Hague Convention Treaty on Recovery of International Child Support and H.R. 1896

(name redacted)
Specialist in Social Policy

(name redacted)
Legislative Attorney

July 15, 2013

Congressional Research Service
7-....
www.crs.gov
R43109

Summary

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. The United States has not ratified a multilateral child support enforcement treaty dealing with this issue. P.L. 104-193 (enacted in 1996) established procedures for international enforcement of child support. Currently, the federal Office of Child Support Enforcement (OCSE, within the Department of Health and Human Services (HHS)) has reciprocal agreements regarding child support enforcement with 15 countries, including Australia, Canada (separate agreements with 9 of the 10 Canadian provinces and with all 3 Canadian territories), 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.

The Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (referred to hereinafter as the Convention or Treaty) 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. 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. The United States was the first country to sign the Convention. The other signatories are Albania, Bosnia and Herzegovina, the European Union, Norway, and Ukraine. However, the United States has not yet ratified the treaty.

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. According to OCSE, the following additional steps must occur before the Convention can enter into force for the United States:

- Congress must adopt, and there must be enacted, implementing legislation for the Convention.
- Pursuant to the implementing legislation, all states must enact the 2008 version of the Uniform Interstate Family Support Act (UIFSA) 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.
- The President must sign the instrument of ratification for the Convention.
- 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 Convention.

Once the Treaty is in force, it would apply to cases being worked between countries that are party to the Treaty.

H.R. 1896 (the International Child Support Recovery Improvement Act of 2013) was passed by the House on June 18, 2013, by a vote of 394-27. It would implement the Convention. H.R. 1896 would require the Secretary of HHS to use federal and, if necessary, state CSE methods to ensure

compliance with any U.S. treaty obligations associated with any multilateral child support convention to which the United States is a party. H.R. 1896 would amend 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. It would require states to adopt the 2008 amendments to the Uniform Interstate Family Support Act (UIFSA) verbatim to ensure uniformity of procedures, requirements, and reporting forms. In addition, H.R. 1896 would provide for the development of a standard format for data exchange of CSE data. It would also allow certain researchers to use the National Directory of New Hires database with personal identifiers for the purposes of the Temporary Assistance for Needy Families (TANF) or CSE programs or of evaluating whether federal reemployment programs are working as intended.

Contents

Contacts

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 very time consuming for CSE workers because there are no agreed upon standards of proof, uniform procedures or methods of communication.[1] The United States has not ratified a multilateral child support enforcement treaty dealing with this issue.

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 and contains current status information on the Convention/Treaty.[2] It also provides a section-by-section summary of H.R. 1896, a bill in the 113th Congress that includes provisions to implement the Hague Convention on International Recovery of Child Support and several other unrelated child support provisions. H.R. 1896 was introduced by Representative David Reichert and nine co-sponsors on May 8, 2012. Nearly identical legislation (H.R. 4282) passed the House by voice vote in the 112th Congress on June 5, 2012.

Proponents 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 that, in addition, 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 negate his or her children from receiving the child support to which they are entitled.

Overview of the Current Child Support Enforcement (CSE) Program[3]

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 families remain self-sufficient and off public assistance.[4] 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

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

[2] This report uses the terms Convention and Treaty interchangeably.

[3] For additional information, refer to CRS Report RS22380, *Child Support Enforcement: Program Basics*, by (name r edacted).

[4] 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.

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.[5] All 50 states, the District of Columbia, and three U.S. territories (Guam, Puerto Rico, and the U.S. Virgin Islands) operate CSE programs[6] 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 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.[7] 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/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, security bonds, 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 support proceedings.[8] In addition, the 1996 law authorized the Secretary of State to deny, revoke, or restrict passports of debtor parents.[9]

Many CSE administrators contend that the most difficult child support orders to enforce are interstate[10] cases. Family law traditionally has been under the jurisdiction of state and local

[5] For information on medical child support, see CRS Report R43020, *Medical Child Support: Background and Current Policy*, by (name redacted).

[6] 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. More than 50 Indian tribes or tribal organizations operate tribal CSE programs. For additional information, see CRS Report R41204, *Child Support Enforcement: Tribal Programs*, by (name redacted).

[7] 42 U.S.C. §654.

[8] 42 U.S.C. §654 and 42 U.S.C. §666.

[9] 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 from $5,000 to $2,500.

[10] The word "interstate" is used here to mean that one or both parents have left the state in which they were married or (continued...)

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).[11] UIFSA was drafted by the National Conference of Commissioners on Uniform State Laws (NCCUSL) and approved by the Commissioners in August 1992.[12] The NCCUSL revised the act in 1996, 2001, and again in 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,[13] because its jurisdiction is undisputed.

UIFSA provides procedural and jurisdictional rules for three types of interstate child support proceedings to (1) establish a child support order; (2) enforce a child support order; and (3) modify 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 all other states to recognize the order and to refrain from modifying it unless the first state has lost jurisdiction.

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 (almost 12 years later), only 21

(...continued)

maintained a relationship.

[11] 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.

[12] 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.

[13] 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.

states and the District of Columbia have adopted the 2001 amendments to UIFSA.[14] 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. Similarly, there is no federal mandate for states to enact UIFSA 2008. To date, 11 states have adopted the 2008 amendments to UIFSA.[15] States that have adopted UIFSA 2008 now stand ready to immediately implement the Convention if it is ratified.

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.[16]

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

> 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.[17] Currently, the CSE program has reciprocal agreements regarding child support enforcement with 15 countries, including Australia, Canada (12 provinces/territories),[18] Czech Republic, El Salvador, Finland, Hungary, Ireland,

[14] 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.

[15] The 11 states are Florida, Georgia, Maine, Missouri, Nevada, New Mexico, North Dakota, Rhode Island, Tennessee, Utah, and Wisconsin. See the following website: http://www.uniformlaws.org/LegislativeFactSheet.aspx?title=Interstate Family Support Act Amendments (2008).

[16] 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, and Individual U.S. State Child Support Arrangements, at http://travel.state.gov/family/services/support/support_2600.html#.

[17] 42 U.S.C. §659A.

[18] 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 (continued...)

Israel, Netherlands, Norway, Poland, Portugal, Slovak Republic, Switzerland, and the United Kingdom of Great Britain and Northern Ireland.[19] According to the U.S. State Department, the United States has held discussions with over 30 countries since 1997, and negotiations are continuing with many of those countries at this time.[20]

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),[21] 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.[22]

Based on information from the federal Office of Child Support Enforcement and the Census Bureau, about 1%-3% of CSE cases are international cases in that a noncustodial parent lives outside of the United States.[23]

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

The United States has not ratified any of the long-standing multinational treaties or conventions related to the recognition and enforcement of child support obligations, such as the Hague conventions on maintenance obligations.[24] According to some commentators, the United States has 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, in the United States although the child support order is established in the home state of the custodial parent, child support

(...continued)

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.

[19] See federal Child Support Enforcement webpage—http://www.acf.hhs.gov/programs/cse/international/.

[20] See U.S. Federal International Child Support Agreements, at http://travel.state.gov/family/services/support/support_2599.html.

[21] 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.

[22] 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).

[23] See Tables 56, 57, 64, and 65 in *Child Support Enforcement Annual Report to Congress FY2010* (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/chldsu09.pdf.

[24] 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).

enforcement relies on the ability of the court to obtain personal jurisdiction over the noncustodial parent.[25]

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.[26]

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.[27] Many provisions of the Convention were drawn from the U.S. experience with UIFSA.[28] 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.[29] Below are some of the main provisions of the Convention.

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.[30]

[25] 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).

[26] 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.

[27] 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.

[28] 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.

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

[30] 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.

Settlement of Jurisdiction Issue

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.[31] 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 sought to be enforced.[32]

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.[33]

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 as compared to current practice where custodial parents must often retain local private counsel in order to establish or enforce a child support order.[34]

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

[31] 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).

[32] 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.

[33] Ibid.

[34] Ibid.

responsible for carrying out, under its supervision, many of its central authority functions, such as transmitting and receiving applications for services, and initiating and facilitating proceedings.[35]

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 signatories are Albania, Bosnia and Herzegovina, the European Union, Norway, and Ukraine.[36]

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.[37] On September 29, 2010, the U.S. 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,[38] the following additional steps must occur before the Convention/Treaty can enter into force for the United States.

> (1) Congress must adopt, and there must be enacted, implementing legislation for the Treaty.
>
> (2) Pursuant to the implementing legislation, all states must 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.
>
> (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.
>
> (5) If at least one other country has deposited its instrument of ratification, acceptance or approval, 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. If the United States is the first country to deposit its instrument, the Treaty will enter into force on the first day of

[35] Ibid.

[36] See the following webpage: http://www.hcch.net/index_en.php?act=conventions.statusprint&cid=131.

[37] The U.S. House of Representatives does not vote, i.e., give its consent, on treaties.

[38] 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).

> the first month that is not less than three months after a second country deposits its instrument.

Once the Treaty is in force, it will apply to cases being worked between countries that are party to the Treaty.[39]

In the 112th Congress, H.R. 4282 was introduced in the House on March 28, 2012. H.R. 4282 contained implementing language for the Convention.[40] The House passed H.R. 4282, by voice vote, on June 5, 2012, but the Senate took no action on the bill. In the 113th Congress, H.R. 1896, almost identical to H.R. 4282, was introduced in the House on May 8, 2013. H.R. 1896 contains implementing language for the Convention.

H.R. 1896, the International Child Support Recovery Improvement Act of 2013

H.R. 1896 was introduced in the House on May 8, 2013, by Representative Dave Reichert and nine co-sponsors. H.R. 1896 was passed by the House on June 18, 2013, by a vote of 394-27. Although H.R. 1896 includes provisions that would implement the Convention, it includes many other provisions as well. Section 1 of the bill provides a title (name) for the bill; Section 2 provides the amendments needed for the Convention/Treaty; Section 3 provides for the development of a standard format for exchange of CSE data; Section 4 allows certain researchers under certain circumstances to use the National Directory of New Hires Database with personal identifiers; and Section 5 provides information related to the budgetary effects of the bill.

The stated purpose of the bill is to ensure that the United States has the legal authority to comply fully with the obligations of the Convention, and for other purposes.

Section 1. Short Title; References

H.R. 1896 is called the International Child Support Recovery Improvement Act of 2013. The references in H.R. 1896 generally refer to amendments made to the Social Security Act, or to a section or provision in the Social Security Act.

[39] The Treaty has been ratified and is in force in Albania, Bosnia and Herzegovina, and Norway.

[40] Another bill that included provisions to implement the Hague Convention/Treaty was S. 3848 (the Strengthen and Vitalize Enforcement of Child Support (SAVE Child Support) Act which was introduced in the 111th Congress. It was not enacted. It was re-introduced as S. 1383 in the 112th Congress but was not enacted.

Section 2. Amendments to Ensure Access to Child Support Services For International Child Support Cases

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

H.R. 1896 would require the Secretary of HHS to use federal and, if necessary, state child support enforcement methods to ensure compliance with any United States treaty obligations associated with any multilateral child support convention to which the United States is a party.

The Treaty 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

H.R. 1896 would expand 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.

Under current federal law, the Federal Parent Locator Service (FPLS) is only allowed to transmit information in its databases to "authorized persons," which include (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.[41]

The FPLS is an assembly of systems operated by the Office of Child Support Enforcement (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 the enforcement and modification of orders for child support, custody, and visitation. The FPLS assists federal and state agencies to identify 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 the 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.[42]

[41] 42 U.S.C. §653(c).

[42] 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.

- 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 passports 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), National Security Agency (NSA), and the Federal Bureau of Investigation (FBI).[43]

The expansion of access to and use of personal information contained in the FPLS, especially in the National Directory of New Hires, could potentially lead to privacy and confidentiality breaches, financial fraud, identity theft, or other crimes. There is also concern that a broader array of legitimate users of the NDNH may conceal the unauthorized use of the personal and financial data in the NDNH. Moreover, concerns about data security and the privacy rights of employees have been a point of contention in many of the debates regarding expanded access to the NDNH.

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

H.R. 1896 would give 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.

H.R. 1896 would amend 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 would also amend 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.

[43] 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.

(d) Amendments to International Support Enforcement Provisions

H.R. 1896 would establish a definition for three terms: (1) "foreign reciprocating country," (2) "foreign treaty country," and (3) "2007 Family Maintenance Convention."

The bill would define a "foreign reciprocating country" as a foreign country (or political subdivision thereof) with respect to which 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 at low cost.

The bill would define a "foreign treaty country" as a foreign country for which the 2007 Family Maintenance Convention is in force.

The bill would define the term "2007 Family Maintenance Convention" to mean the Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance.

The bill would amend 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." H.R. 1896 would amend Section 459A(c)(2) of the Social Security Act to include "foreign treaty countries" as entities which can receive notification as to the state of residence of the person being sought for child support enforcement purposes. H.R. 1896 would also amend Section 459A(d) of the Social Security Act 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

H.R. 1896 would amend 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 Federal Income Tax Refund Offset program 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 the federal Office of Child Support Enforcement (OCSE), the Internal Revenue Service (IRS), and state CSE agencies. Under the Federal Income Tax Refund Offset 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.[44] The money is then sent to the state CSE agency for distribution.

[44] 42 U.S.C. §664.

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

H.R. 1896 would amend Section 466(f) of the Social Security Act 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."

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.[45] States would be required to adopt the 2008 amendments verbatim to ensure uniformity of procedures, requirements, and reporting forms.

In the past, collecting child support across state lines was difficult. Laws varied from state to state, often causing complications that delayed the establishment and/or enforcement of child support orders. The U.S. Congress recognized this problem and mandated (pursuant to PRWORA) that all states adopt UIFSA to facilitate collecting child support across state lines.

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.

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. One could contend or assert that the CSE program would be more effective if all states were required to adopt the most current version of UIFSA. Such a policy would increase 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

H.R. 1896 would clarify current law 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 contestants consent in a record or in open court that the court may continue

[45] 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.

to exercise jurisdiction to modify its order. The bill would also clarify that a state no longer has continuing, exclusive jurisdiction of a child support order if the state is not the residence of the child or an individual contestant, and the contestants 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.

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.[46] 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 United States 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 the need to determine, in cases with more than one child support order issued for the same obligor and child, 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 child and the custodial parent have moved to the state where the modification is sought or have agreed to the modification. The 1996 welfare reform law (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. The bill would provide further clarification (as noted above) of under what conditions a state could modify a child support order.

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

As mentioned earlier, H.R. 1896 would stipulate that each state's UIFSA must include any amendments officially adopted as of September 30, 2008, by the NCCUSL. Given that this provision must be approved by state legislatures, the bill contains a grace period tied to the meeting schedule of state legislatures. In any given state/jurisdiction, the bill would become effective no later than the effective date of laws enacted by state legislatures implementing the UIFSA amendments, but in no event 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. In the case of a state that has a two-year legislative session, each year of such session shall be deemed to be a separate regular session of the state legislature.

Section 3. Data Exchange Standardization for Improved Interoperability

(a) In General

H.R. 1896 would require the Secretary of HHS to issue a rule designating standard data exchange elements for any category of information required to be reported under the CSE program. The

[46] 28 U.S.C. §1738C.

rule would be developed by HHS in consultation with an interagency workgroup established by the Office of Management and Budget (OMB) and with consideration of state and tribal perspectives. To the extent practicable, the standard data exchange elements required by the rule would be non-proprietary, permit data to be exchanged, and incorporate the interoperable standards developed and maintained by recognized international bodies, intergovernmental partnerships, and federal entities with authority over contracting and financial assistance. To the extent practicable, the data reporting standards required by the rule would incorporate a widely accepted, non-proprietary, searchable, computer-readable format; be consistent with and implement applicable accounting principles; be capable of being continually upgraded as necessary; and, to the extent practicable, incorporate existing nonproprietary standards, such as the "eXtensible Business Reporting Language."[47]

According to testimony related to data standards and electronic information exchange in the CSE program:

> Sound standards establish a technological vocabulary that allows parties with various perspectives to speak the same language when discussing electronic information and data exchanges. Further, the existence of quality standards provides a level playing field for the vendors that provide software and services to the governmental entities using them.... As the quantity and complexity of the systems we operate increases, standards can help to insure that a common vocabulary exists for all of us to use in facilitating good and efficient government.[48]

Because CSE data and information are often stored in disconnected systems across a multitude of data centers and because data elements are defined differently by various organizations and entities, it is often hard to exchange data and correctly understand its meaning. The purpose of this provision is to develop a standard format so as to improve the ability of two or more systems or entities to exchange information and to correctly use the information that has been exchanged. According to the Commissioner of the Office of Child Support Enforcement (OCSE), data exchange standardization requirements "will eventually establish a common set of data elements and definitions in a format easily exchanged between different human services systems, and in fact with any system."[49] The Commissioner further states: "With interoperable systems, we may do a better job of serving the whole person and the whole family; we may more effectively share services, streamline information and business systems, and minimize duplicative costs to build, maintain and update redundant computer systems."[50]

[47] XBRL (eXtensible Business Reporting Language) is an XML-based computer language for the electronic transmission of business and financial data. It is a freely available and global standard for exchanging business information. Since 2011, the United States Securities and Exchange Commission (SEC) has mandated that all public companies must report their earnings using XBRL.

[48] Massachusetts Administrative Office of the Trial Court, Trial Court Information Services, Testimony of Craig D. Burlingame (Chief Information Officer) before the House Ways and Means Subcommittee on Human Resources at hearing on No-Cost Improvements to Child Support Enforcement, March 20, 2012.

[49] Office of Child Support Enforcement, *Child Support Report, April 2012*, "Commissioner's Voice—Interoperable computer systems will mean better customer service," by Vicki Turetsky.

[50] Ibid.

(b) Effective Dates

H.R. 1896 would require the HHS Secretary to issue a proposed rule on the data exchange elements within 24 months after enactment. The rule would be required to identify federally required data exchanges, include specification and timing of exchanges to be standardized, and address the factors used in determining whether and when to standardize data exchanges. In addition, the rule would be expected to include state implementation options and likely future milestones.

Section 4. Efficient Use of the National Directory of New Hires Database for Federally Sponsored Research Assessing the Effectiveness of Federal Programs in Achieving Positive Labor Market Outcomes

H.R. 1896 would allow the HHS Secretary to provide access to data in each component of the Federal Parent Locator Service (FPLS) as well as information reported by employers via the National Directory of New Hires for (1) research undertaken by a state or federal agency (including through grant or contract) for purposes found by the Secretary to be likely to contribute to achieving the goals of Title IV-A of the Social Security Act (which includes the TANF block grant program and the Healthy Marriage and Responsible Fatherhood programs) or the CSE program (Title IV-D of the Social Security Act) and (2) an evaluation or statistical analysis undertaken to assess the effectiveness of a federal program in achieving positive labor market outcomes (including through grant or contract), by a specified federal department or agency.

H.R. 1896 would stipulate that applicable data or information may include a personal identifier only if the state and federal agency conducting the relevant research or the federal department or agency undertaking the evaluation or statistical analysis enters into an agreement with the HHS Secretary regarding the security and use of the data or information. H.R. 1896 would require the agreement to include such restrictions or conditions with respect to the use, safeguarding, disclosure, or re-disclosure of the data or information (including by contractors or grantees) as the Secretary deems appropriate. H.R. 1896 would also require that the data or information be used exclusively for the purposes described in the agreement. In addition, H.R. 1896 would require the Secretary to determine that the provision of data or information is the minimum amount needed to conduct the research, evaluation, or statistical analysis and that it will not interfere with the effective operation of the CSE program. (Note that these provisions are in addition to the current law provisions concerning disclosure and use of research information as well as information integrity and security.)

According to testimony on behalf of MDRC:[51]

> Research firms that are funded by federal agencies to evaluate programs often rely on data collected by states from employers on employment and earnings, data that the states already report to the federal government for certain child support enforcement and other purposes. These data are housed in accessible form at the federal level within the National Directory of New Hires (NDNH) database. However, research contractors are generally unable to access this essential database for assessing whether federally supported programs actually work. Instead, they are forced to get the very same data directly from the states, at great cost to the federal government and at considerable burden in duplicative reporting for the states. If the NDNH database were made available to evaluators (with appropriate privacy safeguards), it would enable Congress and the federal agencies to assess the impact that social programs have on jobs and earnings at much less cost and burden to the federal government and the states.[52]

H.R. 1896 would also stipulate that any individual who willfully discloses a personal identifier (such as a name or social security number) in any manner to an entity not entitled to receive the data or information, shall be *fined* under title 18, United States Code, imprisoned not more than five years, or both.[53]

In addition, H.R. 1896 would require that new hire reports be deleted from the National Directory of New Hires 48 months after the date of entry. Under current law new hire reports must be deleted from the National Directory of New Hires 24 months after the date of entry.[54] The reporting and deletion requirements result in a constant cycling of wage and employment data into and out of the National Directory of New Hires. H.R. 1896 would not change the existing provision of federal law that allows the HHS Secretary to keep samples of data entered into the National Directory of New Hires for research purposes.[55]

Section 5. Budgetary Effects

The final section of H.R. 1896 includes instructions related to the budgetary effects of the bill.

[51] According to its webpage, MDRC was created in 1974 by the Ford Foundation and a group of federal agencies. MDRC is a nonprofit, nonpartisan education and social policy research organization dedicated to learning what works to improve programs and policies that affect the poor (http://www.mdrc.org/about/about-mdrc-overview-0).

[52] MDRC, Testimony of Gordon L. Berlin (President of MDRC) before the House Ways and Means Subcommittee on Human Resources at hearing on No-Cost Improvements to Child Support Enforcement, March 20, 2012.

[53] Pursuant to Section 453(l)(2) of the Social Security Act, the HHS Secretary shall require the imposition of an administrative penalty (up to and including dismissal from employment), and a fine of $1,000, for each act of unauthorized access to, disclosure of, or use of, information in the National Directory of New Hires by any officer or employee of the United States who knowingly and willfully violates the provision related to the unlawful use and disclosure of research data or information. Moreover, pursuant to Section 453(m) of the Social Security Act, the HHS Secretary shall establish and implement safeguards with respect to the entities established under this section designed to (1) ensure the accuracy and completeness of information in the FPLS; and (2) restrict access to confidential information in the FPLS to authorized persons, and restrict use of such information to authorized purposes.

[54] 42 U.S.C. §653(i)(2)(A).

[55] 42 U.S.C. §653(i)(2)(C).

Author Contact Information

(name redacted)
Specialist in Social Policy
#redacted#@crs.loc.gov, 7-....

(name redacted)
Legislative Attorney
#redacted#@crs.loc.gov, 7-....