



ERICSA

The logo features the word "ERICSA" in a bold, white, sans-serif font inside a teal, rounded rectangular sign with a white border. The sign is mounted on two teal poles. Behind the sign are two orange triangular road signs pointing upwards. The background is a stylized landscape with green rolling hills, a grey road with white dashed lines curving into the distance, and a light blue sky with white clouds.

On the Road Again

**A
VIRTUAL
ROAD
TRIP**

MAY 24 – 26, 2021

UIFSA BASICS AND BEYOND

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Public Knowledge



Intergovernmental Child Support Laws

- Uniform Reciprocal Enforcement of Support Act (URESA)
- Revised Uniform Reciprocal Enforcement of Support Act (RURESA)
- Full Faith and Credit for Child Support Orders Act (FFCCSOA)—
10/20/94
- Uniform Interstate Family Support Act (UIFSA)



Laws Related to International Child Support

- 42 US.C. § 659a
 - Secretary of HHS, in consultation with State Department, can declare a foreign jurisdiction to be a reciprocal country (FRC)
 - States can enter into reciprocal arrangements with countries that are not the subject of a federal declaration
- 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance

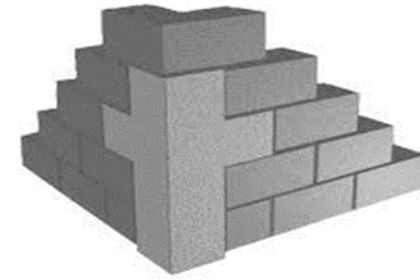


Uniform Interstate Family Support Act

- Model law developed by Uniform Law Commissioners
- Approved 1992. Later amended 3 times.
- PRWORA mandated all states enact UIFSA 1996 by 1/1/98
- Preventing Sex Trafficking and Strengthening Families Act
 - Mandated all states enact UIFSA 2008



Guiding Principles



- The cornerstone of UIFSA and FFCCSOA is one order per obligor and child.
- States must give full faith and credit to valid child support orders issued by other states.
- In the rare case when multiple valid support orders exist, there are rules for determining which support order governs.
- If there is an existing valid order, no new order can be established.
- There are rules that limit modification jurisdiction.



Other Key Principles



- Visitation may not be raised and is not a defense to nonpayment.
- UIFSA has enhanced rules of evidence.
- Non-parentage is not a defense, if parentage has previously been determined under law.
 - Parentage order
 - Signed acknowledgment of parentage
- There are one-state and two-state procedures.



2007 Hague Child Support Convention

- Became effective in U.S. on January 1, 2017
- Implemented in U.S. through UIFSA 2008
- Article 7 of UIFSA only applies to Convention applications
- List of signatory countries can be found on Hague website:

<https://www.hcch.net/en/instruments/conventions/publications1/?dtid=3&cid=131>



What is an Intergovernmental Case?

Noncustodial parent and custodial parent and child(ren) live in different jurisdictions.

- State
- Tribe
- Foreign country



Analyzing an Intergovernmental Case

- No order? – Establish
- One order? – Enforce and/or modify
- Multiple orders – Ask tribunal to determine the valid/controlling order before taking further action



Controlling Order and CEJ



Controlling Order

- Order that governs current support
- Remains enforceable even if everyone has left the issuing state
- Can be registered for enforcement in any state
- Initial controlling order locks in nonmodifiable terms



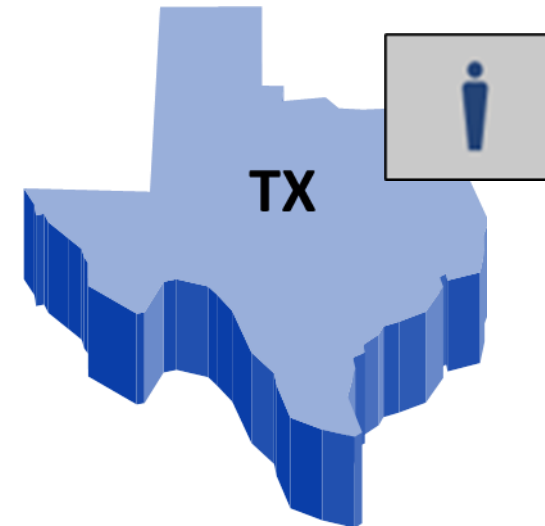
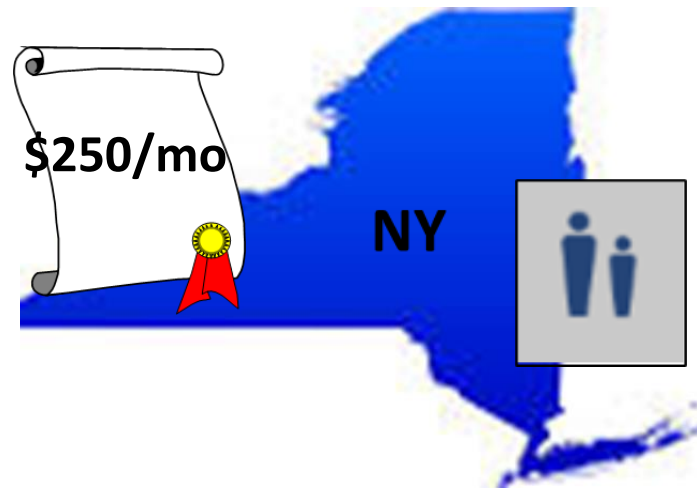
Continuing Exclusive Jurisdiction (CEJ)

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



CEJ and Child Support

- CEJ = controlling order + NCP, individual CP, or child lives in issuing state
- Residence at time of modification request is what matters
- Section 205(a)(1)



CEJ and Child Support (cont'd)

- CEJ = controlling order + consent to retain CEJ
- The issuing tribunal may modify even if no party or child lives there, if:
 - The parties consent in a record or in open court for the tribunal to continue to exercise jurisdiction to modify its order.
- Section 205(a)(2)

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



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Shift of CEJ Based on Consent

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

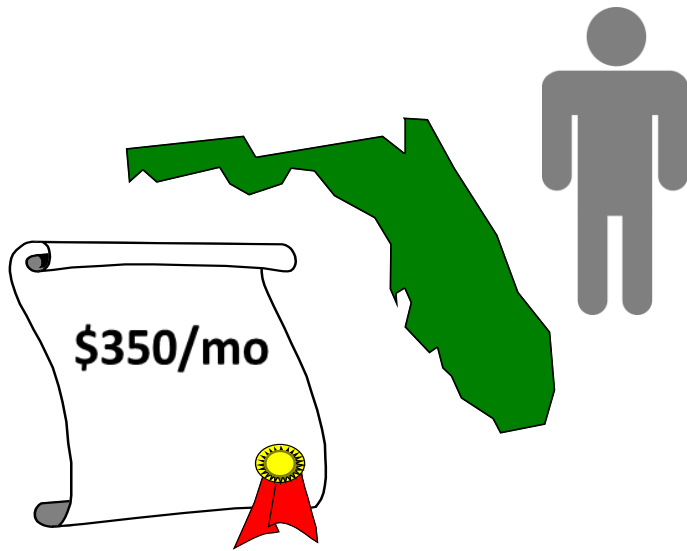


Registration for Modification – CEJ State

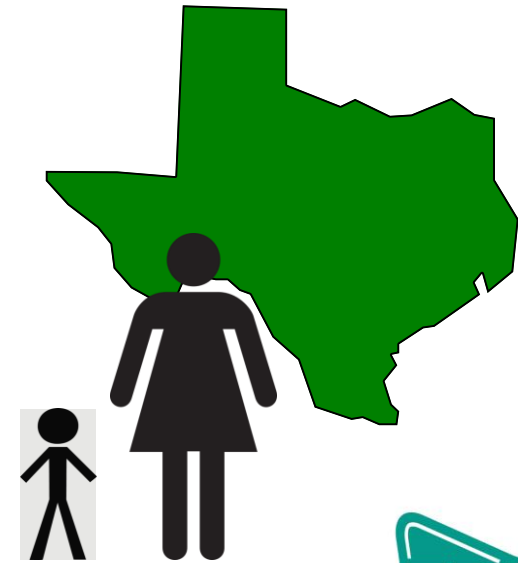
- If there is a CEJ state, another state can register and modify the order **only if**:
 - It is the state where the child resides or it has personal jurisdiction over one of the parties; and
 - All the parties have filed consents in a record in the issuing tribunal for the registering tribunal to modify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



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

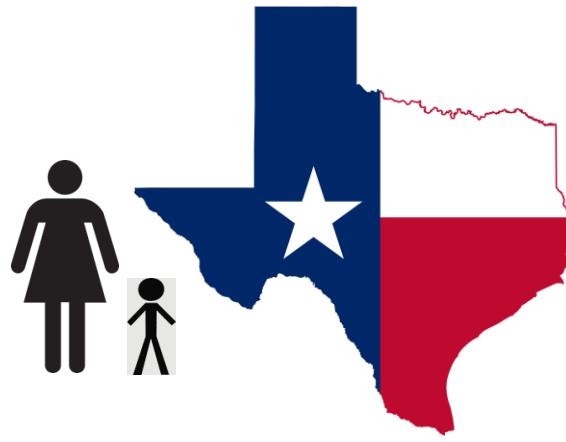


Parties file consent in FL tribunal
for TX tribunal to modify order
and assume CEJ



Issuing Tribunal Retains Modification Jurisdiction – International Case

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



CEJ – Important Points

- If another state gains CEJ, it cannot modify terms of the original controlling order that are non-modifiable.
- For example:
 - Duration (age of majority)



Jurisdiction

- The power and authority to hear and determine a support matter, which may include, but is not limited to:
 - Establishing paternity
 - Establishing a support order
 - Modifying a support order
 - Enforcing the payment and/or other terms of an existing support obligation



Types of Jurisdiction

- Subject-matter jurisdiction
- Personal jurisdiction
 - Long-arm jurisdiction is a way to acquire personal jurisdiction over a nonresident
- In rem jurisdiction



One State or Two State Case?

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



Establishment

- Is long-arm jurisdiction available and appropriate?
- Legal provision that permits one state to claim personal jurisdiction over someone who lives in another state



Long-Arm Statute – UIFSA Section 201

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



Long-Arm Processing

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



Enforcement

- Is direct income withholding appropriate?
- Remedy that allows the agency to send an income withholding order (IWO) directly to an employer in another state



Direct Income Withholding

- Use federal IWO form.
- Not available for foreign support orders.
- Can't change payment SDU in order.
- If another state issued the order:
 - Communicate with the other state.
 - Keep issuing state informed of any payments.
 - May be able to ask the other state to change the payment location to your SDU
 - Section 319
 - OCSE-AT-17-07



Advantages of a One-State Action

- Saves time – no need to involve another agency
- If establishment, means your state's law applies
 - Support guidelines
 - Duration of support
- You will be more familiar with the order's provisions
- Your state has CEJ to modify as long as a party or child lives in the state
- Enforcement stays within your control



Limitations of a One-State Action



- If establishment, might have trouble locating NCP or serving process
 - Will a limited services request help?
- If enforcement, obligor might be a job hopper
- Might need agency where obligor lives or has assets to use their enforcement remedies
- Direct income withholding not appropriate if there's an open IV-D case in another state



Two-State Case: Initiating

- 45 CFR 303.7(c)
- Initiating process includes:
 - Verifying party's location
 - Completing all UIFSA required paperwork
 - Forwarding the documents to the Central Registry of the responding state
 - Following up on the case



Two-State Case: Responding

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



Registration

- Process by which a support order issued by one tribunal is filed in another tribunal
- Types
 - Enforcement-only
 - Modification-only
 - Modification and enforcement
- Allows the state in which the order is registered to take the action requested



Registration for Enforcement

- Allows the order to be registered in any state for the sole purpose of enforcement.
- Confirms validity of order and the amount of the arrears.
- No objection possible to the substantive provisions of the order.
- 20-day contest period available for the non-registering party.
 - Burden of proof on the respondent
 - Limited grounds for challenge



Valid Defenses

- 1) Issuing tribunal lacked personal jurisdiction over the contesting party.
- 2) Order was obtained by fraud.
- 3) Order has been vacated, suspended, or modified by a later order.
- 4) Issuing tribunal has stayed the order pending appeal.
- 5) There is a defense under the law of this State to the remedy sought



Valid Defenses (cont'd)

- 6) Full or partial payment has been made.
- 7) The statute of limitations precludes enforcement of some or all of the alleged arrearage.
(See Section 604 Choice of Law)
- 8) The alleged controlling order is not the controlling order.



Defenses that are Not Valid

- The order amount is too high. It exceeds my ability to pay.
- I'm not the father of the child.
- I'm not allowed to see my child.



Which State's Laws Apply?

Order Issuing State

- Amount of support
- Duration of support
- Interest rate, if any
- Nature of the order (e.g., step down, flat/fixed, per child)

Enforcing State

- Remedies used (e.g., driver's license, professional license suspension)
- Judicial registration or administrative enforcement

Statute of limitations for enforcing arrears is governed by law of issuing state or enforcing state, whichever is longer.



Registration for Modification

- UIFSA packet should include Uniform Support Petition as well as Letter of Transmittal Requesting Registration.
- Tribunal must have jurisdiction to modify.
- Same defenses apply to registration of the order and alleged arrears.



Registration for Modification – No CEJ State

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

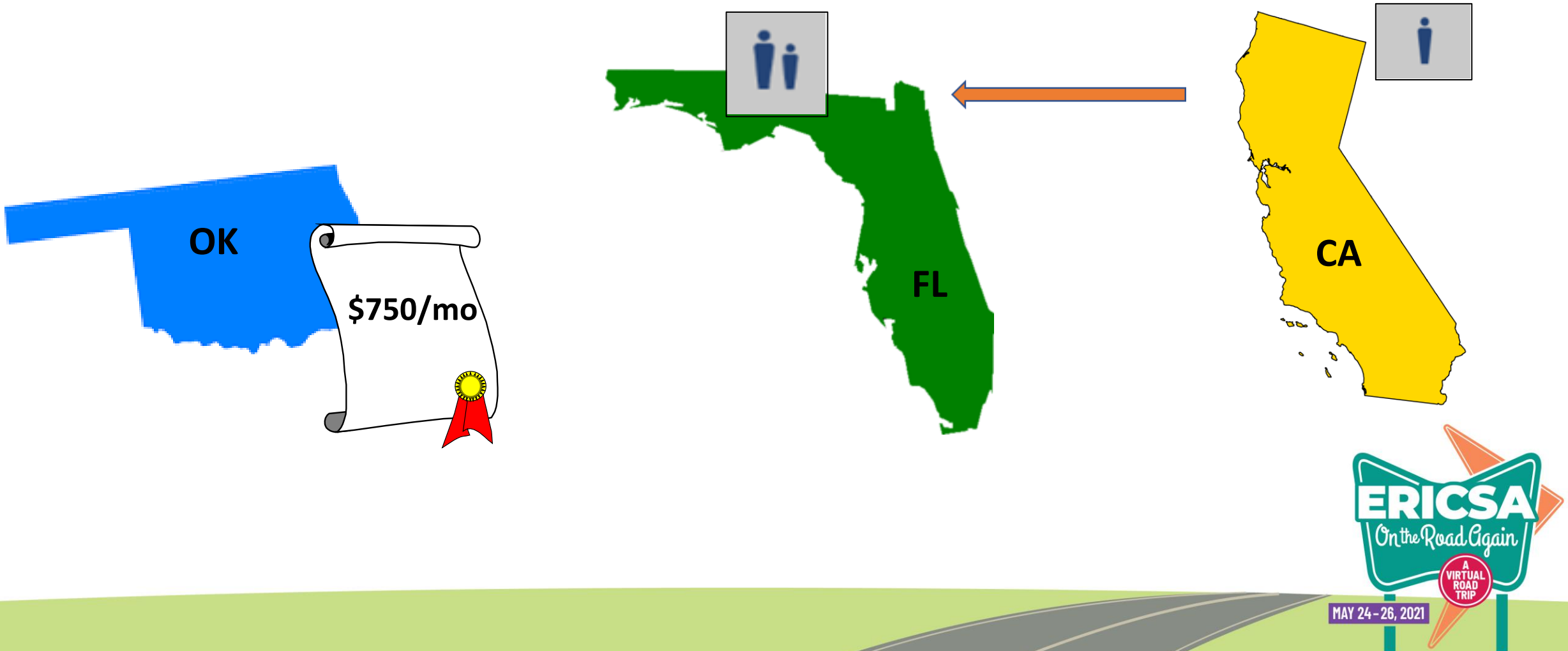


Registration for Modification – Section 611(a)(1)

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



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

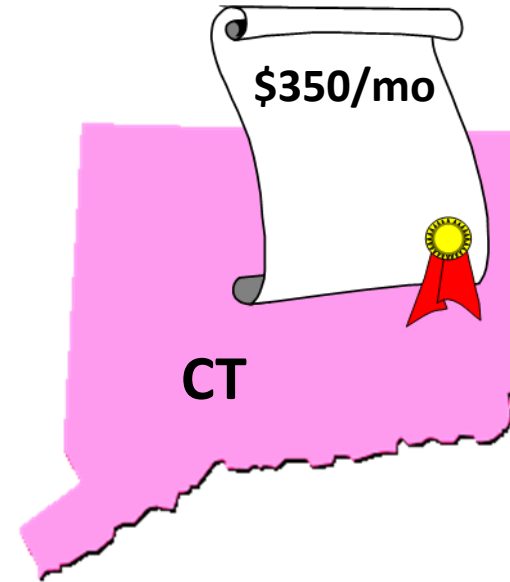
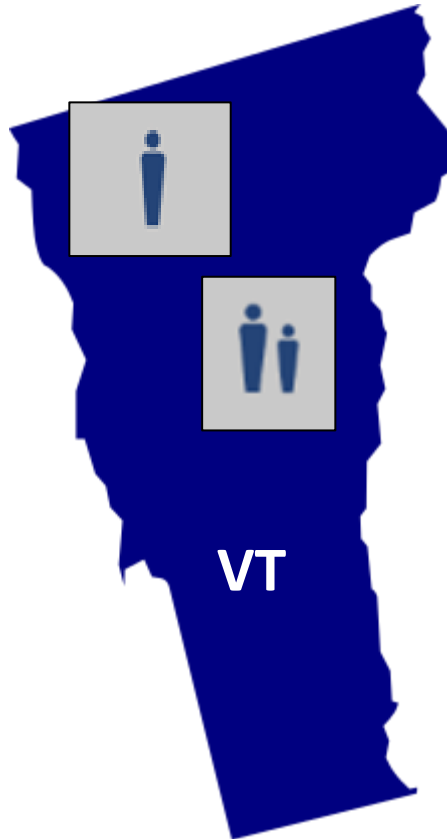


Registration for Modification – Section 613

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



Example of Jurisdiction under Section 613



Which State's Laws Apply?

Order Issuing State

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

State modifying the Order

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

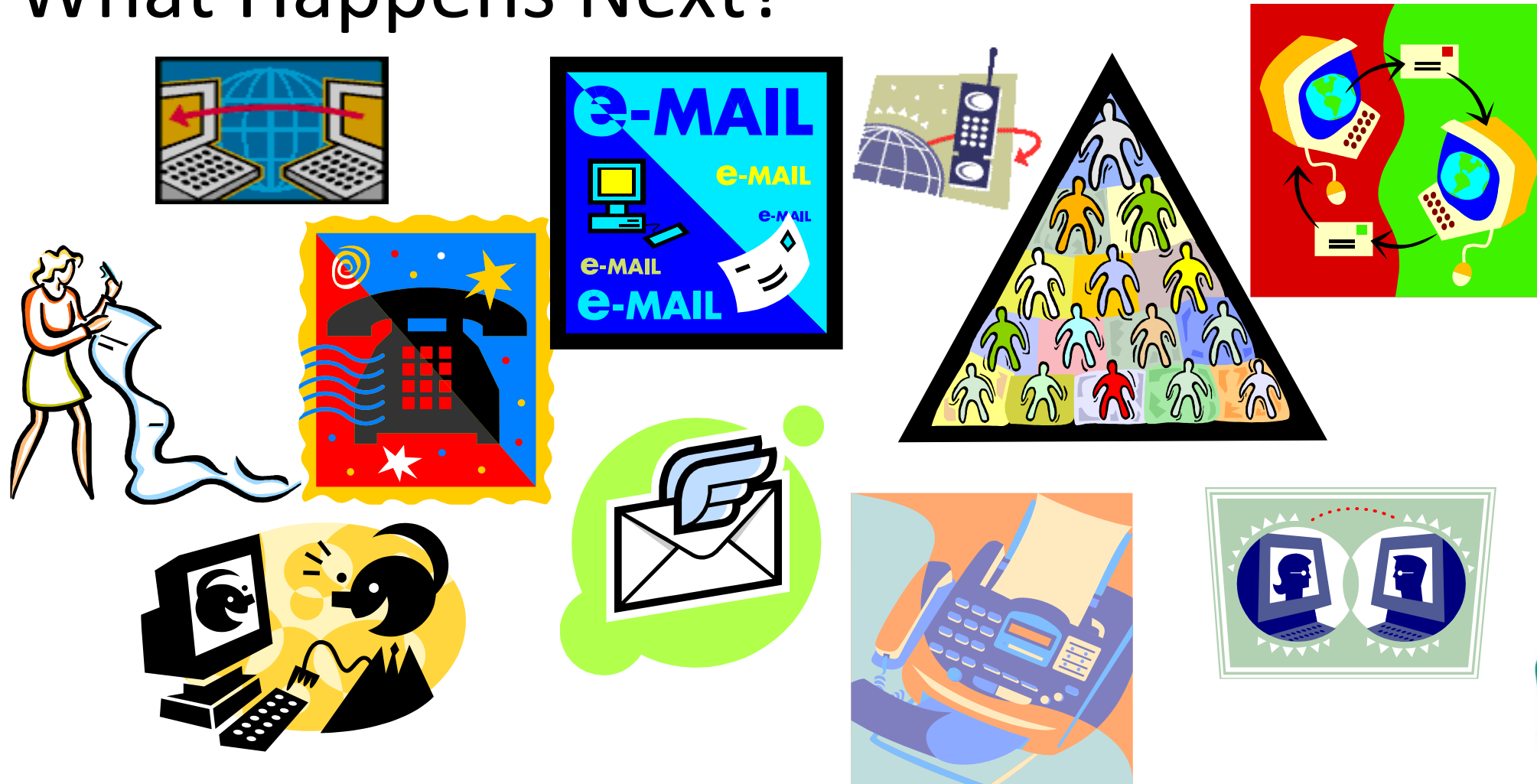


Modification of Foreign Support Orders

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



What Happens Next?



Electronic Tools

- Use the electronic tools available
 - IRG
 - QUICK



- FCR Query
- CSENet
- EDE



Resources

- UIFSA 2008: [Model Act version of UIFSA 2008 with comments](#)
 - Or on your own state's online statute site
- OCSE website: <https://www.acf.hhs.gov/css>
- Intergovernmental Reference Guide for state specific information
<https://extranet.acf.hhs.gov/auth/login>
- Practical Handbook for Caseworkers under the 2007 Child Support Convention, published by The Hague Conference on Private International Law (2013): <https://www.hcch.net/en/publications-and-studies/details4/?pid=6095&dtid=3>



Resources (cont'd)

- OCSE-IM-15-01: Interstate Family Support Act (2008) and The Hague Treaty Provisions
- OCSE-AT-19-08: OMB-Approved Standard Intergovernmental Child Support Enforcement Forms — December 2019
- OCSE-PIQ-20-01: Using the Intergovernmental Forms for Case Processing
- OCSE-AT-20-05: OMB approved Hague Child Support Convention Forms
- OCSE-AT-20-14: Updated Interstate Child Support Policy



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