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# 2019 Intergovernmental Case Law Update

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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.

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# Custody/Parenting Time (W.Va.)

- Petitioner filed a UIFSA PEP in W. Va. She and child were residents of Maryland.
- Court found paternity, issued CSUP orders and nothing about custody/PT.
  - Modified after – Still no Custody or PT.
  - 6 years later – Respondent files for PT and court grants it!
  - 1 year later – RTSC v. Petitioner for failure to abide by PT order. - She filed a notice for foreign custody determination and change of venue to home state.
  - The Court found her in contempt, denied her motion and found that it had jurisdiction over the issue because no other court requested jurisdiction and petitioner didn't object timely.

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# Custody/Parenting Time W. Va.

- Holding on appeal – Of course petitioner is right. UIFSA and UCCJEA require independent jurisdictional tests. Jurisdiction for support does not mean jurisdiction for custody/PT issues.
- On the issue of “no other court took jurisdiction this court”, this court didn’t give another court a chance. They should have reasoned Maryland was home state and inquired if a court in Maryland would assume jurisdiction.
- On petitioner’s failure to object – Jurisdiction under UCCJEA cannot be conferred by consent, waiver or estoppel – so it doesn’t matter.
- Saundra J. v. Robert S., 2019 W. Va. Lexis 43, Supreme Court of Appeals of West Virginia. (memorandum)

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# UIFSA Jurisdiction to Enforce (IL)

- NCP alleged court didn't have jurisdiction to find him in contempt however the Appellate Court noted that he appeared and answered to the original action.
- Because he didn't challenge jurisdiction then he can't allege that now on appeal.
- Affirmed finding him in contempt.
- Evans v. Amos 2018 IL App (1st) 172942-U

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# Gaining Jurisdiction over a Non-Resident (NY)

- Bronx County, NY Divorce w/o CSUP order. Father in MA files for CSUP under UIFSA in Orange County, NY. Mother appeared at the first hearing, then FTA'd for the second hearing.
- Court ruled by default.
- Mom objected due to personal and subject matter jurisdiction.
- Court found mom entered a general appearance and did not contest that the court lacked jurisdiction at the initial hearing and her motion was correctly denied.
- Additionally, the court had subject matter jurisdiction because there was no pending divorce and no other court that had issued a support order and as father no longer resided in NY.
- Matter of Santos v. Rivera, 2019 N.Y. App. Div. Lexis 898

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# Register Swiss Order (NC)

- Father filed a timely request to vacate the registration.
- NC Court vacated the registration and dismissed the action finding that the court record had no proof that father was provided proper notice in Switzerland and never submitted to their jurisdiction.
- Mother filed a motion for relief and attempted to introduce additional documents – a non-notarized statement by her and a translation of other documents she claimed were from the Swiss Court. The Court would not admit them as no notary and no one to argue to their validity.
- Appellate Court affirmed – under NC law the Affidavit and translations lacked validity and were properly excluded.
- Gyger v. Clement 2018 NC App. Lexis 1252.

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# UCCJEA different than UIFSA (AZ)

- Distinction between UCCJEA and UIFSA
- Unlike UIFSA the UCCJEA does not require a foreign custody order to be registered before it can be modified. Ariz. Rev. Stat. § 25-1055(A).
- Prouty v. Hughes, 2018 Ariz. App. Lexis 230

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# Can't use UIFSA if the Case isn't UIFSA (Tenn.)

- Mother could not avail herself of protections of UIFSA to testify telephonically in a case where Tennessee had original jurisdiction.
- Tennessee Order and Tennessee retained Jurisdiction to modify its own order. Mother now a California resident could not rely on UIFSA to force court to allow her to appear telephonically.
- Additionally, the record did not support her claim under the ADA to require a telephonic appearance.
- State ex rel. Malmquist v. Malmquist, 2018 Tenn. App. Lexis 698.

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# Personal Jurisdiction (CA)

- In a paternity action, the fact that father had out of state sex with the mother (a California Resident) did not grant California personal jurisdiction.
- Nor could father's prior interactions with mother in California during two business trips or sporadic business contacts in California to promote concerts and those had nothing to do with his relationship to mother.
- No record that father had created a substantial connection with California.
- David L. v. Superior Court 29 Cal. App. 5th 359.

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# Subject Matter Jurisdiction (AL)

- Father withdrew his objection to jurisdiction in 2010 and a subsequent 2011 modification was granted. He now appeals claiming no jurisdiction. Where he already withdrew his right to avail himself of this issue the court will not find the court erred in finding it continued to have SMJ.
- Additionally father attempted to collaterally attack an award for post-minority support for the parties disabled adult son that he didn't appeal in 2012.
- Hummer V. Loftis, 2018 Ala. Civ. App. Lexis 173

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# Full Faith and Credit (AZ)

- Mother and father had a lengthy and complex procedural legal battle in New Hampshire over their support case. Parties were divorced in the Dominican Republic without a support order – that was registered in NH for establishment of a parenting plan and father then filed a request for NH to enter a support order. The court found it had SMJ to do so and entered an order.
- AZ file to register and enforce the order, mother objected claiming they were ex parte, in violation of due process and without legal basis. The AZ court continued the matter to allow mother's Pet. To vacate in NH to go forward.
- NH declined to vacate and found the order is enforceable and NH supreme court declined to take mother's appeal.

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## Full Faith and Credit (AZ) Cntd.

- Mother failed to attack SMJ in NH and can't now raise that in AZ, in fact in 2014 she agreed that NH had SMJ.
- She also cannot now make collateral attacks on the merits of that order.
- Due Process was not violated as she had notice and the opportunity to appear but did not.
- Strobel v. Rosier, 2018 Ariz. App. Unpub. LEXIS 1485.

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# Paternity and Disestablishment – (MD)

- Child Born D.C. – R.W. waived GT and Order naming him father.
- M.D. and R.W. New action in MD – Dismissed due to GT excluding R.W.
- M.D. then filed to amend the Birth Cert. and that was granted – she believed severing all ties to R.W.
- While M.D. still in MD, D.C. sent UIFSA to MD with M.D.'s affidavit that L.P. is the father.
- L.P. argued against it as R.W. was already adjudicated as the father – Case was dismissed.

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# Paternity and Disestablishment – (MD) Cntd.

- M.D. then moved back to D.C. and signed up for TANF.
- D.C. IV-D moved to reinstate and consolidate cases for R.W. and L.P. to establish paternity. – Later the District w/drew.
- The Court dismissed both cases – declined to do GT for L.P. and declined to disestablish paternity of R.W.
- M.D. appealed and cited hardships and the lower court denied it. She appealed from that.

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# Paternity and Disestablishment – (MD) Cntd.

- Specifically the Court failed to consider that R.W. had a DV history, was never active in the child's life, M.D. moved to MD to escape his abuse and he was arrested in MD for assaulting her. He repeatedly expressed resentment towards her that the court even commented on in the record.
- The Judge only considered hardship in support not the hardship leaving this paternity judgment intact would create.
- Case was remanded to consider this and a more lenient reading of "reasonable time".
- MD v. RW 194 A. 3d 374.

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# Never Lost CEJ (AZ Unpub)

- After concluding CA had CEJ the court dismissed father's Modification.
- Father contends CA never had CEJ and improperly registered the Order. He argues his temporary relocation to CA didn't deprive AZ of CEJ and he was living in AZ when he filed to modify.
- Court misread what was filed in CA – only enforcement of unreimbursed birth expenses. Did not ask for modification. As no modification AZ never lost CEJ.
- UIFSA § 205 Comment: an interruption in residence between the original order and filing request dose not affect CEJ to modify as long as the order isn't modified during the time of absence. A return to reside immediately identifies the proper forum at the time of filing.
- Kennedy v. Wybenga, 2018 Ariz. App. Unpub Lexis 1324

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# Challenging UIFSA Enforcement (NY)

- Plaintiff is a NY resident and a NC court ordered him to pay CSUP.
- He went before King's County Family Court on a BW issued by Judge Javier Vargas to enforce the NC order.
- Because he was impoverished and indigent Judge Vargas appointed Counsel.
- Plaintiff moved to modify CSUP which the Asst. Corp. Counsel opposed and the Magistrate denied. Subsequently Judge Vargas ordered him to pay \$2,000 but his complaint doesn't alleged why.
- He alleged – indigent but ordered to D.O.C without hearing in violation of due process rights and alleging this jurisdiction only has the power to incarcerate him but not give legal remedy/due process.
- Sought Damages and injunction against Judge Vargas from violating and disobeying the Constitution.

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# Challenging UIFSA Enforcement (NY) Cntd.

- Several incorrect Defendants – dismissed and allowed to amend complaint.
- Names – New York City Human Resources Administration of Child Support Enforcement in new complaint but did not name any individual person.
- Finding: Although granting him further time to amend the court is skeptical he can prevail: “once the NC court, with personal jurisdiction over plaintiff (as it found) issued the child support order, the New York family court was obligated to enforce it absence circumstances the plaintiff has not pled just as if plaintiff had been found in NC and the NC court was enforcing its own order.” If plaintiff wishes to assert NC violated his due process his remedy is to appeal that.
- Dismissed for failure to state a claim with 20 days to amend.
- Brock v. City of New York, 2018 U.S. Dist. Lexis 152052.

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# Competing Orders – Jurisdiction (NE)

- WI establishes paternity and orders Birth Expenses only as parties married 4 days after birth (1989).
- WI enters a married but separated support order In Re the Marriage of (1990).
- In 2007 WI consolidated the 2 WI cases.
- Separately the parties were divorced 1999 in NE with division of property and CSUP. Subsequently modified in 2002.
- In NE, 2016 Father filed to have the support reduced to \$0 in the original decree. Mother wrote a letter to court complaining where dad served her and that he isn't paying support. She FTA'd for the hearing.
- Mother and Child never lived in NE – he filed that divorce knowing about WI paternity but not the married but separated PFS case.

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# Competing Orders – Jurisdiction (NE) Cntd.

- Lower Court dismissed the action for failure to provide enough evidence for them to determine the controlling order.
- Appellate Court – Disagreed with Lower Court that it did not have jurisdiction to determine the controlling order. It construed his filing as a request by him to enforce the order against him by determining the controlling order in NE.
- Court discussed that it did not have personal jurisdiction over mother but she did send in her letter and didn't object to jurisdiction and since she didn't that argument is waived.
- Finally, the Court found that: to the claim by the court it lacked enough evidence, UIFSA provides ability to obtain information from the other court, forward the petition to the other tribunal and review any necessary information so the case is remanded to district court to forward the complaint to the WI tribunal to obtain all necessary information and determine which order controls and must be recognized under UIFSA.
- Clark v. Clark, 26 Neb. App. 289.

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# Personal Jurisdiction – International (MO)

- In 2003, the parties (PA residents) dissolved their marriage by consent in Colombia. The decree gave mother custody and support for 10 months per year and father custody and support for 2 months per year.
- Father then moved to MO.
- In 2011, with mother's consent father invoked jurisdiction in MO by registering the 2003 Colombian decree to modify in order to facilitate his work-related move to England with the child. The court granted his motion to modify sole legal and physical custody to father with no party to pay support.
- In 2012 father filed a second motion to modify mother's PT rights. In response mother filed a motion to set aside the consent judgment and argued lack of personal jurisdiction under the UCCJEA because both parties falsely asserted to the court the child live with father for 6 months prior to his filing.
- The Court agreed with mother and in 2013 found there was no statutory authority to modify the foreign judgment, declared it void and mother took custody of the child back to Colombia.
- However, the parties continued a "dizzying array of litigation" in MO. Including father filing to dismiss mother's petition to modify for lack of personal jurisdiction even though he had his own motions pending before the same court.

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# Personal Jurisdiction – International (MO) Cntd.

- The Court ruled on all the motions together – granted modification in part, denied father's motions, ordered the parents to pay half of post-secondary costs and ordered father to pay child support.
- Father appealed on 3 issues – jurisdiction, private school tuition and whether the emancipation age was modified.
- The Court found jurisdiction – father was a MO resident when mom filed her modification and it was father who initiated legal action in MO and continued a flurry of legal action there.
- Held no abuse of discretion on school tuition as the father testified the child should attend the private school, but objected to the cost and also it was the only school in Bogota endorsed by the US Embassy.
- Finally, father's allegation that ordering college expenses extended the emancipation age is false. College expenses are appropriately ordered as there is no case law supporting that modifies emancipation age. Also neither the Colombian Court nor the MO court ever explicitly stated an emancipation age. Father should file a petition to emancipate when he believes the child reaches the appropriate age.
- Rosas v. Lopez, 556 S.W. 3d 620

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# Procedural Errors (Virgin Islands)

- Issues regarding reasonable time, due process and correct practice are still important.
- Court of Law and Equity can fashion any remedy it feels is just and necessary.
- Delays were inexcusable in this case and without just cause, the PCSD made gross procedural delays and blatant errors.
- Reliance on an expired DV order from another jurisdiction was incomprehensible and represents malfeasance.
- Court vacated the order and the outstanding due amount.
- People ex rel. Chapman v. Blyden, 2018 V.I. Lexis 69

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# Subject Matter Jurisdiction – Full Faith and Credit (FL)

- '08 NY Decree – 21 Years emancipation age
- By '09 M and child in FL and D in NC – ordered registered in FL.
- '13 D filed a mod in FL (decrease in income). FL also modified the emancipation age to 18 or 19 still in school. No one appealed.
- '17 D Filed for termination on 18th birthday and graduation – FL DOR argued the 2013 order was void on emancipation age.
- Trial court agreed – void on emancipation age.
- App. Court – disagreed! SMJ and CEJ now in Florida (M+child and out of state filer). Turns on the ability of FL court to utilize NY law which does allow for a modification of the duration of an order (see Calderon v. Almonte 158 AD 3d 681).
- Lamancusa v. Dep't of Revenue, 250 So. 3d 812.

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# Don't lose CEJ just because Parties Move (AL)

- AL divorce but now D alleges that parties and children have lived in NY or Maine at all times.
- Court notes that this the parties 5th time on appeal in this case.
- Father alleges mom's contempt against him can't proceed because no CEJ.
- Ruling – no one registered anywhere else or modified so AL court retains CEJ as it has not been divested of CEJ.
- Gallant v. Gallant, 2018 Ala. Civ. App. Lexis 106

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# Spousal-Support IWO Question (TX)

- OK court entered an order approving and incorporating the parties agreed spousal-support order.
- Husband filed for divorce in TX, wife filed OK order in that case. TX court granted the divorce incorporating the agreements from OK order.
- Husband argued court can't enforce spousal with IWO or by assignment of his retirement account to former wife. This is granted.
- In TX the nature of this order is treated as "support alimony" not "spousal maintenance" so it is treated as a contract not a judgment and unenforceable by IWO.
- Wife argued full faith and credit – court points out that covers the nature, extent, amount and duration of the order but TX law covers the enforcement of that order.
- Only a specific statute that allows wage withholding for spousal and this didn't qualify under that section. Likewise could not assign retirement.
- Dalton v. Dalton, 551 SW 3d 126.

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# Arrears Payment (GA)

- GA Divorce – Parties and Children residents of SC.
- Good discussion of UCCJEA – Dad took kids to a third state and hid them from mother and was charged and convicted for parental interference. This did not change the home state of the children.
- Court erred by limiting mother to an order for father to pay \$100 per week on the arrears. Court may not limit her from using the other remedies available to enforce the case.
- Weiss v. Grant, 346 Ga. App. 208

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# International Support Jurisdiction (OR)

- M & F are Citizens of Saudi Arabia – had kids there, married there and moved to OR. Father repudiated the marriage under Islamic Law at an Islamic Center in OR. His visa expired and he moved back to SA and has not returned to the US. Lives in SA or UAE at various times.
- M filed divorce in OR.
- F objected – no personal jurisdiction, no Subject Matter Jurisdiction as already divorced.
- OR has personal jurisdiction under UIFSA – F lived in OR with the children and the children were only in OR because M&F moved there with them.
- Periodic gift income – should have been included as income as it was received on a semi-regular basis.
- Albar & Najjar, 292 Ore. App. 146.

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# Jurisdiction to Modify for Service Member (ND)

- Court modified father's support order and he appealed alleging court did not retain CEJ and he appealed the calculation also.
- M & F both service members. Divorced in Germany. F stationed later in ND and Divorce Decree registered in ND. M was later stationed in Turkey.
- The ND Court issued amended judgments addressing parenting time and child support.
- F stationed to Texas and then South Korea. M filed to amend judgment for transporting the kids and to modify CSUP.
- F requested transfer to Texas and alleged ND lost jurisdiction when moved out of state and no lived in ND any longer.
- Required review of UIFSA that ND retains jurisdiction if one party resides outside of the US. This is an exception to the "play away" rule.
- At the time the motion was filed F lived outside of the US so ND retained jurisdiction.
- Court did not err in included in-kind housing or an actual allowance as gross income for child support worksheet.
- Ferguson v. Wallace-Ferguson, 2018 ND 122.

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# Can the Court give up CEJ? (TX)

- Galveston County, TX transferred the case to Cook County, IL.
- M lives in TX, met D in IL, child born in TX, family did live in IL and spent time in both.
- Paternity action in TX – custody and CSUP issues and Galveston child's primary residence.
- Parties didn't follow the order and M got an apartment in IL and allowed D to have the child more time and at some point she left the child with a 3rd party for 6 months.
- F filed to modify custody and transfer the proceeding to Cook County.
- M objected and alleged she remained in Galveston and the Child's principal residence is also Galveston.

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# Can the Court give up CEJ? (TX)

## Cntd.

- The court granted transfer, stayed proceedings in TX until IL accepted transfer. Mother then filed multiple new motions and requested a hearing date but the court did not rule or grant a hearing.
- M alleged TX court failed to set a hearing on her motion, transferred the case to IL, and transferred jurisdiction to IL.
- She filed a Mandamus. On appeal – court reasoned that trial court was correct TX still did have CEJ but the decision was where was the most appropriate forum and IL fit that determination – on UCCJEA.
- On her motions – they were filed after the stay and motions filed in that time are considered ineffective.
- On UIFSA though because she still lives in TX, TX still has CEJ and the court cannot choose to give up CEJ so it was erroneous to transfer that portion.
- In re Meekins, 550 SW 3d 729

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# Petitioner must be a nonresident (MO)

- 3 Orders: SMS (Erie County NY – Reg'd in GA), SRS (St. Louis County, MO), and ARS (St. Louis County, MO).
- F filed to register the NY order in MO, modify it, determine CSUP in all 3 cases, stay IWO over 50% of his income, reduce his obligations, take CEJ and determine proper allocation of IWOs.
- Court – reg'd the NY order for enforcement but found GA has CEJ, each case must be heard individually and both MO and GA already follow the CCPA so no need to rule on IWO to income amounts.
- D appealed – claims NY order should have been modified.
- Court upheld – D is not a “nonresident” filing so MO can't get jurisdiction that way. There are not competing orders only a NY order registered in GA and GA is the home state of the child and retains CEJ.
- Swanson v. Hernandez, 544 SW 3d 315

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# Whose law applies? (MS)

- Iowa order. M moved to MS. D moved to OH.
- M filed to register in MS, modify it and terminate parenting time. D counterclaimed to enforce the IA order, modify custody and for contempt.
- Court found Adam proved material change but failed to change custody because it wouldn't be in child's best interest. Denied M's petition to mod visitation and increase support. Found M in contempt for violations of visitation orders.
- M can't benefit from alienating the other parent by winning on the issue of continuity of care. To do so would be allow her to benefit from her wrongdoing. Not harmless error as the issues could be dispositive for change in custody. Reversed and remanded on the issue of custody.
- Court denied M's petition to modify under Iowa law but here should have applied MS law as that is where the case was registered and under UIFSA that state's laws cover modification. Remanded.
- Heisinger v. Riley, 243 So. 3d 248.

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# What trumps UIFSA? (NY)

- NJ order. Mom and child moved to TN. Dad moved to NY. NJ order registered for enforcement in NY. D filed to modify in NY.
- Trial Court dismissed it for lack of SMJ under UIFSA.
- On appeal the Court ruled that the NY Full Faith and Credit for Child Support Orders ACT (FFCCSOA) preempts UIFSA and it allows for NY to modify an order if: the original state no longer has CEJ because no one lives there. The case shouldn't have been dismissed for SMJ.
- Question for you: What about personal jurisdiction over mom?
- Matter of Reynolds v. Evans, 159 AD 3d 1562.

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# Is a PDA Order a “child support order” to divest CEJ? (CA)

- CA divorce. All parties to UT, then D back to Cali.
- At some point when all in UT, case transferred from CA Child Support to UT office of recovery services. UT issued an arrears order with no interest as UT's policy was not to collect interest on out of state orders w/o a specific order.
- D moved to terminate spousal in CA. CA did but would not disturb the UT judgment.
- UT terminated its child support case. CA issued a new IWO. D moved to terminate CA's jurisdiction and alleged UT had taken jurisdiction with the arrears determination.
- CA rejected D's argument. The UT order was not a child support order, rather it was simply a calculation of arrearage. CA retained CEJ.
- However, the UT arrears determination is entitled to FF&C to arrears owed as the order date. Because UT only has a policy against interests but if it wasn't reduced to judgment, the issue could have been litigated in UT and CA interest could have been added and it was not so it is res judicata on that point. CA erred by adding the interest after the fact.
- In re Marriage of Connolly, 20 Cal. App. 5th 395

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# Authority to Enforce (HI)

- Father alleges Hawaii had no jurisdiction to enter an order establishing a child support debt and repayment plan.
- Divorce Order out of Logan County, CO.
- UIFSA allows Hawaii to do this. Hawaii is responding tribunal to Colorado and has the authority to determine the amount of the arrearage and the method of payment. (Haw. Rev. Stat. §576B-305 (b)(4)).
- For fun – father also contended that “these funds” go straight into the “state coffers with no strings attached” and the judges and state employees should be forbidden from proceeding in a case they have a financial interest in.
- Child Support Enf't Agency v. SB, 2018 Haw. App. Lexis 74

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# Is non-parentage a defense to UIFSA enforcement?

- See Dep't of Hum. Res. V. Mitchell, 197 Md. App. 48: Cannot attack parentage to attack the registration of a valid order registered from another state.
- However, in this case: Pennsylvania requested Maryland obtain a support order based on a paternity affidavit. However the PAFF was not in the record. Court points out if it was a Maryland PAFF then it could be challenged upon a showing of fraud, mistake or duress.
- Remanded to have this consideration heard on the agency's motion for reconsideration.
- Prince George's Cnty. Office of Child Support Enf't ex rel. Fowler v. Dickens, 2018 Md. App. Lexis 52.

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# Vaccinations, custody and UIFSA

- Child born in Michigan – 1 year later Mom files DR case in Cook County IL. Case dismissed w/o prejudice b/c Mom failed to comply with GT Order.
- 2 years later mom files UIFSA in MI and it is filed in Cook County and support is entered under UIFSA.
- Specifically stated no finding of Custody or visitation with a handwritten note of “UIFSA”. An apparent reference to the fact that IL didn’t have custody/PT jurisdiction.
- Dad filed in the UIFSA case to request the court Order Mom to have the child vaccinated.
- Lower court ordered it – mother appealed as this was a violation of her custody rights.

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## Ill. Par. Act. Not applicable in UIFSA

- The Appellate court ruled that they don't have jurisdiction to hear this issue as it is custody and parenting time issue and that is not before Illinois.
- Dismiss the petition while stating the lower court didn't officially order it either and mom couldn't be found in contempt for it.
- Dad's Custody and PT issues are a blank state until he goes to Michigan.
- Ill. Dep't of Healthcare & Family Servs. Ex rel. Nile C. v. Andrew G. (In re L.G.), 2019 Ill App (1st) 180847-U.

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# UIFSA and UCCJEA

- UIFSA petition filed in Kanawha County, West Virginia. Mom and child lived in Maryland at the time. The court ordered support but made no findings on Custody and Parenting time.
- Subsequently dad does file for an “allocation of custodial responsibility.”
- Without making any jurisdictional findings the court enters a gradual implementation of a parenting time plan. No one appealed.
- Later dad files for contempt when mom doesn’t follow the order. Mom files to transfer venue to Maryland.
- Court rules against her and finds her in contempt, orders make up time and she appeals. On jurisdiction the court finds that she never objected to the parenting time order.

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# Silence can't confer Subject Matter Jurisdiction

- On appeal – appellate concurs that the Kanawha court never had jurisdiction over the child.
- UIFSA Properly gave W. Va. Jurisdiction over child support.
- The UCCJEA was not satisfied for them to have jurisdiction over custody.
- On no objection – subject matter jurisdiction cannot be conferred by consent, waiver or estoppel.
- Lower Court is reversed.
- Saundra J. v. Robert S., 2019 W. Va. Lexis 43

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# Even with CEJ some things are not Modifiable

- Defendant appealed a NJ Family Division order that modified his CSUP obligation requiring him to pay support and college expenses for his younger son.
- Defendant alleged that since PA issued the original order, its law should have been applied to determine the duration of the obligation.
- Under PA Law, Defendant would not be ordered to pay because child was over 18 and had already graduated high school.

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# Comment to UIFSA by Uniform Law Commission

- “the initial controlling order may be modified and replaced by a new controlling order....But, the duration of the child support obligation remains constant, even though the other aspects of the order may be changed.” Unif. Interstate Family Support Act cmt. On §611 (2008).
- In this case – child turned 18 and graduated high school before the motions were filed and defendant had no further obligation of support under NJ law because PA issued the controlling order and that order governed duration.
- Flynn v. Flynn, 2019 N.J. Super. Unpub. LEXIS 797.

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# Multiple States – Service Members

- Parties were divorced in PA with a marital property settlement agreement that included a support order.
- After the divorce – both parents who were members of the US Military moved to CA.
- Mother then made a military transfer to Bahrain.
- Upon learning of this father filed a custody action in CA.
- During the lengthy custody action parties communicated via various platforms since mother was stationed overseas.

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- They eventually reached an agreement that was filed with the court in CA on custody but the CA court specifically refused to accept jurisdiction of CSUP issues.
- Father claimed he only signed this agreement after mother also agreed to modify child support via text messaging.
- Father alleges and cites messages that mother was to draft a second document for them to sign and notarize and file in PA as CA didn't have jurisdiction over CSUP.

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- Mother denies that this was the reason and alleges that she no longer had access to that Apple account those messages came from as well as the Gmail account father alleged in his exhibits. (new phone who 'dis)
- After the CA custody agreement was filed, mother and the children moved to VA.
- Father began paying the newer lower CSUP amount.
- Mother opened up an enforcement case in VA who then alleged father was behind in support.
- In response to this, father filed an action in PA to recognize their agreement.

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- Court found that under principles of PA contract law: the parties had manifested an intent to be bound by the proposed order contained in father's exhibit and that the terms were definite and that consideration existed such to recognize that agreement to modify.
- Mother appealed primarily on the grounds of FFCSOA and alleged that PA no longer had Jurisdiction and dad's petition should have been filed in CA or VA.

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- Most of mother's arguments on appeal were dismissed outright because they weren't brought up at the lower level.
- On the issue of CEJ however, the Court did find that PA retained jurisdiction of this issue under UIFSA and Father was correct to file his petition in that court, especially in light of CA refusing CEJ.
- On mother's allegation of forum shopping the Court found there was no record father attempted to do that and merely went back to the court that had issued the Support order.
- The Court was correct to apply PA contract law concepts as PA had CEJ over the support matter at issue.
- A.S.C v. N.B.C, 2018 Pa. Super. Unpub. LEXIS 2509

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# Trends in New Laws

- National Conference of State Legislatures
- <http://www.ncsl.org/research/human-services/child-support-and-family-law-database.aspx>
- Intercepts, SNAP, Incarceration

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# Co S 88 Unclaimed Property

- Colorado adopting the revised uniform unclaimed property law including a provision that child support be paid.
- If unclaimed property exceeds \$600 they must do a match against child support arrears.
- Authorizes a memorandum of understanding to be issued with HHS to implement this.
- Status – to Governor

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# Co H 1128

- Allows lottery winnings to be intercepted to pay:
- Restitution in criminal or juvenile cases
- Child support costs and arrearages
- Fines, fees, costs or surcharges related to these debts.
- Status – Pending

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## In S 552

- Prior to disbursing \$600 or more from sports betting must match against child support delinquencies.
- This includes sports brackets or pools.
- Status - Pending

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# ME H 976

- Slot Machine, Table Game and Wagering Winnings
- Effectively adds sports wagering to their existing casino intercept statutes.
- Ties reporting to the issuance of an IRS Form W-2G.
- Status - Pending

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# NJ S 1945

- Child Support Judgment Lien
- The Probation Division of the Superior Court shall file a Title IV-D child support judgment established pursuant to this section as a lien with the Clerk of the Superior Court only when the amount of the judgment equals or exceed the amount of child support due for a one-month period. Any subsequent delinquent child support installment shall accrue to such lien on the date that the delinquent installment is reported to the Clerk of the Superior Court. For the purpose of determining the priority among conflicting security interests pursuant to law, the initial date of recording the child support lien shall be the date upon which the lien is first docketed.
- Status - Pending

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# NJ A 3143

- Establishes separate class of claims against insolvent estates for child support judgments and changes the priority of claims.
- Moves Child Support ahead of medical and hospital expenses of the last illness of the decedent.
- Status - Pending

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# PR H 595

- Amends the law to allow a tax payer to directly authorize their refund be sent to the Child Support Administration.
- Status - Pending

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# RH H 5508

- Requires the lottery director to set off child support arrears among other debts for any winnings of over:
- \$600
- Status - Pending

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# TN S 878

- Reduces from 50% to 40% the amount of income that can be withheld for an assignment of income for support.
- Status - Pending

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# TX S 1692

- This law relates to the State Bullion Depository.
- It lists that property held in the depository is exempt from garnishment, attachment or execution if the property deposited is worth less than \$1 million in fair market value.
- That does not apply to child support debts.
- Status - Pending

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# VT H 3

- Deals with the Vermont Lottery
- Will require offset for child support of any winnings over: \$500.

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# Pending Incarceration – Modification Statutes

- AR H 1612
- CA A 1091
- NY S 841
- WI A 94

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# Other Interesting Statutes

- CT H 5872
  - Prohibit ordering Custodial parent to ever pay non-custodial parent.
  - Status: Pending
- CT H 6909
  - Ensures the court doesn't participate in Gender Bias
  - Ensures that obligor is aware of actions that could be taken against them
  - Status: Pending
- PR H 868
  - Allows prisoners to pick coffee to do other agricultural work for fair compensation that will be credited against familial debts.
  - Status: Pending

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# Dental Insurance (TX)

- New Law requires Dental Insurance to be included in new child support orders.
- Dental Insurance cost must be reasonable.
- A request for dental insurance is not enough to warrant a modification.
- Senate Bill 550 Texas passed in 2015 delayed implementation until 9/1/18.

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# Hawaii

- HI S 574, HI H 640: Establish every judgment for CSUP is enforceable until paid in full.
  - Removes the 33 year old birthday rule of discharge.
  - Status: Pending
- HI S 733, HI H 1060
  - Establishes Felony Non-Support
- HI S 734
  - If an obligor who receives income on a periodic basis becomes delinquent equal to 3 months the employer can be ordered to classify him as an employee for payroll purpose to subject them to IWO.

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- HI S 734

- If an obligor who receives income on a periodic basis becomes delinquent equal to 3 months the employer can be ordered to classify him as an employee for payroll purpose to subject them to IWO.

- HI H 946

- Amends the IWO requirements to impose fines on employers for discrimination based on IWO

- HI S 1173 Fines for discharge related to IWO.

- HI S 1092

- Restricts travel out of the state for obligor not in compliance with an order.

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# Pending Food Stamp Cooperation Bills

- GA H 80
- IN H 1589
- IA S 305
- MO H 183
- MT H 290
- TX S 2166

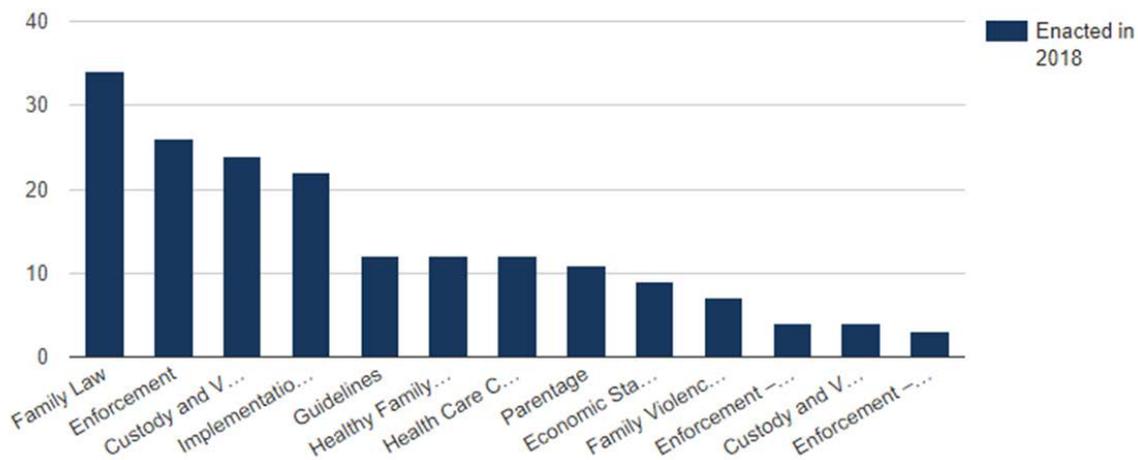
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# 2018 Child Support Laws Enacted

2018 Child Support Enactments



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