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# Child Support Enforcement and the Hague Convention on Recovery of International Child Support

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## Summary

The Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (the Convention) was adopted at the Hague Conference on Private International Law on November 23, 2007. The Convention contains procedures for processing international child support cases that are intended to be uniform, simple, efficient, accessible, and cost-free to U.S. citizens seeking child support in other countries. The United States was the first country to sign the Convention. For many international cases, U.S. courts and state Child Support Enforcement (CSE) agencies already recognize and enforce child support obligations, whether or not the United States has a reciprocal agreement with the other country. However, many foreign countries will not enforce U.S. child support orders in the absence of a treaty obligation.

On August 30, 2016, President Obama signed the instrument of ratification for the Convention. On September 7, 2016, the United States deposited its instrument of ratification with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, which is the depository for the Convention. Thirty-three other countries, including the European Union, have also ratified the Convention.

Although it is not the Senate's role to ratify treaties, it provides its advice and consent to a treaty's provisions. On September 29, 2010, the U.S. Senate approved the Resolution of Advice and Consent regarding the Convention.

Implementing legislation for the Convention was included in the Preventing Sex Trafficking and Strengthening Families Act (H.R. 4980), which was enacted into law on September 29, 2014, as P.L. 113-183. H.R. 4980 was passed by the House on July 23, 2014 (by voice vote under suspension of the rules), and by the Senate on September 18, 2014 (by unanimous consent). P.L. 113-183 included provisions that would implement the Convention. Specifically, it contains several provisions related to the international enforcement of child support orders. It contains provisions designed to improve child support collections in cases where the custodial parent and child live in one country and the noncustodial parent lives in another country. It ensures that the United States is compliant with the Convention and any other multilateral child support enforcement treaty and requires states to update their Uniform Interstate Family Support Act (UIFSA) law to incorporate any amendments adopted as of September 2008 by the National Conference of Commissioners on Uniform State Laws. Additionally, P.L. 113-183 facilitates greater access to the Federal Parent Locator Service (FPLS) by foreign countries and tribal governments as part of improving child support collections. P.L. 113-183 also allows the federal income tax refund offset program to be available for use by a state to handle CSE requests from foreign reciprocating countries and foreign treaty countries.

Once the Convention is in force (January 1, 2017) it would apply to cases being worked between countries that are party to it (currently 34 countries, including the United States and the European Union).

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## **Introduction**

It is often difficult, if not impossible, to enforce child support obligations in cases where the custodial parent and child live in one country and the noncustodial parent lives in another. International cases are often challenging and time consuming for CSE workers because there are no agreed-upon standards of proof, uniform procedures, or methods of communication.<sup>1</sup> While a multilateral CSE treaty has existed since November 23, 2007, the United States just recently ratified the treaty.

This report provides an overview of the current Child Support Enforcement (CSE) system, including a discussion of how international CSE cases are handled. It provides a summary of the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (the Convention) and contains current status information.<sup>2</sup> It also provides a description of the provisions included in P.L. 113-183 that pertain to enforcement of child support in international cases. These provisions would implement the Hague Convention on International Recovery of Child Support and any other multilateral agreement to which the United States is a party.

Supporters of ratification of the Hague Convention provisions related to child support and family maintenance note that many Americans who live abroad may owe child support, and also that there are thousands of foreigners with children who live in the United States for whom child support should be provided. They contend that a noncustodial parent's residence in a foreign country should not prevent his or her children from receiving the child support to which they are entitled. According to some commentators, the United States had not previously ratified any treaty relating to child support primarily because of fundamental differences in how jurisdiction is obtained over the involved parties. In most foreign countries, jurisdiction in child support cases is based on the habitual residence of the custodial parent. In contrast, although the child support order is established in the home state of the custodial parent in the United States, child support enforcement relies on the ability of the court to obtain personal jurisdiction over the noncustodial parent.

On August 30, 2016, President Obama signed the instrument of ratification for the Convention. On September 7, 2016, the United States deposited its instrument of ratification with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, which is the depository for the Convention.

## **Overview of the Current Child Support Enforcement (CSE) Program<sup>3</sup>**

The CSE program was enacted in 1975 (P.L. 93-647) as a federal-state program (Title IV-D of the Social Security Act). Its purpose is to help strengthen families by securing financial support for children from their noncustodial parent on a consistent and continuing basis and by helping some

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<sup>1</sup> National Child Support Enforcement Association, Executive Director Colleen Delaney Eubanks, June 4, 2012, Letter to House Ways and Means Subcommittee on Human Resources.

<sup>2</sup> This report uses the terms Convention and Treaty interchangeably.

<sup>3</sup> For additional information, refer to CRS Report RS22380, *Child Support Enforcement: Program Basics*, by Carmen Solomon-Fears.

families remain self-sufficient and off public assistance.<sup>4</sup> The CSE program has evolved over time from a “welfare cost-recovery” program into a “family-first” program that seeks to enhance the well-being of families by making child support a more reliable source of income. Child support orders require noncustodial parents to fulfill their financial responsibility to their children by contributing to the payment of childrearing costs. The CSE program provides seven major services on behalf of children: (1) parent location, (2) paternity establishment, (3) establishment of child support orders, (4) review and modification of child support orders, (5) collection of child support payments, (6) distribution of child support payments, and (7) establishment and enforcement of medical support.<sup>5</sup> All 50 states, the District of Columbia, and three U.S. territories (Guam, Puerto Rico, and the U.S. Virgin Islands) operate CSE programs<sup>6</sup> and are entitled to federal matching funds. The federal government reimburses each state and the jurisdictions listed above 66% of the cost of operating its CSE program. In addition, the federal government pays the states and jurisdictions an incentive payment to encourage them to operate effective programs.

State CSE programs are usually operated at the county level of government in the human services department, department of revenue, or the state attorney general’s office. States must comply with a comprehensive set of requirements as a condition for receiving federal funds for operating state CSE programs.<sup>7</sup> The CSE program is administered at the federal level by the Office of Child Support Enforcement (OCSE) in the Department of Health and Human Services (HHS).

## **Domestic Enforcement of Child Support**

State CSE programs have authority to use a vast array of methods/tools to collect and enforce the payment of child support. Collection methods used by CSE agencies include income withholding, intercept of federal and state income tax refunds, intercept of unemployment compensation, liens against property, and reporting of child support obligations to credit bureaus. All states, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands also have civil or criminal contempt-of-court procedures and criminal nonsupport laws. Moreover, the 1996 welfare reform law (P.L. 104-193), officially known as the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), required states to implement expedited procedures to allow them to secure assets to satisfy an arrearage by intercepting or seizing unemployment and workers’ compensation; lottery winnings; awards, judgments, or settlements; and assets of the debtor parent held in public or private retirement funds and financial institutions. It required states to implement procedures to withhold, suspend, or restrict use of driver’s licenses, professional and occupational licenses, and recreational and sporting licenses of persons who owe past-due support or who fail to comply with subpoenas or warrants relating to paternity or child

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<sup>4</sup> In addition, federal law (42 U.S.C. §654(4)(B)(ii)) requires state CSE agencies to provide services to applicants seeking spousal support if there is also a request for child support from the same applicant involving the same noncustodial parent. In the absence of a child support order, CSE agencies are not required to provide services for applicants requesting spousal support only.

<sup>5</sup> For information on medical child support, see CRS Report R43020, *Medical Child Support: Background and Current Policy*, by Carmen Solomon-Fears.

<sup>6</sup> States were historically required to provide CSE services to Indian tribes and tribal organizations as part of their CSE caseloads. The 1996 welfare reform law (P.L. 104-193) allowed direct federal funding of tribal CSE programs at a 90% federal matching rate. Approximately 60 Indian tribes or tribal organizations operate tribal CSE programs. For additional information, see CRS Report R41204, *Child Support Enforcement: Tribal Programs*, by Carmen Solomon-Fears.

<sup>7</sup> 42 U.S.C. §654.

support proceedings.<sup>8</sup> In addition, the 1996 law authorized the Secretary of State to deny, revoke, or restrict passports of debtor parents.<sup>9</sup>

Many CSE administrators contend that some of the more difficult child support orders to enforce are interstate<sup>10</sup> cases. Family law traditionally has been under the jurisdiction of state and local governments, and citizens fall under the jurisdiction of the courts where they live. Thus, although federal CSE law requires states to cooperate in interstate child support enforcement, problems often arise because of the autonomy of local courts.

P.L. 104-193 required states to enact and implement the Uniform Interstate Family Support Act (UIFSA).<sup>11</sup> UIFSA was drafted by the National Conference of Commissioners on Uniform State Laws (NCCUSL) and approved by the commissioners in August 1992.<sup>12</sup> The NCCUSL revised the act in 1996, 2001, and 2008.

UIFSA limits the jurisdiction that can properly establish and modify child support orders and addresses the enforcement of child support obligations within the United States. When multiple states are involved in establishing, enforcing, or modifying a child or spousal support order, UIFSA is used to resolve jurisdictional issues of the courts in the different states. UIFSA also establishes which state's law will be applied in proceedings under UIFSA, an important factor as support laws vary greatly among the states. UIFSA is designed to deal with desertion and nonsupport by instituting uniform laws in all 50 states and the District of Columbia. The core of UIFSA is limiting control of a child support case to a single state, thereby ensuring that only one child support order from one court or child support agency is in effect at any given time. It follows that the controlling state will be able to effectively pursue interstate cases, primarily through the use of long arm statutes,<sup>13</sup> because its jurisdiction is undisputed.

UIFSA provides procedural and jurisdictional rules for three types of interstate child support proceedings: (1) establishing a child support order, (2) enforcing a child support order, and (3) modifying a child support order. UIFSA implements the "one-order system." This means that only one state's order governs, at any given time, an obligor's support obligation to any child. Further, only one state has continuing jurisdiction to modify a child support order. This requires

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<sup>8</sup> 42 U.S.C. §654 and 42 U.S.C. §666.

<sup>9</sup> 42 U.S.C. 652(k) and 22 C.F.R §§51.70(a)(8), 51.72(a), and 51.80(a)(2). The Deficit Reduction Act of 2005 (P.L. 109-171) reduced the arrearage amount states were required to use as a threshold for denying or revoking passports from \$5,000 to \$2,500.

<sup>10</sup> The word "interstate" is used here to mean that one or both parents have left the state in which they were married or maintained a relationship.

<sup>11</sup> UIFSA is one of the uniform acts drafted by the National Conference of Commissioners on Uniform State Laws in the United States. First developed in 1992 the NCCUSL revised the act in 1996 and again in 2001 with additional amendments in 2008. In 1996, P.L. 104-193 mandated states to adopt UIFSA by January 1, 1998, or face loss of federal funding for their CSE programs. All 50 U.S. states, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands have adopted either the 1996 or a later version of UIFSA.

<sup>12</sup> 42 U.S.C. §666(f). See *Kansas v. United States*, 24 F.Supp.2d 1192 (D. Kan. 1998) (upholding Title III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and its requirement of states to pass UIFSA against the Spending Clause and Tenth Amendment challenges). PRWORA required all states to enact UIFSA, including all amendments before January 1, 1998.

<sup>13</sup> When a person commits certain acts in a state of which he is not a resident, that person may be subjecting himself to the jurisdiction of that state. The long arm of the law of the state where the event occurs may reach out to grab the out-of-state person so that issues relating to the event may be resolved where it happened. Under the long arm procedure, the state must authorize by statute that the acts allegedly committed by the defendant are those that subject the defendant to the state's jurisdiction.

all other states to recognize the order and to refrain from modifying it unless the first state has lost jurisdiction.

One of the most important aspects of UIFSA is its provisions related to continuing, exclusive jurisdiction. Consistent with UIFSA's policy of "one order, one time, one place," only one court is authorized to establish or modify a child support order at a time. UIFSA provides that the court or administrative agency that issues a valid child support order retains "continuing, exclusive jurisdiction" to modify an existing order, as long as the custodial parent, the noncustodial parent, or the child remains in the issuing state. This provision limits the number of duplicate and conflicting orders, and reduces "forum shopping" by parents seeking to increase or decrease the amount of child support payments.

P.L. 104-193 required that the 1996 version of UIFSA be adopted. It has been adopted in every state, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. As mentioned above, the NCCUSL approved additional amendments to UIFSA in August 2001. However, there is no federal mandate for states to enact the 2001 amendments. To date (more than a decade later), only 21 states and the District of Columbia have adopted the 2001 amendments.<sup>14</sup> In July 2008, the NCCUSL approved amendments to the 2001 UIFSA (referred to as UIFSA 2008), to integrate the appropriate provisions of the Convention, which were adopted at the Hague Conference on Private International Law on November 23, 2007. P.L. 113-183 (enacted September 29, 2014) required that for a state to receive federal CSE funding, each state's UIFSA must include verbatim any amendments officially adopted as of September 30, 2008, by the NCCUSL. All 50 states, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands have adopted UIFSA 2008.<sup>15</sup> Thus, all of the 54 jurisdictions stand ready to immediately implement the Convention.

## **International Enforcement of Child Support**

Before 1996, there was no mandate, direct or indirect, for the states or the federal government to become involved in international arrangements for child support. Prior to P.L. 104-193, states used the system that they had developed for interstate child support cases to collect child support on behalf of children whose noncustodial parent lived abroad. According to various CSE documents, the arrangements developed between the individual states and various foreign countries to enforce child support obligations were based on the principles of comity—the voluntary recognition and respect given to the acts of another nation's government—as well as formal statements of reciprocity.<sup>16</sup>

P.L. 104-193 established procedures for international enforcement of child support. Pursuant to 42 U.S.C. 659A(a), the Secretary of State, with the concurrence of the Secretary of HHS, is authorized to

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<sup>14</sup> The 22 jurisdictions are Arizona, California, Colorado, Connecticut, Delaware, the District of Columbia, Idaho, Illinois, Maine, Mississippi, Nebraska, Nevada, New Mexico, Oklahoma, Rhode Island, South Carolina, Texas, Utah, Virginia, Washington, West Virginia, and Wyoming. See the following website: [http://uniformlaws.org/Shared/uniformact\\_factsheets/uniformacts-fs-uifsa.aspx](http://uniformlaws.org/Shared/uniformact_factsheets/uniformacts-fs-uifsa.aspx).

<sup>15</sup> See <http://www.uniformlaws.org/Act.aspx?title=Interstate%20Family%20Support%20Act%20Amendments%20%282008%29>.

<sup>16</sup> Office of Child Support Enforcement (HHS), A Caseworker's Guide to Processing Cases with Foreign Reciprocating Countries, at <http://www.acf.hhs.gov/programs/cse/pol/IM/2003/im-03-07.htm>. See also Child Support Enforcement Abroad, at [http://travel.state.gov/family/services/support/support\\_2611.html](http://travel.state.gov/family/services/support/support_2611.html), and Individual U.S. State Child Support Arrangements, at [http://travel.state.gov/family/services/support/support\\_2600.html#](http://travel.state.gov/family/services/support/support_2600.html#).

declare any foreign country (or political subdivision thereof) to be a foreign reciprocating country if the foreign country has established, or undertakes to establish, procedures for the establishment and enforcement of child support owed to persons who are residents of the United States, and such procedures are substantially in conformity with the standard.

Reciprocating countries must have procedures for (1) establishing paternity; (2) establishing support orders; (3) enforcement of support orders; (4) collection and distribution of payment under support orders; (5) providing administrative and legal assistance where necessary without cost to the U.S. resident; and (6) establishing a “central authority” to facilitate implementation of support enforcement in cases involving U.S. residents.<sup>17</sup> Currently, the CSE program has reciprocal agreements regarding child support enforcement with 14 countries and 12 Canadian provinces/territories.<sup>18</sup> The 14 countries are Australia, Czech Republic, El Salvador, Finland, Hungary, Ireland, Israel, Netherlands, Norway, Poland, Portugal, Slovak Republic, Switzerland, and the United Kingdom of Great Britain and Northern Ireland.<sup>19</sup>

Moreover, in the absence of a federal-level international agreement for child support enforcement, there may be a state-level arrangement with a country. These state-level arrangements were formerly authorized by the Uniform Reciprocal Enforcement of Support Act (URESA),<sup>20</sup> and are now authorized pursuant to UIFSA. However, such state-level arrangements may not be as comprehensive as the federal-level agreements. Further, not all states have similar arrangements with all countries; most states have arrangements with only a few countries.<sup>21</sup>

Based on data from the federal Office of Child Support Enforcement and the Census Bureau, less than 1% of CSE cases are international cases, in that a noncustodial parent lives outside of the United States.<sup>22</sup>

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<sup>17</sup> 42 U.S.C. §659A.

<sup>18</sup> Canada is a federal state, composed of 10 provinces and 3 territories, each with its own government and power to make laws. The United States currently has bilateral, federal-level agreements with 9 Canadian provinces and 3 Canadian territories. The 9 provinces are Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, and Saskatchewan. The 3 territories are Northwest Territories, Nunavut, and Yukon. The United States does not have a bilateral, federal-level agreement with Quebec.

<sup>19</sup> See *Federal Register*, vol. 79, no. 161, “Department of State—Notice of Declaration of Foreign Countries as Reciprocating Countries for the Enforcement of Family Support (Maintenance) Obligations,” August 20, 2014.

<sup>20</sup> URESA, which first was proposed by the National Conference of Commissioners on Uniform State Laws (NCCUSL) in 1950, was enacted in all 50 states, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands. The act was amended in 1952 and 1958 and revised in 1968. In 1989, the NCCUSL reviewed the revised version of URESA and determined the need for major revisions. The result was the development of the Uniform Interstate Family Support Act (UIFSA), a new interstate act that superseded URESA and the revised version of URESA. The NCCUSL amended UIFSA in 1996, 2001, and 2008.

<sup>21</sup> For a list of the countries that a particular state has reciprocity agreements with, go to the following webpage, click on the state, and then go to Section C1 (<http://www.acf.hhs.gov/programs/css/irg-state-map>).

<sup>22</sup> See Tables 61, 62, 69, and 70 in *Child Support Enforcement FY2015 Preliminary Report* (Note that this is the most recent data related to international CSE cases). Also see Table 9—<http://www.census.gov/people/childsupport/data/files/chldsul3.pdf>.



# The 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance

With the exception of the recent ratification of the Convention, the United States had not ratified any of the long-standing multinational treaties or conventions related to the recognition and enforcement of child support obligations.<sup>23</sup> According to some commentators, the United States had not joined these treaties primarily because of fundamental differences in how jurisdiction is obtained over the involved parties. In most foreign countries, jurisdiction in child support cases is based on the habitual residence of the custodial parent. In contrast, although the child support order is established in the home state of the custodial parent in the United States, child support enforcement relies on the ability of the court to obtain personal jurisdiction over the noncustodial parent.<sup>24</sup>

## Summary of the Convention

The Convention contains procedures for processing *international* child support cases that are intended to be uniform, simple, efficient, accessible, and cost-free to U.S. citizens seeking child support in other countries. It is founded on the agreement of countries that ratify the Convention to recognize and enforce each other's child support orders. As discussed earlier in this report, similar procedures (via UIFSA) are already in place in the United States for processing *interstate* child support cases.<sup>25</sup>

The Convention offers the United States the opportunity to join a multilateral treaty, saving the time and expense that would otherwise be required to negotiate bilateral agreements with individual countries around the world.<sup>26</sup> Many provisions of the Convention were drawn from the U.S. experience with UIFSA.<sup>27</sup> In fact, most cases under the Convention would be handled in the United States in accordance with UIFSA, which, pursuant to the 2008 amendments, includes procedures for handling interstate cases as well as international cases.<sup>28</sup> Below are some of the main provisions of the Convention.

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<sup>23</sup> Since 1893, the Hague Conference on Private International Law has developed and serviced treaties or conventions which respond to global needs in the areas of child protection and family maintenance (see [http://www.hcch.net/index\\_en.php?act=text.display&tid=1](http://www.hcch.net/index_en.php?act=text.display&tid=1)).

<sup>24</sup> National Child Support Enforcement Association (NCSEA), Testimony of Kay Farley (Past President) before the House Ways and Means Subcommittee on Human Resources at hearing on No-Cost Improvements to Child Support Enforcement, March 20, 2012; see *Kulko v. Superior Court of California*, 436 U.S. 84 (1978) (holding that the Due Process Clause requires that for a court to have jurisdiction over a defendant, the defendant must have certain minimum contacts with the forum state).

<sup>25</sup> National Child Support Enforcement Association, Quick Facts: The Hague Convention on International Recovery of Child Support—<http://www.ncsea.org/wp-content/uploads/2011/12/The-Hague-Convention-on-International-Recovery-of-Child-Support-Quick-Facts.pdf>.

<sup>26</sup> National Child Support Enforcement Association, Testimony before the Senate Committee on Foreign Relations, Hearing on the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (Treaty Doc. 110-21), October 6, 2009.

<sup>27</sup> Although all states (and CSE jurisdictions) have adopted the 1996 version of UIFSA, all states have not adopted the 2001 amendments or the 2008 amendments to UIFSA.

<sup>28</sup> Office of Child Support Enforcement, Testimony of Commissioner Vicki Turetsky before the Senate Committee on Foreign Relations, Hearing on the Hague Convention on the International Recovery of Child Support and Other Forms (continued...)

## **Reciprocity**

Pursuant to the Convention, the United States will be able to obtain the same or corresponding treatment (reciprocity) from other signatory countries. For many international cases, U.S. courts and state CSE agencies already recognize and enforce child support obligations, whether or not the United States has a reciprocal agreement with the other country. However, many foreign countries will not enforce U.S. child support orders in the absence of a treaty obligation.<sup>29</sup>

## **Settlement of Jurisdiction**

The Convention addresses jurisdictional barriers that have prohibited the United States from joining other child support conventions. Existing maintenance conventions base jurisdiction to order support on the habitual residence of the creditor (custodial parent or child) rather than on minimum contacts with the debtor (noncustodial parent), as required by U.S. constitutional standards of due process.<sup>30</sup> The Convention provides flexibility for a U.S. court having jurisdiction over the noncustodial parent to establish a new order in circumstances where U.S. jurisdictional requirements were not met in the country issuing the initial order that is intended to be enforced.<sup>31</sup>

## **Coordinated Expedited Enforcement**

Pursuant to the Convention, countries will have the ability to effectively coordinate the enforcement of international child support cases with contracting countries through central authorities. Central authorities will be required to receive and transmit applications for services. Through administrative cooperation, the authorities will facilitate the transfer of documents and case information—using electronic technology where feasible—so that the necessary information is available for expeditious resolution of international child support matters.<sup>32</sup>

## **No-Cost or Low-Cost Access to CSE Services in Other Countries**

The Convention provides for access to cost-free services for U.S. citizens needing assistance with child support enforcement in a contracting country. However, a few countries are required by their own internal procedures to assess fees for these CSE services. In such cases, the involved country must use a means test based on the income of the child, not the parents. This will generally result in relatively minimal fees, compared to current practice where custodial parents must often retain local private counsel in order to establish or enforce a child support order.<sup>33</sup>

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(...continued)

of Family Maintenance (Treaty Doc. 110-21), October 6, 2009.

<sup>29</sup> National Child Support Enforcement Association, Quick Facts: The Hague Convention on International Recovery of Child Support—<http://www.ncsea.org/wp-content/uploads/2011/12/The-Hague-Convention-on-International-Recovery-of-Child-Support-Quick-Facts.pdf>.

<sup>30</sup> See *Kulko v. Superior Court of California*, 436 U.S. 84 (1978)(holding that the Due Process Clause requires that for a court to have jurisdiction over a defendant, the defendant must have certain minimum contacts with the forum state).

<sup>31</sup> National Child Support Enforcement Association, Quick Facts: The Hague Convention on International Recovery of Child Support—<http://www.ncsea.org/wp-content/uploads/2011/12/The-Hague-Convention-on-International-Recovery-of-Child-Support-Quick-Facts.pdf>.

<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid.*

## **No Change to States' Authority over Child Support Law Issues**

The Convention and the 2008 conforming amendments to UIFSA will not affect intrastate or interstate CSE cases in the United States. They will apply only to cases where the custodial parent and child live in one contracting country and the noncustodial parent lives in another contracting country. Similarly, the Convention will not affect substantive child support law, which is generally left to the individual states. The primary focus of the Convention and the 2008 conforming amendments is on uniform procedures for enforcement of CSE decisions and for cooperation among countries. While HHS will be the central authority for the United States under the Convention, it is expected that HHS will designate state CSE agencies as the public bodies responsible for carrying out, under its supervision, many of its central authority functions. This includes transmitting and receiving applications for services, and initiating and facilitating proceedings.<sup>34</sup>

## **History and Current Status of the Convention**

On November 23, 2007, after four years of deliberation, the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance was adopted at the conclusion of the Twenty-First Diplomatic Session of The Hague Conference on Private International Law at The Hague, The Netherlands. The United States delegation was the first country to sign the Convention. The other original signatories were Albania, Bosnia and Herzegovina, the European Union,<sup>35</sup> Norway, and Ukraine.<sup>36</sup>

As noted earlier, in July 2008 the National Conference of Commissioners on Uniform State Laws (NCCUSL) approved amendments to the 2001 Uniform Interstate Family Support Act, referred to as UIFSA 2008, to integrate the appropriate provisions of the Convention with federal U.S. law.

In the United States, a treaty must be consented to by the Senate. The Senate does not ratify a treaty, but it provides its opinion on the treaty in question and then votes whether or not to consent to the treaty's provisions. A two-thirds majority is required for the Senate to give its consent.<sup>37</sup> On September 29, 2010, the Senate approved the Resolution of Advice and Consent regarding the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance.

According to the Office of Child Support Enforcement (OCSE),<sup>38</sup> the following additional steps must occur before the Convention can enter into force for the United States:

- (1) Congress must adopt, and there must be enacted, implementing legislation for the Treaty.

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<sup>34</sup> Ibid.

<sup>35</sup> The European Union (EU) is a political and economic community of twenty-eight countries. The EU countries include Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom. Note that the Convention entered into force in the European Union in 2014, except with respect to Denmark.

<sup>36</sup> See the following webpage: [http://www.hcch.net/index\\_en.php?act=conventions.statusprint&cid=131](http://www.hcch.net/index_en.php?act=conventions.statusprint&cid=131).

<sup>37</sup> The U.S. House of Representatives does not vote, i.e., give its consent, on treaties.

<sup>38</sup> Department of Health and Human Services, Office of Child Support Enforcement, *OCSE Dear Colleague Letter DCL-10-20*, Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, October 12, 2010 (<http://www.acf.hhs.gov/programs/cse/pol/DCL/2010/dcl-10-20.htm>).

(2) The implementing legislation must require that all states enact UIFSA 2008 by the effective date noted in the legislation. In addition, the implementing legislation would require states to make minor revisions to their CSE state plan.

(3) The President must sign the instrument of ratification for the Treaty.<sup>39</sup>

(4) Finally, after all these activities are completed, the United States will be able to deposit its instrument of ratification with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, which is the depository for the Treaty.

In the 113<sup>th</sup> Congress (2<sup>nd</sup> session), H.R. 4980 (the Preventing Sex Trafficking and Strengthening Families Act), a bill that includes provisions to reduce sex trafficking and increase adoptions as well as provisions that would implement the Convention (described below), was introduced in the House on June 26, 2014, by Representative Dave Camp and three co-sponsors. H.R. 4980 was passed by the House on July 23, 2014, by a voice vote.<sup>40</sup> It was passed by the Senate without amendment by unanimous consent on September 18, 2014.<sup>41</sup> H.R. 4980 was enacted into law on September 29, 2014, as P.L. 113-183.<sup>42</sup>

On August 30, the President signed the Instrument of Ratification for the Convention.<sup>43</sup> On September 7, 2016, the United States deposited its instrument of ratification with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, which is the depository for the Convention. Thus, all four steps toward ratification of the Convention have been completed.<sup>44</sup> According to OCSE, the treaty will enter into force for the United States on the first day of the first month that is not less than three months after the date of the U.S. deposit (i.e., January 1, 2017). Once the treaty is in force, it will apply to cases being worked between countries that are party to it.<sup>45</sup>

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<sup>39</sup> The Obama Administration had indicated that President Obama would wait until states complied with the new UIFSA requirement before ratifying the Convention. (Source: U.S. Congress, Senate, *Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (Treaty Doc. 110-21)*, Exec. Rept. 111-2 (111<sup>th</sup> Congress, 2d Session), January 22, 2010, p. 7.). According to *OCSE Dear Colleague Letter DCL-16-11*, “by the spring of this year [2016], all states had enacted UIFA [2008].”

<sup>40</sup> In the 112<sup>th</sup> Congress, H.R. 4282 (the International Child Support Recovery Improvement Act of 2012) was introduced in the House by Representative Berg on March 28, 2012. H.R. 4282 contained implementing language for the Convention. The House passed H.R. 4282, by voice vote on June 5, 2012, but the Senate took no action on the bill. In the 113<sup>th</sup> Congress (1<sup>st</sup> session), H.R. 1896, almost identical to H.R. 4282, was introduced in the House on May 8, 2013, by Representative Reichert and nine cosponsors. H.R. 1896 was passed by the House on June 18, 2013, by a vote of 394-27. It received no action by the Senate.

<sup>41</sup> In the 111<sup>th</sup> Congress, S. 3848 (the Strengthen and Vitalize Enforcement of Child Support (SAVE Child Support) Act, a bill which included provisions to implement the Hague Convention, was introduced by Senator Menendez on September 28, 2010. It was not enacted. It was re-introduced as S. 1383 in the 112<sup>th</sup> Congress by Senator Menendez on July 19, 2011, but was not enacted. It was introduced in the 113<sup>th</sup> Congress as S. 508 by Senator Menendez on March 7, 2013, and has not been enacted. Also, in the 113<sup>th</sup> Congress, The Child Support Improvement and Work Promotion Act (S. 1877), which also included provisions to implement the Hague Convention, was introduced by Senator Baucus on December 19, 2013, the provisions of which were the same as those included in Title III of S. 1870, as approved by the Senate Finance Committee that same month.

<sup>42</sup> For more information on P.L. 113-183, see CRS Report R43757, *Child Welfare and Child Support: The Preventing Sex Trafficking and Strengthening Families Act (P.L. 113-183)*, by Emilie Stoltzfus, Adrienne L. Fernandes-Alcantara, and Carmen Solomon-Fears.

<sup>43</sup> Office of Child Support Enforcement, Dear Colleague Letter, “DCL-16-12—Pending Effective Date of the Hague Child Support Convention and Resources,” September 1, 2016. Also see “DCL-16-11—U.S. Ratification of the Hague Child Support Convention,” August 30, 2016.

<sup>44</sup> See <https://www.hcch.net/en/news-archive/details/?varevent=518>.

<sup>45</sup> The Treaty has been ratified by the United States and is in force in the following 33 countries: Albania, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Burkina Faso, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Montenegro, Netherlands, Norway, (continued...)

## **P.L. 113-183, the Preventing Sex Trafficking and Strengthening Families Act (H.R. 4980)**

Title III of P.L. 113-183 includes provisions that would implement the Convention. Although there are several other provisions in Title III related to the CSE program, this report focuses solely on the provisions that are related to improving the enforcement of child support in international cases.

### **Amendments to Ensure Access to Child Support Services for International Child Support Cases (Section 301)**

#### **(a) Authority of the Secretary of HHS to Ensure Compliance with Multilateral Child Support Conventions**

P.L. 113-183 requires the Secretary of HHS to use the authorities provided by law to ensure the compliance of the United States with any multilateral child support convention to which the United States is a party. According to CBO this provision is expected to reduce federal direct spending by \$1 million across 11 years (FY2014-FY2024).<sup>46</sup>

The Convention will not affect intrastate or interstate child support cases in the United States. It will only apply to cases where the custodial parent and child live in one country and the noncustodial parent lives in another country.

#### **(b) Access to the Federal Parent Locator Service**

P.L. 113-183 gives other countries participating in the Convention access to the Federal Parent Locator Service (FPLS). The FPLS is an assembly of systems operated by OCSE to assist states in locating noncustodial parents, putative fathers, and custodial parties for the establishment of paternity and child support obligations, as well as in the enforcement and modification of orders for child support, custody, and visitation.

Under prior federal law, the FPLS was only allowed to transmit information in its databases to “authorized persons,” which included (1) child support enforcement agencies (and their attorneys and agents); (2) courts; (3) the resident parent, legal guardian, attorney, or agent of a child owed child support; and (4) foster care and adoption agencies.<sup>47</sup>

P.L. 113-183 expands the definition of an “authorized person” to include an entity designated as a central authority for child support enforcement in a “foreign reciprocating country” or in a “foreign treaty country” in cases involving international enforcement of child support.

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(...continued)

Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Ukraine, and the United Kingdom of Great Britain and Northern Ireland. See <https://www.hcch.net/en/instruments/conventions/status-table/?cid=131>.

<sup>46</sup> According to CBO, the cost of the one-year appropriation for these grants would be fully offset by other changes included in H.R. 4980. CBO, *H.R. 4980, the Preventing Sex Trafficking and Strengthening Families Act*, as introduced June 26, 2014.

<sup>47</sup> 42 U.S.C. §653(c).

The FPLS assists federal and state agencies in identifying overpayments and fraud, and assists with assessing benefits. Developed in cooperation with the states, employers, federal agencies, and the judiciary, the FPLS was expanded by PRWORA to include the following:

- The National Directory of New Hires (NDNH): a central repository of employment, unemployment insurance, and wage data from State Directories of New Hires, State Workforce Agencies, and federal agencies.<sup>48</sup>
- The Federal Case Registry (FCR): a national database that contains information on individuals in child support cases and child support orders.
- The Federal Offset Program (FOP): a program that collects past-due child support payments from the tax refunds of parents who have been ordered to pay child support.
- The Federal Administrative Offset Program (FAOP): a program that intercepts certain federal payments in order to collect past-due child support.
- The Passport Denial Program (PDP): a program that works with the Secretary of State in denying the passport of any person that has been certified as owing a child support debt greater than \$2,500.
- The Multistate Financial Institution Data Match (MSFIDM): a program that allows child support agencies a means of locating financial assets of individuals owing child support.

In addition, the FPLS also has access to external sources for locating information such as the Internal Revenue Service (IRS), the Social Security Administration (SSA), Veterans Affairs (VA), the Department of Defense (DOD), the National Security Agency (NSA), and the Federal Bureau of Investigation (FBI).<sup>49</sup>

### **(c) State Option to Require Individuals in Foreign Countries to Apply Through Their Country's Appropriate Central Authority**

P.L. 104-193 (the 1996 welfare reform law) recognized federal responsibility for international child support enforcement and gave the Department of State and the Department of Health and Human Services the authority to establish and administer reciprocal agreements with other countries. Countries with which the United States has entered into formal agreements are called “foreign reciprocating countries.” P.L. 104-193 provided for services at the federal level through a central authority to ensure an efficient, consistent, and workable system in cooperation with the states and foreign reciprocating countries. OCSE serves as the U.S. central authority for international child support cases.

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<sup>48</sup> The National Directory of New Hires is a database that contains personal and financial data on nearly every working American, as well as those receiving unemployment compensation. Contrary to its name, the National Directory of New Hires includes more than just information on new employees. It is a database that includes information on (1) all newly hired employees, compiled from state reports (and reports from federal employers), (2) the quarterly wage reports of existing employees (in Unemployment Compensation (UC)-covered employment), and (3) unemployment compensation claims. The National Directory of New Hires was originally established to help states locate noncustodial parents living in a different state so that child support payments could be withheld from that parent’s paycheck. Since its enactment in 1996, the National Directory of New Hires has been extended to several additional programs and agencies to verify program eligibility, prevent or end fraud, collect overpayments, or assure that program benefits are correct.

<sup>49</sup> Information obtained from the website of the federal Office of Child Support Enforcement—<http://www.acf.hhs.gov/programs/cse/newhire/library/brochures/fpls/fpls.htm>.

P.L. 113-183 gives states the option to require individuals in foreign countries to apply for CSE services through their country's appropriate central authority for child support enforcement. If the individual resides in a foreign country that is not a "reciprocating" or "treaty" country, the state may choose to accept or reject the application for CSE services.

P.L. 113-183 amends Section 454(32)(A) of the Social Security Act (SSA) to include requests for CSE services by a "foreign treaty country" that has a reciprocal arrangement with a state as though it is a request by a state. It also amends Section 454(32)(C) of the SSA to include a "foreign treaty country" and a "foreign individual" as entities that do not have to provide applications, and against whom no costs will be assessed, for CSE services.

#### **(d) Amendments to International Support Enforcement Provisions**

P.L. 113-183 establishes a definition for three terms: (1) "foreign reciprocating country," (2) "foreign treaty country," and (3) "2007 Family Maintenance Convention."

It defines a "foreign reciprocating country" as a foreign country (or political subdivision thereof) that the HHS Secretary has declared as having or implementing procedures to establish and enforce duties of support for residents of the United States at no cost or low cost.

It defines a "foreign treaty country" as a foreign country for which the 2007 Family Maintenance Convention is in force.

It defines the term "2007 Family Maintenance Convention" to mean the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance of November 23, 2007.

It amends Section 459A(c) of the SSA by using the new terms "foreign reciprocating countries" and "foreign treaty countries" in describing cases for which the HHS Secretary is responsible. In other words, it would be the responsibility of the HHS Secretary to facilitate support enforcement in cases involving residents of the United States and residents of "foreign reciprocating countries" or "foreign treaty countries." P.L. 113-183 amends Section 459A(c)(2) of the SSA to include "foreign treaty countries" as entities that can receive notification as to the state of residence of the person being sought for child support enforcement purposes. It also amends Section 459A(d) of the SSA to include "foreign reciprocating countries" and "foreign treaty countries" as entities that states may enter into reciprocal arrangements with for the establishment and enforcement of child support obligations.

#### **(e) Collection of Past-Due Support from Federal Tax Refunds**

P.L. 113-183 amends federal law so that the federal income tax refund offset program is available for use by a state to handle CSE requests from foreign reciprocating countries and foreign treaty countries.

The FOP collects past-due child support payments from the income tax refunds of noncustodial parents who have been ordered to pay child support. The program is a cooperative effort between OCSE, the IRS, and state CSE agencies. Under the program, the IRS, operating on request from a state filed through the Secretary of HHS, intercepts tax returns and deducts the amount of certified child support arrearages.<sup>50</sup> The money is then sent to the state CSE agency for distribution.

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<sup>50</sup> 42 U.S.C. §664.

**(f) State Law Requirement Concerning the Uniform Interstate Family Support Act (UIFSA)—(1) In General**

P.L. 113-183 amends Section 466(f) of the SSA to read as follows: “In order to satisfy Section 454(2)(A), each State must have in effect the Uniform Interstate Family Support Act, as approved by the American Bar Association on February 9, 1993, including any amendments officially adopted as of *September 30, 2008* by the National Conference of Commissioners on Uniform State Laws.” (emphasis added)

This means that for a state to receive federal CSE funding, each state’s UIFSA must include verbatim any amendments officially adopted as of September 30, 2008, by the NCCUSL.<sup>51</sup> States are required to adopt the 2008 amendments verbatim to ensure uniformity of procedures, requirements, and reporting forms.

Collecting child support across state lines was difficult in the past. Laws varied from state to state, often causing complications that delayed the establishment and/or enforcement of child support orders. Congress recognized this problem and mandated (pursuant to P.L. 104-193) that all states adopt UIFSA to facilitate collecting child support across state lines.

Given that roughly 33% of all CSE cases involve more than one state, it is generally considered important that states have the same basic laws for handling interstate cases. Such a policy increases the likelihood that all interstate cases are handled under a similar statutory framework, thus moving closer to the “one-order” world in which a child would not be seriously disadvantaged in obtaining child support just because his or her parents do not live in the same state.

**(f) State Law Requirement Concerning the Uniform Interstate Family Support Act (UIFSA)—(2) Conforming Amendment to the Full Faith and Credit Child Support Orders Act**

Federal law requires states to treat past-due child support obligations as final judgments that are entitled to full faith and credit in every state.<sup>52</sup> This means that a person who has a child support order in one state does not have to obtain a second order in another state to obtain child support due should the noncustodial parent move from the issuing court’s jurisdiction. Congress passed P.L. 103-383, the Full Faith and Credit for Child Support Orders Act (FFCCSOA; 28 U.S.C. §1738B) in 1994 because of concerns about the growing number of child support cases involving disputes between parents who lived in different states and the ease with which noncustodial parents could reduce the amount of the obligation or evade enforcement by moving across state lines. P.L. 103-383 required courts of all U.S. territories, states, and tribes to accord full faith and credit to a child support order issued by another state or tribe that properly exercised jurisdiction over the parties and the subject matter. P.L. 103-383 addressed, for cases with more than one child support order issued for the same obligor and child, the need to determine which order to recognize for purposes of continuing, exclusive jurisdiction and enforcement. P.L. 103-383 restricted a state court’s ability to modify a child support order issued by another state unless the

<sup>51</sup> Note that the 2008 UIFSA revised the 2001 UIFSA which revised the 1996 UIFSA which revised the original 1989 UIFSA. The 2008 UIFSA Amendments modify the current version of UIFSA’s international provisions to be in compliance with the obligations of the United States under the Convention.

<sup>52</sup> 28 U.S.C. §1738C.



child and the custodial parent have moved to the state where the modification is sought or have agreed to the modification.

**Court Jurisdiction:** P.L. 113-183 amends 28 U.S.C. §1738B by stipulating that a state court that has established a child support order has continuing, exclusive jurisdiction to modify its order if the order is the controlling order and (1) the state is the child’s state of residence or that of any individual contestant or (2) the parties consent in a record or in open court that the court may continue to exercise jurisdiction to modify its order. It clarifies 28 U.S.C. §1738B by stipulating that a state court may modify a child support order issued by a court of another state if the court of the other state no longer has continuing, exclusive jurisdiction of a child support order because that state is no longer the residence of the child or an individual contestant and the parties have not consented in a record or in open court that the court of the other state may continue to exercise jurisdiction to modify its order. It also makes minor changes to the definitions section of 28 U.S.C. §1738B.

In addition, P.L. 104-193 clarified the definition of a child’s home state and made several revisions to ensure that the full faith and credit laws could be applied consistently with UIFSA. P.L. 113-183 provides further clarification (as noted above) of under what conditions a state could modify a child support order.

P.L. 113-183 makes the amendments to 28 U.S.C. §1738B effective on the date on which the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance of November 23, 2007, enters into force for the United States. In addition, it makes the amendments to the definitions section of 28 U.S.C. §1738B effective on the date of enactment of P.L. 113-183.

#### **(f) State Law Requirement Concerning the Uniform Interstate Family Support Act (UIFSA) – (3) Effective Date; Grace Period for State Law Changes**

P.L. 113-183 requires that for a state to receive federal CSE funding, each state’s UIFSA must include verbatim any amendments officially adopted as of September 30, 2008, by the NCCUSL. It makes the UIFSA provision effective for a state no later than the effective date of laws enacted by the state legislature (that pertain to the provision), but in no case 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 enactment of P.L. 113-183. In the case of a state that has a two-year legislative session, each year of the session is considered to be a separate regular session of the state legislature.

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