

# **UIFSA**

**Uniform Interstate  
Family Support Act**

# C.R.S. § 14-10-101, et seq

- Is based on the principle of one order in effect at one time (Continuing, Exclusive Jurisdiction or CEJ).
- Allows the establishment of a new order only when no prior order has been issued or no state has CEJ over the parties.
- Allows establishment of paternity only when no other jurisdiction has determined the issue by acknowledgment or court order.

# Long Arm Jurisdiction

(201)

In an action to establish, enforce or modify a support order or to determine parentage, a tribunal may exercise personal jurisdiction over a non-resident if the individual:

- Is personally served in this state
- Consents to this state's jurisdiction
- Resided with the child in this state
- Resided in this state and paid the child's prenatal expenses or provided support

# Long-Arm Jurisdiction (Continued)

- Caused the child to be living in this state;
- Engaged in sexual intercourse in this state and the child may have been conceived by that act;
- Asserted parentage in this state on a birth certificate or putative father registry;
- Or any other constitutionally valid basis

# ***In Re Parental Responsibilities of H.Z.G., 77 P.3d 848 (Colo. Ct. App.) 2003***



- \* Dad and pregnant Mom live in Idaho.
- \* Dad assists pregnant Mom in move to CO.
- \* Dad sends Mom letter to CO promising to pay Mom \$300/month CS to her, so that she can obtain public assistance for herself and child.
- \* Is Dad subject to CS jurisdiction in CO?
- \* Yes, purposeful availment of CO jurisdiction.

# ***In Re Marriage of Haddad, 93 P.3d 617 (Colo. App. 2004)***

- \* 1996 - Mom, a resident of CT filed UIFSA action against Dad in CO.
- \* 1999 - child moves to CO with Dad.
- \* 2002 - Dad moves for a modification of current and past child support, and sought a judgment against Mom for back child support in CO.
- \* Trial court granted Dad retroactive modification of his obligation to pay, but found it had no jurisdiction over Mom to grant Dad a judgment for back child support against Mom.
- \* Court of Appeals reversed: Mom subjected herself to personal and subject matter jurisdiction in CO when she filed the UIFSA petition in 2002.

# **Full Faith and Credit for Child Support Orders Act (FFCCSOA)**

## **28 U.S.C. 1738B**

- Tracks language of UIFSA, but enacted October 20, 1994, for all states, and amended in 1996 to be consistent with UIFSA 1996.
- Requires states to give full faith and credit to support orders of other states **ONLY IF** the issuing state's initial exercise of jurisdiction was consistent with the Act.
- Prevents the issuance of a new support order by a state without CEJ.

# Continuing Exclusive Jurisdiction (CEJ)

- The state that issued the initial order (issuing state) has continuing exclusive subject matter jurisdiction over the child support so long as any party/child continues to reside there.
- Jurisdiction can change in 3 ways:
  - The parties agree;
  - The Judge decides;
  - No one lives in the issuing state anymore.



# Determining the Controlling Order

## (Section 207)

- \* Separates single order cases from multiple order cases; clarifies that solo issuing state has CEJ and its order must be recognized.
- \* Requires tribunal to issue a new order in a multiple order case where no tribunal has CEJ.
- \* Allows any party or CSE to request determination of a controlling order (DCO) in his or her home state, and requires that all parties be given notice of the request and have some minimum contacts with the jurisdiction making the DCO.

# **CEJ Order Sort (Section 207 cont.)**

- \* Allows a DCO to be requested in conjunction with registration for enforcement or modification, or as a stand alone proceeding.
- \* Requires that the requesting party give notice to all parties whose rights might be impacted by the DCO, including CSE if they have an assignment of rights.
- \* Requires the requesting party to produce certified copies of all issued or registered orders in effect, interest information AND record of payments.
- \* The tribunal determines the CEJ Order and consolidated arrears, which must be recognized.

# **CEJ Order Sort**

## **(Section 207 cont.)**

- \* Requires the tribunal to state the basis for its DCO, the amount of prospective support, if any, and the amount of consolidated arrears and interest due under the order.
- \* Requires that once the controlling order is chosen, the issuing tribunal be recognized as having CEJ.
- \* DCO requesting party must file a certified copy of the DCO and arrears determination with all issuing tribunals within 30 days of issuance of the DCO.

# Jurisdiction for Modification

- \* If anyone still lives in the state that issued the order, *only the parties* have the power to transfer or retain jurisdiction.
- \* The change of jurisdiction must be done specifically in accordance with the processes set forth in the applicable statutes, or subject matter jurisdiction will NOT lie here or in the new state.



# **Jurisdiction for Modification (section 205)**

- \* Provides for jurisdiction by consent to CEJ for modification:
  - \* If all individual parties and the child have left CO, but the parties consent to CO maintaining jurisdiction, CO may modify its order.
  - \* If CO has CEJ, but all individual parties consent in a CO record to another state modifying the order, CO may not exercise jurisdiction (one party or the child must reside in the new CEJ state).

# **Jurisdiction for Modification (Section 611, 613 and 615 cont.)**

- \* If all parties now reside in CO and the child does not live in the issuing state, the sole order can be registered and modified here.
- \* If another state/country cannot/will not modify the order, CO may do so, if it has personal jurisdiction over the parties. The new order will have CEJ.

# Questions to Ask Yourself (or the Parties):

- \* Was the jurisdictional basis for the entry of the initial order correct?
- \* Does any party to the original dispute still live in the state that issued the order?
- \* **IF THE ANSWER TO THESE TWO QUESTIONS IS “YES,” JURISDICTION CONTINUES IN THE ISSUING STATE UNLESS:**
  - \* The party still living in the issuing state agrees in writing to a transfer of jurisdiction to the state of residence of the other party or the child, and a written agreement between the parties is filed in the Court of the issuing state, **PRIOR** to filing any request for modification in the new state.

# ***Vogan v. County of San Diego,*** **193 P.3d 336 (Colo. App. 2008)**

- In 1998, SDCSE obtained a CA child support order against Mom and an income assignment. SDCSE forwarded the income assignment to Mom's CO employer under UIFSA, but did not register the order in CO.
- In 2002, Mom registered CA child support judgment in CO.
- In 2003, she filed a petition to vacate the CA judgment for lack of jurisdiction, alleging it was void because she had not been properly served.



# **Vogan v. County of San Diego (Continued)**

- \* SDCSE never responded; the district court deemed the petition confessed, and granted it.
- \* In 2005, Mom filed an action against SDCSS, alleging they ignored the Colorado court's order and wrongfully refused to terminate the income assignment. Mom claimed UIFSA and long-arm "transacting business" jurisdiction over SDCSE.
- \* The trial court granted SDCSE's motion to dismiss.

# Vogan v. County of San Diego (Continued)

- The Court of Appeals agreed with Mom, holding that CRS § 14-5-607(b) establishes jurisdiction over defendants with respect to plaintiff's claims for injunctive relief and restitution of funds allegedly improperly collected by them.
- Regarding Mom's civil theft claim (SDCSE took her tax refund), Colorado's long-arm statute, CRS § 13-1-124(1)(a) and (b) covers SDCSE's tortious conduct.

# Registering a Foreign Support Order

## (section 605)

- \* Must mail Notice to the non-registering party and inform them:
  - \* Order is enforceable from the date of the registration
  - \* They have 20 days to contest the registration of the order
  - \* If not contested timely, order will be confirmed and enforced in CO
  - \* Amount of the arrears balance

# Contesting the registration of an order (section 607)

- \* The only defenses are:
  - \* Issuing tribunal lacked personal jurisdiction to issue the order
  - \* The order was obtained by fraud
  - \* The order has been vacated, modified or suspended by a later order
  - \* The order has been stayed by the issuing tribunal pending an appeal

# Contesting the registration cont. (section 607)

- \* There is a defense under CO law to the remedy sought
- \* Full or partial payment has been made
- \* The statute of limitations of the issuing tribunal precludes enforcement of some or all of the arrears
- \* The alleged order is not the controlling order
- \* If the party contesting registration does not successfully allege one or more of these defenses, the registering tribunal shall confirm the order

# Evidentiary Issues

(section 316)

- \* Allows documents into evidence that may not otherwise be admissible without a foundation (medical bills, payment records, some affidavits).
- \* Precludes the CO Court from requiring that the non-resident party physically appear at the hearing, and requires that they be allowed to appear by telephone or other electronic means.

# NDI

(section 312)

- \* Creates a presumption of non-disclosure of location information to protect the requesting party upon the filing of an affidavit or verified pleading alleging possible harm.
- \* Requires that the Court hold a hearing prior to ruling that the suppressed information be disclosed or if someone files an objection.

# Choice of Law

## (section 604)

- \* The issuing state's law governs:
  - \* Emancipation age
  - \* Computation and payment of arrears
  - \* Interest rate
  - \* Statue of limitations on the arrears
- \* The enforcing state's law governs the enforcement tools which may be utilized.



**QUESTIONS?**