

Beginning UIFSA: Interstate Case Processing

Tracy Rumans
Assistant County Attorney
Arapahoe County, Colorado

Adrienne Reed
Attorney IV
El Dorado County, California

Building Strong Families Through Innovation



Outline

- Basics/Overview
- Establishment/Long-Arm
- Enforcement
- Registration
- Modification/CEJ
- Choice of Law
- Arrears and Interest
- Case Closure
- Q&A

#CSDA19NAC

UIFSA Overview

Underlying principle: Only one order allowed

All courts must accord full faith and credit to child support order issued by another state or tribe

- ✦ FFCCSOA (28 USC §1839B)

Multiple orders are not allowed

States must recognize and enforce controlling order

Establishment

When can paternity be established?

- Based on principle of one order in effect at one time
 - No other jurisdiction has determined paternity
-
- ✦ If parentage has been determined in another state, any challenge must be brought in that state
 - ✦ Where no other jurisdiction has determined parentage by acknowledgment or court order



Establishment

Interstate Establishment Options

Noncustodial parent resides in another state, how to establish?

- ✦ Long arm jurisdiction (one-state)
- ✦ Interstate IV-D referral

Long Arm Jurisdiction

What is Long Arm? UIFSA section 201

Must have personal jurisdiction over the alleged/presumed father

- ✦ Most states have long arm statutes
- ✦ Allows service of a party that resides in another state
- ✦ Must meet one of the listed criteria

Long Arm Jurisdiction

Long Arm Personal Jurisdiction may be exercised (Section 201):

Over a non-resident if the individual:

- ✦ Conceived child in the state
- ✦ Is personally served in this state
- ✦ Consents to this state's jurisdiction
- ✦ Resided with the child in this state
- ✦ Resided in this state and paid the child's prenatal expenses or provided support
- ✦ Other constitutionally valid basis



One-State Establishment

Service is required on nonresident parent, but physical presence is not required

- ✦ Tribunal must permit nonresident parent to testify by telephone, audiovisual, or other means
- ✦ Evidence may include affidavits and electronic documents

Establishment

What if you don't have long arm?

Forward UIFSA request to state where address is verified

Other state will need to establish the order in the state where the parent resides



Establishment Hypotheticals

#1: Child is conceived in CA. Father lives in Colorado. Child and CP live in CA. CP requests establishment. May you proceed with action in CA?

A: Yes. Conception is one of the possible criteria for long-arm jurisdiction over the nonresident parent. CA may proceed to serve father with the action, and has personal jurisdiction over him.

Establishment Hypotheticals

#2: Child is conceived in Texas. Father continues to live in Texas. Child and CP move to CA. CP requests establishment. How do you proceed?

A: File an interstate IV-D case to Texas. CA will be the initiating agency and Texas will be the responding agency. The order will be established in Texas using their law, and CP will be allowed to appear by phone or other means.

Enforcement

- ✦ Any U.S. state has authority under UIFSA to enforce a valid order once established
- ✦ Options
 - Direct Enforcement
 - Interstate Referral (Two-state)
- ✦ Initiating jurisdiction decides whether direct enforcement or an interstate referral is appropriate
 - Obtain relevant order, case and payment information
- ✦ Consult AT 17-07, Interstate Child Support Payment Processing before issuing an IWO on another state's order

Direct Enforcement

- ✦ Income Withholding
 - IV-D Agency can send income withholding order (IWO) directly to out-of-state employer
 - Employer must honor IWO as if it was issued by its state
 - NP may contest validity of IWO
- ✦ If enforcing another state's order, IWO must specify issuing state's SDU
 - Consider system limitations
 - May need to review for two-state referral

Direct Enforcement

Other Direct Enforcement Actions:

- ✦ Lien on personal or real property assets
- ✦ Bank levies
- ✦ Direct Withholding of Unemployment or Worker's Compensation (only a few states will honor direct IWO)

Direct Enforcement Issues:

- ✦ NP disputes arrears
- ✦ NP is unemployed or has spotty employment history
- ✦ NP in bankruptcy
- ✦ NP has multiple cases

Interstate Referral (Two-State)

- ✦ IV-D Agency sends referral to jurisdiction where NP resides
- ✦ Must submit referral on required Federal forms
 - Initiating agency must send 2 copies (including 1 certified) of order and sworn/certified statement of any arrears
- ✦ Responding agency may administratively enforce order if appropriate or will proceed with registration

Enforcement: Limited Services

- ✦ Limited services are a “one-time” request for assistance without opening a full intergovernmental case
- ✦ Limited services requests may include:
 - Quick locate
 - Service of Process
 - Assistance with genetic testing or discovery
 - Copies of court orders or payment records
 - Special enforcement with probate or worker’s compensation
 - Teleconferenced hearings
- ✦ Request submitted on Transmittal #3 – Request for Assistance/Discovery

Registration for Enforcement

Two-State Enforcement

Notice to the non-registering party (UIFSA Section 605)

- ✦ Service by mail
- ✦ Order is enforceable from the date of registration
- ✦ 20 days to contest registration of the order
- ✦ If not contested timely, order confirmed by operation of law
- ✦ Include alleged arrears balance

Contest of Registration

Statutory defenses (UIFSA Section 607)

- ✦ Issuing tribunal lacked personal jurisdiction
- ✦ Order obtained by fraud
- ✦ Order has been vacated, modified, suspended
- ✦ Order has been stayed pending appeal
- ✦ Defense to the remedy sought
- ✦ Full or partial payment made

Registration Hypothetical

Order is established in Washington. CP and child continue to live in Washington. NP moves to CA. WA requests enforcement of order by CA.

CA files notice of registration. Upon confirmation, WA order is now enforceable in CA in the same way as a CA order. NP objection must be filed within 20 days and allege one of the listed defenses under section 706. NP entitled to a hearing on the objection. Court may confirm the order, stay enforcement, continue proceedings for additional evidence, or other appropriate orders. (UIFSA Section 706)

Evidentiary Issues

Specific UIFSA Evidence Rules

Documents allowable without a foundation

Precludes court from requiring non-resident party to physically appear at the hearing

- Requires that out of state party be allowed to appear by telephone or other electronic means

Nondisclosure

Nondisclosure of Information

UIFSA Section 312

- ✦ Presumption of nondisclosure of location information to protect the requesting party upon the filing of an affidavit or verified pleading alleging possible harm
- ✦ Requires court to hold hearing if objection filed that the suppressed information be disclosed

Continuing Exclusive Jurisdiction

- ✦ Determines which jurisdiction has the authority to modify the current order
- ✦ References: UIFSA 205 & 611
- ✦ Order-issuing state retains CEJ as long as one of the parties or the child still reside there
 - **Unless the parties consent to another jurisdiction assuming CEJ****
- ✦ CEJ “up for grabs” if all parties have left the order-issuing state



CEJ: Play Away Rule

- ✦ Play Away Rule: CEJ is “up for grabs” if all parties have left the order-issuing state
- ✦ The party requesting a modification must “play away” to the non-requesting party’s state for a modification

CEJ: Exceptions

Exceptions to UIFSA 205 & 611, order-issuing state retaining CEJ:

- ✦ Consent to CEJ – All parties have left issuing state
 - Issuing state maintains CEJ
 - Another state assumes CEJ, provided at least one of the parties resides there
- ✦ International Move Away
- ✦ Modification of a Foreign Support order

CA Jurisdictional Attachment

FL-590A

PETITIONER/PLAINTIFF: _____	CASE NUMBER: _____
RESPONDENT/DEFENDANT: _____	
OTHER PARENT: _____	

UIFSA CHILD SUPPORT ORDER JURISDICTIONAL ATTACHMENT

- TO Order After Hearing (form FL-687)
 Stipulation and Order (form FL-625)
 Other (specify): _____

THE COURT FINDS THE FOLLOWING:

- All parties have left (*issuing state or foreign country*): _____ Petitioner Respondent
 Other Parent is the party requesting modification and resides in (*state or foreign country*): _____
 Petitioner Respondent Other Parent is the nonrequesting party and resides in California. This court assumes continuing, exclusive jurisdiction under Family Code section 5700.611 and modifies the order.
- _____ is the issuing state of the support order. Petitioner Respondent
 Other Parent resides in the issuing state. Petitioner Respondent Other Parent resides in California. Under Family Code section 5700.611(a)(2), the court finds that the parties consented in the issuing state for California to assume continuing, exclusive jurisdiction over support. This court assumes jurisdiction and modifies the order accordingly.
- California is the issuing state of the support order. Petitioner Respondent Other Parent is the party requesting modification and resides in (*state or foreign country*): _____ Petitioner
 Respondent Other Parent resides outside the United States, in (*country*): _____
Under Family Code section 5700.611(f), California retains jurisdiction to modify the order.
- All parties have left (*issuing state*): _____ and reside in California. This court assumes jurisdiction under Family Code section 5700.613 to modify support and domesticates the support issues.
- Under Family Code section 5700.615, this court finds that the foreign country that issued the foreign support order (*country*): _____, cannot or will not modify its order. This court assumes jurisdiction and modifies the order accordingly.
- The parties have agreed that neither of them currently reside in California, which is the state that issued the support order.
 Petitioner Respondent Other Parent resides in (*state or foreign country*): _____
 Petitioner Respondent Other Parent resides in (*state or foreign country*): _____
Under Family Code section 5700.205(a)(2), the parties consent for California to retain continuing, exclusive jurisdiction to modify the support order.
- The parties have agreed that California is the state that issued the support order. Petitioner Respondent
 Other Parent resides in California. Petitioner Respondent Other Parent resides in (*state*): _____
The parties consent under Family Code section 5700.205(b)(1) for (*state*): _____ to assume continuing, exclusive jurisdiction and modify the order.
- Other: _____

THIS IS A COURT ORDER.

Page 1 of 1

Modification

- ✦ Must register another state's order and have CEJ in order to proceed with a modification
- ✦ Spousal support
 - Section 211: Cannot modify a spousal support order issued by another state having CEJ over that order under the law of that state
 - Issuing state retains jurisdiction

Modification Hypotheticals

#1: CA entered an order for child support. All parties have left CA. May CA proceed with a modification?

- ✦ A: Yes. If both parties consent to CA retaining CEJ and modifying the order.
- ✦ NOTE: A stipulation indicating the consent to CA retaining CEJ should be filed with court. This should be included in the order.
 - If the parties do not agree on child support, they must appear at a hearing & give their consent on the record.

Modification Hypotheticals

#2: CA entered an order for child support. NP resides in WA. CP & DEP still reside in CA. CP requests a modification. Where should the modification take place?

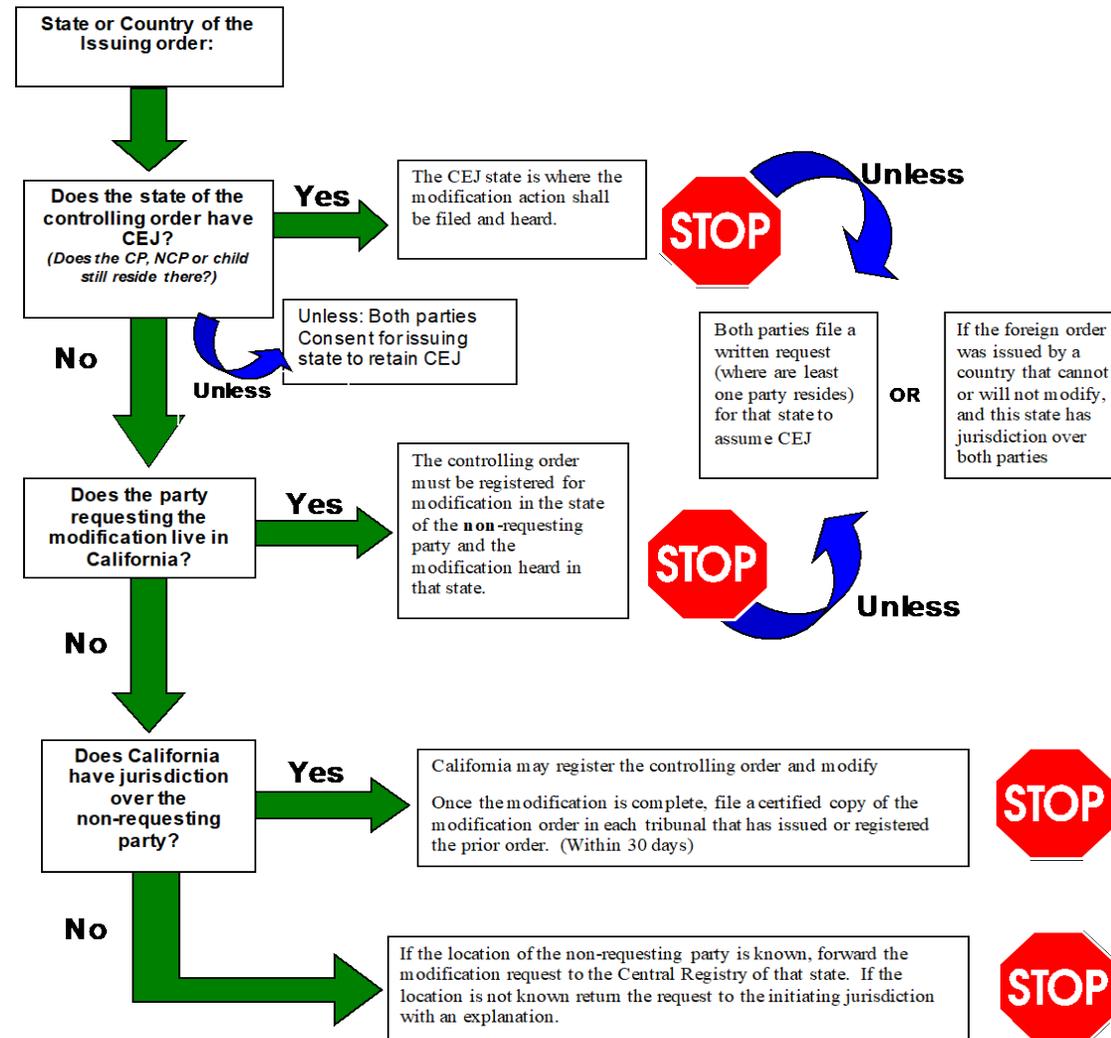
A: CA. If any party or child still reside in the order-issuing state, that state retains CEJ.

NOTE: The parties can consent to WA assuming CEJ & modifying the order.

- The consent must be filed with CA.

CEJ Worksheet

MODIFICATION JURISDICTION WORKSHEET-CALIFORNIA





Choice of Law

Law of issuing/forum state applies for most UIFSA proceedings

Exceptions

- ✦ Direct withholding (Section 502(d))
- ✦ Registration (Section 604)
- ✦ Modification (Section 611(d))

Choice of Law

Direct Withholding (UIFSA Section 502(d))

Employer shall comply with the law of the state of the obligor's principal place of employment for withholding from income with respect to:

- ✦ Employer's fee for processing an income-withholding order
- ✦ Maximum amount permitted to be withheld from the obligor's income
- ✦ Time within which employer must implement withholding order and forward payment

Choice of Law

Registration (UIFSA Section 604)

Law of issuing state governs:

- ✦ Nature, extent, amount, and duration of current payments under a registered support order
- ✦ Computation and payment of arrearages and accrual of interest on the arrearages under the support order
- ✦ Existence and satisfaction of other obligations under the support order

Choice of Law

Registration (UIFSA Section 604)

- ✦ Statute of limitations:
 - Whichever is longer between the issuing state and the registering state controls
- ✦ Enforcement procedures & remedies:
 - Responding state controls

Choice of Law

Modification (UIFSA Section 611(d))

- ✦ In a proceeding to modify a child support order, the law of the issuing state controls the duration of the obligation of support
- ✦ Fulfillment of the duty of support precludes imposition of a further obligation by the modifying state

Choice of Law Hypotheticals

#1: CA entered an order for child support. New York registers the order for enforcement. The statute of limitations in NY is 20 years. There is no statute of limitations in CA. Which SOL applies to the registered order in NY?

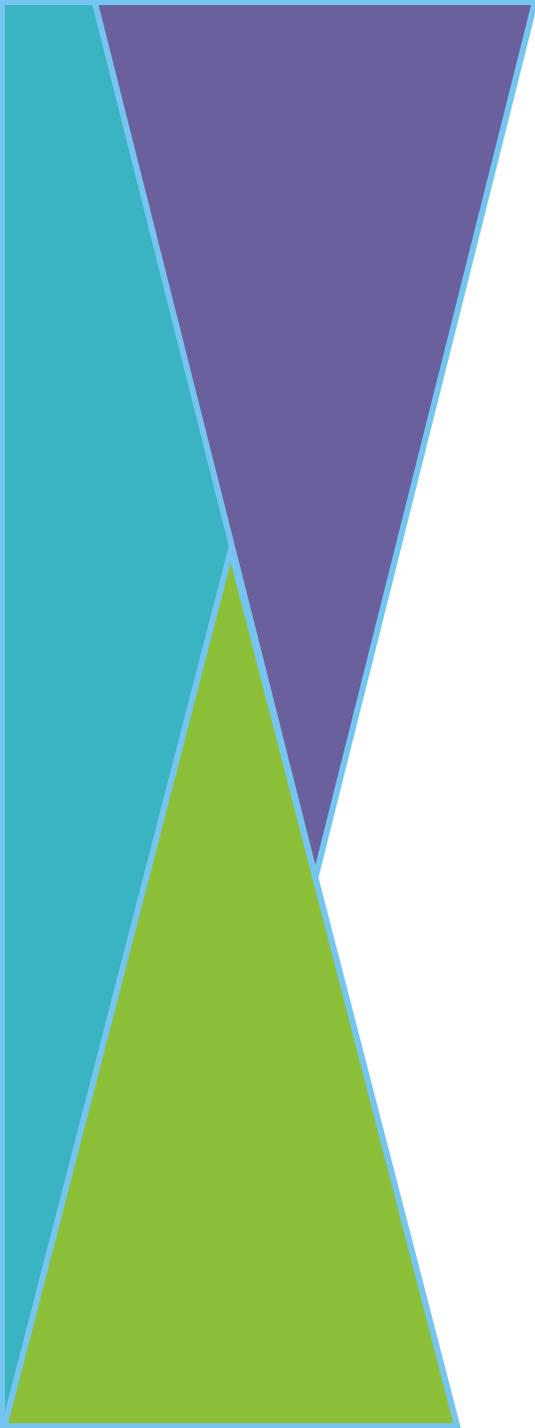
A: CA. Whichever statute of limitation is longer applies.
NOTE: Registration here cannot revive an order for which the SOL has passed.



Choice of Law Hypotheticals

#2: CA entered an order for child support. New York registers the order for modification. Both parents and the child now reside in NY. The age of majority in CA is 18. The age of majority in NY is 21. Under which law does the child emancipate?

A: CA. The law of the issuing state controls the duration of the support order, regardless of which state assumes CEJ.



Financial Issues: Payments

- ✦ Responding agency is responsible for collecting payments
- ✦ Payments must be forwarded to the initiating agency within 2 business days
- ✦ Payments should be allocated to the associated intergovernmental case

Financial Issues: Arrears

- ✦ Order-issuing state is the custodian of records → it determines when a case is paid in full
- ✦ Enforcement of arrears is based on the law of the order-issuing state
- ✦ Interest on arrears varies by state
 - Check the Intergovernmental Reference Guide
 - NOTE: Interest rate of the issuing state applies until the order is registered & modified by state with CEJ
- ✦ Annual notification
 - Initiating agency must send the interest charges owed on the case to the responding jurisdiction at least once a year & upon request

Financial Issues: Fees and Costs

- ✦ Some states recover costs such as genetic testing and other program costs
- ✦ Some states may charge processing fees
- ✦ Must enforce/collect fees and costs for another jurisdiction if they are included in the order
 - [Check the Intergovernmental Reference Guide](#)
- ✦ If your state is not a cost-recovery state, you are not required to obtain an order for cost recovery
 - [You are required to enforce an order for cost recovery for another state upon request](#)

Financial Hypotheticals

#1: CA initiates to NM for enforcement of a CA order. NM subsequently advises the case is paid in full and it will be closing its IG case. Can NM close?

A: No. As the order-issuing state, CA is the custodian of records. The custodian of records controls the calculation of arrears & determines when the case is paid in full.



Financial Hypotheticals

#2: Your state charges interest on arrears. You initiate a referral for enforcement of arrears to a state that does not charge interest. Can the responding jurisdiction reject the referral on this basis?

A: No. A responding agency may not refuse to collect interest if the interest is part of the child support order that the responding agency is enforcing.

- ★ Consider obtaining an order determining arrears and then send the arrears order to the other jurisdiction for enforcement

Case Closure

- ✦ Responsibilities differ depending on whether agency is initiating or responding
- ✦ Generally, a responding jurisdiction may not close its case without the initiating jurisdiction's permission
 - Exception is if the responding agency documents failure by initiating agency to take action essential to providing services
- ✦ Communication with the other jurisdiction is key
- ✦ Can contact Central Registry in other jurisdiction if needed

Case Closure: Initiating Agency

- ✦ Must notify responding agency within 10 business days of case closure:
 - Initiating agency has closed its case
 - Basis for case closure
 - Responding agency's services are no longer needed
- ✦ Must instruct responding agency to terminate any IWO before sending its own IWO to employer

Case Closure: Responding Agency

- ✦ Within 10 business days of receiving notice to close from initiating agency, responding agency must:
 - Terminate IWO
 - Close intergovernmental case
 - Notify initiating agency when case is closed
- ✦ If there is documented failure by initiating agency to take action essential to providing services, responding agency must:
 - Send 60-day intent to close notice to initiating agency
 - Keep case open if initiating agency provides information

Case Closure Hypothetical

Responding jurisdiction discovers NP's sole source of income is SSI. They close their responding case and notify the initiating jurisdiction they have closed. Is this proper?

A: No. Even though this does meet closure criteria (45 CFR 303.11(9)), a state may not unilaterally close intergovernmental cases under case closure criteria in §303.11(1) to (11) without the permission of the initiating agency.

Questions?

Speaker Contact Information

Tracy Rumans, Assistant
County Attorney

trumans@arapahoegov.com

303.752.8892

Adrienne Reed, Attorney IV

adrienne.reed@edcgov.us

530.642.7348

Please be sure to complete the session evaluation.



#CSDA19NAC

