



ERICSA

2022

**Jazzin' It Up
for Children
and Families**

New Orleans

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**59TH ANNUAL
TRAINING CONFERENCE
& EXPOSITION**

Your State or Mine? Interstate Modification

Speakers:

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Public Knowledge®

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Discussion Topics

- Goal of UIFSA
- Continuing Exclusive Jurisdiction (CEJ)
- International Case – Continuing Jurisdiction to Modify
- Registration for Modification
- Jurisdiction to Modify Child Support vs. Child Custody
- Modification of Tribal Order – FFCCSOA
- Improper Modification



GOAL OF UIFSA



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Goal of UIFSA

- One controlling order for current support
 - Same obligor and child(ren)
- Three key concepts
 - No *de novo* order if existing order
 - Determination of controlling order if multiple orders
 - Continuing exclusive jurisdiction to modify



(with acknowledgment to Three Dog Night!)



No New Order

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



Establishment or Modification – Case Scenario #1

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

How should OH proceed?

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



Establishment or Modification – Case Scenario #1

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

How should OH proceed?

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



Establishment or Modification – Case Scenario #2

- SC issues divorce order that awards \$0 support
- Obligor moves to NC
- Obligee applies for IV-D services in SC, seeking support

How should SC proceed?

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



Establishment or Modification – Case Scenario #2

- SC issues divorce order that awards \$0 support
- Obligor moves to NC
- Obligee applies for IV-D services in SC, seeking support

How should SC proceed?

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



Establishment or Modification – Case Scenario #3

- MN issues divorce order with child support reserved
- Obligee moves to WV and requests IV-D services, seeking support
- Obligor remains in MN

How should WV proceed?

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



Establishment or Modification – Case Scenario #3

- MN issues divorce order with child support reserved
- Obligee moves to WV and requests IV-D services, seeking support
- Obligor remains in MN

How should WV proceed?

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



Determination of Controlling Order

- Applies if multiple ongoing support orders involving same obligor and child(ren)
- Should be rare
- Initially determined controlling order establishes duration



CONTINUING, EXCLUSIVE JURISDICTION



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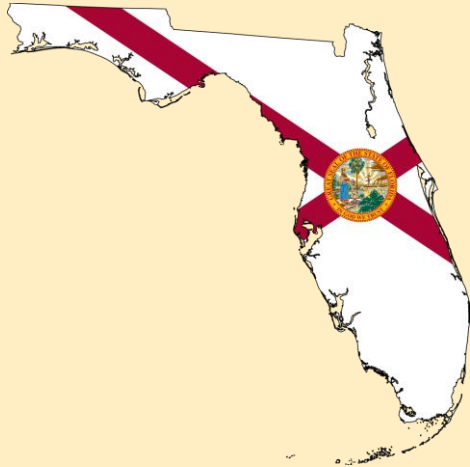
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Definition

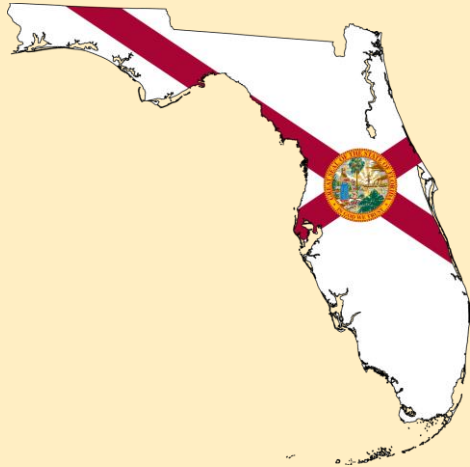
- Section 205(a)
- Tribunal assumes CEJ once order issued
- Tribunal retains CEJ if either party or child resides there
 - Time of filing of modification request
- Even if no one resides in issuing state, tribunal retains CEJ if parties consent



CEJ – Residence of Party or Child



CEJ – Residence of Party or Child



CEJ - Consent

- 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



Consent to Shift CEJ

- 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)



CEJ – Case Scenario #1

- Obligee lives in Ohio with child
- Obligor lives in Illinois where support order issued
- Obligor wants reduction in support

Which state has CEJ to modify order?

- a. Ohio
- b. Illinois
- c. No state has CEJ



CEJ – Case Scenario #1

- Obligee lives in Ohio with child
- Obligor lives in Illinois where support order issued
- Obligor wants reduction in support

Which state has CEJ to modify order?

- a. Ohio
- b. Illinois**
- c. No state has CEJ



CEJ – Case Scenario #2

- Obligee and children live in MI
- Obligor lives in NJ
- Order issued in NY

Can obligee seek modification in NY?

- a. Yes, because NY is issuing state
- b. No, because no party lives there
- c. Yes, if both parties consent



CEJ – Case Scenario #2

- Obligee and children live in MI
- Obligor lives in NJ
- Order issued in NY

Can obligee seek modification in NY?

- a. Yes, because NY is issuing state
- b. No, because no party lives there
- c. Yes, if both parties consent**



Special Rules of Evidence

- If tribunal is exercising personal jurisdiction over nonresident because it has CEJ to modify order, UIFSA's special rules of evidence and procedure apply
 - Section 316 (receipt of evidence from outside state)
 - Section 317 (communications between tribunals)
 - Section 318 (assistance with discovery)
- In other respects, Articles 3 through 6 do not apply because it's considered a domestic action
 - Tribunal applies local law



INTERNATIONAL CASE – CONTINUING JURISDICTION TO MODIFY



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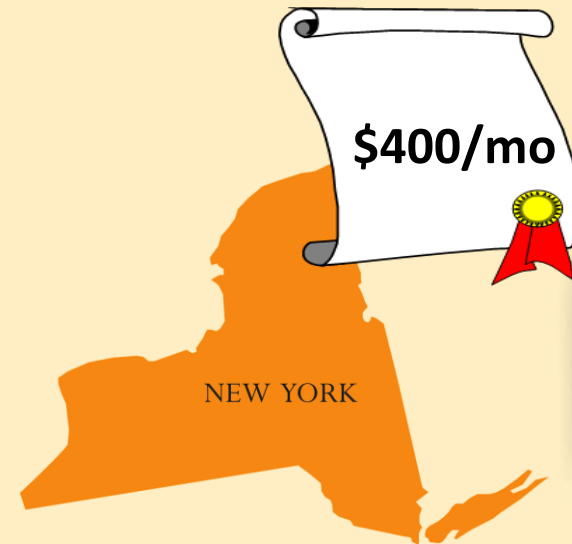
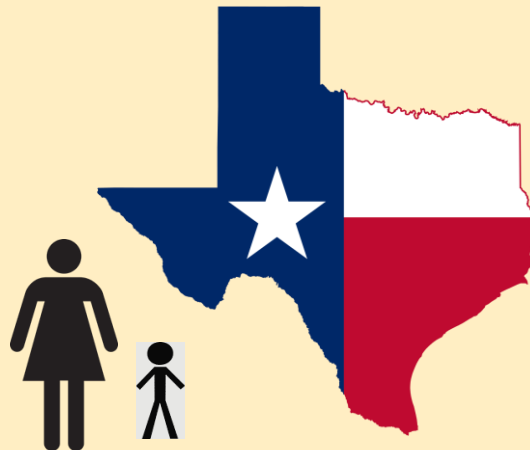
International Case – Continuing Jurisdiction to Modify

- Section 611(f)
 - U.S. order, one party in U.S., one party in foreign country
 - Does not require consent by parties
 - Does not matter where petitioner resides
- Continuing, but **not** exclusive, jurisdiction to modify



Issuing Tribunal Retains Modification Jurisdiction – International Case

- One party resides in another U.S. state (as defined by UIFSA); and
- The other party resides outside the U.S.



International Case – Continuing Jurisdiction to Modify – Case Scenario

SC

Order

NC

Obligee and child

Italy

Obligor

Can obligor seek modification in U.S.?

- a. Yes
- b. No, because there is no state with CEJ

Which state has jurisdiction to modify order?

- a. South Carolina
- b. North Carolina

Must obligor seek modification in South Carolina?

- a. Yes
- b. No



REGISTRATION FOR MODIFICATION



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Overview

- Requires existing support order
- Requires personal jurisdiction over parties
- Used when no CEJ unless consent exception applies



Overview (cont'd)

- 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.

For cases with existing orders from another jurisdiction (not the responding state):

- Register, modify, and enforce
- Register, modify, then close the intergovernmental IV-D case

1. Child Support Enforcement Transmittal #1 – Initial Request (Check action 4.B or C.)
2. Child Support Agency Confidential Information Form
3. Letter of Transmittal Requesting Registration
4. Uniform Support Petition
5. General Testimony
6. Personal Information Form for UIFSA § 311

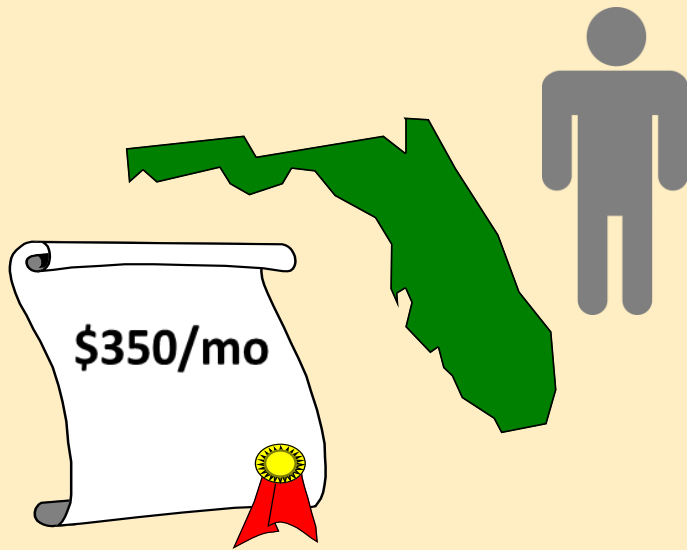


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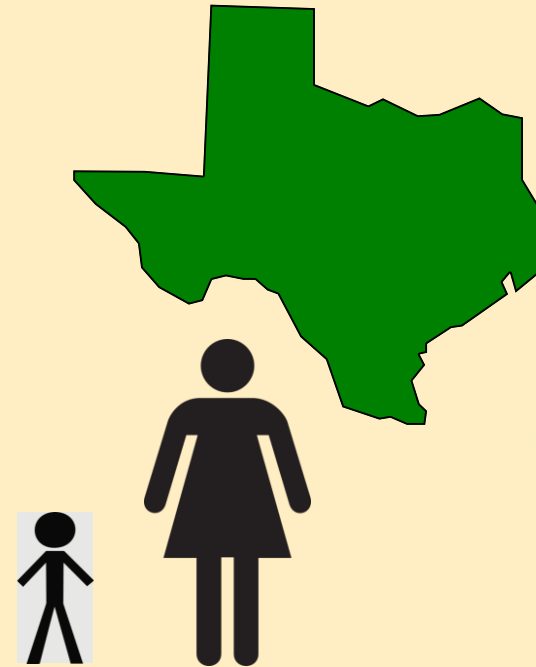


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Example of Jurisdiction under Section 611(a)(2)



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



Registration for Modification – No CEJ State

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

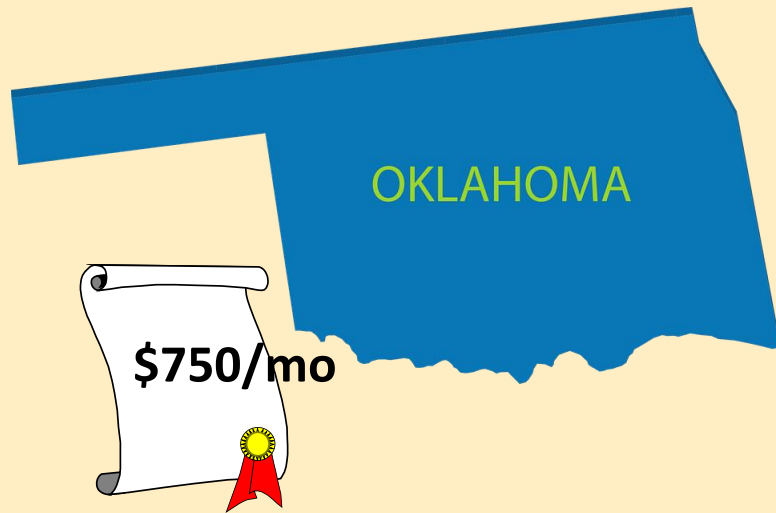


Registration for Modification – Section 611(a)(1)

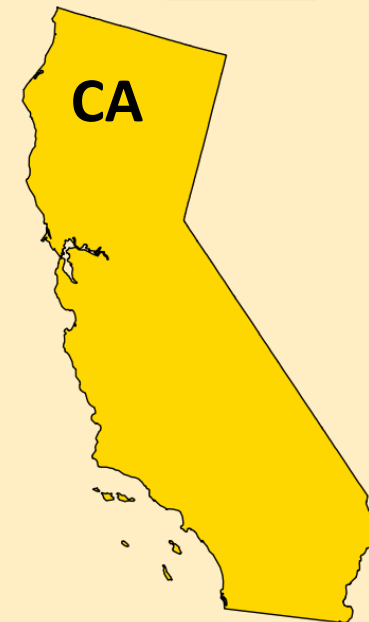
- No CEJ state;
- Nonresident petitioner; and
- Personal jurisdiction over respondent
- Known as “play away” rule



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



FL

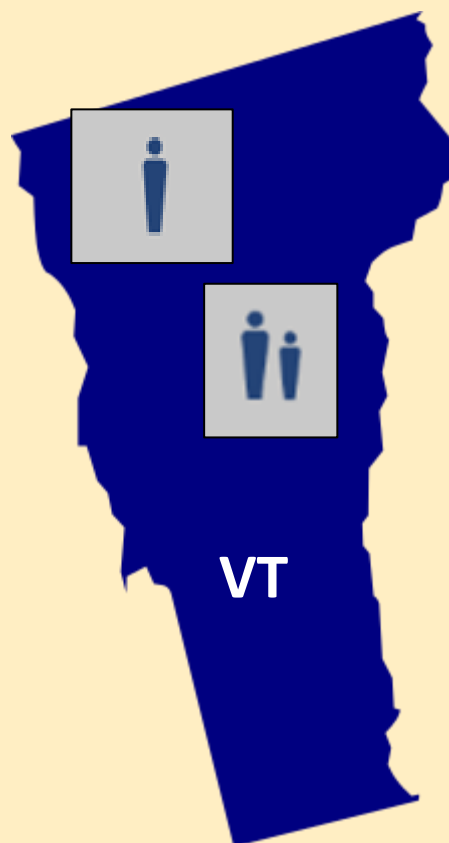


Registration for Modification – Section 613

- Tribunal must find all requirements are met:
 - All individual parties reside in registering state; **and**
 - 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



Registration for Modification – Case Scenario #1

- TX issued order
- Oblige now lives in MI
- Obligor lives in IL

Oblige asks MI IV-D agency for increase in TX support order. Where can MI agency seek modification?

- a. TX if obligee and obligor consent for TX to retain CEJ
- b. MI if MI has long-arm jurisdiction over obligor
- c. IL because that is where obligor lives
- d. (a) or (c), depending on facts
- e. (a) or (b), depending on facts



Registration for Modification – Case Scenario #1

- TX issued order
- Oblige now lives in MI
- Obligor lives in IL

Oblige asks MI IV-D agency for increase in TX support order. Where can MI agency seek modification?

- TX if obligee and obligor consent for TX to retain CEJ
- MI if MI has long-arm jurisdiction over obligor
- IL because that is where obligor lives
- (a) or (c), depending on facts**
- (a) or (b), depending on facts



Registration for Modification – Case Scenario #2

- FL issued order
- Oblige now lives in GA
- Obligor lives in SC
- GA agency registered order in SC for enforcement. SC is enforcing FL order and transmitting payments to GA.

Obligor contacts SC agency and says he wants order reduced. Assuming no consent between parties, how should SC agency proceed?

- a. Ask FL to modify its order
- b. Ask SC tribunal to modify registered GA order
- c. Register FL order in GA for modification and enforcement



Registration for Modification – Case Scenario #2

- FL issued order
- Obligee now lives in GA
- Obligor lives in SC
- GA agency registered order in SC for enforcement. SC is enforcing FL order and transmitting payments to GA.

Obligor contacts SC agency and says he wants order reduced. Assuming no consent between parties, how should SC agency proceed?

- a. Ask FL to modify its order
- b. Ask SC tribunal to modify registered GA order
- c. **Register FL order in GA for modification and enforcement**



Valid Defenses to Registration

- 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.



Valid Defenses (cont'd)

- 5) There is a defense under the law of this State to the remedy sought
- 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.



Special Rules of Evidence and Procedure

- Section 316 (receipt of evidence from outside state)
- Section 317 (communications between tribunals)
- Section 318 (assistance with discovery)



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)



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](#)



Choice of Law – Case Scenario #1

- TX support order
- Oblige and child live in TX
- Obligor lives in LA
- TX order registered in LA for modification
- Interest rate in TX is 6%. LA does not charge interest on support arrears.
- **What law governs interest on any arrears at time order is registered for modification?**
- **What law governs interest on any arrears that accrue after order is registered and modified?**



Modifiable Terms – Case Scenario #1

- GA – Order, residence of obligee and child
- NY – Residence of obligor
- GA order registered for modification and enforcement in NY
- Assume duration of support in GA is 19 and is nonmodifiable
- Assume duration in NY is 21
- **Can NY establish new order, using its law, once child turns 19?**



Modifiable Terms

- State where order is registered for modification may modify:
 - Amount of current child support
 - Determined under registering state's guidelines



Nonmodifiable Terms

- State where order is registered for modification **may not** modify:
 - Arrearage and interest accruing **prior** to modification
 - Aspects of order that are not modifiable in original issuing state
 - Duration is set by law in state issuing original order
 - In most states, duration is nonmodifiable aspect
 - Fulfillment of support obligation set by original issuing state



Impact of Modification

- Once order is modified, it becomes controlling order and that tribunal acquires CEJ
- Tribunal in original order issuing state must recognize CEJ of other state



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



CHILD CUSTODY VS. CHILD SUPPORT JURISDICTION



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Differences in Modification Jurisdiction

Child Custody Order

- Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)
 - Focus on factual circumstances of child
 - Child's home state
 - Authority to transfer case based on forum *non conveniens*

Child Support Order

- UIFSA
 - Focus on personal jurisdiction over obligor
 - Child's home state only relevant if multiple ongoing support orders
 - No concept of transfer based on forum *non conveniens*



MODIFICATION OF TRIBAL ORDER



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Application of FFCCSOA



- Federal law does not require tribes to enact UIFSA 2008
- Tribes are subject to federal Full Faith and Credit for Child Support Orders Act (FFCCSOA)
 - Modification jurisdiction in FFCCSOA is consistent with modification jurisdiction in UIFSA



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IMPROPER MODIFICATION OF ORDER



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Determining Validity of Modification

- If question about validity of subsequent order
 - **Ask tribunal to decide**
- Lack of subject matter jurisdiction
 - Nullity from the outset
- Mistake of law
 - May be vacated by tribunal or appellate court
 - Must be timely raised



Case Law

- Subject matter jurisdiction
 - AL, D.C., FL, KY, LA, NC, RI, TX, UT
- Mistake of law
 - MO, WA, WI



Impact of Modification

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- Tribunal in original order issuing state must recognize CEJ of other state



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Residence vs. Domicile

- UIFSA bases CEJ on residence of parties and child
- No definition of residence
 - Fact question for tribunal
 - Comment to Act states “the question is residence, not domicile.”
- Conflicting case law



Redirection of Payment Location

- Change of payment location under Section 319(b) is not a modification requiring continuing, exclusive jurisdiction
- Only applies if requirements of Section 319(b) are met
 - Neither obligee, nor obligor, nor child resides in issuing state
 - Obligee is receiving services from support enforcement agency in second state
 - Request is made by support enforcement agency for tribunal [or agency] in issuing state to redirect support payments to state in which obligee is receiving services and issue conforming income withholding order
 - [AT-17-07: Interstate Child Support Payment Processing](#)
 - [PIQ-20-01: Using the Intergovernmental Forms for Case Processing](#)



Cost of Living Adjustment

- Some states provide for automatic adjustments to support amount
- Application of COLA is not a modification requiring continuing, exclusive jurisdiction



Resources – UIFSA

- UIFSA 2008: [Model Act version of UIFSA 2008 with comments](#)
 - Or your own state's online statute site
- OCSE-[AT-20-14](#): Updated Interstate Child Support Policy
- OCSE-[AT-19-08](#) OMB-Approved Standard Intergovernmental Child Support Enforcement Forms – December 2019
- OCSE-[PIQ-20-01](#) Using the Intergovernmental Forms for Case Processing



Resources (cont'd)

- Essentials for Attorneys in Child Support Enforcement, 4th Ed. (July 2021), Chapter 13: Intergovernmental Child Support Cases, <https://www.acf.hhs.gov/css/training-technical-assistance/essentials-attorneys-child-support-enforcement>

- Training resources developed by OCSE

[Interstate Case Processing Training Materials](#)

[International Case Processing Under UIFSA 2008](#)

[Intergovernmental Forms Training](#)



Resources – 2007 Hague Child Support Convention

- OCSE website: <https://www.acf.hhs.gov/css>
- 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>
- OCSE-[AT-20-05](#): OMB approved Hague Child Support Convention Forms
- OCSE-[PIQ-22-10](#): Incoming Cases under the 2007 Hague Child Support Convention
- OCSE- [IM-15-01](#): Interstate Family Support Act (2008) and The Hague Treaty Provisions



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