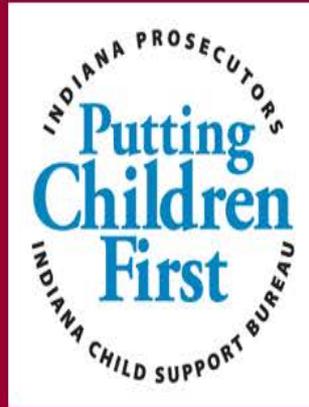


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# UIFSA 2008

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# UIFSA 2008

The 2008 UIFSA Amendments modify the current version of UIFSA's international provisions to comport with the obligations of the United States under the 2007 Hague Convention on Maintenance. 2014 federal legislation requires all states to enact the 2008 UIFSA Amendments as a condition of continuing to receive federal funds for state child support programs. Failure to enact these amendments during the 2015 legislative session may result in a state's loss of important federal funding.

# Outline of UIFSA 2008

- ❖ Article I – General Provisions
- ❖ Article II – Jurisdiction
- ❖ Article III – Civil Provisions of General Application
- ❖ Article IV – Establishment of Support Order or Determination of Parentage
- ❖ Article V – Enforcement of Support Order without Registration
- ❖ Article VI – Registration, Enforcement, & Modification of Support Order
- ❖ Article VII – Support Proceeding Under Convention

# Summary of Changes

- ❖ Determination of Controlling Order
- ❖ Consolidation of Arrears
- ❖ Jurisdiction to Modify
- ❖ Redirection of Payments
- ❖ Expansion of Duties of Support Enforcement Agency
- ❖ Nondisclosure of Information

# Summary of Changes

- ❖ Direct Income Withholding
- ❖ International Cases
- ❖ Evidentiary Provisions
- ❖ Temporary Support Orders
- ❖ Choice of Law

# Definitions

- ❖ State – separate definition; includes tribes
- ❖ Foreign country – separate definition; includes many but not all foreign nations
- ❖ Outside this state – any place but here!
- ❖ Record - information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form

# Determination of Controlling Order

- ❖ Should no longer be necessary
- ❖ Full Faith & Credit for Child Support Orders Act – 10/20/94

# Consolidation of Arrears

- ❖ Requires that tribunal determine arrears under existing order
  - ❑ In conjunction with determination of the order controlling prospective current support

# Jurisdiction to Modify

- ❖ New basis for jurisdiction for modification
- ❖ Issuing tribunal may modify if both parties consent even if neither party resides in that state
  - ❑ Tribunal can retain jurisdiction over spousal support, property settlement and child support if parties agree
- ❖ The residence of the parties at the time of the filing governs whether a tribunal has CEJ
- ❖ The parties may consent to the issuing tribunal retaining CEJ to modify

# Jurisdiction to Modify (cont.)

- ❖ Must follow UIFSA rules in Sections 205, 611, 613 regarding modification jurisdiction
- ❖ Long-arm jurisdiction may not be used to gain personal jurisdiction over a party in a modification proceeding
- ❖ The law of the issuing state governs whether duration of support is a non-modifiable term
  - ❑ The initially determined controlling order locks in the duration of support – UIFSA § 611
  - ❑ Once the support obligation has been fulfilled under the initial controlling order, a new order may not be established

# Jurisdiction to Modify (cont.)

- ❖ UIFSA § 205(a)(2)
- ❖ Issuing tribunal retains CEJ to modify based on consent
- ❖ The issuing tribunal may modify its order even if no party resides there if:
  - ❑ The parties consent in record or in open court for the tribunal to continue to exercise jurisdiction to modify its order
  - ❑ Ex: New Jersey order, CP moves to New York and NCP moves to Pennsylvania, but parties want NJ to retain control of order

# Jurisdiction to Modify (cont.)

- ❖ UIFSA § 205(b)(1)
- ❖ Even if a party resides in the issuing state, the issuing tribunal may not exercise its CEJ to modify its order if:
  - ❑ All individual parties file consent in a record with the issuing tribunal that a tribunal of another state with jurisdiction over at least one of the individual parties or that is located in the state of the child's residence may modify the order and assume CEJ

# Jurisdiction to Modify (cont.)

- ❖ Registration for Modification of another state's order – “Play Away Rule” – UIFSA § 611(a)(1)
- ❖ Registration for Modification of another state's order – Consent – UIFSA § 611(a)(2)
- ❖ Registration for Modification of another state's order – all parties reside in registering state – UIFSA § 613

# Redirection of Payments

- ❖ UIFSA Section 319
- ❖ Process has been expedited
- ❖ If neither party continues to live in the state that issued the controlling order, the support agency or tribunal of the issuing state must
  - ❑ Redirect the payment to the agency in which the obligee is receiving services, and
  - ❑ Issue a conforming income withholding order to the obligor's employer

# Expanded Duties of Support Enforcement Agency

- ❖ The amendments place additional responsibilities upon the support enforcement agency to
  - ❑ Seek a DCO
  - ❑ Convert any orders, arrears or judgments listed in foreign currency to US dollars
  - ❑ Cooperate with a request for redirection of payments

# Nondisclosure of Information

- ❖ UIFSA Section 312
- ❖ Changes the language regarding protection of information in family violence or child abduction cases
  - ❑ Consistent with the language in the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)

# Nondisclosure of Information (cont.)

- ❖ No need for a finding by a tribunal
- ❖ Need an allegation in affidavit or pleading under oath
  - ❑ Health, safety, or liberty of party or child would be jeopardized by disclosure
- ❖ If allegation, identifying information must be sealed
- ❖ Tribunal may order disclosure after hearing



# Challenges to Direct Income Withholding

- ❖ 1996 version of UIFSA - allows an obligor to challenge a direct income withholding as if it had been issued in the employer's state
- ❖ UIFSA 2008 - provides for registration of the income withholding order in the employer's state
  - ❑ Upon registration, the obligor can seek a stay of enforcement of the order pending resolution of the contest

# Evidentiary Provisions

- ❖ UIFSA Section 316
- ❖ Requires telephonic hearing if requested by out-of-state party
- ❖ While the 1996 version of UIFSA permitted a tribunal to accept testimony via telephone, audiovisual or other electronic means from a tribunal in that state, the 2001 amendments make such acceptance mandatory
- ❖ Documents may be admitted into evidence "under penalty of perjury" rather than "under oath"

# Temporary Support Orders

- ❖ List of circumstances changed making them consistent with the circumstances contained within the Uniform Parentage Act

# Choice of Law

- ❖ UIFSA Section 604
- ❖ Clarifies choice of law for:
  - ❑ Interest rates - law of issuing state; once arrears are consolidated in multiple order case, prospective interest is based on law of state with controlling order
  - ❑ Duration of Support - law of state that issued first determined controlling order
  - ❑ Statute of Limitations – law of issuing state or enforcing state, whichever is longer

# Proposed New/Revised Forms

- ❖ New Personal Identifying Information – PII form
- ❖ Child Support Enforcement #1 Acknowledgment – now a separate form
- ❖ Revisions to Uniform Support Petition and General Testimony
- ❖ Instead of Affidavit in Support of Establishing Paternity (Paternity Affidavit), there will be a new form: Declaration of Parentage
- ❖ Child Support Agency Request for Change of Payment Location Only Pursuant to UIFSA §319(b)

# International Cases

- ❖ Article VII
- ❖ More direction regarding international support cases
- ❖ The amendments expand the definition of state as it relates to a foreign country
- ❖ States must convert foreign amounts to US dollars
- ❖ If a foreign country would have jurisdiction to modify under UIFSA, but cannot, the IJ tribunal is granted jurisdiction to do so

# International Cases (cont.)

- ❖ States may choose between two alternatives:
  - ❑ Must, upon request, provide services to all petitioners; or
  - ❑ Must, upon request, provide services to a petitioner residing in a state or requesting services thru a Central Authority (Hague or bi-lat case) and may, upon request, provide services to an individual petitioner not residing in a state (all other foreign cases)

# International Cases (cont.)

- ❖ Registration for Enforcement
  - ❑ non-Hague foreign support orders – same as per UIFSA 1996
  - ❑ Hague foreign support orders – differences involving documents, timeframes, and defenses

# International Cases (cont.)

- ❖ Required documents - Registration for Enforcement of non-Hague foreign support orders:
  - ❑ Child Support Enforcement Transmittal #1
  - ❑ 2 copies of order, including 1 certified copy
  - ❑ Sworn or certified statement of arrears
  - ❑ Certain obligor & obligee information – Registration Statement

# International Cases (cont.)

- ❖ Required documents - Registration for Enforcement of Hague foreign support orders:
  - ❑ Child Support Enforcement Transmittal #1
  - ❑ Complete text of order (or abstract by issuing tribunal)
  - ❑ Record: order is enforceable in issuing country
  - ❑ Record attesting to due process (if default order)
  - ❑ Record: arrears and automatic adjustment of support
  - ❑ Record of receipt of free legal assistance in issuing country (if necessary)

# International Cases (cont.)

- ❖ Timeframe to contest non-Hague foreign support orders:
  - ❑ Within **20** days after notice of registration
- ❖ Timeframe to contest Hague foreign support orders:
  - ❑ Not later than **30** days after notice of registration
  - ❑ Not later than **60** days after notice if contesting party does not reside in U.S.

# International Cases (cont.)

- ❖ Defenses to recognition and enforcement of convention order include:
  - ❑ Recognition and enforcement of order is manifestly incompatible with public policy, including failure of issuing tribunal to observe minimum standards of due process
  - ❑ Issuing tribunal lacked personal jurisdiction consistent with Section 201;
  - ❑ Order is not enforceable in issuing country;
  - ❑ If default order, there was a lack of due process re: notice & opportunity to be heard

# International Cases (cont.)

- ❖ If a tribunal does not recognize a Hague order because:
  - ❑ There was a lack of personal jurisdiction;
  - ❑ There was procedural fraud;
  - ❑ A proceeding between same parties with same purpose is pending before a tribunal of that state and that proceeding was filed first; or
  - ❑ The order is a default order but the notice and opportunity to challenge did not satisfy due process
- ❖ Then...

# International Cases (cont.)

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

# International Cases – Modification

- ❖ A U.S. tribunal retains jurisdiction to modify an order it has issued, or modify a foreign support order even if that country would have CEJ, if:
  - ❑ one party resides in another U.S. state (as defined by UIFSA)
  - ❑ the other party resides outside the United States
  - ❑ Issuing country *cannot or will not* modify its order
  - ❑ U.S. tribunal has personal jurisdiction over the parties
  - ❑ Consent is not necessary
  - ❑ Residence of petitioner does not matter
- ❖ UIFSA § 611(f) for U.S. order, § 615 for foreign order

# International Cases - Modification (cont.)

- ❖ If a U.S. tribunal does not modify a Convention order because it does not recognize the order, it must allow time for the appropriate party to request establishment of a new support order

# International Cases - Currency Conversion

- ❖ Hague Convention does not address
- ❖ UIFSA says when it must occur and who has responsibility to prepare conversion but does not specify how to do currency conversion
- ❖ Recommended practice re: wording of notice of registration of foreign support order:

*“The amount of the alleged arrearage is 900 Euros as of [12/25/2015] having a United States of America Dollar equivalence of \$ 1100.”*

# International Cases - Currency Conversion (cont.)

- ❖ It is important for caseworkers to periodically reconcile accounts
- ❖ Key principle – the order isn't paid in full until it is paid in full in currency of the country where it was issued; the foreign country has the official determination of arrears over their own orders, just like U.S. states have the official determination of arrears over our orders
- ❖ Currency conversion for enforcement purposes does not modify the order

# Hague Convention

- ❖ U.S. signed the *Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance* on November 23, 2007
  - ❑ World-wide coverage
  - ❑ Reciprocity
  - ❑ Uniformity/Efficiency
  - ❑ Higher standard of child support services world-wide
  - ❑ UIFSA 2008 implements the Hague Convention

# Hague Convention

- ❖ 55 countries are members
- ❖ Application through central authority
- ❖ Direct request to competent authority
- ❖ Has no effect on countries the United States has bilateral agreements with, or on state-level agreements
- ❖ US ratification expected by late summer 2016
- ❖ All states would first have to adopt UIFSA 2008
- ❖ Different international forms: bi-lats vs Hague

# Hague Convention – What Has Happened?

- ❖ The Senate gave advice and consent – 2010
- ❖ Congress passed the Preventing Sex Trafficking and Strengthening Families Act – 2014
  - ❑ Requires a state to enact UIFSA 2008 in its next legislative session as a condition of federal Title IV-D funding
  - ❑ UIFSA 2008 – state legislation that will implement the Convention in U.S.
  - ❑ All states have adopted UIFSA 2008, by 4/1/16.

# Hague Convention – What Needs to Happen?

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

# Hague Convention

Current status of ratification – Countries that have ratified:

- ❑ Norway
- ❑ Albania
- ❑ Ukraine
- ❑ Bosnia & Herzegovina
- ❑ European Union:
- ❑ Austria
- ❑ Belgium
- ❑ Bulgaria
- ❑ Croatia
- ❑ Cyprus
- ❑ Czech Republic
- ❑ Denmark
- ❑ Estonia
- ❑ Finland
- ❑ France
- ❑ Germany
- ❑ Greece
- ❑ Hungary
- ❑ Ireland
- ❑ Italy
- ❑ Latvia
- ❑ Lithuania
- ❑ Luxembourg
- ❑ Malta
- ❑ Netherlands
- ❑ Poland
- ❑ Portugal
- ❑ Romania
- ❑ Slovakia
- ❑ Slovenia
- ❑ Spain
- ❑ Sweden
- ❑ United Kingdom

# Hague Convention Resources

- ❖ From website, [www.hcch.net](http://www.hcch.net), go to the page for Child Support and Family Maintenance Section
  - ❑ [http://www.hcch.net/index\\_en.php?act=text.display&tid=191](http://www.hcch.net/index_en.php?act=text.display&tid=191)
  - ❑ Convention text
  - ❑ Mandatory and recommended forms
  - ❑ Country Profiles
  - ❑ Hague Convention forms
  - ❑ Practical Handbook for Caseworkers, containing procedures, flowcharts, and instructions for completing the forms

# Hague Convention Resources

- ❖ OCSE international web page
  - ❑ <http://www.acf.hhs.gov/programs/css/international>
  - ❑ International Case Processing Guides for Caseworkers
  - ❑ International Dear Colleague Letters to FRCs
  - ❑ Policy Guidance to States
  - ❑ <http://www.acf.hhs.gov/programs/css/resource/uniform-interstate-family-support-act-2008-and-hague-treaty-provisions>