

DIVERSITY IN A UNITED WORLD OF CHILD SUPPORT: COUNTRY REPORTS: THE UNITED STATES OF AMERICA

Recovery of Maintenance in the
European Union and Worldwide
Heidelberg Conference 5 – 8 March 2013

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Brooklyn, New York



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PRESENTATION OBJECTIVES

- Provide a brief overview of the child support program in the United States
- Provide background on the rules regarding personal jurisdiction in the U.S.
- Provide information on what you can do to be certain your order can survive the personal jurisdiction minefield in the United States



DIVERSITY IN A UNITED WORLD OF CHILD SUPPORT: COUNTRY REPORTS: THE UNITED STATES OF AMERICA PRESENTATION METHODOLOGY

- Description of the basic features of child maintenance law in the United States
 - Substantive Law
 - Procedural Law
- Discussion of the principles governing the exercise of personal jurisdiction in United States Courts
- Discussion of the Hague Convention and UIFSA and how a US state court will be able to recognize your orders



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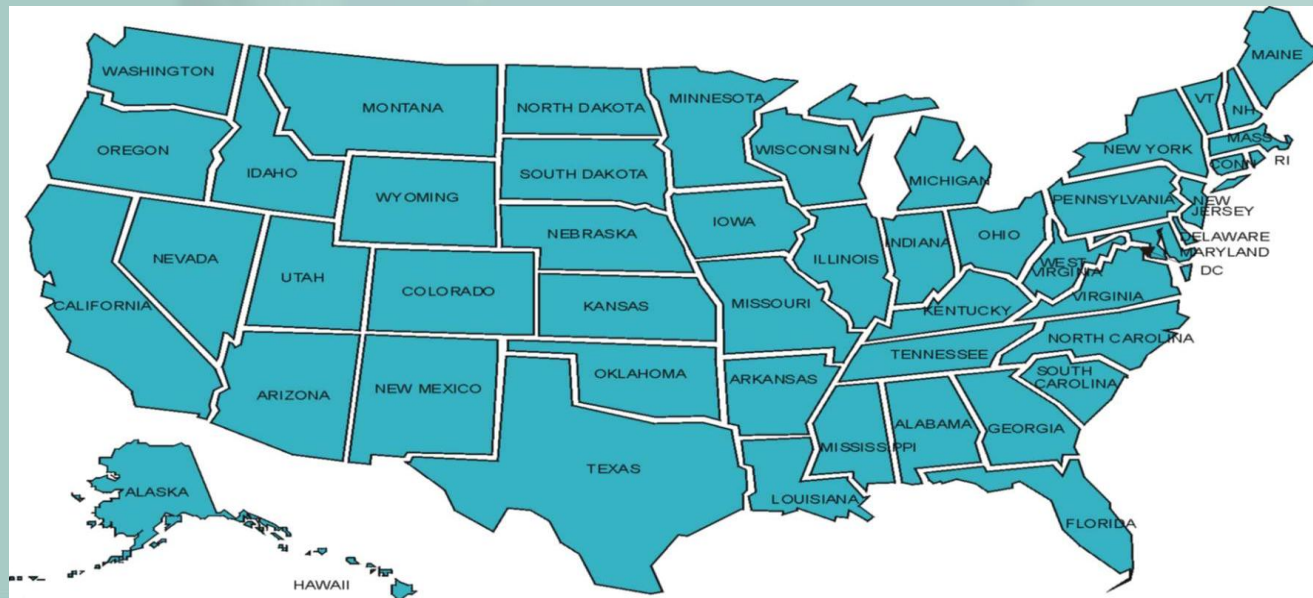
- CHILD MAINTENANCE LAW IN THE UNITED STATES



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- **CHILD MAINTENANCE LAW IN THE UNITED STATES**



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- “This court disclaims altogether any jurisdiction in the courts of the United States upon the subject of divorce or for the allowance of alimony, whether as an original proceeding in chancery or as an incident to a divorce *a vinculo*. . .”
Barber v. Barber, 62 U.S. 582, 583 (1858)
- “The whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the states, and not to the laws of the United States” *Ex parte Burrus*, 136 U.S. 586, 593-94 (1890)



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- The Federal government has a limited role in the *substance* of child maintenance law.
 - Congress may encourage, but not coerce the States to adopt particular laws or concepts by using the spending power in Article I section 8 of the Constitution
 - Adopt *presumptive* guidelines
 - Voluntary acknowledgement of paternity
 - Adopt UIFSA 1996

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- Each state, territory, district, commonwealth and many native tribes has its own child support guidelines.
 - New York guidelines are different from Illinois guidelines.
 - States used different models for their guidelines
 - Income Shares
 - Percentage of Income
 - State profiles are maintained by the Federal Office of Child Support Enforcement
 - <http://www.acf.hhs.gov/programs/css/irg-state-map>

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- Each State, territory, district, commonwealth and many native tribes adopted support guidelines.
 - Each state determines the duration of the child maintenance obligation
 - Each state determines what is included in the child maintenance obligation
 - Each state decided if the child support is determined in a judicial setting or an administrative setting

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- **New York State Child Support Guidelines**



- **Court-based determination of support**

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- New York's child support guidelines are codified in Article 4 of the Family Court Act and Article 13 of the Domestic Relations Law.
 - Child support is determined in the Family Court under the Family Court Act where marital status is not an issue
 - Trial court of *limited jurisdiction*
 - UIFSA tribunal
 - No filing fees or other fees are charged
 - The petition room cannot turn away any litigant
 - May enter *spousal support* order if parties are *still married*

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- New York's child support guidelines are codified in Article 4 of the Family Court Act and Article 13 of the Domestic Relations Law.
 - Child support is determined in the Supreme Court under the Domestic Relations Law where marital status must also be resolved
 - Supreme Court is the trial court of general jurisdiction
 - Filing fees charged
 - May enter *spousal maintenance* orders which extend beyond termination of marriage

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- New York's child support program is state run and county administered.
 - New York City is treated as one county.
- Provision of legal services differs from county to county.
 - Statutory right to counsel for the Respondents in paternity hearings and contempt hearings.
 - Some counties provide counsel to prosecute interjurisdictional matters.



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- Some counties provide income information to the court during the course of a support proceeding.
 - Wage reporting information
 - *State* income tax information



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- In New York, a parent is required to support a child until the child turns twenty-one years of age
- The court must include the following in the child maintenance obligation
 - A percentage of the combined parental income
 - Income tables may be found at
https://www.childsupport.ny.gov/dcse/pdfs/cssa_2012.pdf
 - Reasonable child care expenses incurred by the custodial parent which allows that person to work, look for work or continue their education

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- The court must include the following in the child maintenance obligation
 - Which parent is required to provide health insurance for the child and a *pro rata* division of the cost of said insurance
 - Private, employer/union provided insurance is the norm
 - State insurance (Child Health Plus or Medicaid) is last resort
 - *Pro rata* division of health care expenses not covered by insurance

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- The court may include the following in the child maintenance obligation
 - Education expenses
 - Primary and secondary school
 - College expenses
 - Religious education
 - Enrichment expenses
 - Extra-curricular activities
 - Summer camp
 - Recurring health care expenses



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- The parents are free to negotiate their own arrangements so long as they are informed of the guidelines requirements and can explain why they opted to deviate.
- A court must enter an order based on the guidelines calculations unless the parent can show the amount is unjust or inappropriate.



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- **Illinois Child Support Guidelines**



- **A child support order may be entered either judicially or administratively**

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- In Illinois, a parent is required to support a child until the child turns 18 years of age.
 - If child is still in high school on 18th birthday, the obligation is extended to
 - Graduation
 - 19th birthday



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- Illinois currently has guidelines based on a percentage of the net income of the non-custodial parent
 - The income level of the custodial parent is not usually relevant
 - The amount of parenting time that the non-custodial parent enjoys is not usually relevant
- Illinois is moving to an income shares model

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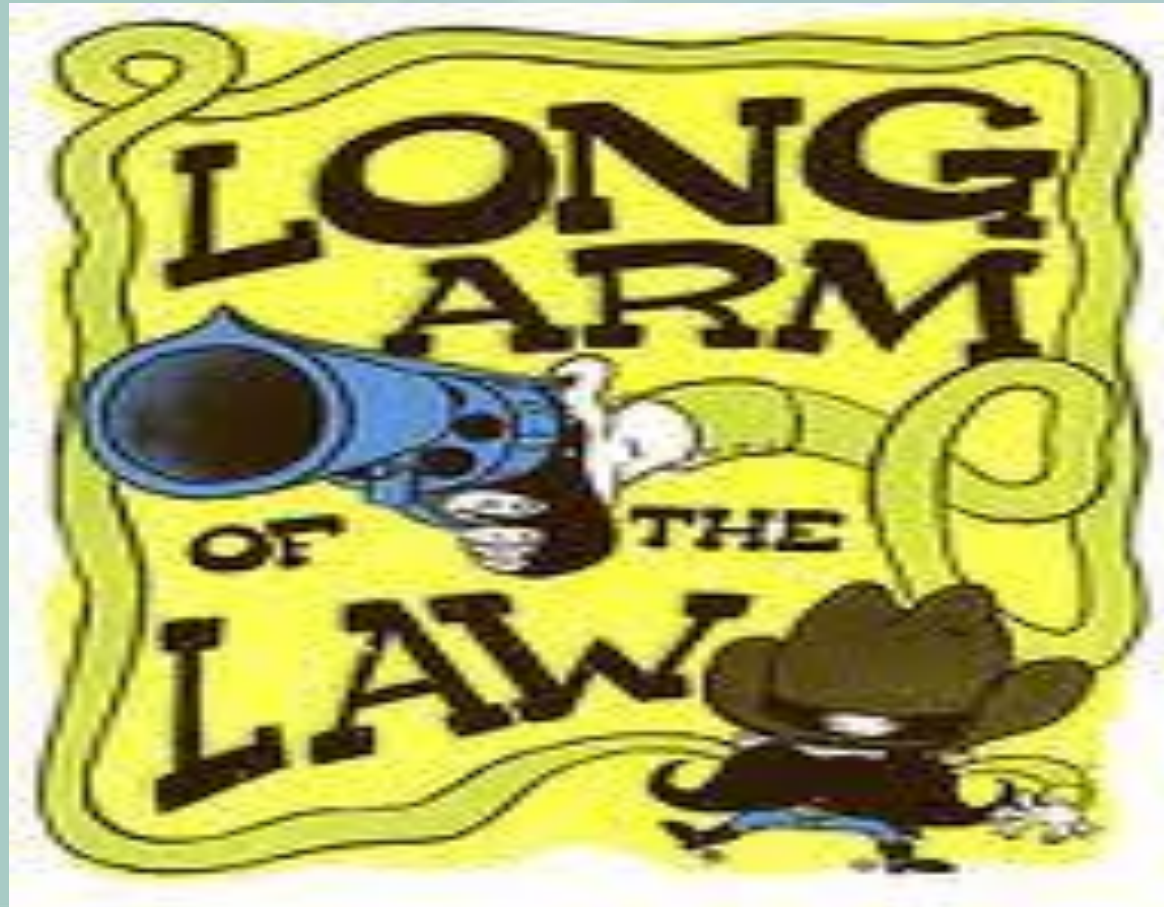
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- In Illinois, the court must order the non-custodial parent to cover the child on a health insurance plan if available through the employer
- The court has the discretion to order the non-custodial parent to contribute to other expenses such as child care, education, and extracurricular activities

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- **Personal Jurisdiction**

- In the United States, a court must have jurisdiction over a person to enter a valid, enforceable order
- Concept of personal jurisdiction dates back to English common law
 - *Coram non judice*
- Concept now embodied in the Due Process Clause of the 14th Amendment



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- **A court obtains personal jurisdiction over a defendant where:**

- 1) The defendant resides within the State,
- 2) The defendant does not reside within the State but is served there, or
- 3) The defendant does not reside and is not served the State but, nevertheless, requiring the defendant to defend the lawsuit comports with “traditional notions of fair play and substantial justice.”



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- **Personal Jurisdiction – Service**

- If the defendant is served with court summons while in the State, even if for a brief period, the court has personal jurisdiction over the defendant
- *Burnham v. Superior Ct. of Calif.*,
495 U.S. 604 (1990)



- **Personal Jurisdiction Over Non-Present Defendants**
 - If the defendant is not present in the State, the existence of personal jurisdiction depends upon:
 - 1) Reasonable notice to the defendant that an action has been brought, and
 - 2) A sufficient connection between the defendant and the forum State, along with other factors, make it fair to require the defendant to defend the action there

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- **Minimum Contacts**

- Essential criterion in all cases involving a non-resident who is not present in the State:

- Whether the “quality and nature” of the defendant’s activity is such that it is “reasonable” and “fair” to require him to defend a lawsuit in that State

- *International Shoe Co. v. Washington*, 326 U.S. 310 (1945)

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- **Minimum Contacts**

- Facts of each case weighed to determine if the “requisite affiliating circumstances” are present

- United States Supreme Court recognized:

“[T]his determination is one in which few answers will be written in ‘black and white. The greys are dominant and even among them the shades are innumerable.” Estin v. Estin, 334 U.S. 541, 545 (1948)



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- *Kulko v. Superior Ct. of California,*
436 U.S. 84 (1978)

New York

California



- If the defendant has the requisite minimum contacts to the forum State, the court considers other factors:
 - Burden on the defendant
 - Forum State's interest in adjudicating the dispute
 - Plaintiff's interest in obtaining convenient and effective relief
 - Interstate judicial system's interest in obtaining the most efficient resolution of controversies
 - Shared interest of the several States in furthering fundamental substantive social policies

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- **Long Arm Statutes were designed to codify the requirement of minimum contact with the Forum State**
 - For parentage & child support, sexual intercourse in the State during possible period of conception
 - Failure to support a child if the parent formerly resided with the child in the State
 - For divorce cases, matrimonial domicile in the State

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Illinois



Germany



- *Department of Healthcare & Family Services ex rel. Heard v. Heard*, 394 Ill. App. 3d 740 (3rd Dist. 2009)

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- **Personal Jurisdiction**



- *CIBC Mellon Trust Co. v. Mora Hotel Corp.*, 286 A.D.2d 81 (1st Dept., 2002)
- *Aranoff v. Aranoff*, 226 A.D.2d 657 (2d Dept. 1999)
- *In re Claire Lucia D. v Russell Morris D.*, 43 A.D. 3d (1st Dept. 2007)
- *Matter of Amy L.P. v. William W.D.*, 261 A.D.2d 933 (4th Dept. 1999)

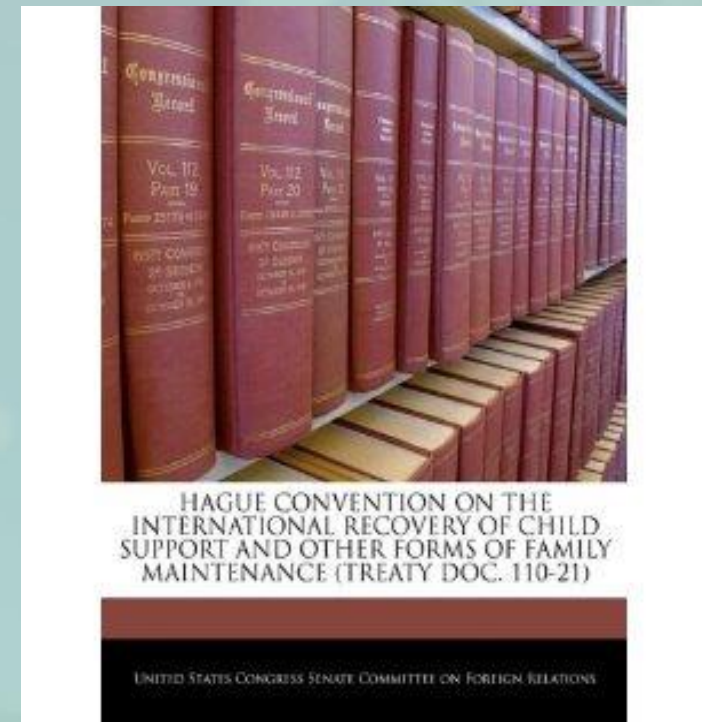
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- HAGUE CONVENTION ON THE INTERNATIONAL RECOVERY OF CHILD SUPPORT AND OTHER FORMS OF FAMILY MAINTENANCE



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- The United States signed the convention on *27 November 2007*.
- Pres. Bush submitted the treaty to the United States Senate for their advice and consent to ratification on *8 September 2008*



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- The Senate gave their advice and consent to ratification on *29 September 2010*, subject to two reservations, one understanding and three declarations.
 - 2 reservations
 - US will not recognize jurisdiction based upon habitual residence of creditor, or written agreement of parties unless child support is at issue, or nationality of parties where personal status or parental responsibility is at issue.
 - US objects to use of French in communication between the Central Authority of any Contracting State and the Central Authority of the United States

DIVERSITY IN A UNITED WORLD OF CHILD SUPPORT: COUNTRY REPORTS: THE UNITED STATES OF AMERICA

- The Senate gave their advice and consent to ratification on *29 September 2010*, subject to two reservations, one understanding and three declarations.
 - 1 Understanding
 - As the US is not a party to the Convention on the Rights of the Child, mention of that Convention in the preamble does not affect the status of the latter as a matter of US Law or international law

DIVERSITY IN A UNITED WORLD OF CHILD SUPPORT: COUNTRY REPORTS: THE UNITED STATES OF AMERICA

- The Senate gave their advice and consent to ratification on *29 September 2010*, subject to two reservations, one understanding and three declarations.
 - 3 Declarations
 - The Convention shall extend only to the 50 U.S. States, the District of Columbia, Guam, Puerto Rico and the United States Virgin Islands
 - The Executive Branch of the U.S. Government may file reservations to proposed forms without further action by the Senate
 - The Convention is not self-executing
 - The text of the Senate Resolution may be found at <http://thomas.loc.gov/cgi-bin/ntquery/z?trtys:110TD00021>:

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- As the Convention is not self-executing, the Congress must pass legislation to implement the provisions of the treaty

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- As substantive family law is governed by State law rather than Federal law, the implementing legislation will require action by the States
 - Mandate to adopt the 2008 version of the Uniform Interstate Family Support Act (UIFSA 2008)
 - Condition to continued federal funding of the State child support program
 - The state agencies will take on many of the functions of the Central Authority required under the Convention

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- **Uniform Interstate Family Support Act**
 - Under UIFSA 1996 & UIFSA 1998 a foreign jurisdiction treated as a State where:
 - Laws or procedures for issuance and enforcement of support orders which are substantially similar to UIFSA, URESA or RURESAs; or
 - Establishment of reciprocal agreement
 - Where UIFSA does not apply, a foreign jurisdiction's order may be recognized through the principal of comity

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- **Uniform Interstate Family Support Act**
 - After UIFSA 2008 is adopted:
 - A foreign country will no longer be treated as a State (UIFSA 2008 §101(5))
 - Federal declaration of a foreign reciprocating jurisdiction
 - Bi-lateral agreement with an individual US State
 - Substantially similar procedures
 - A party to the Hague Convention
 - Comity may still be used to recognize a foreign order if UIFSA recognition does not apply

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- **Uniform Interstate Family Support Act 2008**
 - Registered convention orders *must be recognized and enforced* by a US tribunal unless a challenger establishes the existence of one of the ten listed grounds for non-recognition

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- **Uniform Interstate Family Support Act 2008**
 - Ten grounds for non-recognition
 - Manifestly incompatible with public policy
 - Failure to observe minimum standards of due process
 - ***Issuing tribunal lacked personal jurisdiction consistent with Section 201***
 - Order is not enforceable in the issuing country
 - Order was obtained by fraud in connection with a matter of procedure

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- **Uniform Interstate Family Support Act 2008**
 - Ten grounds for non-recognition
 - Record transmitted lacks authenticity or integrity
 - Prior filed proceeding between the same parties for the same purpose pending in the registering tribunal
 - Order is incompatible with a more recent support order which is entitled to recognition and enforcement
 - Payment of claimed arrears in whole or part

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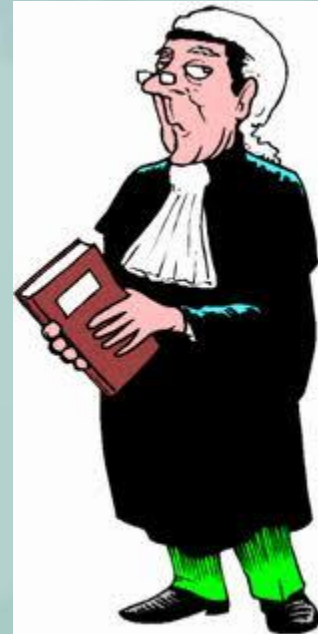
- **Uniform Interstate Family Support Act 2008**
 - Ten grounds for non-recognition
 - Where respondent neither appeared or was represented in issuing proceeding, that person did not have proper notice of the proceedings and an opportunity to be heard
 - Order for which recognition and enforcement is sought was itself an improper modification of another order.

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- **Uniform Interstate Family Support Act 2008**
 - Where the person challenging the recognition and enforcement of the Convention order on jurisdictional grounds:
 - The tribunal in which the registration is filed is bound by the ***findings of fact*** upon which the foreign tribunal based its jurisdiction
 - Where the basis for the exercise of jurisdiction is not a basis recognized under US law, the tribunal

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- **Uniform Interstate Family Support Act 2008**
 - Where the person challenging the recognition and enforcement of a Convention order:
 - Where the basis for the exercise of jurisdiction is not a basis recognized under US law, the tribunal is required to determine if the facts found by the foreign tribunal will establish a basis for jurisdiction consistent with section 201 of the Act.



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- **Uniform Interstate Family Support Act 2008**

- Bases for the exercise of jurisdiction over a non-resident

- Individual is personally served with within the state
- Individual submits to jurisdiction by consent in a record, a general appearance, or by filing a responsive document which has the effect of waiving any objection to jurisdiction



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- **Uniform Interstate Family Support Act 2008**

- Bases for the exercise of jurisdiction over a non-resident

- The individual resided in the state with the child
- The individual resided in the state and provided prenatal expenses or support for the child
- The child resides in the state as a result of the or directives of the non-resident



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- **Uniform Interstate Family Support Act 2008**
 - Bases for the exercise of jurisdiction over a non-resident
 - The individual engaged in sexual intercourse in the jurisdiction and the child may have been conceived by that act of intercourse
 - The individual asserted parentage of a child in the jurisdictions' putative father registry
 - Any other basis consistent with the constitution of the state or the United States



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- In order to ensure that your order is recognized and enforced, provide enough information within the factual findings that a US tribunal will be able to determine which UIFSA basis for jurisdiction over a non-resident would be applicable.

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Questions???



Comments???



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