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# SAVANNAH

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MAY 17-21, 2020

# 2020 Intergovernmental Case Law Update

Ethan C. McKinney, DPA, Child Support Director, St. Joseph  
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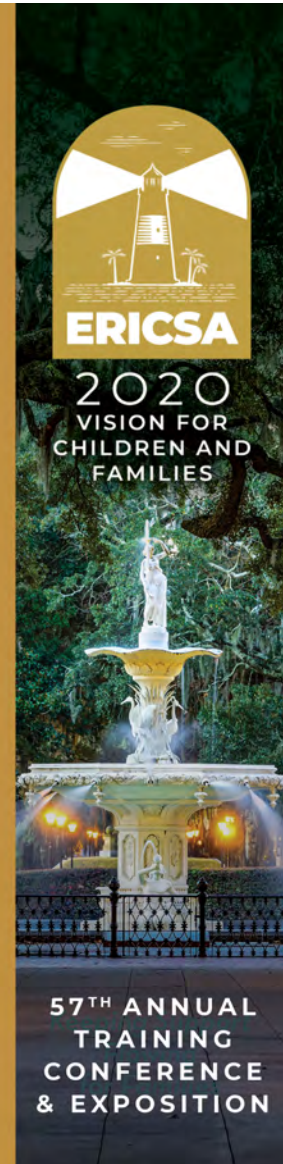


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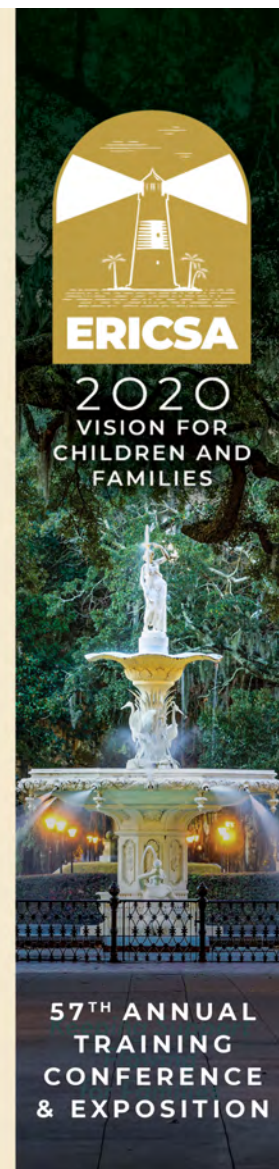
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This session will survey recent appellate decisions from around the country related to UIFSA and the Full Faith and Credit for Child Support Act (FFCCSOA). Emphasis will be given to one state's enforcement and modification of another state's order (or, perhaps, orders issued/enforced by different countries). Written materials will provide a comprehensive review of related appellate decisions issued within the past year.



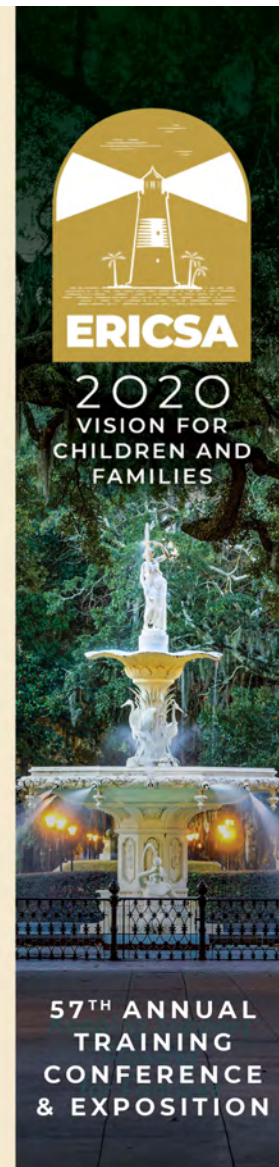
# In Re Gray, 2020 Cal. App. Unpub. Lexis 232. 1/13/20

- Not a child support case but UIFSA and Spousal.
- Parties divorced in Utah – no children but a spousal support order was entered. Then both parties move to California.
- Mom moves to modify the Spousal Support order and the court without any consideration of UIFSA grants it and modifies the spousal support order.
- UIFSA governs. CEJ for a spousal support order always rests with the Order state. There is no similar exception to CEJ found in the child support sections.
- Court remands to dismiss mom’s petitions for lack of jurisdiction.



# Nusbaum v. Nusbaum, 2019 Md. App. Lexis 1082. 12/20/19

- Maryland Divorce – Dad subsequently moved to Georgia
  - Maryland and Georgia allocated his payments differently between CSUP and Spousal.
  - Georgia would have shown less due in CSUP and more due in Alimony.
- Mr. Nusbaum asked the Court to reallocate all money for child support and alimony to just apply to child support solely.
  - Trial Court ordered a new accounting to do all CSUP first. Maryland OCSE filed to reconsider as this puts them in conflict with the Federal distribution matrix.
  - After the reconsideration hearing, the Judge ruled that Mr. Nusbaum was “judicially estopped from a reallocation” based on Mr. Nusbaum’s tax returns showing he previously claimed the money as “alimony paid” as an income tax deduction.
  - The Judge did not rule on Maryland OCSE’s position that the reallocation was improper based on State and Federal Law. Mr. Nusbaum appealed.
- Holding: The Court erred in its judicial estoppel application but it couldn’t have legally ordered a reallocation in any event so it was affirmed.
  - Taking the deduction on his taxes is not the same as taking an inconsistent position in different litigation.



# Separation of Powers (Nusbaum, cntd.)

- OCSE argued that separation of powers prevents the Court from dictating to the executive branch how to apply support payments.
  - Court can't upset their decision unless it is unlawful.
- OCSE also argued (something I think we can all agree with) based on the states process allocating support in this manner for one case is impossible.
- Federal Allocation is part of the UIFSA scheme and Maryland's allocation is consistent with this scheme: Current Child Support first then Current Spousal Support then the arrearages on each.
- Case makes no other mentions of Georgia's method of calculation as it shouldn't since Maryland is still the controlling order state.



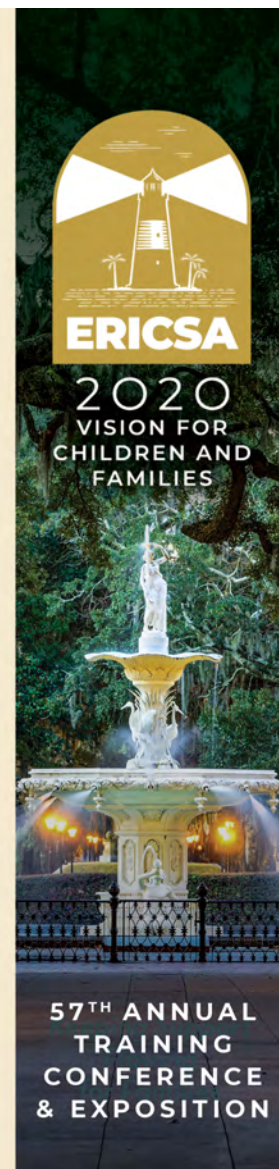
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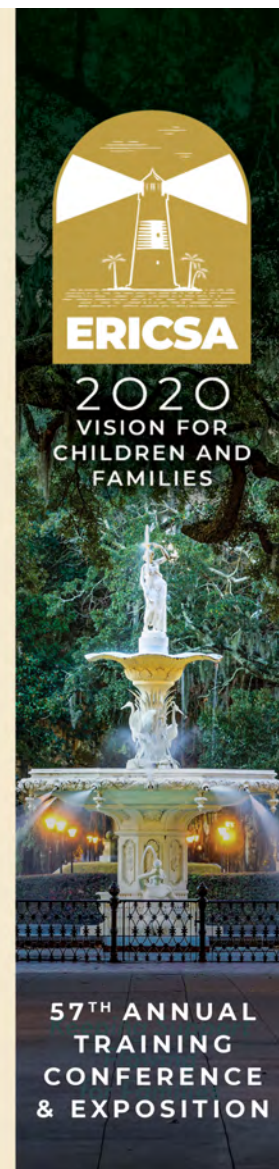
# TLH v. JPR, 2019 Pa. Super. Unpub. Lexis 4643. 12/17/19

- Mother appeals PA's decision to assume jurisdiction over NY order and modify support pursuant to UIFSA.
  - "In a detailed procedural history, the trial court thoroughly explained how a support obligation from NY found its way to PA by way of NJ."
  - NY Order, Registered in NJ (Dad lived there), mother moved to PA.
- Dad filed in PA to reduce his support order. PA considered the motion, did a calculation and reduced his support.
- Mother appealed: jurisdiction, abuse of discretion, predetermined the outcome, personal bias v. mother, failure to address relevant facts, ruling based on irrelevant or quasi-legal falsehoods, father's ongoing bad faith.
- The Court determined however mother had only preserved two issues: Jurisdiction under UIFSA and if it did have jurisdiction whether it was an abuse of discretion to modify the order.



# Jurisdiction and Discretion (TLH v. JPR Cntd.)

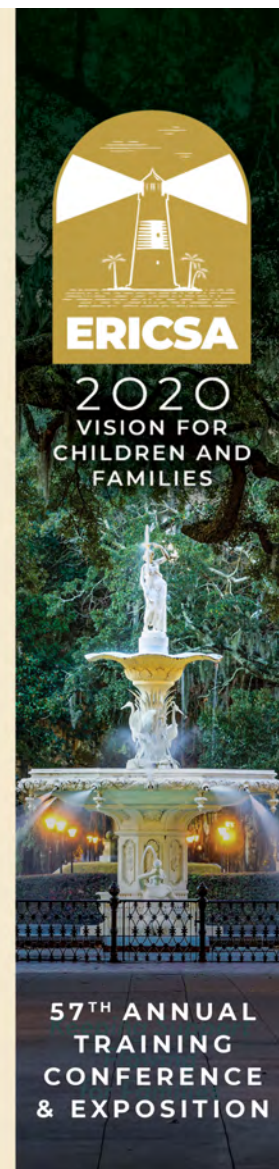
- Bucks County concluded it had jurisdiction under UIFSA b/c no other state had CEJ.
  - Order issued in NY and registered in PA.
    - No one lives in NY.
    - Dad lives in NJ and petitions in PA.
    - Mother is subject to personal jurisdiction in PA.
    - The three criteria under UIFSA, no one in Order state, petitioner is a non-resident in the state where filed and the respondent is subject to that jurisdiction.
  - Mother tried to Argue NJ was the issuing state b/c it issued 2 orders.
    - Court found NJ was only a responding state to NY.
- Court had jurisdiction under UIFSA.
- Mother alleges father did not have a change in circumstances so the order should not be modified. (Father 135K, Mother 107K in original order, but now Father at 139K, Mother at 141K). Also original order was an upward deviation at father's request to pay more due to income disparity.
- Mother also tries to argue res judicata – as other modifications were denied so this one should be. The court points out that child support modification is always subject to review.
- The modification was not an abuse of discretion.





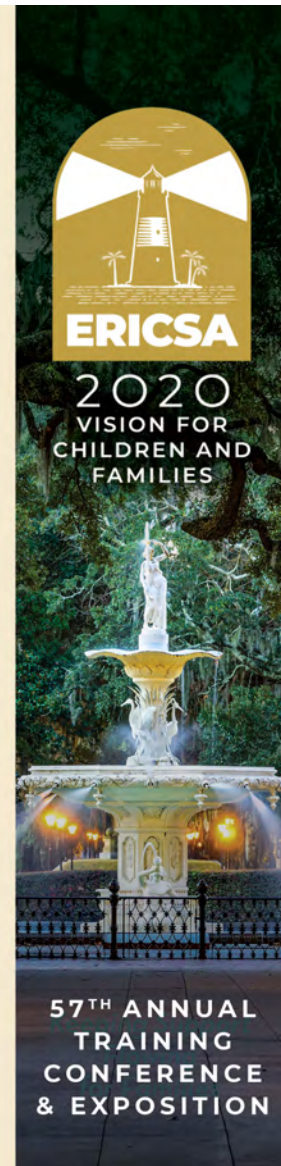
## In re Marriage of Ten, 2019 Wash. App. LEXIS 3058. 12/9/19

- Parties married and divorced in Russia.
- In 2010, Russian Court entered a CSUP Order.
- In 2014, a Russian bailiff/law enforcement officer entered an order an order and decision concluding father was current in CSUP as of 12/3/14.
- In 2015, after a vacation in Vienna, the parties remarried in the US.
- In 2017, they were divorced in the United States. Mother sought unpaid back child support from the Russian order.



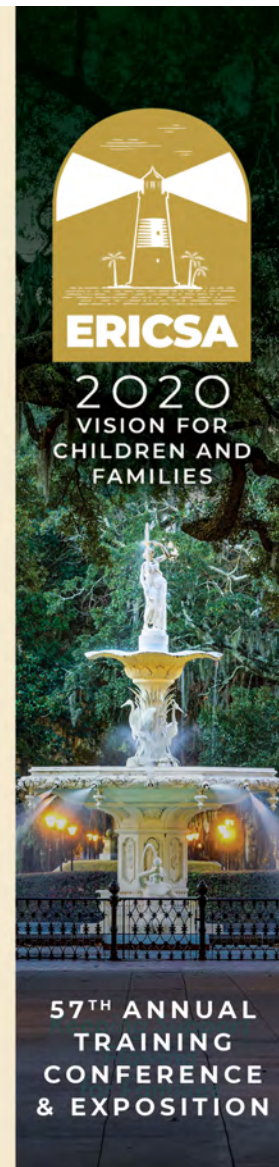
# Comity (Ten, cntd.)

- Mother moved to register the 2010 Russian Child Support Order under UIFSA. Father opposed this. In her reply, Mother argued Comity.
- The court recognized the order and a finding of arrears but did not recognize the decision that father was current in his payments.
- The trial court granted comity to the 2010 Russian CSUP order but not the 2014 decision.
- Comity – recognition by one nation of the orders of another. It is not a rule of law but a practice for convenience and expediency.
  - Court can grant comity to “valid judgments.”
- Here the 2010 and 2014 order were both signed by the same official. It is untenable why the court found one valid but one not.
- Case was remanded to treat both orders the same and recalculate the arrears based on that and the parties reconciliation period.



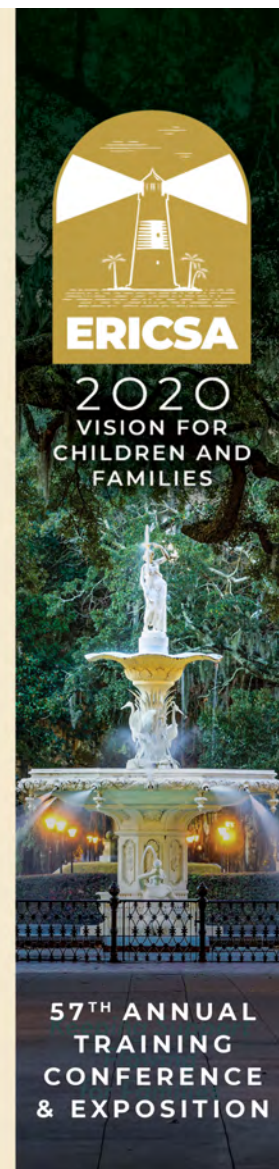
# Beaver v. Wetzel, 2019 Pa. Commw. Unpub. LEXIS 662. 12/6/19

- By order, Trumbull County, OH CSEA directed SCI-Mercer to withhold money from Beaver's inmate account to satisfy child support arrearages.
- Beaver requested an order to cease and desist taking monies from his inmate account and to pay him \$500 in punitive damages.
- DOC argues the petition should be dismissed because it is complying with a facially valid out of state child support order and is therefore immune from liability under UIFSA.
- Beaver argues that only applies to an employer and DOC is not is employer.
  - However, the law defines employer as "individual, partnership, association, corporation, trust or commonwealth agency...paying or obligated to pay income."



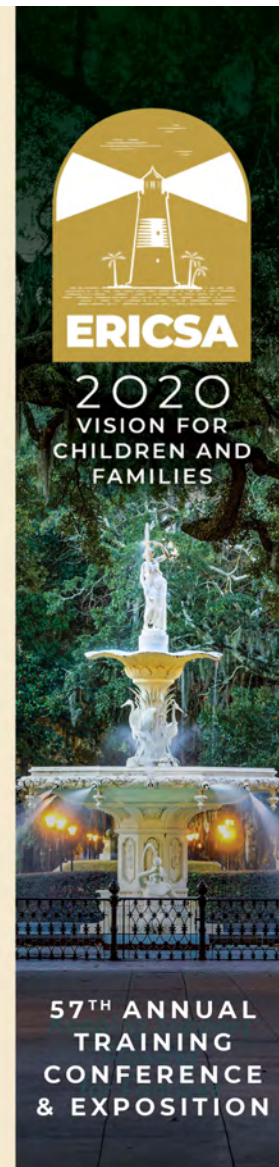
## Liability (Beaver, cntd.)

- DOC asserts Beaver should use his due process remedies by registering the foreign order in a tribunal in this state and objecting to the enforcement.
- Lastly DOC argues for dismissal because Beaver fails to state a clear right to relief.
  - Namely he argues that PA removed the arrears from PACSES.
  - However, this didn't remove the arrears from the Controlling State and the DOC was directly withholding for them.
- Case dismissed.



# In the Interest of IRB, 2019 Tex. App. Lexis 10258. 11/26/19

- Extensive litigation history. Father lives in NY, mom in TX, but mom subsequently also moves to NY during the pendency of the litigation and before the trial.
- Mother had an extensive history of blocking father's parenting time and filing false reports against him.
- At trial mom failed to appear, her motion to appear via phone had been denied. Father was granted the right to determine residence of the child and mother was restricted to specific parenting time only.
- Mother appealed citing a 12 count appeal but the court limited it to jurisdiction to act, venue in Fort Bend County, TX and the sufficiency of the evidence.

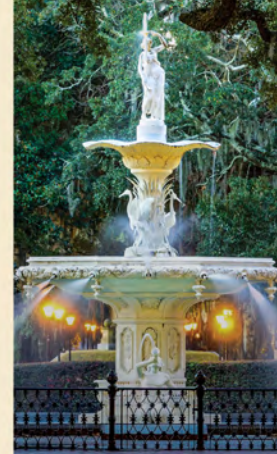


# Jurisdiction, Venue and Sufficiency (IRB, cntd)

- Mother argued that Dad and child lived in NY and that by the time of the trial she also lived in NY so TX lost jurisdiction to make any orders.
  - Under UCCJEA – TX is the home state if the child lived with a parent for 6 months prior to the commencement of the action – this is when first pleading is filed. It is undisputed that mother and child lived in TX when father filed his motion to enforce the orders.
- Father filed for dismissal of the appeal under mootness as he had now registered the case in NY.
  - Under UIFSA the Fort Bend orders can be enforced in NY once determined to be valid so just registering the order there doesn't render mother's appeal in TX moot.
- Mother argued Fort Bend was not the proper venue as court denied to transfer case to where she said she and child lived. Father alleged she gives false addresses to thwart court process.
  - However, mother filed this 6 months after she was served at the address in Fort Bend so its untimely without needing to rule on merits.
- No abuse of discretion – long record of mother's use of her relationship with the child to cause disruption.



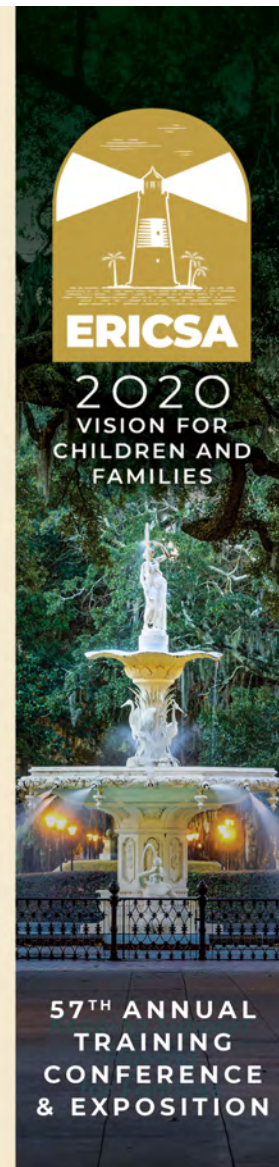
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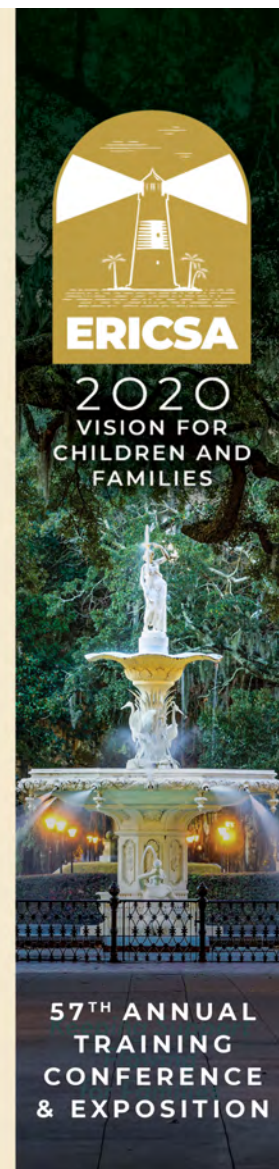
# Roper v. Roper, 2019 Ky. App. LEXIS 199. 11/8/19

- Divorce filed in KY. During the divorce Dad petitioned to move to TX with the kids due to work. The move was a known possibility during their marriage due to this work for Toyota.
- Court gave joint legal to parties with Dad as primary physical and approved the move to TX. Temp. CSUP was entered. Mom moved to TX first then Dad and children 1 month later.
- Issues arose over jurisdiction to enter a permanent support order at the final dissolution hearing.
- Dad filed for a special writ of mandamus to stay enforcement under UIFSA and the court found as it had proper jurisdiction when the case was filed it had jurisdiction to conclude the matters.



## Jurisdiction (Roper, cntd.)

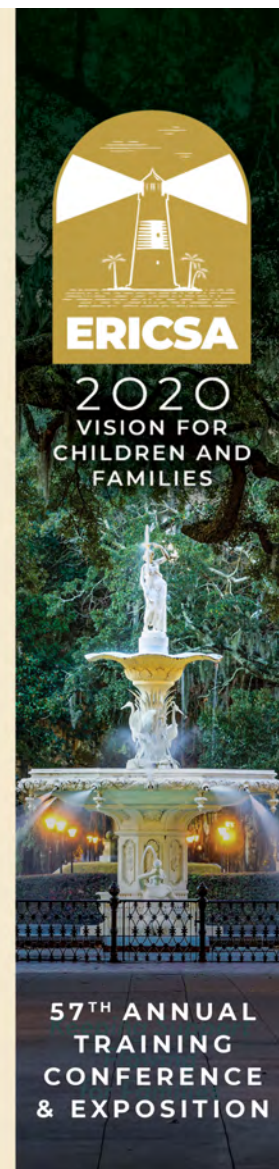
- D appealed the denial and cited KY UIFSA. There is no dispute that no one lived in KY at the time of the decree.
- However, the court found the parties had consented to the court retaining jurisdiction by continuing to litigate the issues in that court.
- Because the parties consented the court retained CEJ.
- UCCJEA – however on the issues of custody and parenting time the court did lose jurisdiction over those issues.
- Lastly, Property Settlement – court pointed out there are no legal provisions such as UIFSA and UCCJEA for property settlement and maintenance. However they did remand on the amount of the maintenance award because the court did not properly consider father's ability to pay the maintenance and meet his own reasonable and necessary expenses.





# Hart v. Hart, 2019 N.C. App. LEXIS 879. 11/5/19

- Washington State Divorce. M and children moved to NC. Later D also moved to NC.
- Mother filed to register and modify the custody order in Mecklenburg County. WA court entered an order transferring all parenting related issues to Mecklenburg. Mother also registered the support order and correction of scrivener's error order but not the corrected order.
- Father later filed a motion for modification and attached the initial support order, corrected order and the correction of scrivener's error.
- Mother objected to subject matter jurisdiction to modify the order.



## Subject Matter Jurisd. (Hart, cntd.)

- Mother's argument was that the court lacked SMJ to modify the order because she failed to register the corrected order so NC didn't have that order to modify.
- Court points out – registration is not a jurisdictional issue but a procedural requirement. The NC courts have found strict adherence is not a requirement – rather substantial compliance is sufficient.
- In this case the controlling order is in 3 parts, the initial order, the corrected order and the corrections of scrivener's error. Mother neglected to register the corrected order. This inadvertent omission is not a fatal error.
- Mother substantially complied so it isn't procedurally deficient.
- Lastly NC does have SMJ as all parties now reside in NC and the order was registered there.



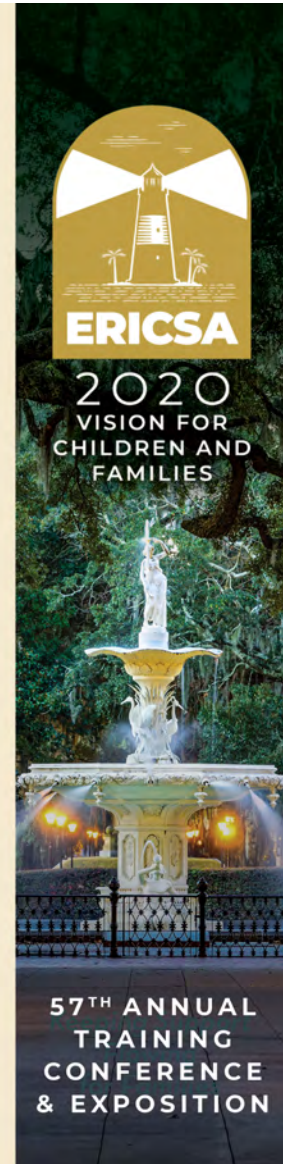
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## GB v. Montgomery Cty. Office of Child Support, 2019 Md. App. LEXIS 887. 10/16/19.

- Married in April 2012, allegedly stopped having sexual relations in October and separated in December. The child was born in 2013. Three weeks later, mother filed for divorce. The parties filed a consent motion for Genetic testing.
- The Judge held what is referred to as a “best interests” hearing and determined the GT was not in the child’s best interests to the motion was denied.
- Following that the parties signed a marital settlement agreement. In it appellant clearly recognized and agreed he was the father. It did not include a child support order. In April, 2014 the court entered a judgment of divorce with no support order and incorporated the agreement.



# Wait no GT (GB, cntd.)

- In Oct, 2015 M and Child moved to Texas.
- In January 2017, Texas CSUP initiated a child support case and pursuant to UIFSA forwarded a petition to Montgomery County CSUP which then filed the instant action for support.
- In Father's response he again denied paternity and asked for GT again. MCOCS objected.
- The Court held another "best interest" hearing.
  - Appellant argued based on two new cases – *Davis v. Wicomico*, 447 Md. 302 and *Faison v. Murray*, 235 Md. App. 76 that he had a right to GT and was not subject to any best interest of the child analysis.
  - The Judge distinguished those cases and relied on the same case as before *Mulligan v. Corbett*, 426 Md. 670 and denied his request.
  - The Court then entered child support retroactive to the date of the UIFSA petition.



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## King Minos? (GB, Cntd.)

- “Whether and under what circumstances a man alleged (by himself or others) to be the father of a child is entitled to genetic testing to establish or disestablish his alleged paternity is no less confusing than the great labyrinth designed by Daedalus for King Minos at Knossos. Cases have gone this way and that, some with dissents, depending in part on whether the mother and the alleged father were married when the child conceived but not when it was born, or when it was born but not when it was conceived, or whether the alleged father acknowledged paternity in an affidavit, or acknowledged paternity in some other way, or in either event had second thoughts later, and mostly, on which of the two sets of statutes in different Articles of the Code, some of which changed over time, were held to apply.” GB v. MCOCS, 2019 Md. App. Lexis 887



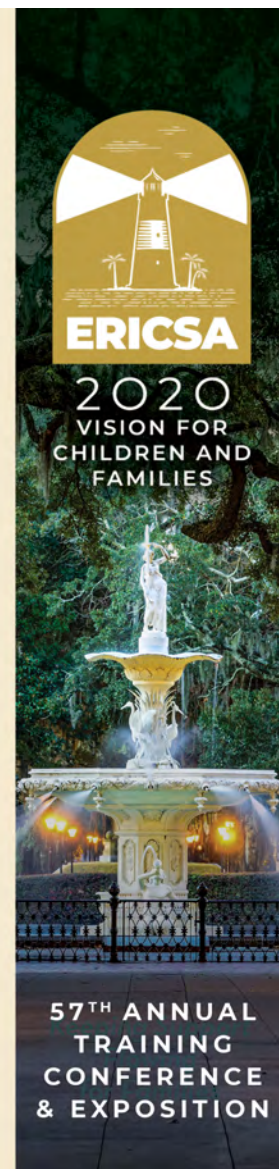
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# Court's Reasoning (GB, cntd.)

- The Mulligan case was a self-proclaimed father attempting to get GT for a child of two other parties marriage. The court used the best interests standard to deny the self-proclaimed father GT.
- GB argued that Davis and Faison effectively overruled Mulligan. But those were paternity cases, not a marriage case like Mulligan.
- Basically his argument is that the best interest test is antiquated and even though it is established law in MD, the court should order GT as the next logical evolution of the law.
  - He also argued this creates an equal protection issue between married and unmarried parents. He did not raise this at the trial level so his appeal is denied for this reason.
    - The court does not feel it needs to consider that MD law at the time required father to rebut the marital presumption before he was entitled to GT, that required the best interest review and GB didn't appeal the denial of this request. Though it would have denied him for this.
    - Nor does it address that he agreed in the marital settlement agreement that he was the father, thus waiving that issue for appeal. Though it seems it would have denied him for this.
- Appeal denied and CSUP order retro to filing date of UIFSA upheld.



# Watkins v. Benjamin, 833 S. .E. 2d.

8/20/19

- Parties married in 1996 and separated 2012. NC divorce 2014.
- After the separation but prior to the divorce mother and the children relocated to VA. A variety of filings followed.
- Parties were given joint custody with primary residence to be with father in Maryland. CSUP was reserved based on joint custody.
- In 2015 court found mother had moved to MD and gave full custody to father and ordered mother to pay child support.
- 1 year later, the parties agreed for mother to have custody, term'd the support order and reserved the right for her to ask for support and agreed that NC would retain jurisdiction over the parties and children in regards to custody and support and future modifications of those orders.



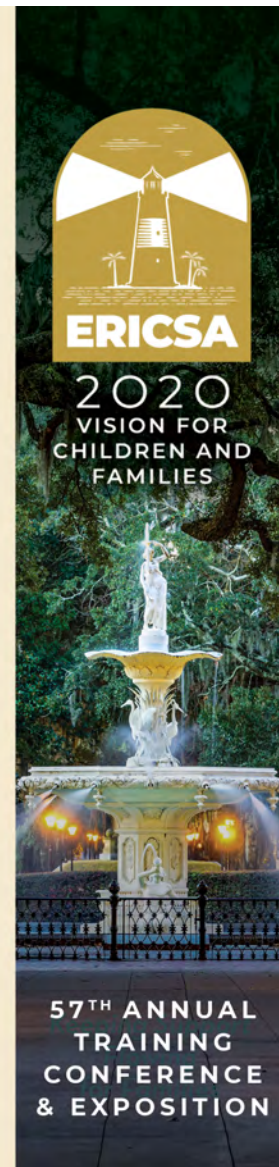
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# The Maryland Action (Watkins, Cntd.)

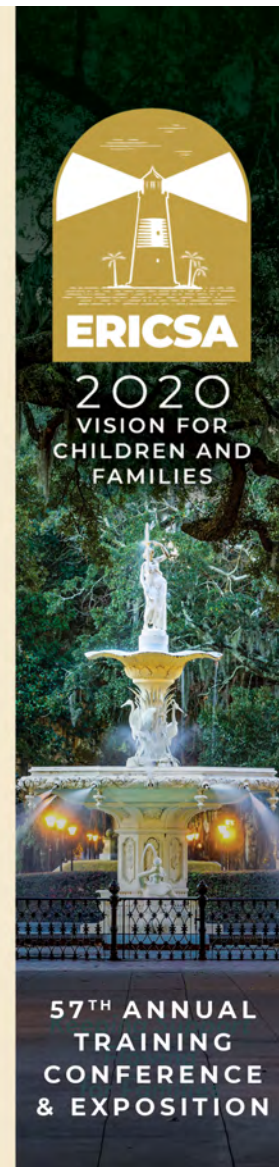
- In 2017 mother filed for CSUP in Baltimore County, MD. Father moved to dismiss and it was dismissed for lack of personal jurisdiction over him. Mother filed to have that renewed and it was apparently granted and remained pending at the time the orders in this appeal were entered.
- During this time she also filed in NC to have custody and support modified and recognize the change in custody. Father also moved the same. Mother voluntarily dismissed her motion but Father's moved on.
- Ultimately the NC court found it still had CEJ to modify CSUP and did so. Mother filed TR 59 and 60 motions and both were denied – she appealed.





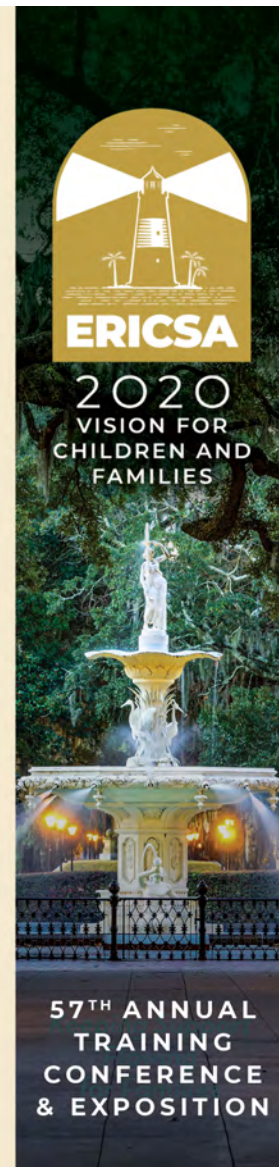
# Modification or Establishment (Watkins, Cntd.)

- Mom's contention is that the NC court erred by exercising SMJ.
- Mom argues that on the date those orders were entered Father did not owe her child support so setting the support amount was the establishment of a new order not a modification of the existing one.
- Since she had already filed for support in Maryland, NC no longer had SMJ to enter that order. She didn't argue that the court couldn't modify its existing orders, just that it couldn't create a new one.
- The court ruled that under UIFSA this isn't a new order but it is the modification of the existing order because to follow UIFSA's one-order system you must be able to modify orders if child custody changes and for this reason mother's appeal is denied and the trial court is affirmed.



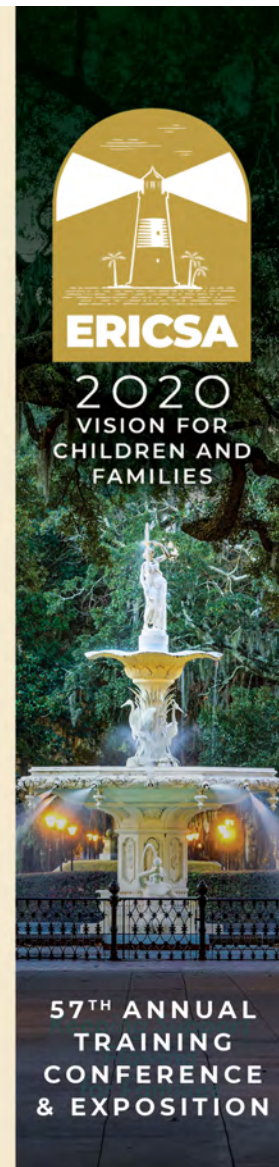
# Matter of Nicholas A. v. Jessica T., 65 Misc. 3d 365. 7/22/19

- German Divorce Decree – ordering father to pay support. At the time of the divorce both lived there, where Mother is still. Father has returned to America.
- 2016, German Order registered in NY for enforcement. Father objected to the arrears amount and on ground of parental alienation and to limit the scope arguing NY lacked authority to modify the order.
- German Central Authority responded seeking to dismiss that defense as visitation cannot be raised in child support proceedings.
- Father alleged that is a defense in NY and as such he can assert it.



# Parental Alienation Defense and UIFSA (Nicholas, Cntd.)

- After some back and forth with his attorney where he withdrew the parental alienation defense and then his attorney was set to withdraw, the case moved forward.
- NY has incorporated the Hague Convention through UIFSA.
- A NY Court could modify a convention order in certain circumstances.
  - However, it may not if the obligee remains a resident of the foreign country where the order was issued, unless they submit to NY's jurisdiction or the foreign tribunal has lost jurisdiction.
  - The record shows mother did not submit to the jurisdiction and to the extent necessary objected to anything other than CSUP enforcement occurring in NY.
  - Dad didn't argue or show that Germany has lost or refused to exercise jurisdiction.
- Lastly, there is no catch all provision for Convention orders that allows an obligor to assert an unenumerated defense under NY law. Parental alienation is not available in the context of a UIFSA proceeding. He could have argued it and the court could have considered all of this but he withdrew it. Even if his attorney shouldn't have withdrawn it, his vague conclusory allegations of attorney neglect are insufficient to warrant reconsideration of it.



# Ihenachor v. Martin, 2019 Md. App. Lexis 563. 7/8/19.

- \*Unpublished.
- Father filed for custody in Queen Anne's county. Court ordered primary physical custody to Mom and ordered dad to pay support.
- 3 years later father moved to vacate the order on subject matter and personal jurisdiction matters under UCCJEA and UIFSA, and that the judge violate Maryland court rules by not recusing himself because he was married to mother's attorney.
  - D lived in Arlington, VA but he filed for joint legal and physical in Maryland and alleged mom and child lived in Maryland.
  - M countersued for sole legal and primary physical custody and asking for child support.
  - After the order father directly appealed on substantive grounds and that the order was affirmed.
- Then father filed his motion to dismiss and reiterated his substantive interests.



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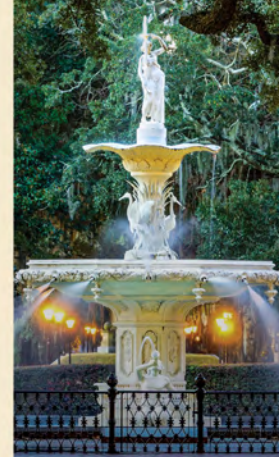
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# UCCJEA, UIFSA, Conflict (Ihenachor, Cntd.)

- UCCJEA. He alleged even though the child is in Maryland, it should have denied jurisdiction because of mom's unjustifiable conduct in keeping the child from him.
  - He filed! Number 1. Also, he waited 3 years to file to dismiss after the court ruled against him.
- UIFSA. Now he could have had limited immunity under UCCJEA to just do custody/pt. But, father filed for custody in Maryland, mom filed for CSUP and father filed an answer to that countersuit and by doing requested affirmative relief under UIFSA and waived the limited immunity under UCCJEA. He submitted to the jurisdiction.
- Conflict – Judge alleged only approved routine admin functions of the court and did not impact the merits. He signed two orders, one striking mother's former attorney and approving her new attorney, his wife and a scheduling order.
  - Also he didn't allege this in his 2015 appeal so it was waived.
  - Even if preserved, father failed to point to any prejudice nor can the court envision any due to the only orders being ancillary and not bearing on the merits.



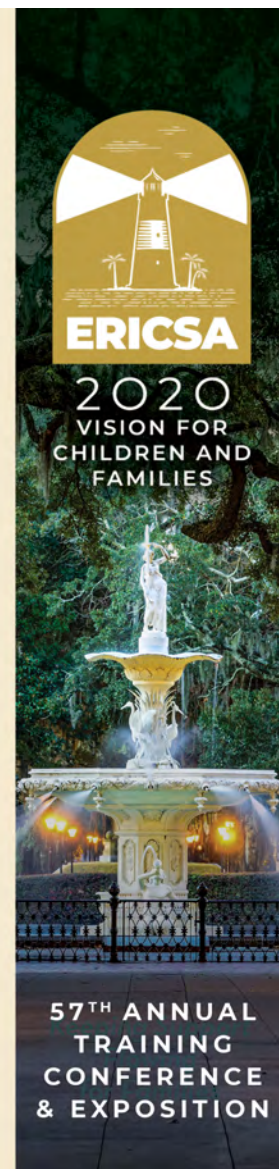
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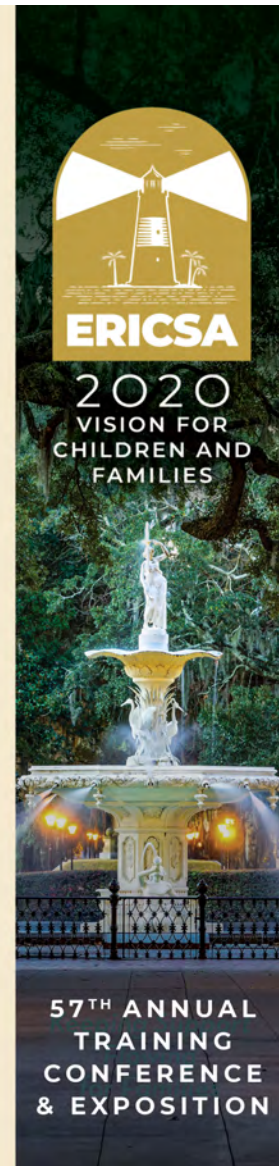
# In re Cleopatra Cameron Gift Trust, 2019 SD 35. 6/26/19.

- Christopher divorced Cleopatra and got custody of the children in California. Due to her receipt of \$40,000 per month from the trust and his relatively low income CSUP was set t \$8,863 per month. She was also ordered to pay spousal of \$14,761 per month and \$50,000 in attorney fees. (Ultimately the CA court ruled that attorney fees could not be paid this way, only child and spousal orders due to the specific law carve out).
- The Family Court joined the trust in the divorce and intended to use a particular feature of California Trust law to require the trust to directly fund Cleopatra's child support orders.
- Dad filed a request for contempt against Mom and Wells Fargo for failing to satisfy the obligation. The court found they had acted in bad faith and ordered them to pay the obligation from the Trust.



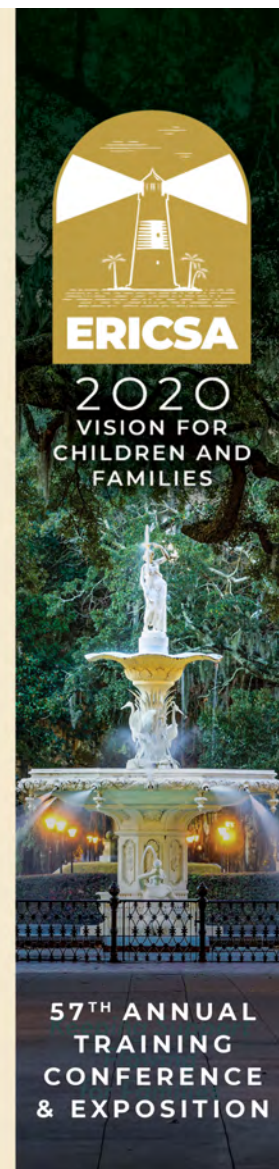
# Trust Funds (Cameron, Cntd.)

- Wells Fargo objected on the basis the family court had no authority to order direct payment from a spendthrift trust to a creditor or child support obligee. Nevertheless they honored the order and made the payments.
- Mother and Wells Fargo in a separate court were granted their withdrawal as co-trustees and BNY Mellon took on the role. They agreed to be bound by the March 10 order.
- California law allows a trustee to be ordered to pay child support out of the future payments that the trustee (at their discretion) determines to make to or for the benefit of the beneficiary. If the trustee fails to exercise its discretion the court may order the trustee to satisfy past due and ongoing support obligations from the trust.



# New Trust Company, who dis? (Cameron, Cntd.)

- Mother invoked her authority under the trust to move the situs of the Trust to South Dakota. BNY resigned and was replaced by Citicorp Trust of South Dakota, Citicorp resigned and was replaced by Bankers Trust Company. The Trust continued to pay child support despite being in SD.
- In 2016, Trident Trust Company became acting trustee and appointed Empire Trustee as trust protector. They reviewed the Trusts spendthrift provision and determined that it would not accede to the trustee's direct child support payments to Christopher. These were contrary to spendthrift provision and legislatures explicit intent regarding the rights of creditors to the assets of spendthrift trusts. It also determined it improvident in light of the trusts rapidly depleting assets.





# Full Faith and Credit (Cameron, Cntd.)

- Cleopatra petitioned the court in SD to resume supervision of the Trust and determine if it had to keep making direct child support payments.
- SD Court found that the Trust is prohibited by its terms from doing so and concluded the means of enforcing the California support order were to be determined by SD not California, therefore the court order regarding those payments was not entitled to full faith and credit. Dad appealed.
- Court found this was an enforcement method only and not entitled to full faith and credit. SD Law has strong protections for trusts from creditors.
- Lastly, since the support order was not registered in SD the Court did not need to consider his UIFSA concerns. However, even if it had been, registered support orders are only enforceable in the same manner and subject to the same procedures as an order issued by a tribunal in that state. So, since under SD law this couldn't be enforced this way, even under UIFSA this wouldn't have been valid.
- This doesn't relieve her of her obligation to support her children, it simply means it can't be enforced by direct payment from the Trust to the obligee.



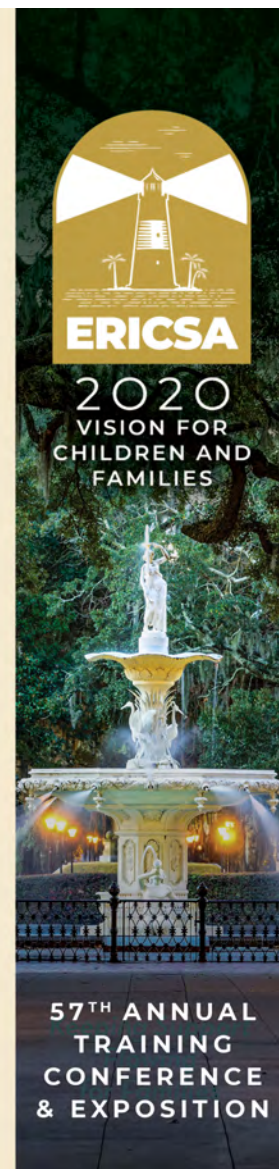
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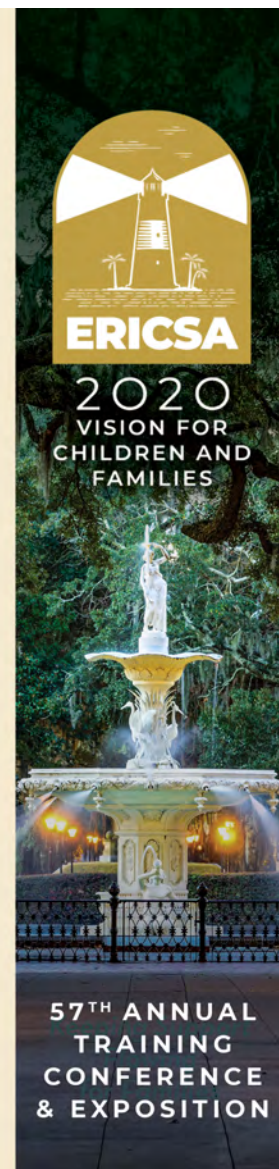
## Quimby v. Quimby, 2019 Tex. App. Lexis 5110. 6/20/19.

- Parties married in Washington State, 2009. Thereafter stationed at various locations while both were serving in the military.
- Separated 2016, Dad moves to MS where is stationed and Mom moves leaves the military and she and the children move to FL.
- In 2017, Dad files for divorce in Galveston, TX, Mom filed for legal separation in FL.
- Dad's suit alleged TX is his home state, and admitted Mom and child had not been there but were also not under the CEJ of any court. He served Mom in FL.



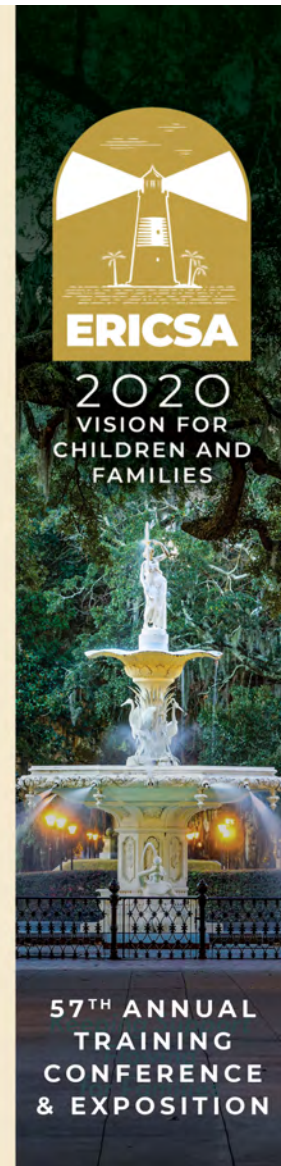
## Personal Jurisdiction (Quimby, Cntd.)

- Mom filed a special appearance to argue Galveston lacked personal jurisdiction over her because she had lived in FL continuously for greater than 6 months and thus she was a domiciliary of FL. She also argued lack of jurisdiction over the children as they had never resided in TX.
- Subject to her special appearance she also sought dismissal of his suit under the UCCJEA.
- The trial court agreed and granted her motion and dismissed the case.



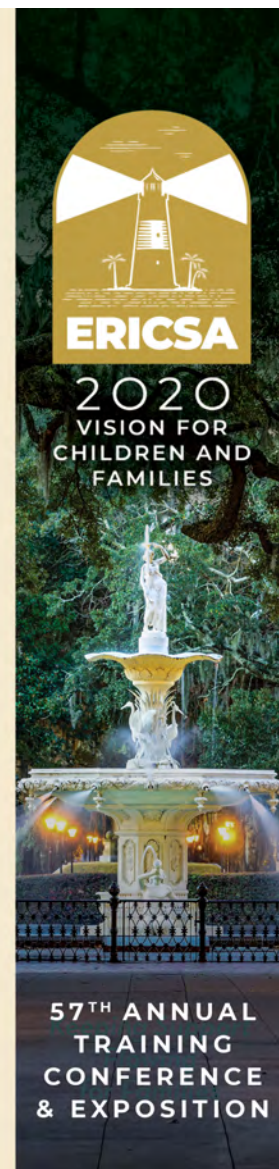
# Special Appearance (Quimby, Cntd.)

- Dad argued her special appearance should have been denied because she visited TX (1 time) right after they got married to meet his parents and have never been back.
  - Court found this does not constitute a “purposeful avilment of the benefits and protections of TX sufficient to confer personal jurisdiction.”
  - On appeal he argued that she should have known since TX was his home state even though he was in the military. Court found here that only the party can complete the acts that create jurisdiction, not the unilateral actions of their spouse.



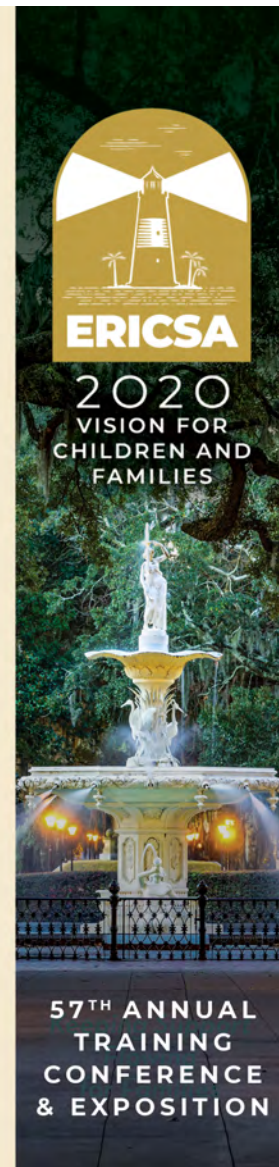
## Dismissal (Quimby, Cntd.)

- Dad argued the court erred in dismissing his suit entirely because he met the domiciliary and residency requirements to maintain his suit. Even if they lacked jurisdiction over mom he was entitled to a divorce.
- It is established that TX may exercise its jurisdiction over those portions of a suit for which it has authority. This is discretionary. A party would have to prove it was an abuse of discretion for relief.
- The court may have jurisdiction to grant a divorce but lacks personal jurisdiction over a party so it can't divide the property, lacks jurisdiction over the children under UCCJEA and support issues under UIFSA.
- The court did not abuse its discretion in dismissing this suit entirely.



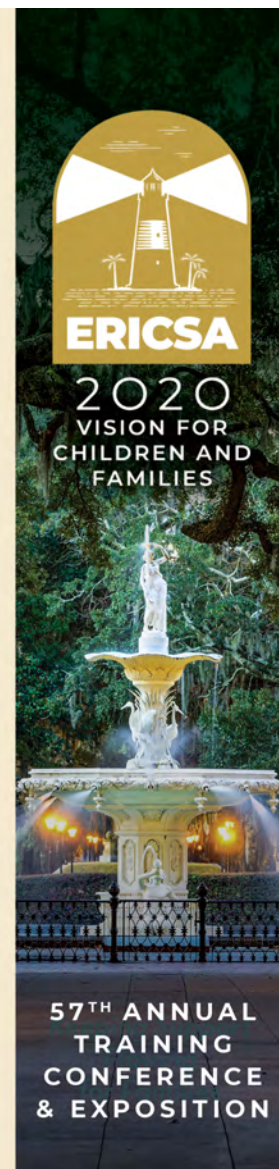
# Finch v. Rudolph, 2019 Mich. App. Lexis 2600. 5/28/19.

- Parties married in MI in 1992 and divorced in OH in 2004. 2 children, elementary aged at the time of the divorce and college-aged adults now.
  - Shared parenting plan incorporated into the parties divorce required father to pay CSUP until child turned 19 and keep HI until then as well with mother paying the \$100/yr in uninsured expenses and then dad the rest.
  - Regarding college expenses: Dad was ordered to “use his best abilities to provide an undergraduate college education for the parties two children.”
  - At the time of the divorce, dad lived in OH and mom in MI.
- In 2005, Court granted mom’s motion to transfer the case to Grand Traverse County as she lived there and dad was in Milton, MI. This was as to property settlement and parenting-time.
- Father contested this in OH and in 2008 OH transferred all issues except child support as its reading of OH law required the parties agreement to transfer that issue.



# Health Insurance (Finch, Cntd.)

- Beginning in 2010, the Court heard and decided health care matters.
- In 2010, the court denied mother's request for reimbursement, reasoning that OH retained jurisdiction over CSUP and that reimbursement of medical expenses was a CSUP issue.
- However in 2014, with a different Judge, the court ordered Dad to pay for accrued health care expenses and current and future counseling.
- In 2017, mom filed to enforce the agreement with respect to college and health care. Dad, now living in TX, moved to dismiss for lack of SMJ because OH retained those issues.



## OH Court (Finch, Cntd.)

- In February 2018, while the other motions were still pending, Dad filed in Ohio to eliminate his obligations to pay uninsured health care and assist with college expenses.
  - The OH Court denied his motions. It found college expenses are not child support and thus not modifiable under Ohio law.
  - As to uninsured the court found those were child support and enforceable as part of their agreement.
  - The Court also found it no longer had CEJ to modify child support under the revised 2016 UIFSA.
- MI court found it didn't have SMJ either and that there hadn't been appropriate transfer under the uniform law.
  - Further it felt that regardless of OH's order it didn't have SMJ to enforce the shared parenting time agreement. The court also rescinded the 2014 order on past and future health care expenses.



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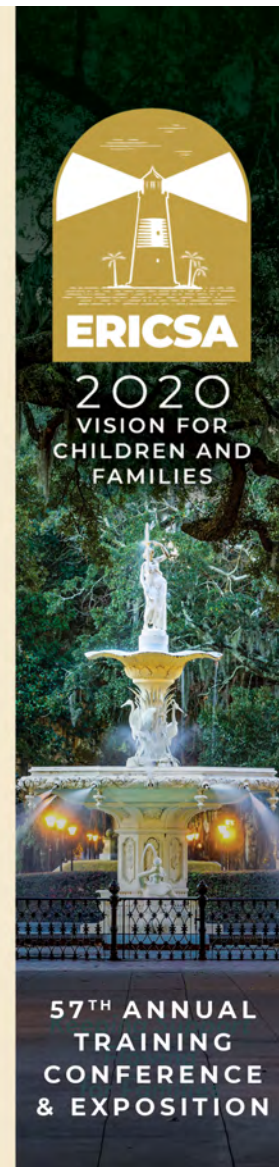


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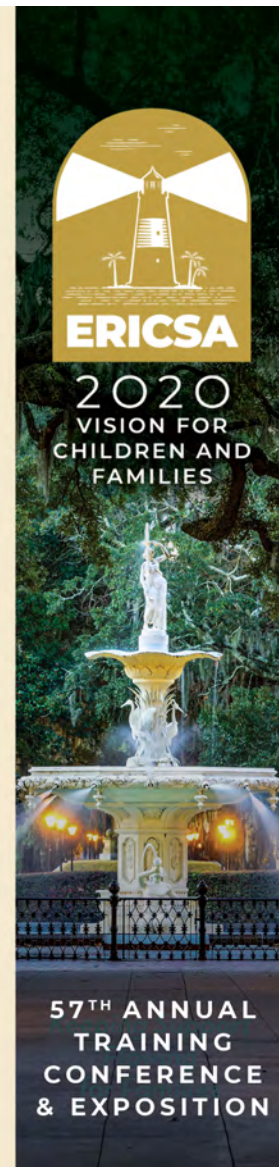
# UIFSA Analysis (Finch, Cntd.)

- Very good discussion of UIFSA by this court.
  - Health Insurance issues are part of CSUP and covered by UIFSA. Mom didn't correctly register the order under UIFSA so trial court is correct while OH may have lost CEJ to modify, the order can still be enforced in OH. Mom's motion denied but no prejudice to her for any future actions filed correctly under UIFSA.
  - College education order is not child support and not subject to UIFSA. It is however subject to UEFJA (Uniform Enforcement of Foreign Judgments). No transfer is required but Mom didn't comply with UEFJA. Again she was correctly dismissed but without prejudice for future filings consistent with UEFJA.



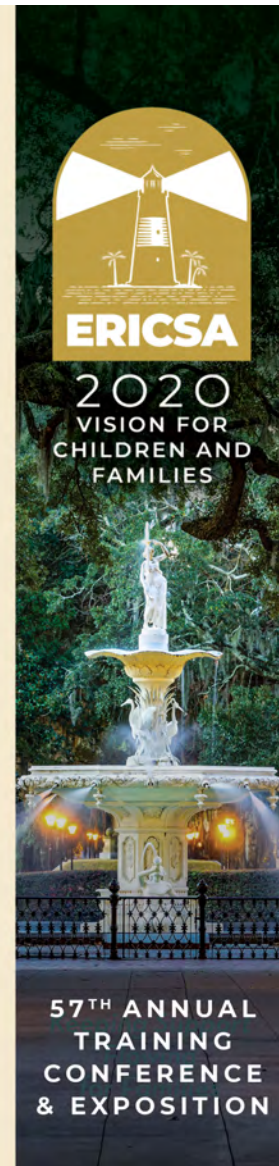
# Brett v. Martin, 9 Wn. App. 2d 303. 5/20/19.

- Vanderburgh County, IN divorce and Supreme Court of Ontario support order. (IN did not have jurisdiction over dad for support).
- In 2011, Washington sought to enforce the Ontario order against Brett who was currently residing in Washington.
- Dad objected and argued a manifest incompatibility between Ontario and Washington public policy that forbade registration and enforcement of the order.
- Court – said no way – and denied his objections and registered the order.



# Spousal Support (Brett, Cntd.)

- On appeal, Brett argues that Washington courts presume a spousal support obligation terminates on remarriage of the support recipient and so the enforcement of an order from a jurisdiction without that presumption is barred by public policy.
- The court found the difference between Ontario and Washington courts on duration is not a manifest incompatibility.
- Under UIFSA, the order is to be enforced in the same manner and procedures as if issued by a Washington court except it can't be modified and the law of the issuing jurisdiction governs, nature, extent, amount and duration of the payments under the order as well as the computation of arrearages.



# Manifestly Incompatible (Brett, cntd.)

- Washington law bars the enforcement of a foreign order if it is manifestly incompatible with public policy. This is only found if the foreign order doesn't grant the parties the same rights as they would in Washington or under the US constitution.
  - The chief concern here is due process. A constitutional concern could also arise to this level.
  - In Ontario, when a spousal support order doesn't have an expiration date it remains until death or the order is changed by the issuing court. This is a contrast to Washington's presumption upon remarriage.
  - It is merely a presumption though so a court could deny it. Similarly, Ontario courts have discretion to terminate upon remarriage.
- Washington public policy is not offended by this. Brett could have moved to modify or terminate the order in Ontario.



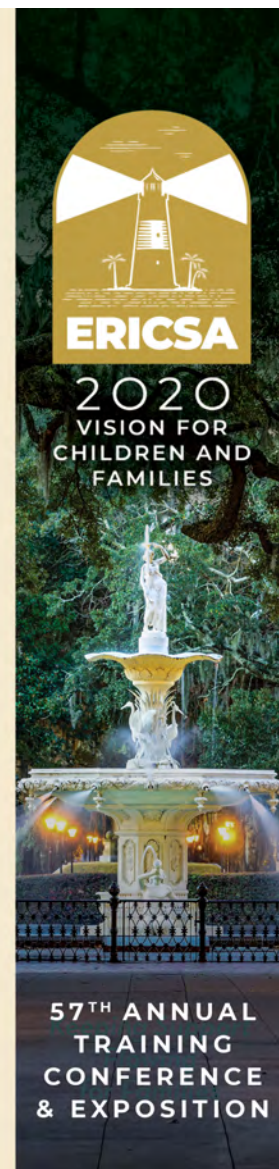
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# Statute of Limitations (Brett, Cntd.)

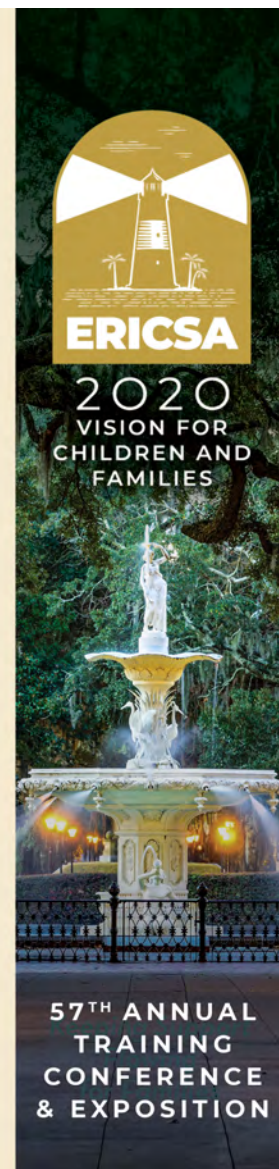
- Lastly, Brett argued that enforcement of this order is time barred under a formerly applicable Ontario SOL.
- In the differences of SOLs from different jurisdictions Washington law will take the longest SOL into account to enforce.
- Ontario's statutory limitation of 20 years was eliminated in 2004. Thus all of his arrears occurring after 1984 are fully enforceable because they weren't time barred prior to the repeal of the statute. Anything owed prior to 1984 would be time-barred.



# Friedah v. Friedah, 2019 –Ohio-1842.

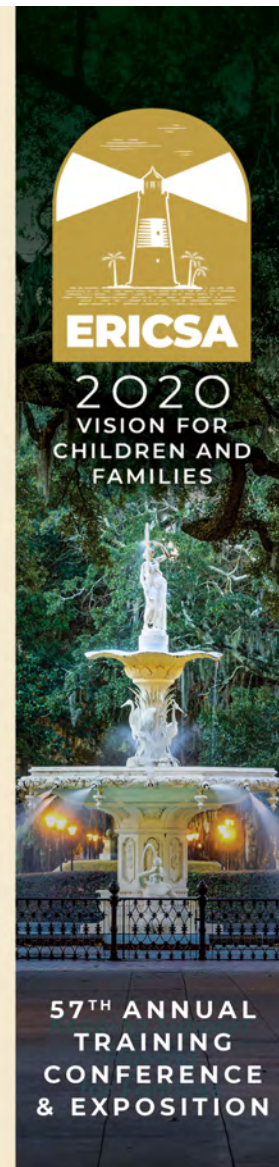
5/13/19.

- Mother and children in OH, Father in NY. OH Divorce, father served in NY and divorce was granted including support and health insurance orders.
- Mother filed a request to relocate to TN and father filed a response indicating no objection. Mother and children moved to TN.
- Mother filed for contempt in OH, Father served in NY and both appeared for a pre-trial hearing. Father did not come back for the trial and was found in contempt and a sentence was issued.
- Mother moved to impose the sentence and served father for a hearing.



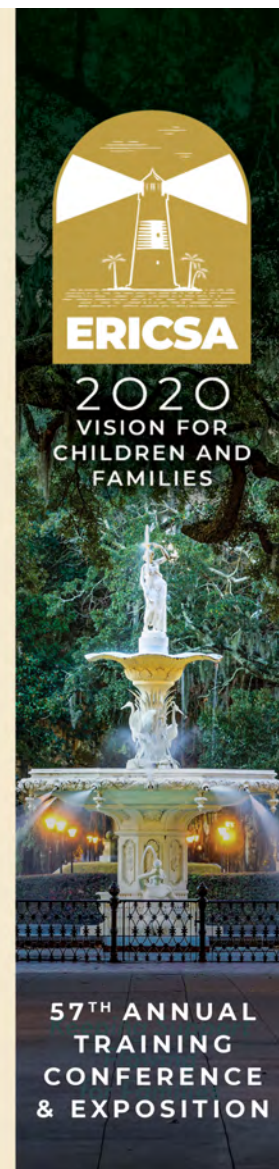
# Not a UIFSA but review UIFSA (Friedah, Cntd.)

- Father filed a motion to vacate the void order as not continuing personal jurisdiction over him because both lived outside of OH and cited UIFSA.
- Mother's brief in opposition alleged that the court never lost the inherent authority to enforce its own order.
- Father loses here because it is an OH order, no one has registered it anywhere else, father lived in NY when the order was issued and the court had personal jurisdiction over him. Mom did move but she hasn't registered the order anywhere else.
- Important issue is no one registered and modified the order in a new state so OH retained CEJ and personal jurisdiction over father pursuant to UIFSA.



# Brooks v. Brooks, 171 A.D. 3d 1462. 4/26/19.

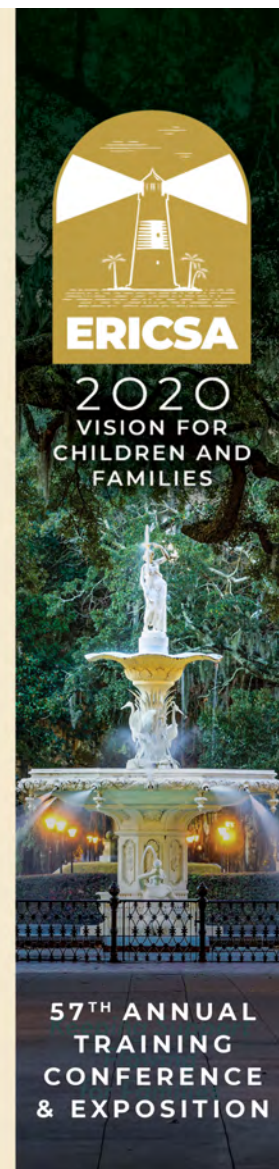
- 2011 NJ Divorce that incorporated but did not merge the parties' separation agreement which included language that stated that notwithstanding any other residence or domicile of the parties, the agreement would be interpreted, governed, adjudicated and enforced in New Jersey by New Jersey law.
- In 2016, when parties and children all lived in NY. Mom registered for modification.
- The court agreed under the agreement it could be modified but used NJ law. Mom objected. Court denied her objections and she appealed.





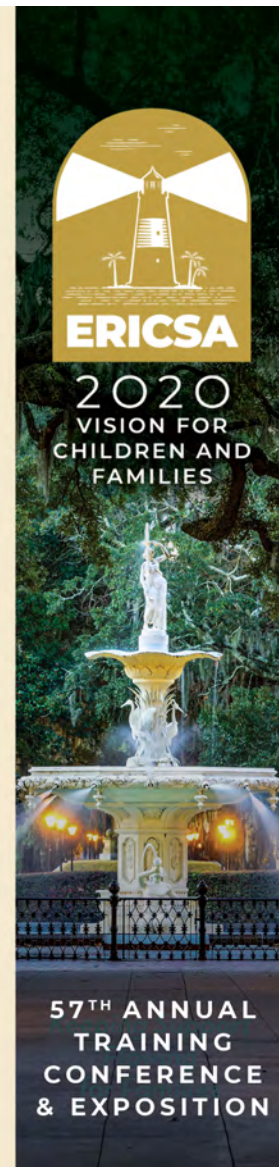
## Choice of Law v. UIFSA (Brooks, Cntd.)

- On appeal, court agreed that it did have jurisdiction to modify under UIFSA.
- UIFSA unequivocally provides that where as here, the parties live in this state and the child does not reside in the issuing state NY has jurisdiction to enforce and modify the order.
- Furthermore, agree that NY law must apply under UIFSA.
- General rule is correct to follow choice of law provisions, but here under NY law there is a strong policy to support children and calculate support under NY's guidelines.
- The parties do not have a valid agreement to opt out NY child support law.



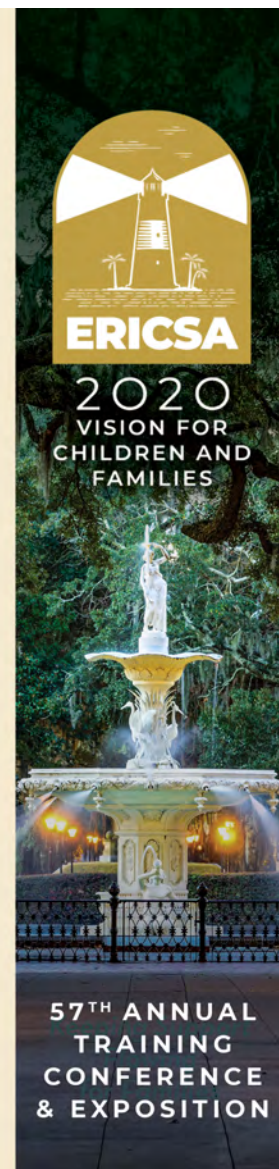
## Berry v. Coulman, 440 P. 3d 264. (April 26, 2019)

- M and D and child in Alaska – CSSD issues a support in 2011.
- 2014 D files for custody and is now stationed in North Carolina. The court entered a temporary custody order to M but didn't address child support.
- 2016 M filed to modify the support order in Superior Court. Dad refused to cooperate with discovery and M argued that as a remedy CSUP should be set at the maximum amount until he does. Back and forth litigation ensues but D finally does provide income.
- The Court modified the order.



## CSSD v. The Court (Berry, cntd).

- Berry moved to reconsider the modification and argued that only CSSD had authority to modify the order as they were the original tribunal.
- Berry's permanent address is Alaska and after his military service he intends to move back there. This is his home state, so court has CEJ.
- The 2011 CSSD order is controlling. Alaska is the home state.
- Lastly, under Alaska Statute 25.25.205 the Superior Court has authority to exercise jurisdiction to modify orders issued by CSSD.
- Under UIFSA and Alaska's framework, CSSD and Superior Court are both the tribunal so as long as the law is followed, Superior Court can modify CSSD's order.



# Statutory Updates and Legislative Trends



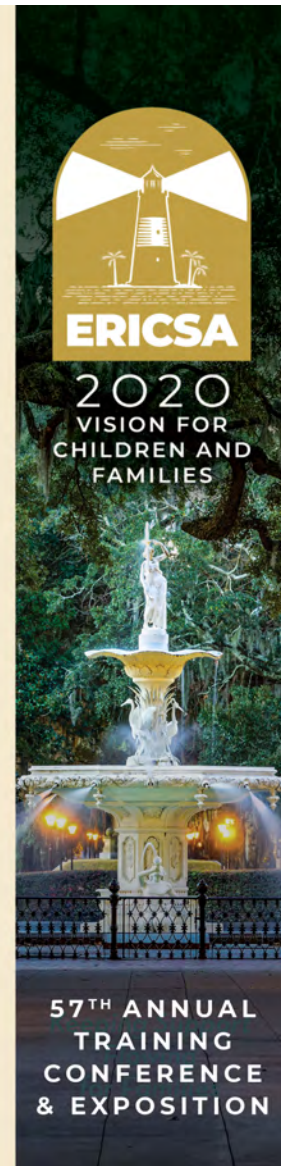
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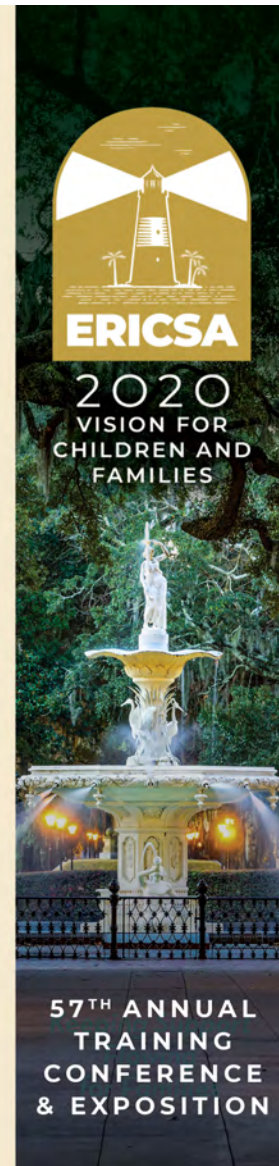
# Pending Federal Legislation

- **Increasing Opportunity for Former Foster Youth Act: S. 3025:**  
The first half of this bill provides funding for best practices for foster care. The second half of this bill includes three topics that would benefit child support:
  - Requirement for companies to report basic information for any independent contractor who earned at least \$600.
  - A provision to allow OCSE to transmit FIDM notices upon a state's request across state lines.
  - Lastly, to give single state banks access to the multi-state FIDM to identify people owing child support.



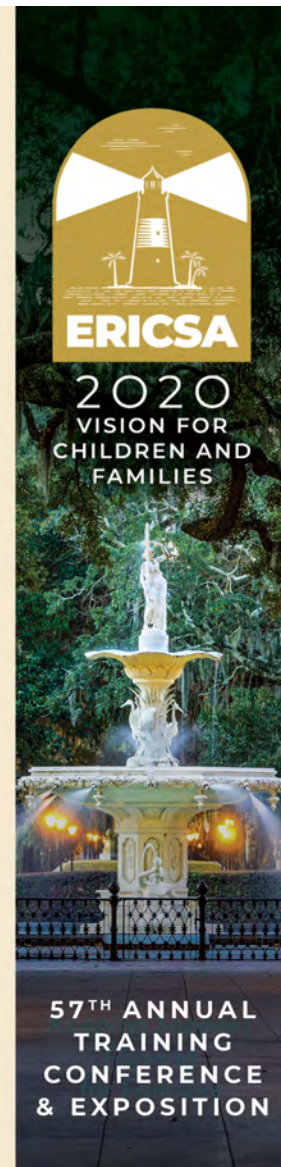
# Pending Federal Legislation

- **Tribal Child Support Enforcement Act: S. 3154:** Tons of work by the National Tribal Association, National Association of Tribal Child Support Directors and NCSEA on this one.
- This would give tribal governments equal and direct access to the Federal Tax Offset Program and other parent locate resources while also requiring IRS safeguards to be in place.



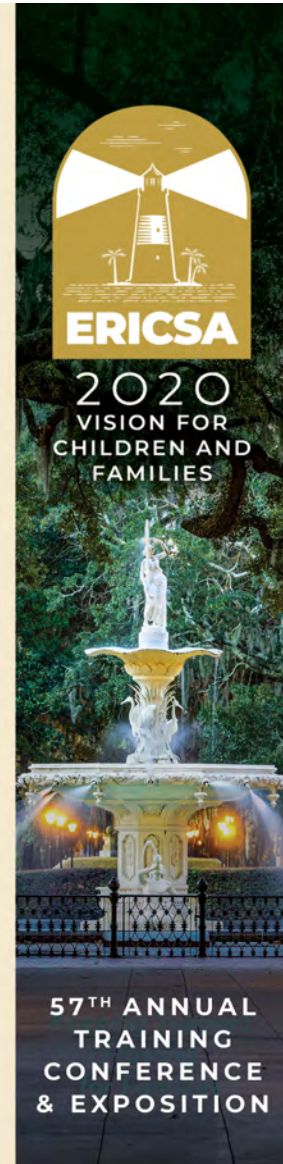
# Pending Federal Legislation

- **Providing Adequate Resources to Enhance Needed Time with Sons and Daughters Act (PARENTS ACT):** Has not been introduced yet. This is intended to make it easier for states to use incentive funds to establish voluntary parenting time agreements without a waiver from OCSE. These waivers are consistently approved so this just removes a step from that process.
- **Child Support Works Act:** This is a draft bill to allow states to choose an option to get 66% reimbursement on expenditures for mandatory work programs for non-custodial parents who are delinquent on their child support obligations.



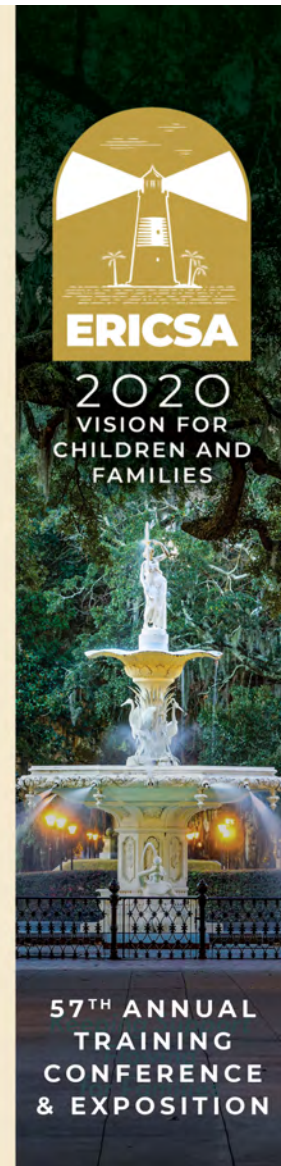
# State Legislative Trends Affecting CSUP

- Trends We are Seeing:
  - Driver's License Issues
  - Sports Wagering
  - Independent Contractors
  - Incarcerated Parents
  - SNAP Cooperation



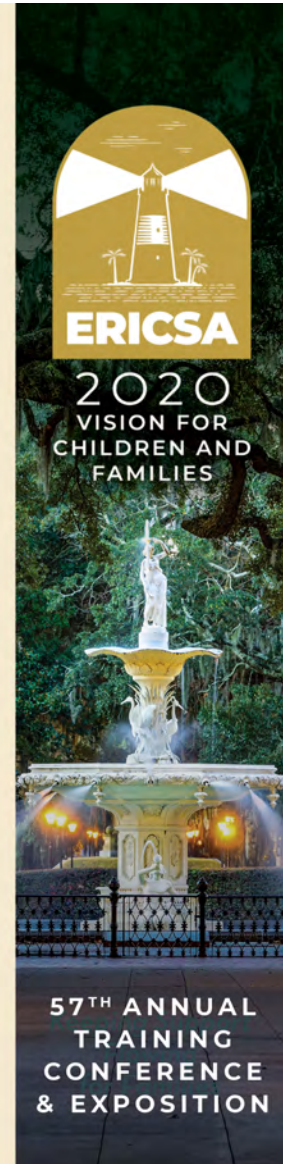


- Currently there are 559 different bills pending across the country in areas that affect child support and family law.
- They represent action in 40 States.
- 28 states and 122 bills affect enforcement alone!
  - Today we are just going to look at some of those.



# Alabama

- AL S 65 – A child support complaint can't be dismissed due to a failure to serve the summons and complaint within a certain time period. Pending
- AL H 160 – Provides for the elimination of a suspension of a person's drivers license in certain circumstances. May no longer be suspended for non-payment of child support. Pending

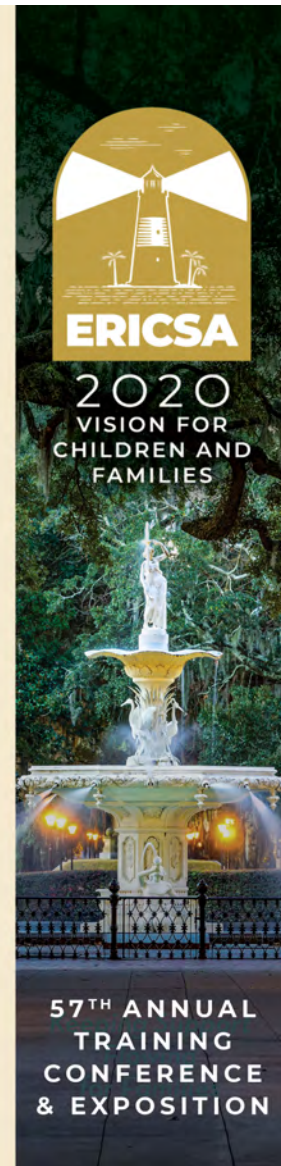


# Hawaii

- HI S 574: Establishes that a child support judgment is enforceable until paid in full. Pending.
- HI S 733: Establishes Felony Non-Support. Pending.
- HI S 734: Requires an employer to classify an obligor as an employee if they receive an IWO for them. Pending.
- HI S 1092: Provides a process to restrict a delinquent obligor from traveling outside of the state. Pending.

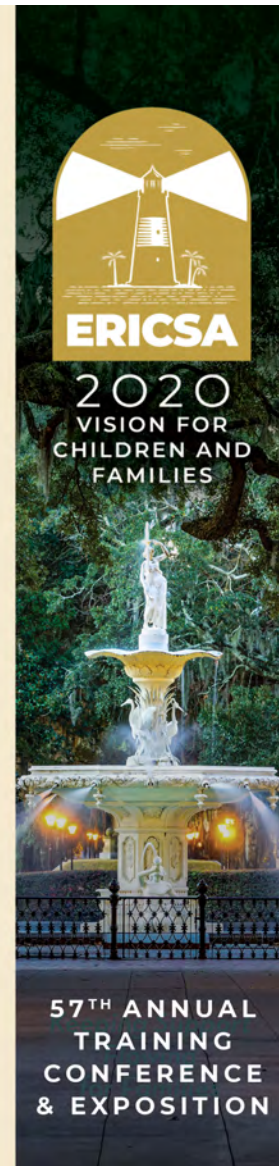
# Idaho

- ID H 433: Creates a specific family law license suspension temporary restricted license.



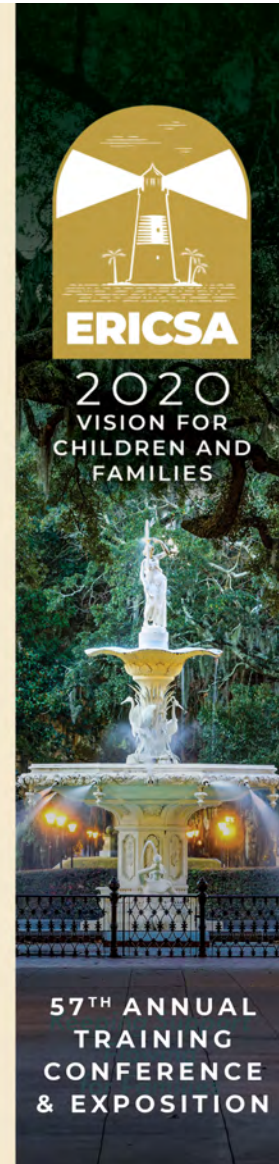
# Illinois

- IL H 929: Interest to be 5% per annum and agency must determine simple interest once per calendar year and make corresponding changes. Pending.
- IL H 2494: Removes the court suspension of driver's licenses for being more than 90 days delinquent. Also removes the same for violation of a parenting time order. Pending.
- IL H 2555: Directs employment security to work with child support to identify job opportunities for people behind in child support. Pending.
- IL H 3527: If a parent is hiding their income or assets the court shall enter an order for parenthood cost sharing. Pending.
- **IL H 4569: Directs Dept. of Central Management to develop and implement a plan to increase the number of individuals employed by the state who are in arrears in child support. Requires the creation and annual review of employment plans for delinquent parents. Pending.**



# Iowa

- IA S 305: Requires child support cooperation for SNAP eligibility. Pending. And
  - IA SSB 1109: Requires child support cooperation for SNAP eligibility. Pending.
- **IA H 2006: Removes driver's license from the license suspension provisions for CSUP. Pending.**
- IA H 2010: Would repeal the code section allowing for CSUP license suspensions. Pending.

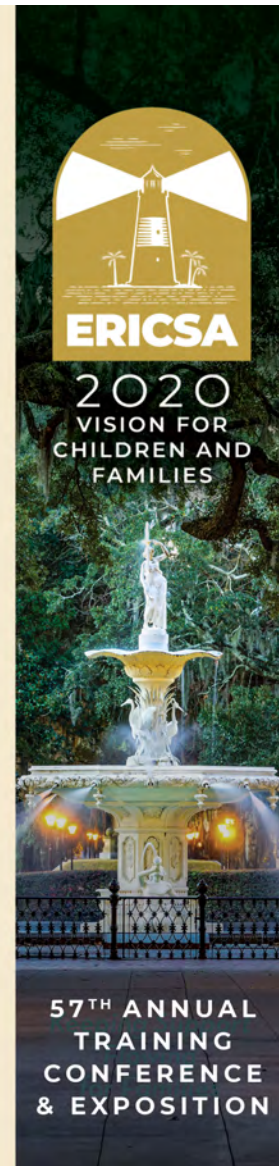


# Kentucky

- KY S 24: Creates legal Sports Wagering for KY and includes the right to withhold delinquent child support from winnings. This would be done through the KY Lottery Corporation. Pending.

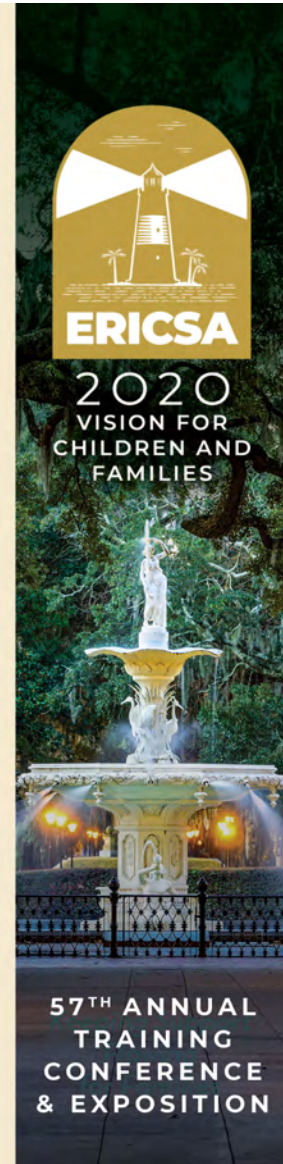
# Maine

- ME S 175: Sports Wagering defined. Includes language to intercept winnings for payment of child support debt. Governor Vetoed this and the Veto was overridden. Override pending.
- ME H 1458: Addresses various tax laws but also includes a priority of state agencies debt for tax setoff. Child support is ahead of the other agencies in priority. Pending.



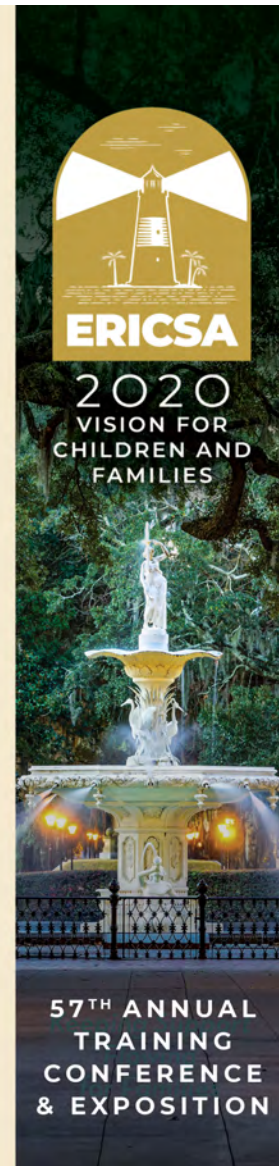
# Maryland

- MD H 148: Felony Non-Support sentences shall run concurrently. Pending.
- MD H 234: Amendment that child support is not past due and arrears will not accrue during incarceration and 60 days after if the incarceration is at least 180 days. Prior provision was 18 months. Pending.
- MD H 647: Amendment to labor laws – Independent contractor is included for child support purposes. Pending.



# Michigan

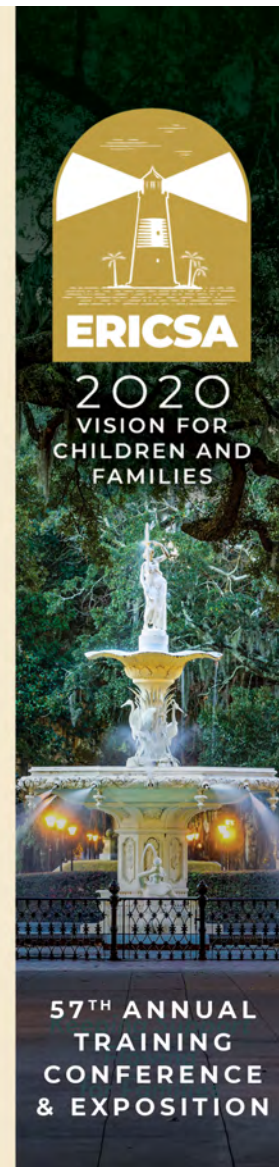
- MI S 209: Removes a requirement that in a CSUP case a minimum bond of \$500 cash must be posted. Pending.
  - MI H 4357: Effectively the same as above. Pending.





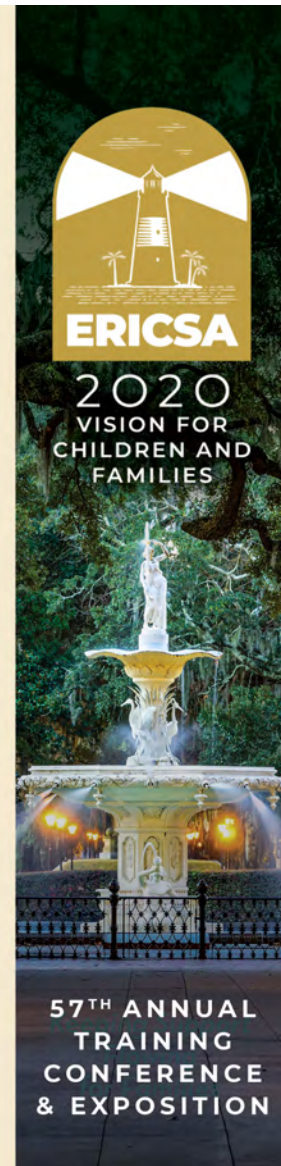
# Mississippi

- **MS H 106: Authorizes hardship driver's licenses for a person who was suspended for child support arrears. Establishes a fee and requires only may drive to work and religious services. Pending.**
- MS H 146: Authorizes using other approved means of communications with banks on liens or encumbrances as approved by the bank. Pending.
- MS H 207: Provides that after a certain date the State will no longer provide funds to pay for the existing contract between DHS and any private entity operating child support collection and enforcement offices. The department shall provide all the functions previously provided by the private entity. Pending.
- MS S 2177: Duty to pay is suspended during incarceration for a felony offense. Pending.
- MS S 2179: Failure to pay GAL fees is not contempt of court but shall be enforced as any other civil debt. Pending.



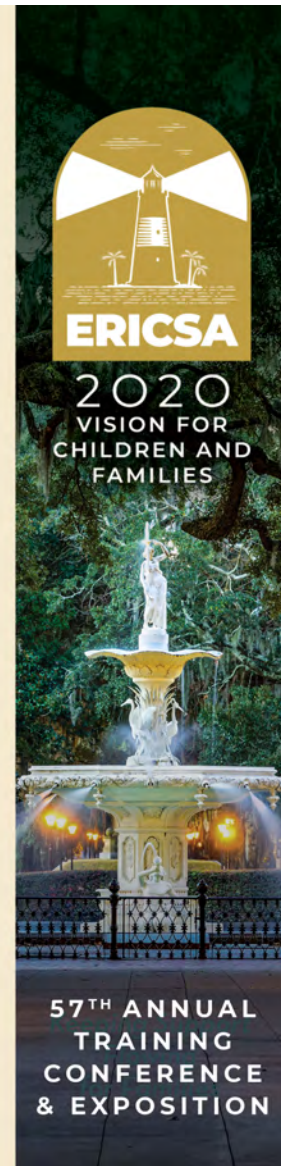
# Missouri

- **MO S 606: Requires specific due process requirements for license suspension and requires specific findings of fact and conclusion of law as to the suspension. Pending.**
  - MO H 1307: Eliminates license suspension for nonpayment of child support. Pending.
- MO H 1597: Requires IV-D Cooperation in order to qualify for SNAP. Pending.
- MO H 1684: Modifies who can receive payments from the support payment center. Basically includes any authorized caretaker of the child. Pending.



# Nebraska

- NE L 883: Requires that when a support order is entered the order include language notifying the obligee that they may file a rule to show cause if the obligor doesn't pay. Also requires adding any possible obligee or obligor to an action. Pending.
- NE L 1094: Cleans up some language in the lien statute for child support judgment liens. 10 years from date of age of majority, death or the most recent execution was issued to collect the judgment whichever is later. Also auto terminates any existing liens on the date the child reaches the age of majority or dies and the arrears are paid in full on that date. Pending.



# New Jersey

- NJ AR 89: Would have required the court to review all internal records for any possible credit to the obligor before using any enforcement tools. Failed.
- NJ S 364: Would have required the licensing agency to notify the obligor that he couldn't obtain a license due to child support until the arrears were paid. Failed.
- NJ S 447: Refund or homestead rebate or credit shall first be applied to child support debt before being credited to delinquent local property taxes. Pending.
- NJ S 522: Removes any time limitation for collecting a child support debt when that debt is due to public assistance. Pending.
- **NJ A 800: Provides that driver's license can't be suspended for child support unless the obligor is given opportunity for a hearing. Pending.**
- NJ S 1060: Child Support as a judgment lien only once it equals or exceeds one month in arrears. Pending.
- NJ A 1551: Would make SSD decision inadmissible in court hearing to determine if parent is disabled for child support or alimony purposes. Failed.
- **NJ S 2267: Gives lottery winners the option to be anonymous indefinitely, but also carves out that data match for child support will still happen for child support, defaulted student loans, state agencies and any other debts that have the right to be collected through lottery. Enacted.**



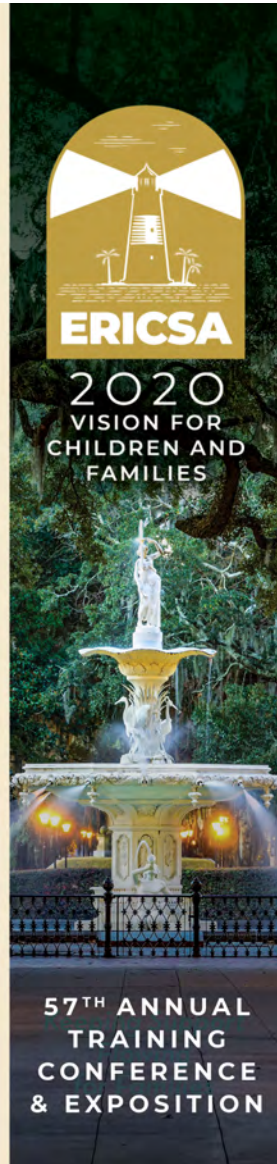
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# New York

- **NY A 263: Amends the tax law to including independent contractors in the state directory of new hires. Pending.**
- NY S 841: Requires inmates be notified of their right to seek modification of CSUP, provides for a 180 day stay of enforcement following release. Pending. Also NY A 4263.
- NY A 867: Authorizes the transfer of some child support matters to the criminal courts. Pending.
- NY A 921: Adds family court review to a suspended license and provides for restricted use licenses. Pending.
- NY A 1365: Mandatory minimum jail time of 60 days for at least three violations of the court order. Every time after as well. Pending.
- NY A 1735: To disallow driver's license suspensions for not paying child support. Pending.
- NY S 1759: Makes inability to pay an affirmative defense to non-support offenses rather than an element of the offense. Pending.
- NY A 3197: Creation of a website to list parents with child support arrears. Pending. Also NY A 4966.



## North Carolina

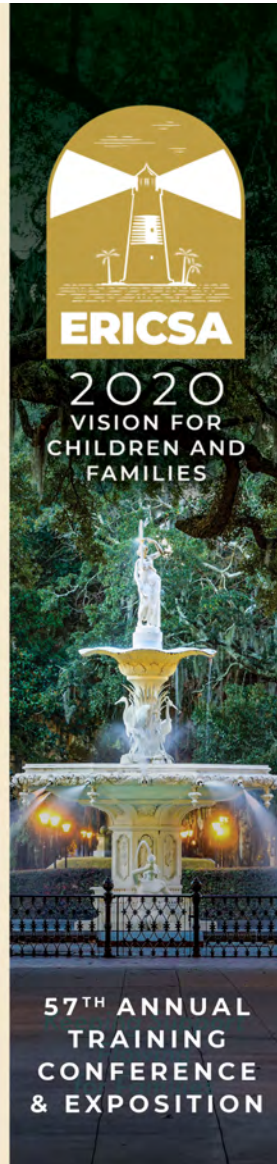
- NC S 551: Child Support cooperation requirement for SNAP. Pending.

## Ohio

- OH H 200: Child support cooperation for SNAP. Pending.
- OH H 477: Requires the option to get limited driving privileges when suspended for child support. Pending.

## Oklahoma

- OK S 727: Amends driver's license suspension to be for Class D licenses. Pending.
- OK S 1028: SNAP Cooperation Requirement. Pending.



# Pennsylvania

- PA H 226: Removes driver's licenses from the license suspension tools we have. Pending.
- PA S 505: Child support cooperation requirement for SNAP. Pending.

# Rhode Island

- RI H 7428: Expands child support interception to insurance payments to include life insurance proceeds. Pending.
- RI H 7429: **Eliminates any award of interest by the family court in any enforcement proceeding resulting in a judgment for child support. Pending.**



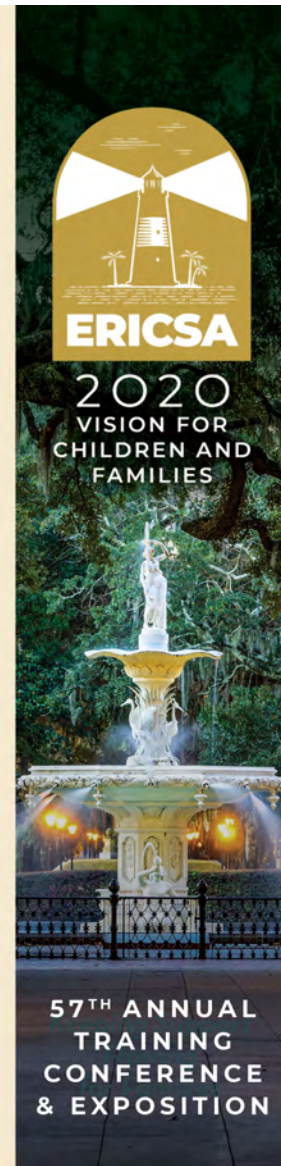
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# South Carolina

- SC S 559: Relating to child support, any offender sentenced to 90 days or less and is employed may serve his sentence at a time when he is not working and the sentence doesn't interfere with his employment, provides for wage garnishment to satisfy the child support payments. Pending.
- SC H 3287: Changes the definition of license for license suspension to basically exclude all license suspensions including driving. Pending.





# Tennessee

- TN H 277: Mandatory child support cooperation act. Pending. Also TN S 549.
- TN S 871: Gives parties 30 days to file a written request for administrative review of child support action. Pending.
- TN S 878: Reduces from 50% to 40% income that can be withheld for CSUP. Pending.
- TN H 932: Clears up that all IWOs must be honored, first current, then arrears and up to the withholding threshold. Pending.
- TN S 1193: Changes 2 days to 2 business days for notice in a registration case. Pending. Also TN H 1308.
- TN H 1480: Changes from 5 days to 1 business day for agency to notify obligor of admin order to seize or sell assets of the obligor. Pending.
- TN S 2433: Allows a person to get back their voter ID card if they are making payments towards restitution and child support arrears. Pending. Also TN S 2524.



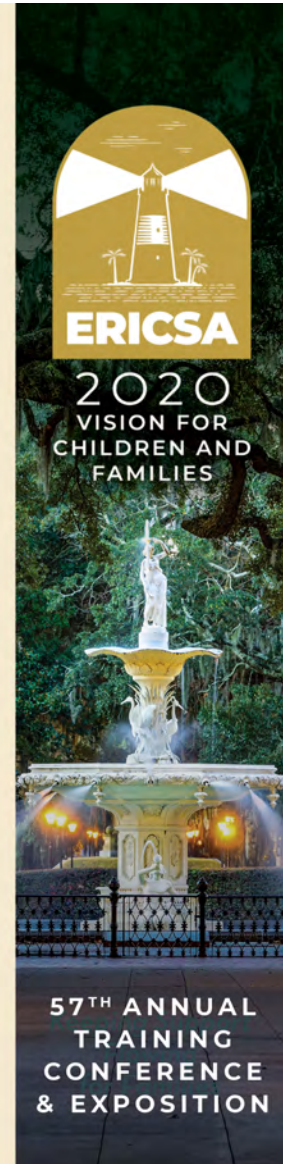
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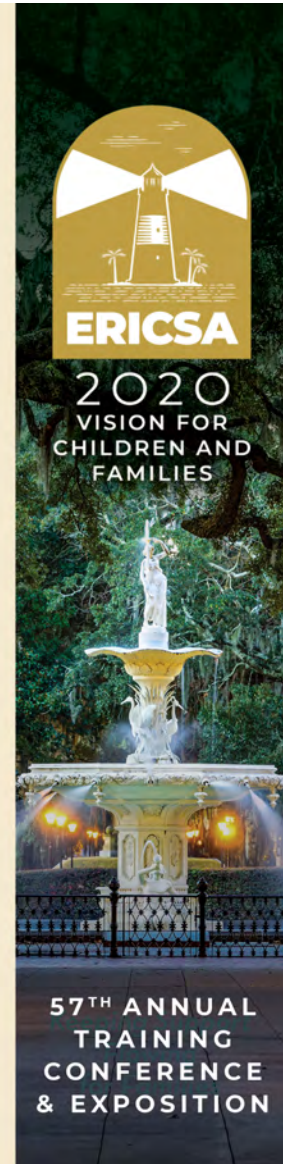
# Utah

- UT H 78: Modifies the support orders for children in state custody. Pending.
- UT H 196: Addresses what a court shall order for collection of past due support or alimony. Pending.
- UT H 197: Prohibits issuance of hunting or fishing license to people behind in child support. Pending.



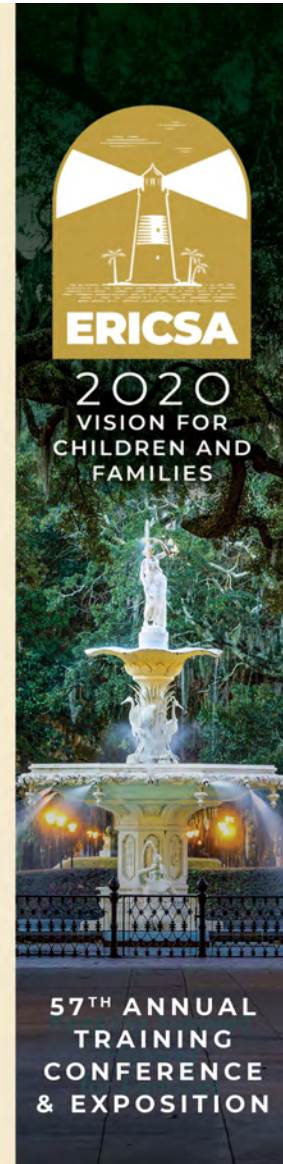
# Virginia

- VA S 429: Relates to IWOs and independent contractors. Clarifies that income earned by independent contractors may be withheld for payment of child support. Pending.
- VA S 502: Requires the department to enter into an agreement with obligee regarding disbursement and disbursement dates. Also requires State to pay obligee the amount that if support isn't paid, the State will pay obligee the amount that would have been paid. State to use any enforcement tools to recover the funds paid to obligee without the receipt from obligor. Pending.



# Washington

- WA H 1282: Deals with driver's license suspensions and a relicensing program. Child Support suspensions are included. Pending – Indefinitely postponed.
- WA H 2302: Deals with child support calculations, specifically some new language for abatement for incarcerated parents and income determination for full-time high school parents. Pending. Also WA S 6343 for incarcerated abatement only.

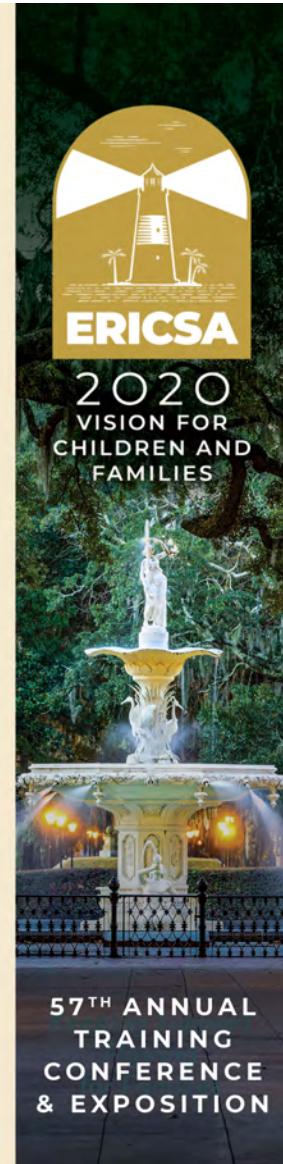


## West Virginia

- WV H 3078: Deals with FMLA and if the parent discloses they have CSUP then the bureau shall notify child support that they are on FMLA and withhold for CSUP from the benefits. Pending.

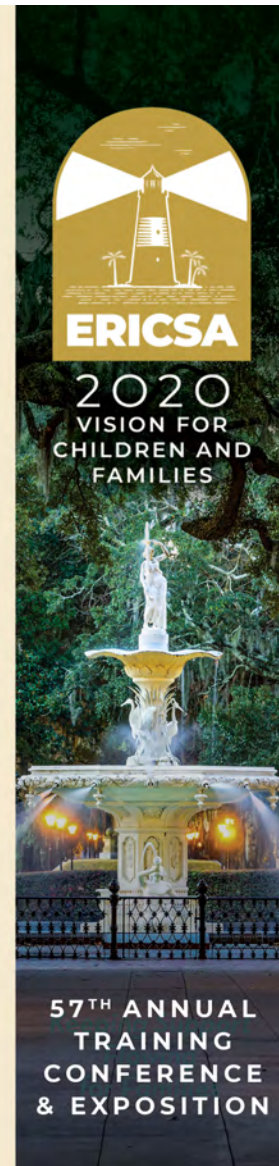
## Wisconsin

- WI A 94: Court may not consider incarceration to be voluntary unemployment. Incarceration is a change in circumstances sufficient to allow the court to review a support order but each case must still be evaluated on their own merits. Pending.



# Resource for State Bills Research

- National Conference of State Legislatures
- <http://www.ncsl.org/research/human-services/child-support-and-family-law-database.aspx>
- Thanks to NCSEA, Tom Joseph and Lisa Skenandore for updates on Federal Legislation



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