



ERICSA 63RD ANNUAL TRAINING CONFERENCE & EXPOSITION

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Milwaukee

WISCONSIN

Long-Arm
Jurisdiction and
Limited Service
Requests – Is
One State Better
Than Two?



Moderator and Speakers



Tommy Howard
First Assistant Prosecutor
and Director
Warren County CSEA
Lebanon, Ohio



Loretta Everett

Knoxville, Tennessee

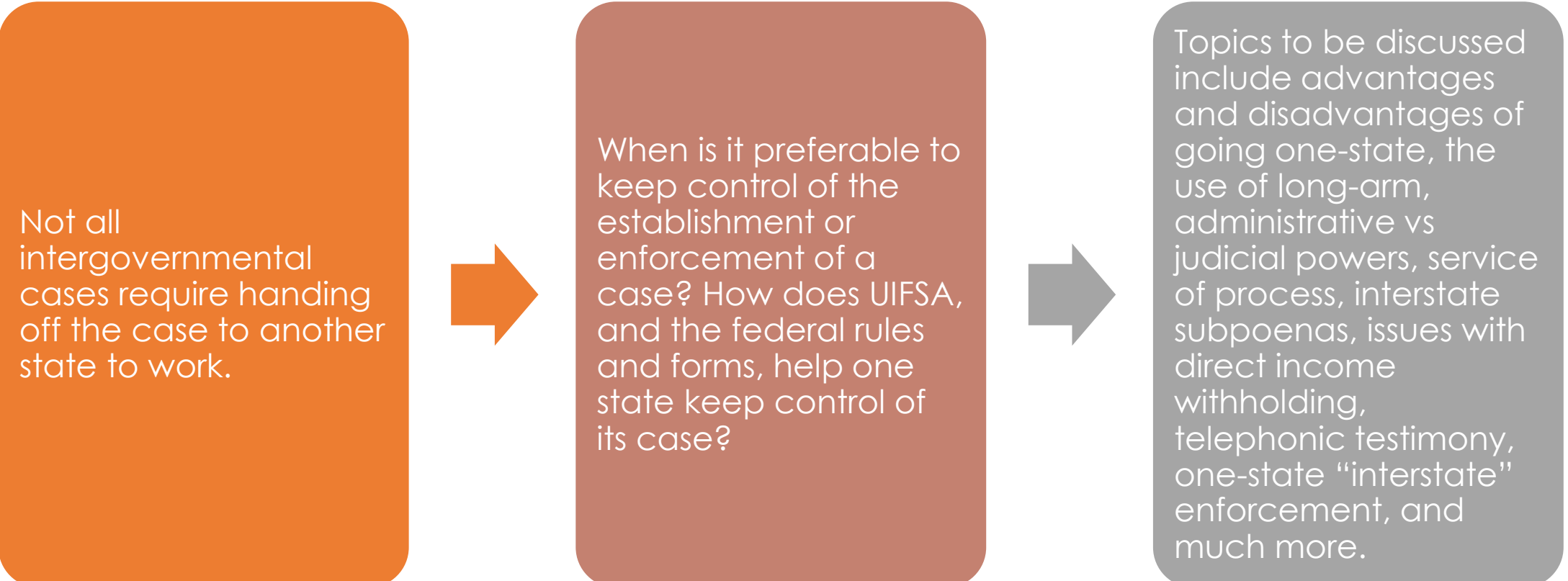


Lara Webb Fors
Trial Team Leader
Jackson County
Prosecutor's Office
Kansas City, Missouri



Not all interstate cases require handing off the case to another state to work. When is it preferable to keep control of the establishment or enforcement of a case? How does UIFSA, and the federal rules and forms, help one state keep control of its case? Topics to be discussed include advantages and disadvantages of going one-state, the use of longarm, administrative vs judicial powers, service of process, interstate subpoenas, issues with direct income withholding, telephonic testimony, and much more.





Not all intergovernmental cases require handing off the case to another state to work.

The diagram consists of three rounded rectangular boxes connected by arrows. The first box is orange and contains the text 'Not all intergovernmental cases require handing off the case to another state to work.' An orange arrow points from this box to a second, reddish-brown box. This second box contains the text 'When is it preferable to keep control of the establishment or enforcement of a case? How does UIFSA, and the federal rules and forms, help one state keep control of its case?'. A grey arrow points from the second box to a third, grey box. The third box contains a list of topics to be discussed: 'Topics to be discussed include advantages and disadvantages of going one-state, the use of long-arm, administrative vs judicial powers, service of process, interstate subpoenas, issues with direct income withholding, telephonic testimony, one-state "interstate" enforcement, and much more.' In the top right corner of the slide, there is a small orange plus sign and a small orange dot.

When is it preferable to keep control of the establishment or enforcement of a case? How does UIFSA, and the federal rules and forms, help one state keep control of its case?

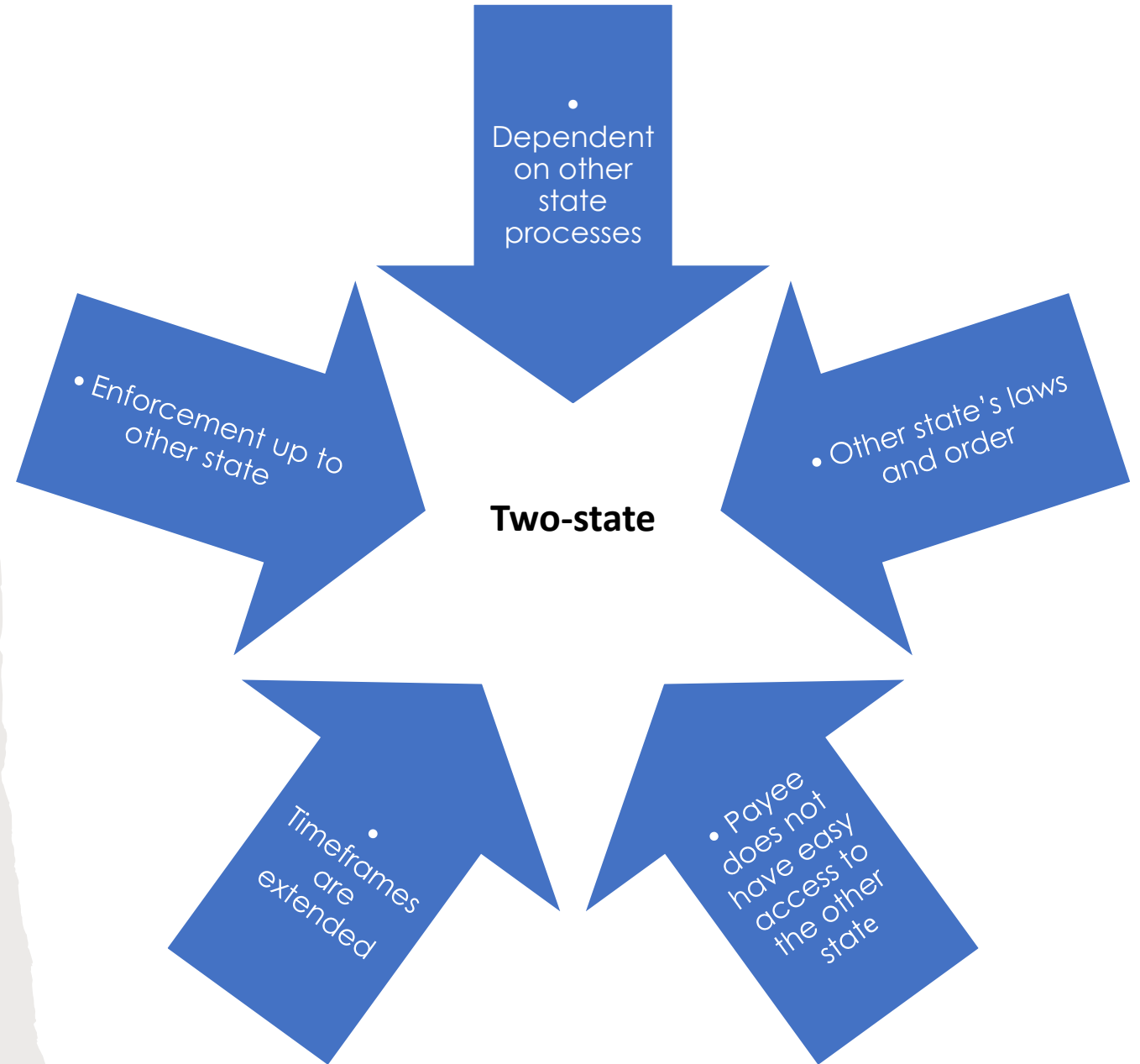
Topics to be discussed include advantages and disadvantages of going one-state, the use of long-arm, administrative vs judicial powers, service of process, interstate subpoenas, issues with direct income withholding, telephonic testimony, one-state "interstate" enforcement, and much more.

When it comes to the establishment of parentage and/or support a decision has to be made on whether to utilize the one-state or two-state process. There are pros and cons to both.



One-state

- Your state establishes the order
- Your guidelines and duration
- Your state controls the order
- Admin fees and/or interest
- No waiting for the other state



Family Violence Considerations & Paternity Actions



- 1-state UIFSA
 - Filing where CP and child reside
 - AF is out of state
 - Court is in the home state of the child, so AF can file a counter-/cross-petition for custody and parenting time or
 - Parties may do mediation and have agreement filed in IV-D paternity case
- 2-state UIFSA
 - Filing where AF is, not the child
 - Court is not in the home state of the child, so that court cannot enter orders as to custody and visitation (Art. I, §104)
 - AF would have to sue CP in CP's state to establish custody and parenting time



- After an incident involving a donut-eating contest, a runaway lawnmower, and the destruction of all the sprinkler heads at the Springfield Nuclear Power Plant, Homer Simpson decides he “needs a fresh start.” Naturally, he packs up and moves to Florida, explaining that “the sunshine will help me think better... and also they have all-you-can-eat shrimp.”

- Back in Springfield, Marge Simpson stays put with their adorable one-year-old, Maggie, who has recently mastered the art of firing a pacifier like a tiny blowdart.

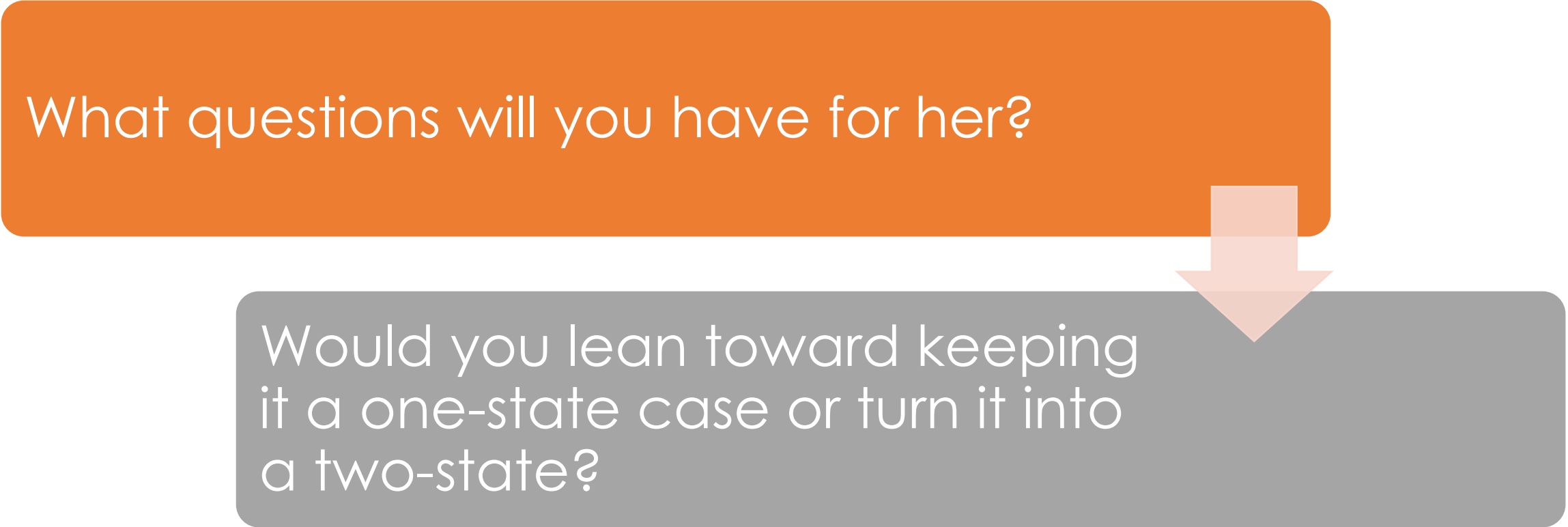
- Homer insists he will send money “as soon as the Flamingo-Shaped Lazy River Park hires me as a lifeguard,” but Marge has her doubts — especially after Homer mentions that his backup plan is to become a “professional alligator tickler.”

- Wanting stability for Maggie, Marge goes to her local child support agency in Springfield and completes an application for services. She tells the caseworker: “I love Homer, but we should probably establish support now... before he changes careers again. Last night he said he might run for mayor of a place called ‘Gainesvilleland.’ I don’t think that’s even real.”



Marge comes into your child support office...

What questions will you have for her?



Would you lean toward keeping it a one-state case or turn it into a two-state?

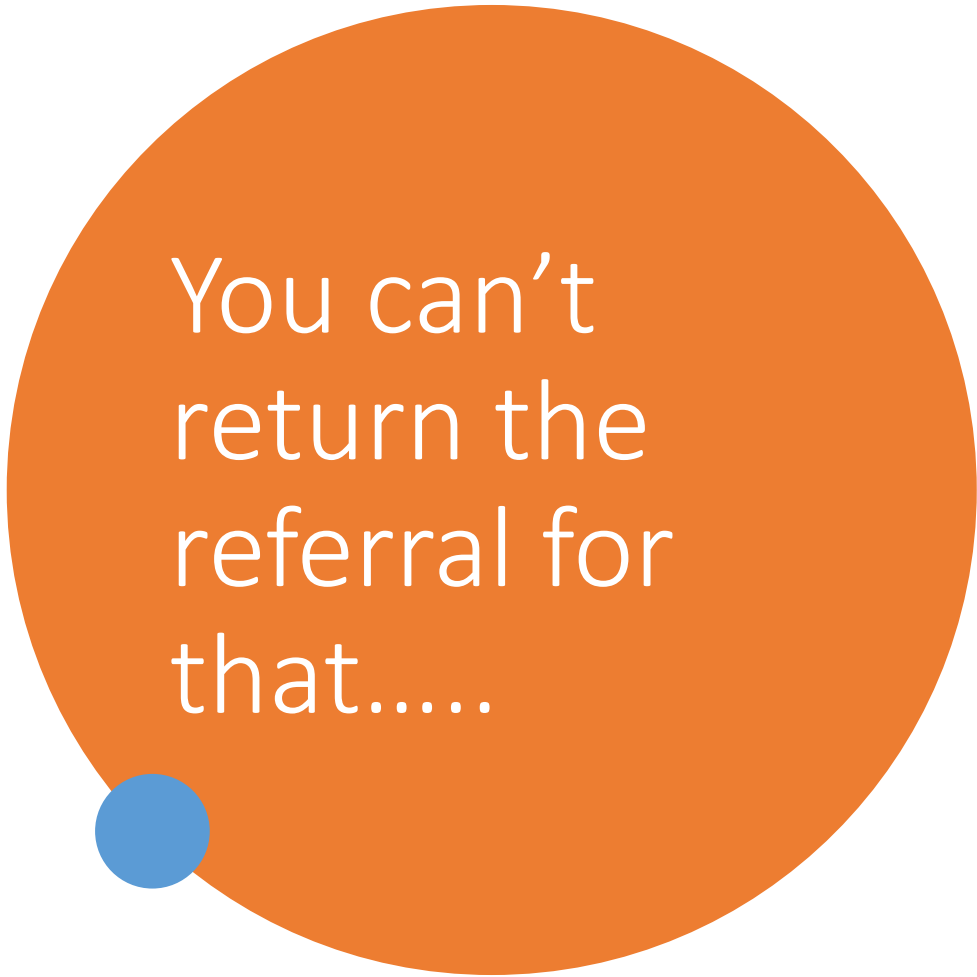
- **CFR 303.7(d)(1) – Provision of Services in Intergovernmental IV-D Cases**

(d) Responding state IV-D agency responsibilities.

Upon receipt of a request for services from an initiating agency, the responding state IV-D agency must:

(1) Accept and process an intergovernmental request for services, regardless of whether the initiating agency elected not to use remedies that may be available under the law of that jurisdiction.





You can't
return the
referral for
that.....

- 
- An initiating jurisdiction may elect the action it finds most appropriate and a responding jurisdiction may not deny a two-state action simply because it may also be achieved through a one-state process.

What would you need?

One state

- Ohio could use a CSE Transmittal #3 to obtain information from Florida
- Could also use QUICK to see if either party has other child support orders
- Telephonic testimony is permitted, Art 3

Two state

CSE Transmittal #1

Uniform Support Petition

Declaration in Support of Establishing Parentage. (if paternity is in question)

General Testimony

Personal Information Form for UIFSA 311

Child Support Agency Confidential Information form

Any other supporting documentation (birth cert, etc.)



Long-Arm Jurisdiction

UIFSA contains broad provisions for asserting long-arm jurisdiction to provide a tribunal in the state of residence of the party entitled to support with the maximum possible opportunity to secure personal jurisdiction over an absent respondent, Section 201.

This converts what otherwise would be a two-state proceeding into a one-state proceeding.



Section 201. Bases for Jurisdiction Over Non- Resident



- (1) the individual is personally served...within this state;
- (2) the individual submits to the jurisdiction of this state by consent in a record, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;
- (3) the individual resided with the child in this state;
- (4) the individual resided in this state and provided prenatal expenses or support...;
- (5) the child resides in this state as a result of the acts or directives of the individual;
- (6) the individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse; or
- (7) the individual asserted parentage in the putative father registry maintained in this state by the appropriate agency; or
- (8) there is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction

WARNING

- Long arm jurisdiction is not a term specific to child support intergovernmental law; it is a legal “term of art” with respect to “personal jurisdiction” over a party.
- If a party does not have minimum contacts with a jurisdiction and is not properly served with the initiating paperwork, the order is voidable.
- DO NOT “STRETCH” the facts to obtain an order and always document the basis for exerting jurisdiction over a non-resident.



2022

Ned Flanders, while traveling through the State of Ohio for a religious conference, briefly stayed there for several days. During that time, he and another adult formed a close relationship that later resulted in the conception of a child. Although Ned returned to his home state afterward, the key events leading to the child's conception occurred in Ohio.

Can Ohio keep this a one-state case?

DV/FV and Minimum Contacts

Colorado's Uniform Interstate Family Support Act (UIFSA) was enacted in order “to be used as a procedural mechanism for the establishment, modification, and enforcement of child and spousal support.” *McNabb ex rel. Foshee v. McNabb*, 31 Kan.App.2d 398, 65 P.3d 1068, 1074 (2003). Adopted as the long-arm provision of UIFSA, section 14-5-201(5) provides that, “[i]n a proceeding to establish, enforce, or modify a child support order or to determine parentage,” a Colorado court may exercise personal jurisdiction over a non-resident if “[t]he child resides in this state as a result of the acts or directives of the individual.” Thus, jurisdiction is appropriate under UIFSA if the Defendant's abuse and harassment of Malwitz constituted “acts or directives” that caused Malwitz to reside in Colorado and, ultimately, ***60** to give birth to the Defendant's child in this state.

In re Marriage of Malwitz, 99 P.3d 56, 59-60 (Colo. 2004)



In re Marriage of Malwitz, 99 P.3d 56, 61 (Colo. 2004)

- Malwitz demonstrated to the trial court that she honestly feared for her own safety and the safety of the children, based on the Defendant's actual abuse, threats of abuse, harassment, prior convictions for similar behavior, and involvement in a gang. Although she initially attempted to remain in Texas, first at a friend's house and later in a shelter, the Defendant's menacing behavior caused Malwitz to believe that she and her children would not be safe so long as the Defendant could find them....Based on this testimony, the trial court concluded, and we agree, that “[i]t is because of the acts of domestic violence perpetrated against [Malwitz] by [the Defendant] that [Malwitz and her son with the Defendant] presently reside in the State of Colorado.”



Sections 210, 316 – 318 Evidence and Discovery



When jurisdiction over a non-resident is obtained, the tribunal may:



- obtain evidence,



- provide for discovery, and



- elicit testimony through use of the same "information route" provided for two-state proceedings, Sections 210, 316-318.

Section 316. Special Rules of Evidence and Procedure

(e) Documentary evidence transmitted from outside this state to a tribunal of this state by telephone, telecopier, or other means that do not provide an original record may not be excluded from evidence on an objection based on the means of transmission.

(f) In a proceeding under this [act], a tribunal of this state shall permit a party or witness residing outside this state to be deposed or to testify under penalty of perjury by telephone, audiovisual means, or other electronic means at a designated tribunal or other location. A tribunal of this state shall cooperate with other tribunals in designating an appropriate location for the deposition or testimony.

Official Comment

The intent throughout these subsections is to eliminate by statute as many potential hearsay problems as possible in intergovernmental litigation, with the goal of providing each party with the means to present evidence, even if not physically present.

Do your courts routinely conduct telephonic or virtual hearings?

Does the out of state party go into a local agency or do they participate at home?



Section 317. Communications Between Tribunals



A tribunal of this state may communicate with a tribunal outside this state in a record or by telephone, electronic mail, or other means, to obtain information concerning the laws, the legal effect of a judgment, decree, or order of that tribunal, and the status of a proceeding.



A tribunal of this state may furnish similar information by similar means to a tribunal outside this state.



Section 318.

Assistance with Discovery

A tribunal of this state may:



1) Request a tribunal outside this state to assist in discovery; and



2) Upon request, compel a person over which it has jurisdiction to respond to a discovery order issued by a tribunal outside this state.

Interstate Deposition and Discovery Act

How it works:

Prepare a subpoena including language that it is not enforceable but is being provided for the purpose of obtaining a Uniform Interstate Depositions and Discovery Act subpoena.

Send the subpoena, a draft subpoena which complies with the other state's rules of discovery, and a letter to the clerk of court where the record is maintained requesting that they issue the subpoena.

A clerk's office may have a web page explaining its forms and procedures that should be consulted in preparing the draft subpoena.

Motions affecting a subpoena (such as to quash, enforce, or modify) follow the rules of the state where the subpoena is issued. That state's discovery rules generally apply as well, although some states take the opposite approach.

**Sonja Faith
Moffett v. David
Jemmott, Jr.
Court of
Appeals of
Michigan
June 8, 2017
Case #330900**

- The child of the case was conceived in March 1999 in Virginia Beach City, VA.
- In 2015 the Oakland County, MI Prosecutor filed a paternity action. The mother and child were living in MI and the alleged father remained in VA.
- The alleged father then signed and dated an order for genetic testing that had been sent to him. Order contained a provision that the results “would be admissible as evidence in this case” and that the default order shall remain in force and effect.
- On 11/4/15 the trial court found that it had personal jurisdiction over the parties, found the alleged father in default, and entered a default order of paternity and support.

- The father then retained counsel in MI to set aside the order arguing that the trial court did not have personal jurisdiction over him.
- Trial court overruled his objection on basis that the father had signed the genetic testing order.
- The father then appealed.
- Appellate Court stated that a court must have personal jurisdiction over a party. However, personal jurisdiction is a waivable right, and there are a variety of legal arrangements by which a litigant may give express or implied consent to the personal jurisdiction of the court. An individual could consent by entering a general appearance or by filing a responsive document having the effect of waiving a contest to personal jurisdiction.
- With all that said the Appellate Court looked at whether the father signing the genetic testing order constituted a general appearance thereby submitting to personal jurisdiction.

Court held that there are two requirements to render an act adequate to support the inference that it constitutes a general appearance:

- 1 . Knowledge of the pending proceedings, and
2. An intent to appear

Any action on the part of the defendant, except to object to the jurisdiction over his person which recognizes the case as in court, will constitute a general appearance.

In this case, the Defendant signed the genetic testing order agreeing to all of its terms and in no way objecting to any of them or to the jurisdiction of the circuit court on the face of the order.

It is clear that the Defendant knew of the action and that he intended to participate in the proceedings.

For those reasons the appellate court held that the Defendant's execution and submission of the genetic testing order constitutes a general appearance. Appealed overruled.

Additional One-State Considerations

- CSE workers should know how to assist the CP in understanding if a support case falls under one-state processing.



- Know the criteria that allows you to meet the processing standards.



- Consider creating a checklist to aid in making a determination to file as a one-state action.



- Explain the pros and cons to the CP in keeping the case local or creating an intergovernmental case.

**Your child
support office
receives a new
application, and
the NCP resides
outside your
state.**

- Does the NCP have multiple support cases?

- If yes, review those cases to determine if they are one-state or two-state cases
- If one-state, proceed with one-state
- If two-state, proceed with two-state
- If no cases, review long-arm requirements to determine whether you can file the action as one-state

- Discuss the one-state process with the CP

- Determine if there is a need to establish parentage

- Review the NCP's employment status

- Determine if direct income withholding is possible

- Evaluate the ability to serve the NCP in the other state

- Consider limited services options

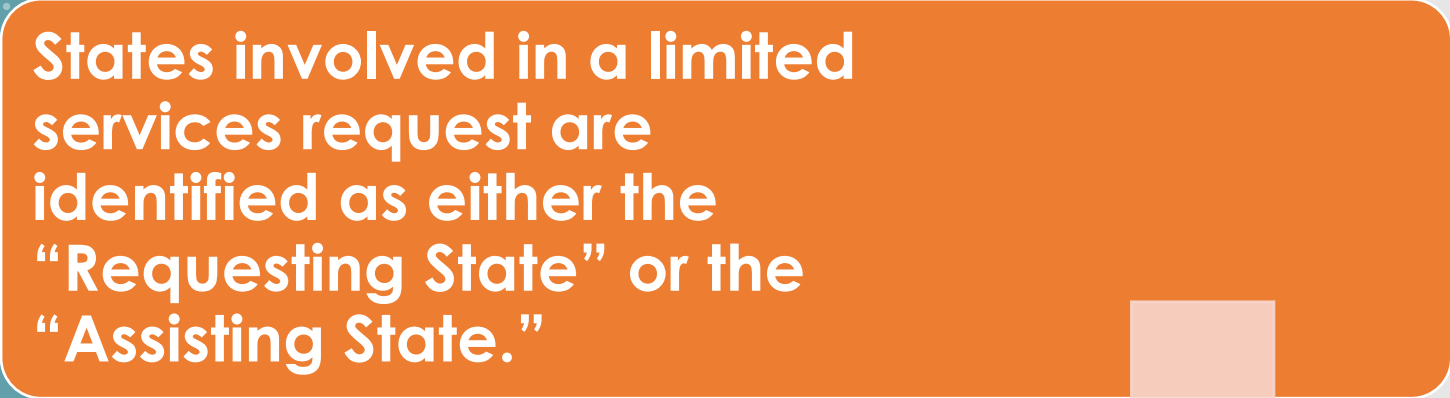
Limited Services 45 CFR 303.7

Provision of Services in Intergovernmental IV-D Cases

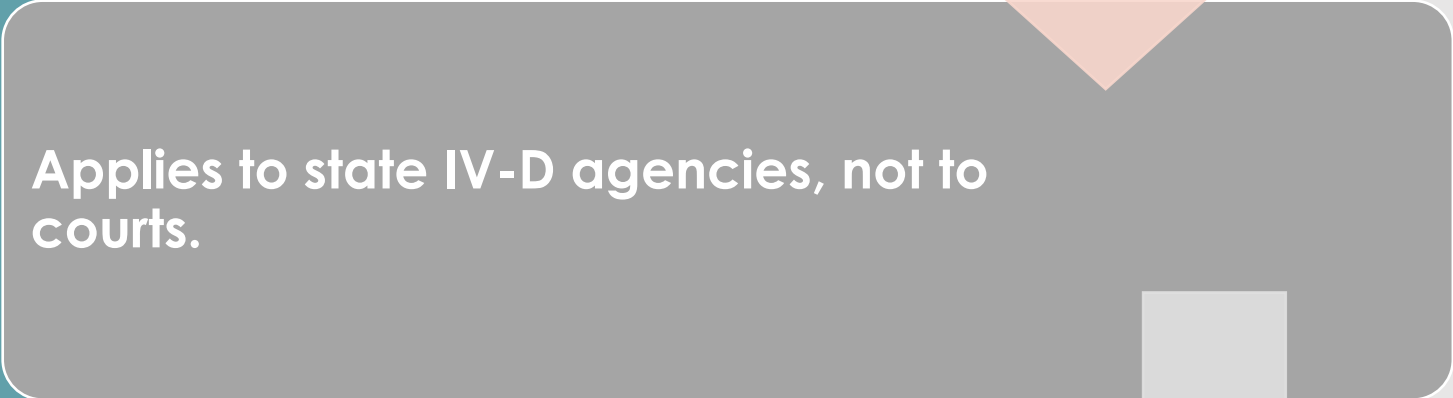
- Identifies and implements procedures for cooperating with 12 limited services requests (45 CFR 303.7(a)(8))
 - Copy of support orders and payment records
 - Assistance with service of process
 - Assistance with genetic testing
 - Assistance with teleconference hearings
 - Assistance with administrative review
 - Assistance with discovery
 - High-volume automated administrative enforcement in interstate cases under section 466(a)(14) of the Act
 - Assistance with a lien
 - Financial data
 - Other
 - Provide remittance ID
 - Payment forwarding

Limited Services 45 CFR 303.7

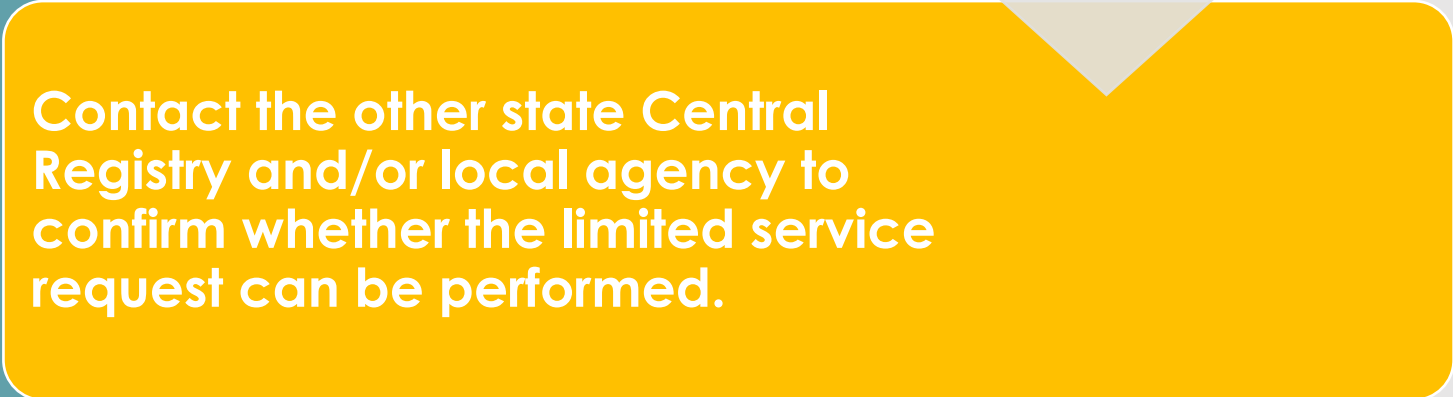
States involved in a limited services request are identified as either the “Requesting State” or the “Assisting State.”



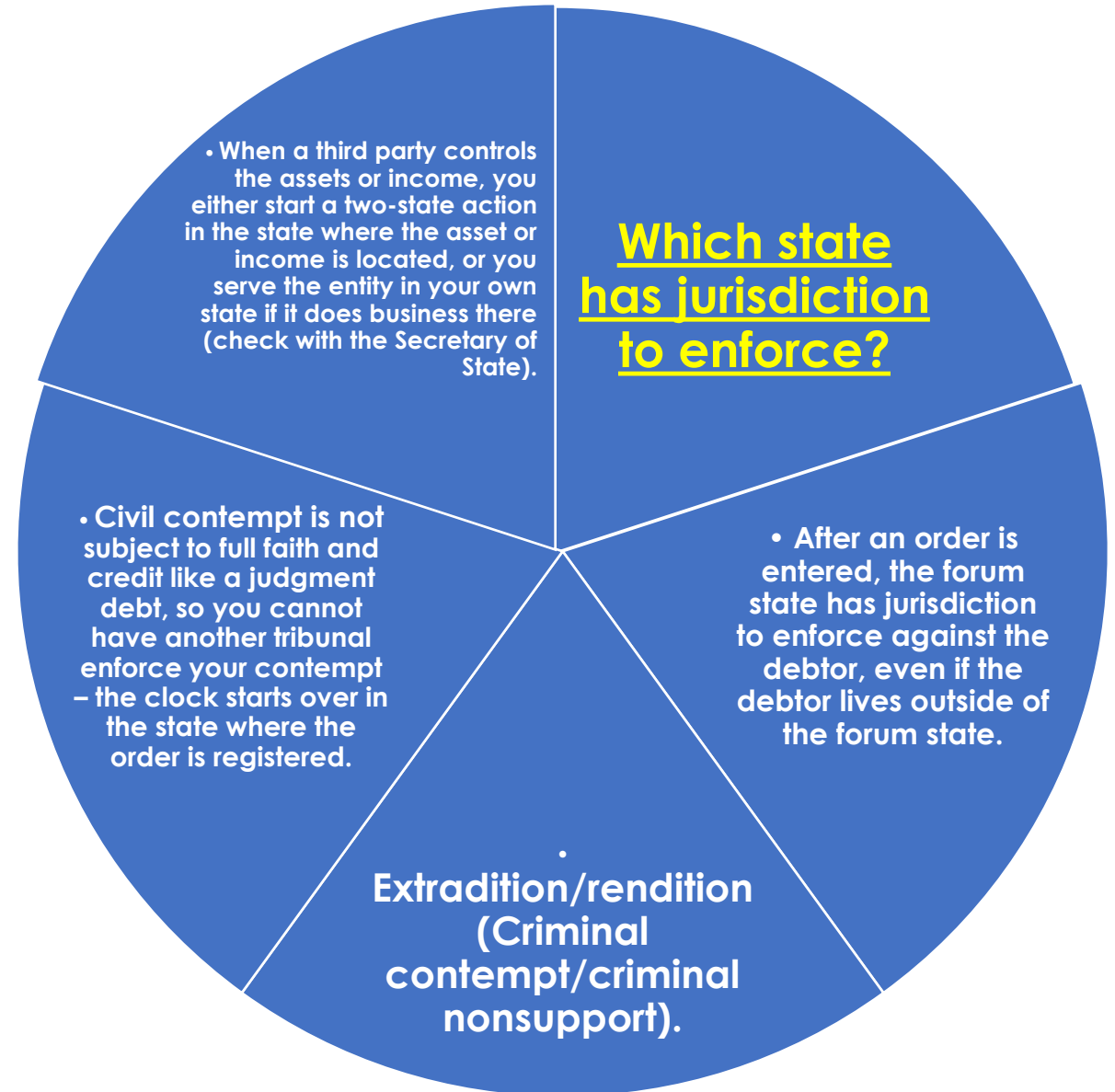
Applies to state IV-D agencies, not to courts.



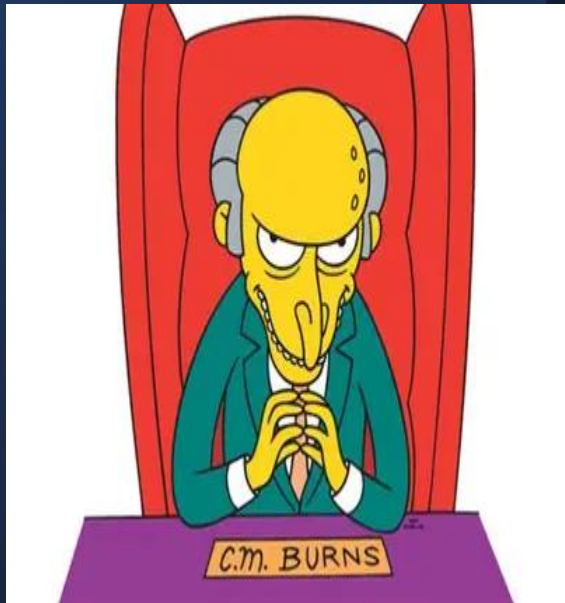
Contact the other state Central Registry and/or local agency to confirm whether the limited service request can be performed.



Enforcement Jurisdiction



Enforcement Decision-Making



• A state that issued a controlling order that has terms that cannot be enforced by another state may collect on the arrearages itself.

Who is in charge of the enforcement decisions?

• If the order is registered in another (responding) state, that responding state takes over primary enforcement action, even when the forum state could continue to enforce (e.g., the initiating state would terminate an IWO if a responding state takes over enforcement duties; the responding state issues the appropriate IWO.

• Is it the forum state that issued the last controlling order?

If yes, then the forum state may take all actions, including local enforcement, one-state interstate enforcement, and registration for enforcement.

Enforcement Decision-Making (cont.)

Who is in charge of the enforcement decisions?

- Is it an initiating state with another state's controlling order?

- If yes, initiate to responding state where NCP has income and/or assets through a registration action.

- Has a state assumed enforcement control through registration of a controlling order in its state?

- If yes, that state takes over all enforcement that is within the jurisdiction of the enforcing state/tribunal.

- If no, perhaps the requesting state with a controlling order only wants limited assistance from the responding state.

One-State Discovery Tools

- National Directory of New Hires (NDNH)

<https://www.acf.hhs.gov/css/training-technical-assistance/guide-national-directory-new-hires>

- Child Support Enforcement Network (CSENet)
- Child Support Locate Request form

https://www.acf.hhs.gov/sites/default/files/documents/ocse/omb_0970_0085_1.pdf

- Use when there is not a CSENet agreement with the other state (which is very rare).
 - CSE Transmittal #3 – Request for Assistance
- https://www.acf.hhs.gov/sites/default/files/documents/ocse/dcl_19_04_child_support_enforcement_transmittal_3_request_for.pdf



One-State Discovery Tools (cont.)

Query Interstate Cases for Kids (QUICK)

- Look up information in another state's system
- Some states do not provide full information



One-State Discovery Tools (cont.)

- **Electronic Document Exchange (EDE)**
 - **Electronically submit documents to another state**

- **Administrative subpoena**

<https://www.acf.hhs.gov/css/form/administrative-subpoena-and-notice-lien-forms-instructions>

- **Compel production of documents or information**

Enforcement Tools Across State Lines

- Direct income withholding & EIWO
 - In UIFSA, so not applicable to tribes
- Interstate Lien

<https://www.acf.hhs.gov/css/form/administrative-subpoena-and-notice-lien-forms-instructions>

- Multistate Financial Institution Data Match (MSFIDM)
- Direct Unemployment Insurance Income withholding
 - 14 jurisdictions: GA, IN, LA, MA, MI, MN, NY, ND, OH, PA, PR, TN, VI, and WI



Enforcement Tools Across State Lines (cont.)

- Child Support Lien Network (CSLN)

<http://childsupportliens.com>

- Personal Injury claims and real property
- 29 states

- FIDM

<https://www.acf.hhs.gov/css/training-technical-assistance/financial-institution-data-match-overview>

- 32 states

- Federal Insurance Match

<https://www.acf.hhs.gov/css/outreach-material/child-support-and-insurance-match-program>

- FAST Levy

<https://www.acf.hhs.gov/css/training-technical-assistance/fast-levy-overview>

High-Volume, Automated Administrative Enforcement in Interstate Cases (AEI)

- **(14) HIGH-VOLUME, AUTOMATED ADMINISTRATIVE ENFORCEMENT IN INTERSTATE CASES.—**
- **(A)** In general.—Procedures under which—
 - **(i)** the state shall use high-volume automated administrative enforcement, to the same extent as used for intrastate cases, in response to a request made by another state to enforce support orders, and shall promptly report the results of such enforcement procedure to the requesting state;
 - **(ii)** the state may, by electronic or other means, transmit to another state a request for assistance in enforcing support orders through high-volume, automated administrative enforcement, which request—
 - **(I)** shall include such information as will enable the state to which the request is transmitted to compare the information about the cases to the information in the data bases of the state; and
 - **(II)** shall constitute a certification by the requesting state—
 - **(aa)** of the amount of support under an order the payment of which is in arrears; and
 - **(bb)** that the requesting state has complied with all procedural due process requirements applicable to each case;
 - **(iii)** if the state provides assistance to another state pursuant to this paragraph with respect to a case, neither state shall consider the case to be transferred to the caseload of such other state (but the assisting state may establish a corresponding case based on such other state's request for assistance); and
 - **(iv)** the state shall maintain records of—
 - **(I)** the number of such requests for assistance received by the state;
 - **(II)** the number of cases for which the state collected support in response to such a request; and
 - **(III)** the amount of such collected support.

Enforcement Tools Across State Lines (cont.)

- Driver License Compact: An interstate compact used by States of the United States to exchange information concerning license suspensions and traffic violations of non-residents and forward them to the state where they are licensed known as the home state. Its theme is One Driver, One License, One Record. The home state would treat the offense as if it had been committed at home, applying home state laws to the out-of-state offense. The action taken would include, but not be limited to, points assessed on a minor offense such as speeding and suspension of license or a major violation such as DWI/DUI. It is not supposed to include non-moving violations like parking tickets, tinted windows, loud exhaust, etc.
 - While it is not specific to child support, if one state suspends a drivers license due to non-payment of child support, most other states will suspend the drivers license as well.
 - <https://apps.csg.org/ncic/Compact.aspx?id=56>

Federal Jurisdictional Enforcement Tools

- **Defense Finance and Accounting Services (DFAS)**

- Active duty and retirement compensation
- Most pay, but not allowances

- **5 CFR 581, App. A - List of Agents Designated To Accept Legal Process**

[https://www.law.cornell.edu/cfr/text/5/appendix-A to part 581](https://www.law.cornell.edu/cfr/text/5/appendix-A%20to%20part%20581)

- For service of process/IWOs on federal agencies

- **Qualified Domestic Relations Order (QDRO)**

- For pension plans, stock options
- Order must have specific language

- **IRS refunds**

- Does your state apply only to arrears?
- Deficit Reduction Act (DRA) allows current support

- **Social Security Disability Insurance (SSDI)**

- NOT Supplemental Security Income (SSI)

- **Social Security Retirement**

Federal Jurisdictional Enforcement Tools (cont.)

- **VA benefits**

- Only when partially in lieu of military retirement
- Allocation of VA benefit

- **Moneys owed to federal contractors**

- **Moneys owed to federal employees, such as travel reimbursements**

- **Passport Denial**

<https://www.acf.hhs.gov/css/training-technical-assistance/overview-passport-denial-program>

- \$2,500 or more in arrearages
- new or renewal

- **Project Save Our Children (PSOC)**

- Federal criminal prosecution - 18 USC §228

One-State Lien Tips



- When filing an interstate lien, you do not need to file a two-state action to the state where the property is located.
- Involvement of the child support agency in the state in which the obligor's asset is located is not required.
- File interstate lien directly to the agency authorized to process liens in the other state.
- Review the IRG for general information about each state's lien procedures.
- State's procedures may vary.
- Contact the state where the property is located to ensure that all necessary procedures and requirements are met.
- Use the Administrative Subpoena to verify the existence and/or location of the asset prior to filing the Notice of Lien.

Tips for Effective One-State Processing

- Maintain open and regular communications

- Facilitate telephonic testimony

- Utilize Quick Locate to secure asset and employment information on NCP

- Review QUICK when the NCP has multiple cases



Tips for Effective Enforcement Processing

- Use two-state UIFSA when enforcement becomes an issue, or if direct communication with the NCP, direct income withholding, or Quick Locate are not successful.



- Registration for enforcement only.

- Advise responding state to stop IWO and close case before issuing your own IWO - §303.7(c)(12).

- Responding state must stop its IWO and close its case within 10 days of notification - §303.7(d)(9).
- Responding state and initiating state can reach an alternate agreement – §303.7(d)(9).

Questions? / Discussion



Thank you!

Tommy Howard
First Assistant Prosecuting
Attorney
and Director
Warren County CSEA
Lebanon, Ohio
(513)695-1668
[Thomas.Howard@jfs.ohio.
gov](mailto:Thomas.Howard@jfs.ohio.gov)

Lara Webb Fors
Trial Team Leader
Jackson County
Prosecutor's Office
Kansas City, Missouri
(816) 881-3514
lfors@jacksongov.org

