

ERICSA 2015: Building Sweet Futures for ...



# UIFSA 2008 and the Hague Convention

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## Hague Maintenance Convention – Current Status

- ❖ 32 countries have ratified:
  - ❖ Norway
  - ❖ Albania
  - ❖ Bosnia and Herzegovina
  - ❖ Ukraine
  - ❖ All of the European Union Countries (as of August 1, 2014)



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# Convention Resources

## ❖ [www.hcch.net](http://www.hcch.net)

- Convention text
- Explanatory report
- Caseworker's Guide
- Mandatory and recommended forms
- Country Profiles
- I-Support information

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# What Has Happened

- ❖ The Senate gave advice and consent to ratify the Convention on September 29, 2010.
- ❖ Congress approved implementing legislation, which the President signed on September 29, 2014.
  - Pub. L. No. 113-183 - the *Preventing Sex Trafficking and Strengthening Families Act*
  - Requires all states to enact UIFSA 2008

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# What Needs to Happen

- ❖ All states must enact UIFSA 2008 to be in effect no later than:
  - *“the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.”*
  - *If a State has a 2-year legislative session, “each year of the session shall be deemed to be a separate regular session of the State legislature.”*
- ❖ The President must sign the instrument of ratification.

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## What Needs to Happen (cont'd)

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

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# UIFSA Versions Across US

**UIFSA 1996**  
(26 states)  
As of Dec. 2014

Alabama, Alaska, Arkansas, California, Guam, Hawaii, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Montana, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Puerto Rico, South Dakota, Vermont, Virgin Islands

**UIFSA 2001**  
(16 states)

Arizona, Colorado, Connecticut, Delaware, District of Columbia, Idaho, Illinois, Mississippi, Nebraska, Oklahoma, South Carolina, Texas, Virginia, Washington, West Virginia, Wyoming

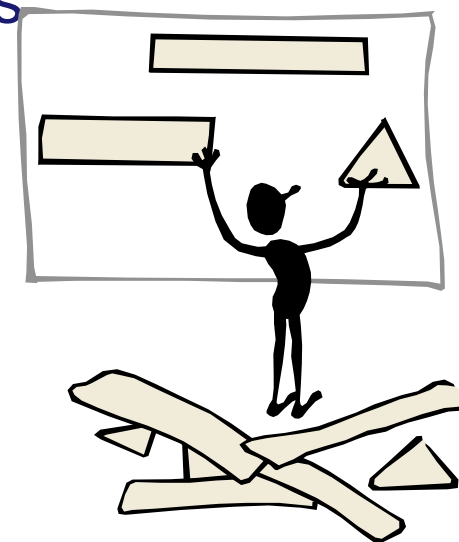
**UIFSA 2008**  
(12 states have passed it;  
enactment dates vary.)

Florida, Georgia, Maine, Minnesota, Missouri, Nevada, New Mexico, North Dakota, Rhode Island, Tennessee, Utah, Wisconsin

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# UIFSA 2001 – Most Substantial Changes

- ❖ Adds definition of “record” to allow for electronic transmission of testimony
- ❖ Allows issuing state to modify its order if no party lives there but both parties consent
- ❖ **Requires** tribunal to allow telephonic or other electronic testimony by non-resident party
- ❖ Replaces “under oath” with “under penalty of perjury” for documents and affidavits



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# UIFSA 2001 Changes (cont'd)

- ❖ Authorizes redirection of payment when no party lives in order-issuing state to pay the SDU of state in which obligee is receiving IV-D services
- ❖ Expands situations under which a tribunal may issue a temporary order
- ❖ Allows modification of a foreign order if the other country cannot or will not modify



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# UIFSA 2001 – Many Clarifications

- ❖ Long-arm is not applicable for modifications
- ❖ Clarifies issues related to Determination of Controlling Order; DCO rarely applicable today
- ❖ Only need certified copy of order to be registered; only 1 original and 1 copy needed

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## UIFSA 2001 – Clarifications (cont'd)

- ❖ To contest direct income withholding, obligor may register order in his/her state
- ❖ Choice of law – issuing state governs duration and interest
- ❖ Consolidated arrears - prospective interest is that of controlling order state

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# Goals of UIFSA 2008

- ❖ Implement the Hague Convention
- ❖ Address international cases in general
- ❖ Build upon UIFSA 2001

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# UIFSA 2008 – Key Changes

- ❖ Definition of “state” includes tribes
- ❖ New definition of “Foreign Country”
  - Includes many, but not all, foreign nations



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# New Definition of Foreign Country

A country, including a political subdivision thereof, other than the United States, that authorizes the issuance of support orders and:

(A) has been declared under U.S. law to be **a foreign reciprocating country**;

(B) Has established a **state reciprocal arrangement** for child support;

(C) Has law or procedures for the issuance and enforcement of support orders which are **substantially similar to UIFSA procedures**; or

(D) In which the **Convention** is in force with respect to the United States.

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# Road Map for International Cases

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- ❖ Articles 1 thru 6 apply to a support proceeding involving:
  - A foreign support order;
  - A foreign tribunal; or
  - An obligee, obligor, or child residing in a foreign country
  
- ❖ Articles 1 thru 6 may be applied by a tribunal recognizing and enforcing a foreign support order on basis of comity
  
- ❖ New Article 7 applies only to Convention proceedings

# Enforcement Without Registration

- ❖ Direct income withholding available only for support orders issued by a state. No longer requires U.S. employers to honor DIWs from foreign countries.
- ❖ Administrative enforcement under §507 remains available to enforce a foreign support order.

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# Registration for Enforcement

- ❖ Procedure for non-Hague foreign support orders
  - UIFSA 2001
  
- ❖ Procedure for Hague foreign support orders
  - New Article 7
  - Major differences
    - Documents
    - Time frames
    - Defenses

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# Required Documents

## Non-Hague Foreign Support Orders

- Transmittal letter
- 2 copies of order, including 1 certified copy
- Sworn or certified statement of arrears
- Certain obligor & obligee information
- Name/address of person to whom support payments to be sent (if applicable)
- Request for DCO, if appropriate

## Hague Foreign Support Orders

- Transmittal letter
- Complete text of order (or abstract by issuing tribunal)
- Record: order is enforceable in issuing country
- Record attesting to due process (if default order)
- Record: arrears and automatic adjustment of support
- Record of receipt of free legal assistance in issuing country (if necessary)

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# Time Frame to Contest

- ❖ Non-Hague Foreign Support Orders
  - Within **[20]** days after notice of registration
  
- ❖ Hague Foreign Support Orders
  - Not later than **30** days after notice of registration
  - Not later than **60** days after notice if contesting party does not reside in US

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## Defenses to Recognition of Convention Foreign Support Order Include:

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

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# Non-Recognition of Hague Order

If a tribunal does not recognize a Hague order because:

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

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## Non-Recognition of Hague Order (cont'd)

### THEN

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

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# Modification of US Support Order

A U.S. tribunal retains jurisdiction to modify an order it has issued if:

- (1) one party resides in another U.S. state (as defined by UIFSA); **AND**
- (2) the other party resides outside the United States.

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# Modification of Foreign Support Order

Procedure for registration & modification of foreign support orders:

- ❖ Except as otherwise provided in Sec. 711 (Convention orders), if a foreign country lacks or refuses to exercise jurisdiction to modify its child-support order pursuant to its laws, a state may assume jurisdiction to modify the child-support order and bind all individuals subject to the personal jurisdiction of the tribunal whether the consent to modify the order has been given or whether the individual seeking modification is a resident of the state or of the foreign country.
- ❖ For non-Convention foreign support orders, register for modification under Article 6

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# Modification of a Convention Foreign Support Order

- ❖ Register the Convention order for modification under new Article 7
- ❖ A tribunal may not modify a Convention child support order if the obligee is a resident of the foreign country where the support order was issued unless:
  - (1) the obligee submits to the jurisdiction of a tribunal of this state, either expressly or by defending on the merits of the case without objecting to the jurisdiction at the first available opportunity; or
  - (2) the foreign tribunal lacks or refuses to exercise jurisdiction to modify its support order or issue a new support order.
- ❖ If a tribunal of this state does not modify a Convention child-support order because the order is not recognized in this state, there must be time for the obligee to seek establishment of an order.

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# Currency Conversion

- ❖ Hague Convention does not address.
- ❖ UIFSA says when it must occur and who has responsibility to prepare conversion but does not specify how to do currency conversion.
- ❖ Recommended practice re: wording of NOTICE OF REGISTRATION OF FOREIGN SUPPORT ORDER:

*The amount of the alleged arrearage is 900 Euros as of [12/25/YYYY] having a United States of America Dollar equivalence of \$ 1080 as of [9/1/YYYY].*

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## Services by Support Enforcement Agency

State legislature may choose between two alternatives:

- ❖ **Must**, upon request, provide services to all petitioners OR
- ❖ **Must**, upon request, provide services to a petitioner residing in a state or requesting services thru a Central Authority (Hague or bi-lat case) AND **may**, upon request, provide services to an individual petitioner not residing in a state (all other foreign cases)

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## Federal Intergovernmental Forms

- ❖ OCSE convened an Intergovernmental Forms Revision Project in 2014
  - Workgroup includes federal and state members
  - Considering comments received in 2013
    - Addressing sensitive/confidential information(PII)
    - Adjusting for UIFSA 2008
  - Revised forms will be released for comment in 2015
    - ❖ Adding two new forms and seeking comments: PII and §319(b)

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# Hague Convention Forms

- ❖ Hague forms must be used in Convention cases once the U.S. ratifies the treaty.
  - Two mandatory forms: **Transmittal** and **Acknowledgment**
  - Number of recommended forms developed by the Forms Working Group
  - Applications not under penalty of perjury

The Hague Conference website has the mandatory and recommended forms for the Convention, [www.hcch.net](http://www.hcch.net)

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# Questions?

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