

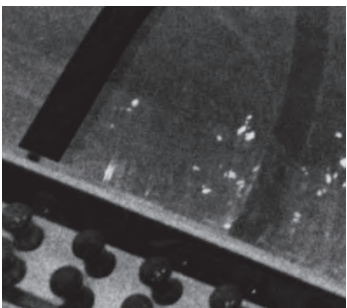
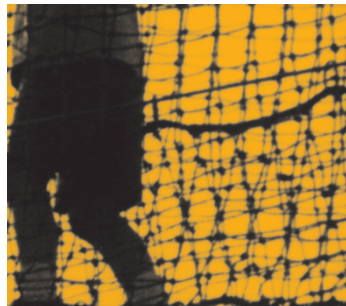


JUDICIAL COUNCIL
OF CALIFORNIA

OPERATIONS AND PROGRAMS DIVISION

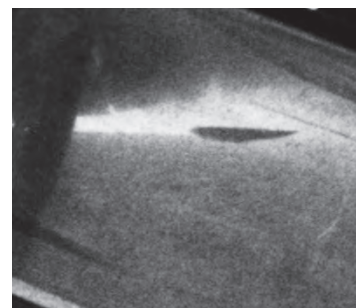
CENTER FOR FAMILIES, CHILDREN & THE COURTS

18th Annual AB 1058 Child Support Training Conference



September 30–
October 3, 2014
Los Angeles Airport Marriott Hotel

Child Support Commissioners,
Family Law Facilitators,
Title IV-D Administrative
and Accounting Staff,
Paralegals, and Court Clerks



Conference CD Usage Instructions

For Attendees of the 18th Annual AB 1058 Child Support Training Conference

The Center for Families, Children & the Courts (CFCC) is pleased to release this conference CD, which serves as an electronic binder of handout materials from the 18th Annual AB 1058 Child Support Training Conference.

To navigate through this CD, please click through the outline of bookmarks that appears to the left of this document. The bookmarks are linked to corresponding pages.

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The points of view expressed at the conference and in the conference materials are those of the author(s) and presenter(s) and do not necessarily represent the official positions or policies of the Judicial Council of California.

We appreciate your attendance at the 18th Annual AB 1058 Child Support Training Conference. If you have any questions or comments, please contact the editors:

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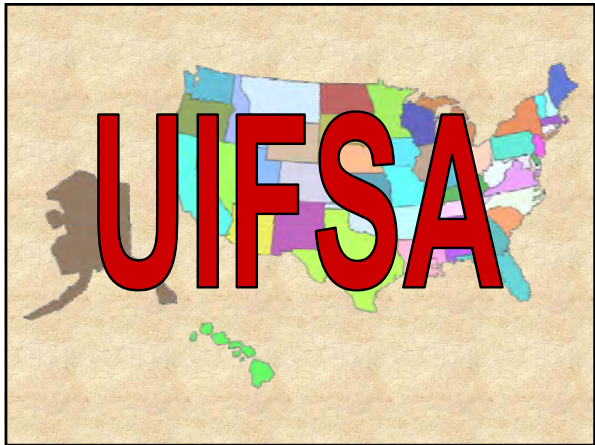
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TAB 23

UIFSA Refresher

Mr. Barry J. Brooks & Ms. Mary Dahlberg







UIFSA

- Applies to all cases where one party resides outside California or where the order was issued outside California

–Note: UIFSA is in addition to other laws and mostly procedural.

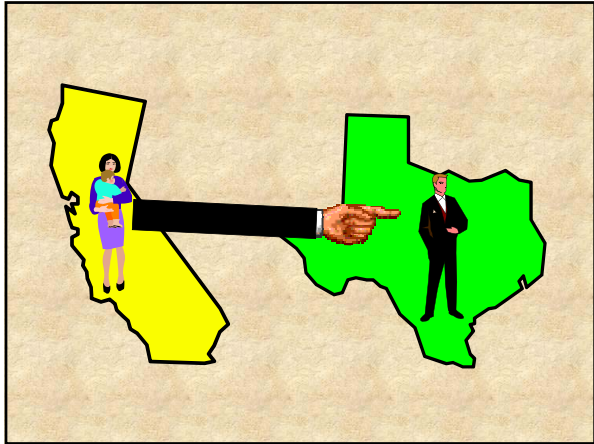
ONE ORDER

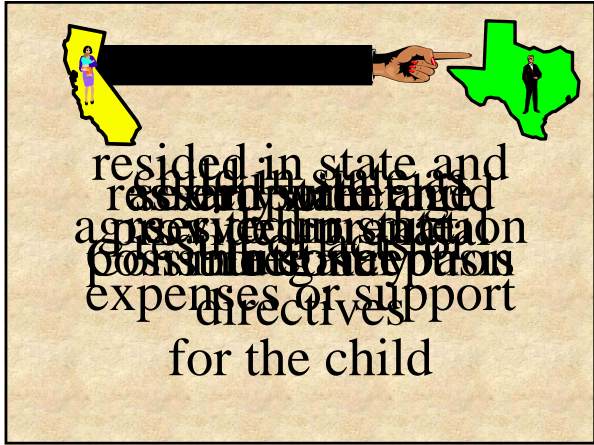


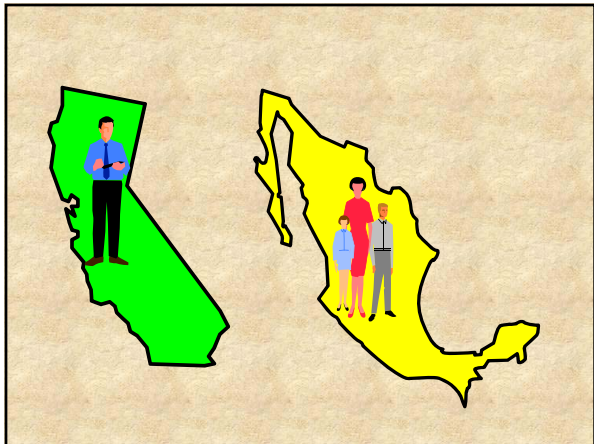
CEJ Jurisdiction

✚ Subject Matter

✚ Personal







Personal Jurisdiction

- One party resides in California.
- The other party submitted to the jurisdiction of California by applying through the IV-D agency for affirmative relief in our courts.

Physical Presence

The physical presence of the petitioner is not required for the establishment, enforcement, or modification of a support order or entry of judgment of paternity

Family Code 4930, subd. (a)

Reciprocity is not required

- Court of general jurisdiction, including child support
 - Personal jurisdiction over the parties
- = jurisdiction to hear the case unless precluded by specific law (i.e., modification)

CEJ
Continuing
Until “lost”

CEJ
Exclusive
To
Modify

Enforcement

- ☺ Against the PERSON
- ☺ Against an ASSET
- ☺ Simultaneously in multiple States
- ☹ Interstate Income Withholding



Registration

- Notice
- No Contest - Confirmation
- Contest - Limited Defenses

**Registration of an International Order:
Most Common Defense**

Issuing foreign court had no personal jurisdiction

- Look to facts of the case, regardless of law in issuing country
- Obligor may choose to submit

Enforcement

UIFSA

- Issuing State Law
 - Nature, Extent, Amount
 - Computation of Arrears
 - Interest Rate and Method
 - Defenses to Judgment

Enforcement

UIFSA

- Enforcing State Law
 - Defenses to Remedy
- Statute of Limitation
 - Longer of Issuing or Enforcing

Enforcement

Federal Reciprocating

State Reciprocating

Similar to UIFSA

Comity

'Comity,' in the legal sense, is neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, upon the other.

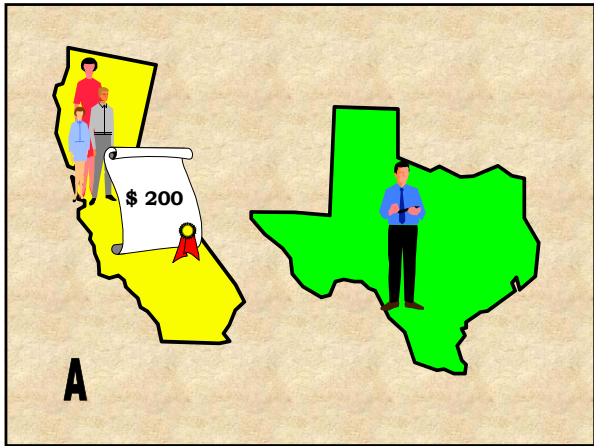
But it is the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens, or of other persons who are under the protection of its laws.

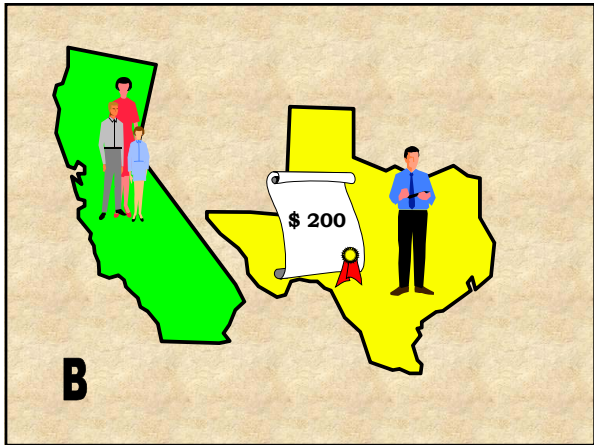
Hilton v. Guyot, 159 U.S. 113, 16 S.Ct. 139 (1895)

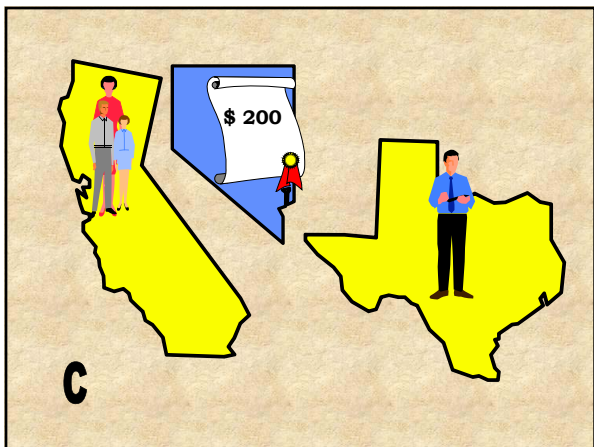
Miscellaneous Issues

- Health care costs
- Translation
- Telephonic appearances
- Currency Conversion

CEJ
Exclusive
To
Modify







Modification

- Assumption Upon Showing
 - All Parties Left Issuing State
 - Petitioner is Nonresident
 - Jurisdiction over Respondent
- Agreement

Modification

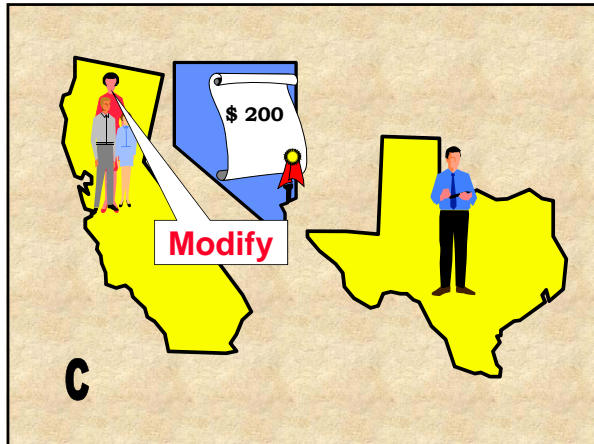


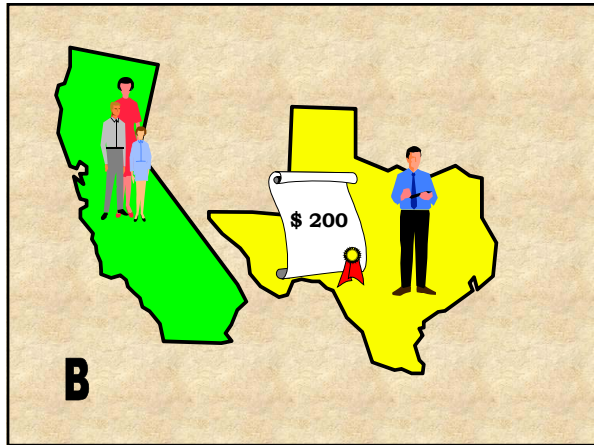
Registration

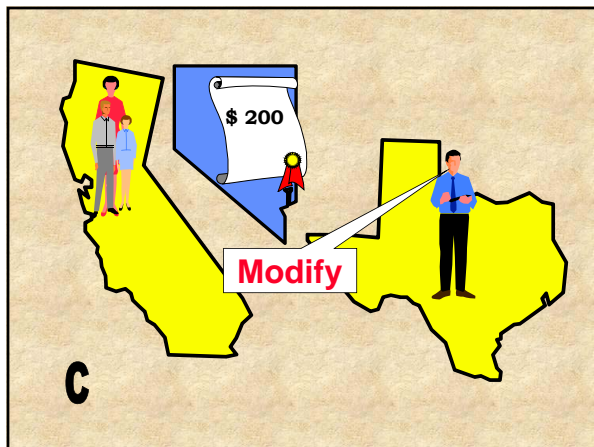
Modification

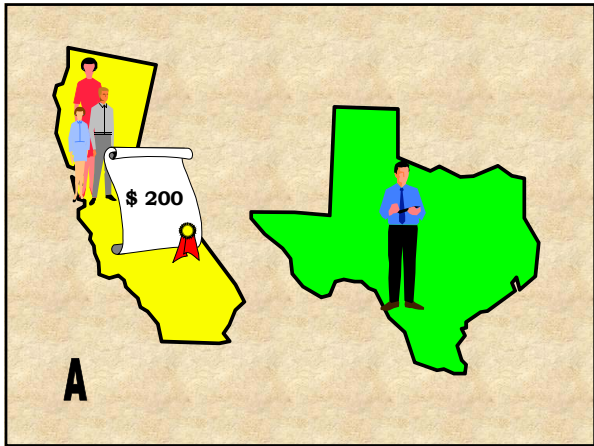
UIFSA

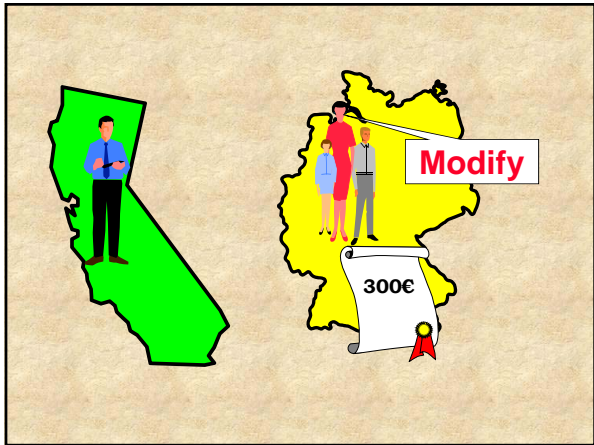
- Upon Assuming
 - Modify CHILD Support
 - NOT Spousal Support
 - Assuming State's Guidelines
- Can NOT Modify Duration











CEJ

Modification of an order issued in foreign jurisdiction with CEJ

- No consent from resident of CA necessary

Family Code, § 4960, subd. (a)(2)

UIFSA 2001:

If a foreign country or political subdivision will not or may not modify its order pursuant to its laws.

Family Code, § 4964 (not enacted)

October

20

1994

Reconciliation of Arrears

- * URESA, RURESAs, and UIFSA provide for simultaneous accrual and simultaneous credit under multiple orders
- * Computation based upon the highest order in existence at the time

Reconciliation of Arrears

Provides an accounting for ALL arrears owed under ALL known orders up until the date of the determination of which order will control the prospective child support obligation

Interest on Arrears

- UIFSA 96 – the law of the state that contributed the arrears
- UIFSA 2001 & 2008 – the law of the state that contributed the arrears unless another state modifies ongoing support; then, the law of the new CEJ state applies to arrears and prospectively missed payments.



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ADMINISTRATIVE OFFICE
OF THE COURTS

UIFSA Modification Scenarios



One Order = CEJ state = controlling order

Obligee/ "home" state

Enforcement - anywhere with jurisdiction over obligor's person or property; can have simultaneous enforcement in multiple states

Modification - CEJ state, unless all parties agree in writing for another state (obligor) to assume CEJ

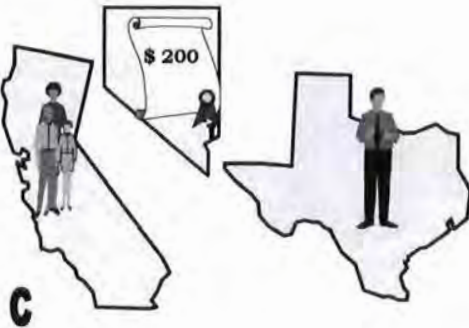


One Order = CEJ state = controlling order

Obligor state

Enforcement - anywhere with jurisdiction over obligor's person or property; can have simultaneous enforcement in multiple states

Modification - CEJ state, unless all parties agree in writing for another state (obligee) to assume CEJ



One Order = CEJ state = controlling order

Enforcement - anywhere with jurisdiction over obligor's person or property; can have simultaneous enforcement in multiple states

Modification - Petitioner must "play away" and have respondent state assume CEJ, unless all parties agree in writing for CEJ to go to petitioner's state or (2001) remain in issuing state.

UIFSA - the Basics

I. Uniform

- A. Pursuant to **PRWORA** (Personal Responsibility Work Opportunity Recognition Act), all states were required to adopt UIFSA 96 by January 1, 1998 .
- B. It is the only **NCCUSL** (National Conference of Commissioners on Uniform State Laws) Act to be federally mandated for adoption.
- C. During the time states were adopting UIFSA, **FFCCSOA** (Full Faith and Credit for Child Support Orders Act, 28 U.S.C. 1738b) was enacted October 20, 1994, and contains similar provisions to UIFSA.
- D. UIFSA was revised in 2001 and states can adopt UIFSA 2001 by obtaining a waiver from **OCSE** (Office of Child Support Enforcement) while awaiting federal legislation mandating its adoption.
- E. UIFSA was revised again in 2008 to have it comport with the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance which the US Senate has approved. Implementation requires the enactment of **UIFSA 2008** by all states. Federal legislation to mandate adoption of UIFSA 2008 has not been introduced.

II. Interstate

- A. Applies any time not all parties are residing in the same state. EX: parties both in State O at the time of the divorce; one party now in another state and either party wants a modification.
- B. Applies when a state is exercising long-arm jurisdiction.
- C. UIFSA has always had the ability to apply to cases involving international residents or foreign jurisdiction orders and UIFSA 2001 enhances the ability.
- D. Remedies are cumulative. § 103 [96], § 104 [01]

III. Family Support

- A. “Family support” includes child and spousal support. § 101(21) [96], § 102(23) [01]
- B. UIFSA does not apply to custody or visitation issues. § 104 [01]

IV. Users

- A. UIFSA creates a State information agency to process incoming requests. § 310
- B. UIFSA sets out the duties of the support enforcement (IV-D) agency in interstate cases. § 307
- C. UIFSA is the law to be used by private practitioners. § 309

V. CEJ - Continuing, Exclusive Jurisdiction § 205

- A. “Exclusive” means the exclusive jurisdiction to modify the prospective support obligation. Any tribunal with personal or *in rem* jurisdiction can enforce the obligation.
- B. Having exclusivity results in ONE order.
 - 1. **URES**A (Uniform Reciprocal Enforcement of Support Act) and **RURES**A (Revised Uniform Reciprocal Enforcement of Support Act) allowed for the creation of subsequent valid orders as the obligor moved from state to state. There was no requirement that the previous order be given full faith and credit as to prospective support. However, the obligation continued to accrue.
 - 2. UIFSA & FFCCSOA contain the rules for determining the one prospectively “controlling” order when multiple, valid orders exist. § 207
 - 3. Case law has held that subsequent orders created after the adoption of UIFSA or FFCCSOA are VOID since the tribunal lacked subject matter jurisdiction to enter them.
- C. A tribunal may lose the exclusivity to modify child support, but will still retain the continuing jurisdiction to enforce the support obligation. § 206 [01]
- D. The tribunal that issued the spousal support order retains the exclusive jurisdiction to modify it regardless of the location of the parties. § 205(f) [96], § 211 [01]

VI. Establishment

Long-arm Jurisdiction

- A. UIFSA created a uniform set of criteria for asserting long-arm personal jurisdiction over a non-resident. § 201
 - 1. The individual is personally served with summons within this state;

2. The individual submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;
 3. The individual resided with the child in this state;
 4. The individual resided in this state and provided prenatal expenses or support for the child;
 5. The child resides in this state as a result of the acts or directives of the individual;
 6. The individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse;
 7. [the individual asserted parentage in the [putative father registry] maintained in this state by the [appropriate agency];] or
 8. There is any basis consistent with the Constitution of this state and the United States for the exercise of the personal jurisdiction.
- B. While most of the bases are relevant to child support, these can also serve as a basis to assert personal jurisdiction for spousal support.
- C. The long-arm bases are also the bases for establishing paternity under the **UPA** (Uniform Parentage Act). UPA § 604(b)
- D. The tribunal that establishes the order applies its laws regarding the support amount and duration of the support obligation. § 303
- E. Long-arm jurisdiction under this section of UIFSA cannot be used to modify an order unless the requirements of § 611 or § 615 are met. § 201(b) [01]

Two-State Case:

- F. If a state cannot exercise long-arm jurisdiction over the non-resident to establish paternity and/or support, an interstate case must be filed to that party's state of residence. This process includes:
1. Completing all UIFSA required paperwork
 2. Forwarding the documents to the Central Registry of the responding state
 3. Continued follow-up of case
 4. The tribunal that establishes the order applies its laws regarding the

support amount and duration of the support obligation and typically continues to enforce its order on behalf of the initiating state.

VII. Enforcement

- A. Multiple states can have or acquire continuing jurisdiction to enforce a support order. The jurisdiction is based on personal jurisdiction over the obligor or *in rem* jurisdiction over an asset.
- B. UIFSA “legalized” the practice of sending a support order issued in a case in State O to an employer in State E. §§ 501-506
 - 1. An employer who receives an order that appears “regular on its face” is to honor the order as if it was issued in the employer’s state.
 - 2. OCSE has promulgated a “federal form” to implement income withholding.
 - 3. The terms of the obligation are fixed by the law of the state that issued the support order.
 - 4. The process to be followed by the employer is determined by the law of the obligor’s principle place of employment.
 - a. One component is the maximum that can be withheld.
 - b. Another component is the allocation of support when there are multiple obligees.
 - 5. UIFSA allows for a withholding order to be sent from state A to an employer in state B based on a support order not issued by state A. The payment destination cannot be changed from that of the underlying support order. OCSE PIQ 01-01.
 - 6. If the employee wishes to contest the withholding order, it may be done in the employer state, in the same manner as if the order had been issued in the employer state. § 506
- C. UIFSA provides processes for enforcement and modification but is not the exclusive enforcement remedy.
 - 1. Administrative enforcement without Registration is limited to support enforcement agencies. § 507
 - 2. Other non-UIFSA remedies:

- a. Lien
- b. **UEFJA** (Uniform Enforcement of Foreign Judgments Act), but not **UFMJRA** (Uniform Foreign Money Judgments Recognition Act)
- c. FIDM, IRS intercept and passport denial – available to IV-D agencies

VIII. Registration §§ 601- 603, §§ 605 - 610

- A. The initial process for enforcement and modification.
 - 1. The registering party provides the tribunal with a certified copy of the order and an arrears calculation.
 - 2. The clerk of the tribunal sends the nonregistering party a Notice that includes the amount of asserted arrears along with a copy of the order.
 - 3. The Notice informs the nonregistering party that failure to contest in the statutory time allowed results in confirmation, by operation of law of:
 - a. The validity of the order
 - b. The amount of arrears
- B. A remedy can be sought simultaneously with Registration
- C. A limited number of defenses to registration.
 - 1. The issuing tribunal lacked personal jurisdiction over the contesting party
 - 2. The order was obtained by fraud
 - 3. The order has been vacated, suspended, or modified by a later order
 - 4. The issuing tribunal has stayed the order pending appeal
 - 5. There is a defense under the law of this State to the remedy sought
 - 6. Full or partial payment has been made
 - 7. The statute of limitation under Section 604 (Choice of Law) precludes enforcement of some or all of the alleged arrearage
 - 8. The alleged controlling order is not the controlling order

9. Nonparentage is not a defense § 315

IX. Modification § 611, § 613, § 615 [01]

- A. The tribunal that issued the spousal support order retains the exclusive jurisdiction to modify regardless of the location of the parties.
- B. The tribunal that issued the child support order retains the exclusive jurisdiction to modify:
 - 1. So long as the obligor, individual obligee, or child resides in the state at the time of filing.
 - 2. The parties who are individuals have filed written consent for the issuing tribunal to continue the exclusive jurisdiction. § 205 [01]
- C. Another tribunal can assume the exclusive jurisdiction to modify child support
 - 1. If it determines:
 - a. The obligor, individual obligee, and the child have left the issuing state;
 - b. The party seeking the modification is not a resident of the state being asked to assume jurisdiction; and
 - c. The tribunal has jurisdiction over the respondent to the motion to modify.
 - 2. The parties agree that a tribunal with jurisdiction over at least one individual party can assume jurisdiction
 - 3. No consent is needed if all parties move to the same state.
- D. If the conditions for assumption of jurisdiction are met, the consent of the original issuing tribunal is not an issue.
- E. Upon assuming jurisdiction, the tribunal
 - 1. Can prospectively modify the support amount in accordance with the guidelines of the assuming state
 - 2. Cannot modify the duration of the support obligation unless it was modifiable in the original issuing state.
- F. When all parties have left the issuing state with one in another US state and the

other in another country, the original order state retains the exclusive jurisdiction to modify and the “play away” requirement does not apply § 611(f) [08]

X. Multiple Orders § 207

- A. URESA and RURESAs allowed for the creation of subsequent valid orders as the obligor moved from state to state. There was no requirement that the previous order be given full faith and credit as to prospective support. However, the initial obligation continued to accrue. In applying UIFSA, a consolidated arrears amount should be obtained. This is accomplished by accruing at the highest amount in existence at the time.
- B. UIFSA & FFCCSOA contain similar rules for determining the one prospectively “controlling” order when multiple, valid orders exist. (Note: this process applies to original orders issued before 10/20/94.)
 - 1. If only one issuing state still has a person residing in it, that state’s order controls.
 - 2. The order in the “home state” of the child always controls.
 - 3. If there are multiple orders, none in the child’s home state, but orders in both the obligee’s and obligor’s states, the most recent order controls. (This most often occurs when the obligee and child have moved within the last six months, so the child doesn’t have a “home state”.)
 - 4. If there are multiple orders and no one (obligor, individual obligee, or child) resides in any state that issued an order, a tribunal with jurisdiction must establish a new, controlling order and apply its guidelines and duration.
 - 5. In determining the prospectively controlling order or issuing a new controlling order, the tribunal should make a finding of the consolidated arrears under all previous, valid orders.

Resources

The home website of the Uniform Law Commission (ULC) which contains information about the adoption of Acts:

<http://www.uniformlaws.org/>

The latest version of Uniform Acts as well as copies of drafts of those acts:

<http://www.law.upenn.edu/bll/ulc/ulc.htm#drafts>

The Office of Child Support Enforcement has

<http://www.acf.dhhs.gov/programs/cse/index.html>

a link to the Online Interstate Roster and Referral Guide (IRG)

<http://ocse3.acf.hhs.gov/ext/irg/sps/selectastate.cfm>

a link to Forms, Reports, & Other Resources [withholding, lien, and “UIFSA” forms]
choose “Selected ACF/OCSE Forms”

<http://www.acf.hhs.gov/programs/cse/forms/>

NCSEA also has helpful resources

<http://www.ncsea.org/resources/links.php3>

John J. Sampson & Barry Brooks, *Uniform Interstate Family Support Act (2001) With Prefatory Note and Comments (With Still More Unofficial Annotations)*, 36 FAM. L. Q. 329 (2002)
(Available on Westlaw and Lexis).

John J. Sampson, *Uniform Interstate Family Support Act (1996) (with More Unofficial Annotations by John J. Sampson)*, 32 FAM. L. Q. 385 (1998).

According to the NCCUSL website, as of August 10, 2011, the following 22 states have enacted UIFSA 2001:

Arizona	Nevada*
California	New Mexico*
Colorado	Oklahoma
Connecticut	Rhode Island*
Delaware	South Carolina
District of Columbia	Texas
Idaho	Utah*
Illinois	Virginia
Maine*	Washington
Mississippi	West Virginia
Nebraska	Wyoming

* and UIFSA 2008

According to the NCCUSL website, as of July 30, 2012, the following 10 states have enacted UIFSA 2008:

Florida	North Dakota
Maine	Rhode Island
Missouri	Tennessee
Nevada	Utah
New Mexico	Wisconsin

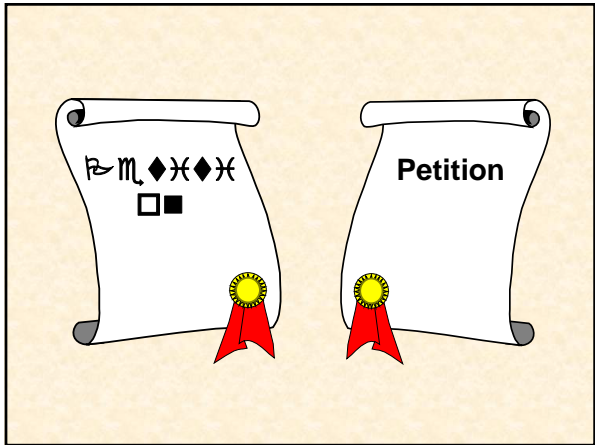
TAB 24

Interjurisdictional Issues of Interest

Mr. Barry J. Brooks & Ms. Mary Dahlberg

Interjurisdictional Issues of Interest

18th Annual Child Support Training Conference
September 30- October 3, 2014



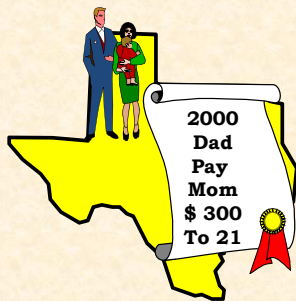


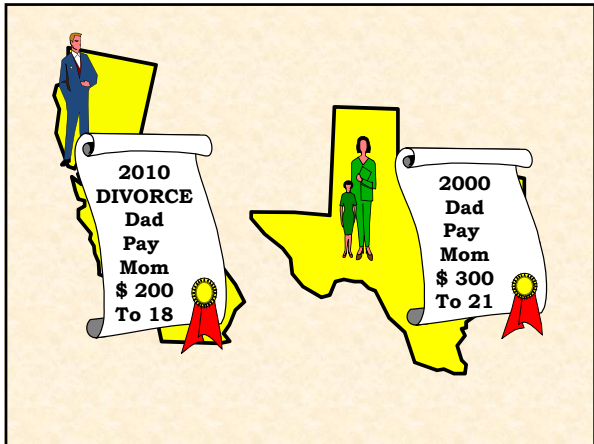
Tribal Issues

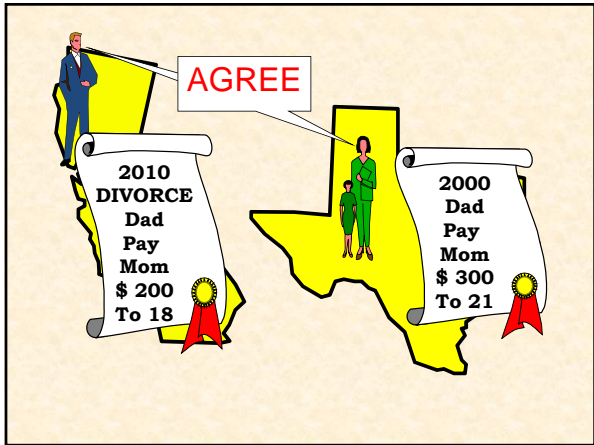
- ❖ ICWA only applies to Child Custody issues, not support
- ❖ ICWA does not apply to domestic actions between parents
- ❖ UIFSA & FFCCSOA apply to Tribal modifications of State Orders

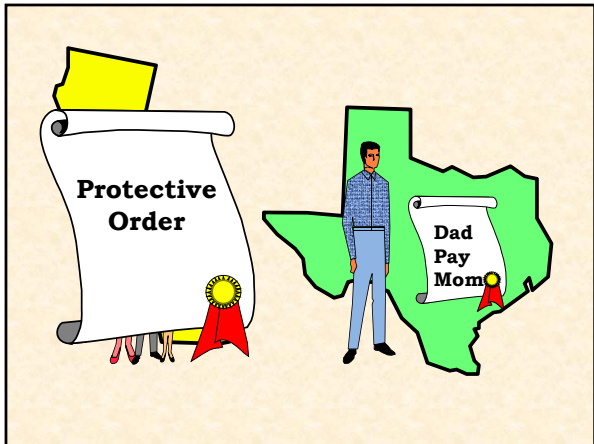


Subsequent Divorce









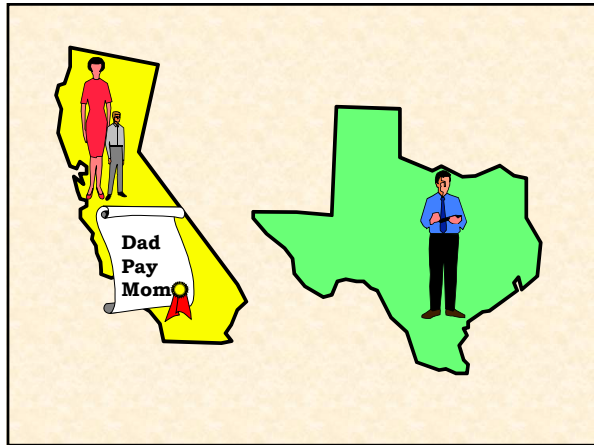
Kid

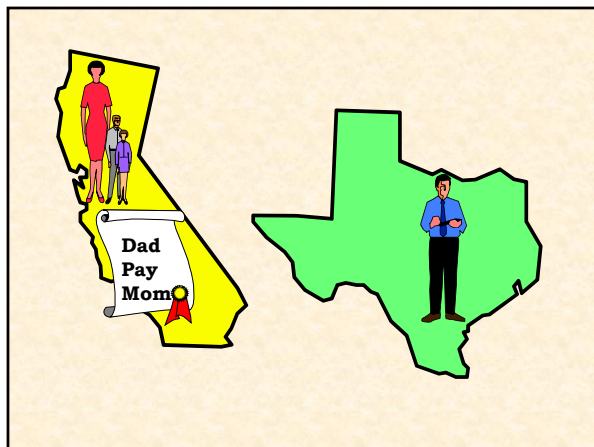
SWAP

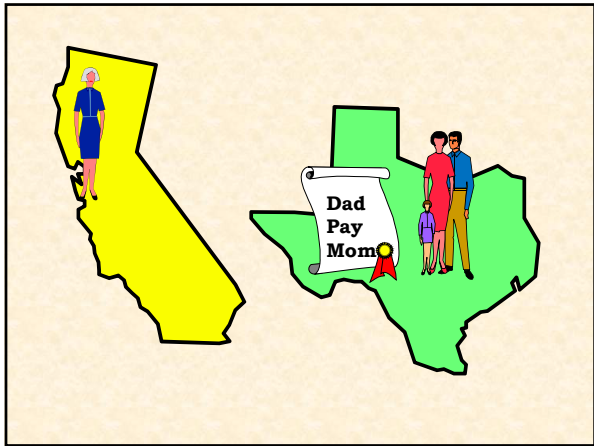
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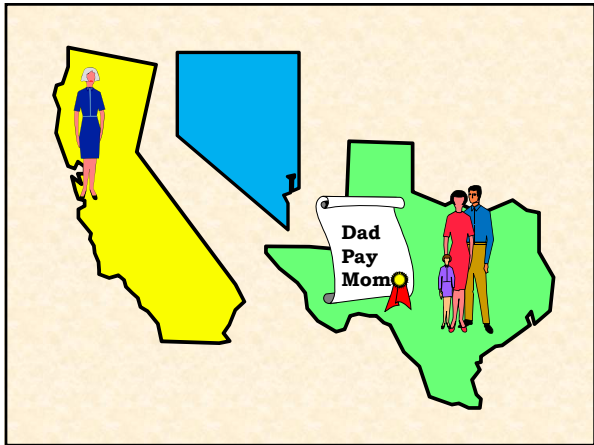
Relative Caretaker

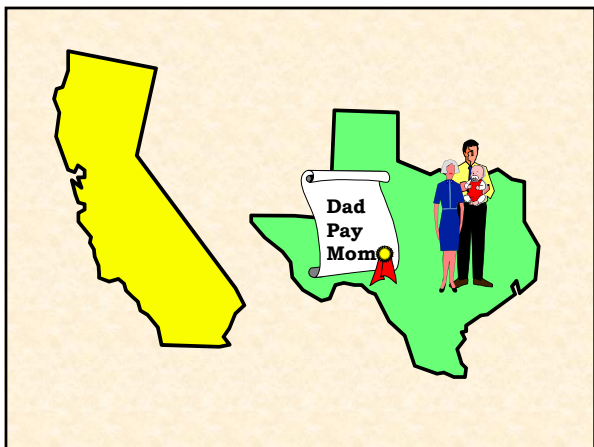
Foster Care

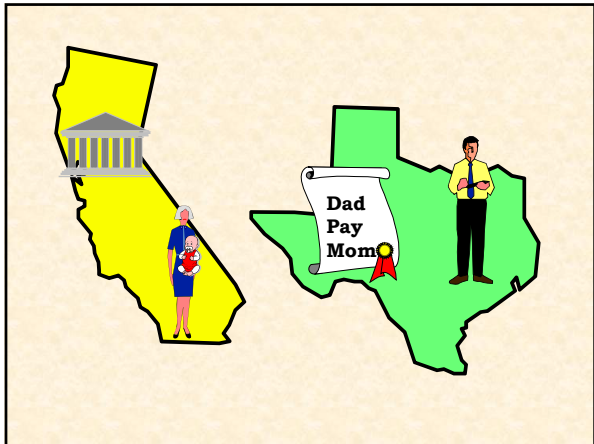


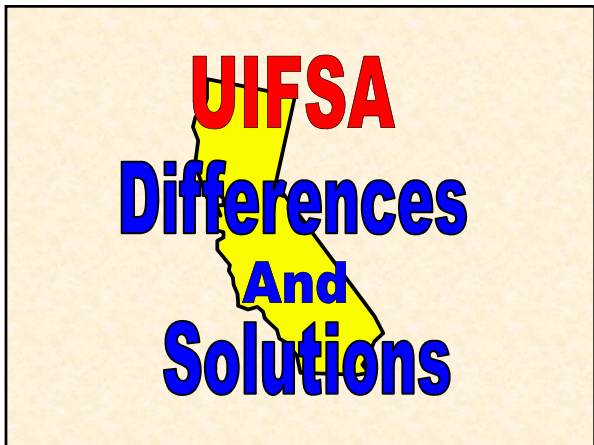








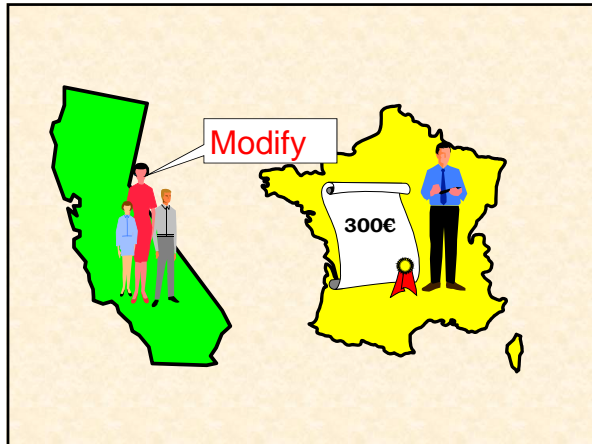




Case Scenario: Registration Challenge

- Parties marry, have children, and divorce in France, a country with which California has established reciprocity
- Mother and children move to California and seek modification; Father remains in France
 - Can California modify?
 - What role does the reciprocity agreement have in this case?

18



International – Definition of “State”

- Definition of “state”:
 - 1996: foreign jurisdiction that has enacted laws or procedures similar to UIFSA, URESA, or RURES.A. (UIFSA 1996 sec. 101(19)(ii))
 - 2001: federal or state reciprocity or similar laws. (UIFSA 2001 sec. 101(21)(B))

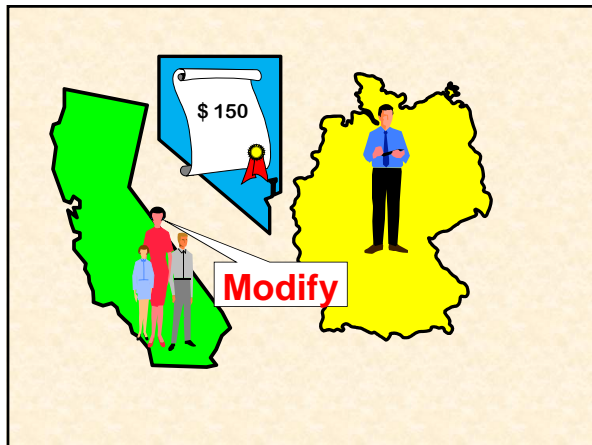
20

International – Modification

- Modification
 - 1996: consent to modify foreign order in U.S. state – consent of U.S. resident not required (Section 611(a)(2))
 - 2001: U.S. court may modify foreign order if foreign country with CEJ cannot or will not. (Section 615)

21

In a State Vs. Not Here



UIFSA 2008 Section 611(f)

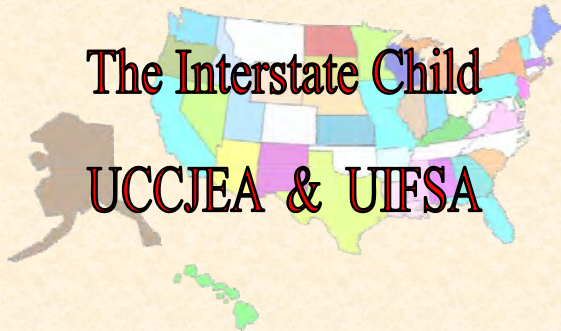
Notwithstanding subsections (a) through (e) and Section 201(b), a tribunal of this state retains jurisdiction to modify an order issued by a tribunal of this state if:

- (1) one party resides in another state;
- (2) the other party resides outside the United States.

**Nondisclosure
of**



**The Interstate Child
UCCJEA & UIFSA**



Origins

UIFSA ↔ FFCCSOA

UCCJEA ↔ PKPA


**Jurisdiction
Subject Matter**

<p>UCCJEA</p> <ul style="list-style-type: none"> ▶ Custody ▶ Visitation 	<p>UIFSA</p> <p>Support</p> <ul style="list-style-type: none"> ▶ Child ▶ Spousal
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**Jurisdiction
Additional**

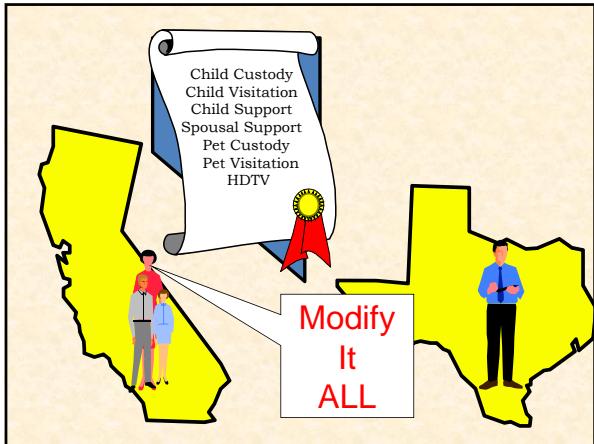
<p>UCCJEA</p> <ul style="list-style-type: none"> ▶ “Status” ▶ Home State ▶ Significant Contacts 	<p>UIFSA</p> <ul style="list-style-type: none"> ▶ Personal ▶ Long-Arm
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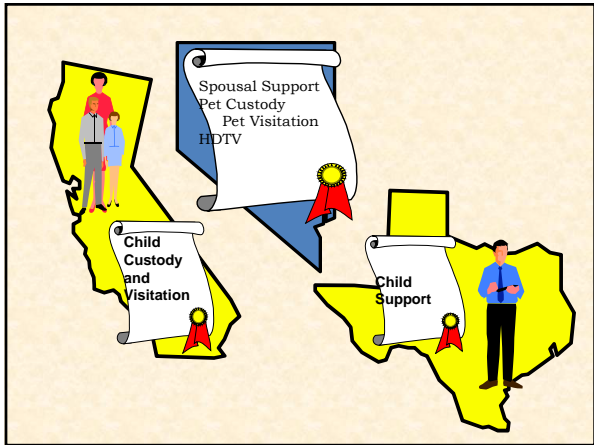
ONE ORDER

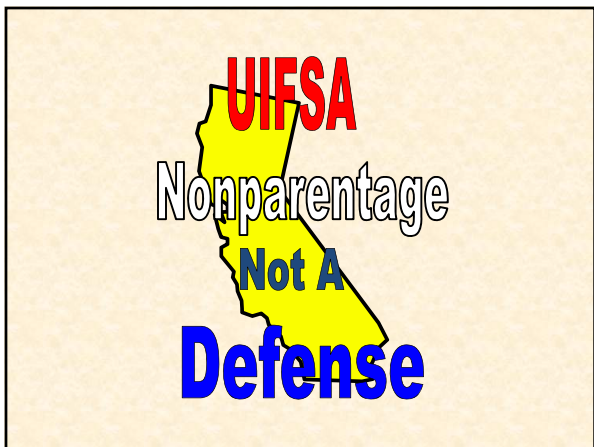


UCCJEA	UIFSA
ECJ	CEJ


Exclusive Jurisdiction to MODIFY









Full



Faith
and
Credit





The End



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Mary Dahlberg
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(916) 451-3179

UCCJEA Modification Scenarios



One Order = ECJ State

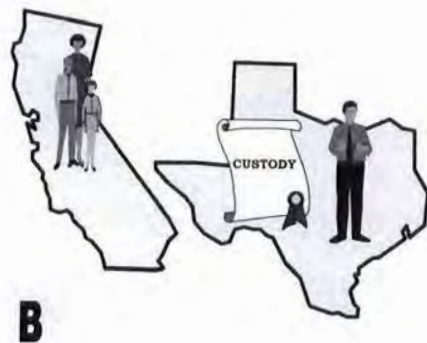
Custodian/ "Home" State of child

Modification - ECJ State

unless the ECJ Court transfers the custody issue to a new state finding:

Neither child, nor child and one parent, nor child and person acting as a parent have a significant connection with ECJ State and there is no substantial evidence in ECJ State

OR New State is more convenient



One Order = ECJ State

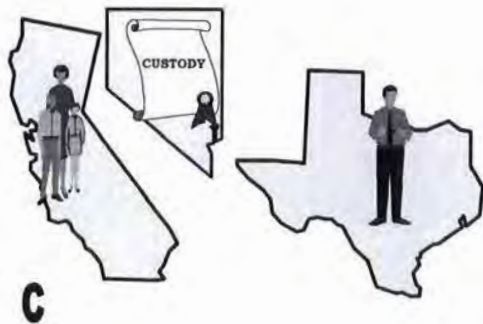
Non-Custodian State

Modification - ECJ State

unless the ECJ Court transfers the custody issue to a New State finding:

Neither child, nor child and one parent, nor child and person acting as a parent have a significant connection with ECJ State and there is no substantial evidence in ECJ State

OR New State is more convenient



One Order = ECJ State

Modification - ECJ State

Unless

ECJ State transfers finding no one (child, parent, or person acting as a parent) resides in Order State

OR

New State assumes finding no one (child, parent, or person acting as a parent) resides in Order State and New State is "Home" State or there are significant connections

International Family Support: Currency Conversion

by

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Background

The issue of how to approach currency conversion in international cases has existed as long as there has been international trade and commerce. A starting point for tracing the “modern” resolution of what exchange rate to use might begin with two US Supreme Court cases arising out of World War I; although, some reference is made to commercial transactions made during the Civil War. In discussing the issue, it is also necessary to discuss events tangential to the courts’ decisions.

The precipitating event for the discussion is the Coinage Act of 1792. This was the first act by the fledgling federal Congress regarding coinage and money.

SEC. 20. And be it further enacted, That the money of account of the United States shall be expressed in dollars or units, dismes or tenths, cents or hundredths, and milles or thousandths, a dime being the tenth part of a dollar, a cent the hundredth part of a dollar, a mille the thousandth part of a dollar, and that all accounts in the public offices and all proceedings in the courts of the United States shall be kept and had in conformity to this regulation. (Emphasis added)

This language was taken to mean that a judgment in a US court had to be stated in US currency. Thus, the development of an approach regarding the applicable conversion principle and date to be used had to take into account the fact there is always a time gap between the occurrence of the “wrong” and the “remedy” (judgment). The task of resolving the issue has taken place in both the federal and State courts. It is the federal judiciary which seems to have struggled most

In *Hicks v. Guinness*, 269 U.S. 71, 46 S.Ct. 46, 70 L.Ed. 168 (1925) a German company owed a debt to an American company based on an account stated in German marks. The American company brought suit in the United States and the Court held Hicks was entitled to not seek payment of the debt but to seek damages in equity. The Court affirmed that the damages the American company suffered should be determined in dollars as of the “breach date”.

Almost a year to the date, the Court decided *Deutsche Bank Filiale Nurnberg v. Humphry*, 272 U.S. 517, 47 S.Ct. 166, 71 L.Ed. 383 (1926) which involved an American depositor in a German bank filing suit in the United States for the Bank’s failure to pay him his deposited marks upon demand. The Court noted the event was not subject to US jurisdiction at the time it occurred. Thus, the Court opined that when a contractual obligation arises under and is payable in a foreign country in that country’s currency, a “judgment day” conversion rule should apply.

Initially, the *Hicks* and *Deutsche Bank* cases were viewed as stating the principle that the rule to be applied is based upon the place the payment is to be made. That principle was revisited and revised in *In re Good Hope Chemical Corp.* 747 F.2d 806 (1st Cir.1984). The *Good Hope* court looked at the law that gives rise to the cause of action. If the cause of action arose entirely under foreign law such that damages are in the foreign currency, the “judgment day” rule should apply. If the cause of action arose under American law, the “breach day” rule applies.

As the federal courts were struggling with the development of two “bright line” rules, states were also attempting to resolve the issue. Early on, many states had adopted the “N.Y. Rule” of “breach date” regardless of where the cause of action arose. See *Hoppe v. Russo-Asiatic Bank*, 235 N.Y. 37, 138 N.E. 497 (1923); and, *Parker v. Hoppe*, 257 N.Y. 333, 178 N.E. 550 (1931), on rehearing, 258 N.Y. 365, 179 N.E. 770 (1932). The dual approaches being developed by the federal courts became more focused on the “breach date” approach when *Erie R. Co. v. Tompkins*, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 (1938), decreed that federal courts should apply State law in most cases.

Significantly, while the federal courts and other State courts were struggling with development of some “bright line” rule, a Texas Court in *Butler v. Merchant*, 27 S.W. 193 (Tex. Civ. App. 1894, no writ.) articulated a very prescient resolution. It found the value of the Mexican peso had varied widely between the “breach date” and the ostensible “judgment date”. Thus, it approved of a “blended” approach.

Although the “breach date” remains at the fore with the “judgment date” still an option, a third approach is developing, driven in part by a confluence of historical events combined with academic and judicial rethinking.

Towards the end of World War II, representatives from all 44 Allied nations met at the Mount Washington Hotel in Bretton Woods, New Hampshire. The task was to establish a framework for post-war cooperation in monetary and financial matters. A part of this process involved setting fixed par values for currency exchange that could only vary in a one percent range. This agreement lasted until 1971 when the US backed out of the agreement. By 1973, the other major currency issuers had abandoned the process as well.

In 1980, the court in *Baumlin & Ernst, Ltd. v. Gemini, Ltd.*, 637 F.2d 238 (4th Cir.1980) questioned whether the Coinage Act actually prohibited entry of a judgment stated in foreign currency. This issue became more moot when the Coinage Act was reenacted in 1982 without the questionable text.

31 U. S. C. § 5101. Decimal system

United States money is expressed in dollars, dimes or tenths, cents or hundredths,[1] and mills or thousandths. A dime is a tenth of a dollar, a cent is a hundredth of a dollar, and a mill is a thousandth of a dollar.

The next institution to add to the discussion was the American Law Institute which in 1987 released its Restatement (Third) of Foreign Relations Law. The Reporter’s Notes track the development of the law in the US as well as internationally. The Notes mention the often inconsistency of approaches while observing the focus of all decisions had been to make the injured party whole. Thus, the Restatement provides:

§ 823. Judgments On Obligations In Foreign Currency: Law Of The United States

(1) Courts in the United States ordinarily give judgment on causes of action arising in another state, or denominated in a foreign currency, in United States dollars, but they are not precluded from giving judgment in the currency in which the obligation is denominated or the loss was incurred.

(2) If, in a case arising out of a foreign currency obligation, the court gives judgment in dollars, the conversion from foreign currency to dollars is to be made at such rate as to make the creditor whole and to avoid rewarding a debtor who has delayed in carrying out the obligation.

However, it is the Comment to this Section which places the new concept of “**payment date**” into the lexicon.

d. Alternative conversion rules. Under Subsection (2), and Comment c, a judgment in dollars should be given on the basis of conversion at whichever date would serve the ends of justice in the circumstances.

(I) Breach date. When the breach date is applied for conversion of foreign obligations, Comment c, an obligation to pay a sum of money is convertible as of the date it was payable; an obligation to deliver goods or perform services is convertible as of the last date on which the obligation could be performed in compliance with the agreement on which it was based, or the date on which default was declared. For an obligation not arising out of contract, such as a tort or ships' collision, the date for conversion is the date of the event giving rise to the claim. When a judgment is based on multiple obligations, conversion should be made separately in respect of each obligation.

(ii) Judgment date. When the judgment date rule is applied for conversion of foreign obligations, the obligation is convertible into dollars as of the date on which the judgment is rendered, regardless of the duration of any appeal.

(iii) Payment date. When judgment is given in a foreign currency, it may be paid in that currency within the normal time for payment of judgments, or in the dollar equivalent on the date of payment.

Shortly after the Restatement, the National Conference of Commissioners of Uniform State Laws (NCCUSL) promulgated the Uniform Foreign-Money Claims Act in 1989. The Act has been adopted in 24 States. It, also, adopts the “payment date” approach although termed “conversion date”.

SECTION 1. DEFINITIONS. In this [Act]:

...

(3) “Conversion date” means the banking day next preceding the date on which money, in accordance with this [Act], is:

(I) paid to a claimant in an action or distribution proceeding;

(ii) paid to the official designated by law to enforce a judgment or award on behalf of a claimant; or

(iii) used to recoup, set-off, or counterclaim in different moneys in an action or distribution proceeding.

Comment

3. “Conversion date.” Exchange rates may fluctuate from day to day. A date must be picked for calculating the value of foreign money in terms of United States dollars. As used in the Act, “conversion date” means the day before a foreign-money claim is paid or set-off. The day refers to the time period of the place of the payor, not necessarily that of the recipient. The exchange rate prevailing at or near the close of business on the banking day before the day payment is made will be well known at the time of payment. See Comment 2 to Section 7.

SECTION 7. JUDGMENTS AND AWARDS ON FOREIGN-MONEY CLAIMS; TIMES OF MONEY CONVERSION; FORM OF JUDGMENT.

(a) Except as provided in subsection (c), a judgment or award on a foreign-money claim must be

stated in an amount of the money of the claim.

(b) A judgment or award on a foreign-money claim is payable in that foreign money or, at the option of the debtor, in the amount of United States dollars which will purchase that foreign money on the conversion date at a bank-offered spot rate.

(c) Assessed costs must be entered in United States dollars.

(d) Each payment in United States dollars must be accepted and credited on a judgment or award on a foreign-money claim in the amount of the foreign money that could be purchased by the dollars at a bank-offered spot rate of exchange at or near the close of business on the conversion date for that payment.

...

The combination of the revision to the Coinage Act, Restatement, and Uniform Foreign-Money Claims Act resulted in most all courts recognizing not only the ability to enter a judgment in a foreign currency but also the advisability. *Comptex v. LaBow*, 783 F.2d 333 (2nd Cir. 1986); *Matter of Oil Spill by the Amoco Cadiz Off the Coast of France on March 16, 1978*, 954 F.2d 1279 (7th Cir 1992); *Mitsui & Co., Ltd. v. Oceantrawl Corporation*, 906 F.Supp. 202 (S.D. New York 1995)

To show the practical application of the payment date concept, the Prefatory Note to the Uniform Foreign-Money Claims Act provides an example from an actual case:

An American citizen (A) owes 18,790 pounds sterling to a British corporation (BCo) suing in New York, and the pound is falling against the dollar. Due to the declining value of the pound, the three rules worked out as follows:

Date Rate of Exchange BCo Gets

Breach day Pound = \$2.20	\$41,338
Judgment day Pound = \$1.50	\$28,185
Payment day Pound = \$1.20	\$22,548

A judgment of \$41,338 may be entered based on the breach day rule. However, the payment in dollars was worth 34,449 pounds (\$41,338 divided by \$1.20) when eventually received, an excess of £15,659 over the actual loss.

This example is adapted from an actual case. See *Comptex v. LaBow*, 783 F.2d 333 (2d Cir. 1986). The facts are simplified.

Of course the converse is true when the dollar is losing value in comparison to the applicable currency. The same 18,790 pounds sterling converts:

Breach day Pound = \$1.20	\$22,548
Judgment day Pound = \$1.50	\$28,185
Payment day Pound = \$ 2.20	\$41,338

In this situation, it is the obligor who has not made the payment when due or when the judgment is entered that must expend more dollars to satisfy the foreign denominated debt.

Family Support Applicability

Clearly, the above example can be changed to a situation where an obligor residing in America owes a fixed amount of family support to an obligee in another country based on a support order issued by that country. (While applicable to both child and spousal support, the term “child support” will be used to include either or both.) However, child support cases, especially with unpaid support, present some rather unique issues. Both these issues are related to the fact the support obligation is not a one time event.

- Ongoing support. Obviously, for prospective support, there has been no breach date nor has there been a judgment date. Whether by judicial or administrative process, whenever an amount of child support stated in a foreign currency is “restated” in US\$, it must be considered an equivalence. Otherwise, the obligor will almost always be either underpaid or overpaid at the time the obligation ends. Thus, to achieve the objective of making both the obligor and obligee whole over time, the payment date must be utilized.

- Unpaid support. Although cumbersome, it is certainly possible to use a breach date approach for missed support payments. The blended or an annual average approach is also viable; as is the judgment date. The approach of the Restatement, Uniform Foreign-Money Claims Act, and current case law is that the US judgment should be stated in the foreign currency. This really makes the breach versus average versus judgment date discussion moot. The foreign currency amount used in the judgment should have been derived by subtracting the foreign currency amount received on the “payment date” from the foreign currency amount accrued on that date. As shown by the example above, considering the arrears to be paid in full when based on the payment date is the best way to assure both obligor and obligee are made whole while acknowledging that fluctuations over time will have an adverse impact on at least one of the parties.

The entire body of law relating to foreign currency conversion is premised on a situation where an obligation is not being met or some injury has occurred. If there is no dispute regarding the support obligation, it would seem axiomatic that the obligor would tender whatever amount of US\$ is needed to provide the amount of foreign currency ordered, i.e. the payment date approach. It is only when the obligation is not being met that these issues become relevant.

To establish the requirements necessary for effective enforcement, the US court will obviously need to set a fixed US\$ equivalence. To measure compliance with the order, the focus must be on the timely payment of the US\$ equivalence. However, the court and parties must not lose sight of the fact the obligation is not paid in full until the final payment equates to the total amount of foreign currency due on that payment date. An obligor can make each and every payment of current support and a payment on the arrears when due and still be under or over paid regarding the obligation up until the date the entire obligation ends and is paid in full. Obviously, an obligor who pays the stated equivalence should not be punished or held in contempt if the rate of exchange on the payment date does not cover the full amount of order currency due on that date.

Because support is an ongoing obligation, the issue can arise regarding the correct currency conversion application for ongoing payments. The Uniform Foreign-Money Claims Act addresses this issue at some length.

SECTION 11. DETERMINING UNITED STATES DOLLAR VALUE OF FOREIGN-MONEY CLAIMS FOR LIMITED PURPOSES.

(a) Computations under this section are for the limited purposes of the section and do not affect computation of the United States dollar equivalent of the money of the judgment for the purpose of payment.

(b) For the limited purpose of facilitating the enforcement of provisional remedies in an action, the value in United States dollars of assets to be seized or restrained pursuant to a writ of attachment, garnishment, execution, or other legal process, the amount of United States dollars at issue for assessing costs, or the amount of United States dollars involved for a surety bond or other

court-required undertaking, must be ascertained as provided in subsections (c) and (d).

...

Comment (d) to the Restatement § 823 states it more succinctly:

If payment was to be made on more than one date, the conversion must be made separately on each date of payment. If execution is levied against the property of a judgment debtor in the case of a judgment expressed in foreign currency, the conversion should be made as of the date of levy.

It is immutable that income withholding is the best mechanism for the enforcement of ongoing support and one of the best for obtaining payments towards any arrears. Thus, it makes legal and financial sense to give the obligor credit for the amount of foreign currency that is applied to the official payment record of the order issuing country on the date the currency is posted, i.e. payment date.

Regardless of the approach chosen, there will always be an issue regarding the gain or loss of purchasing power, i.e. dollars to diapers. To make up for the loss of use of the currency, countries can, and do, impose interest or other periodic “fees” on the missed obligation.

Practical Implementation

The challenge becomes to keep the closest exchange approximation in effect at all times. Both administrative and judicial processes used to collect support will need the flexibility to implement periodic adjustments. These must be accomplished not in the context of a “modification” but rather a “re-conversion”. To the extent the payments are resulting in a shortfall, this can be resolved by utilizing the enforcement processes currently in place for increasing payments on “arrears”. To the extent the payments are resulting in an overage, the same basic principle will have the obligor “pre-paid” and the total support obligation may end prior to the child being emancipated.

The task of setting a converted amount for payments towards arrears should be able to utilize existing intrastate and interstate processes. Virtually all states have an administrative mechanism for adjusting the amount paid towards arrears. Some states use an annual “super notice”. Others have a periodic review process, some linked to new employment information. The common feature of all the approaches is that they provide the obligor with due process through some type of contest process.

The challenge is to have a procedure for adjusting the conversion amount for the prospective support. The critical element is that the obligor be afforded due process with both notice and a right to be heard; albeit this can be by contest. There are two existing methods that would seem to suffice:

- UIFSA § 507 provides for an administrative process to implement enforcement actions, including income withholding, for orders not issued by the enforcing state.

SECTION 507. ADMINISTRATIVE ENFORCEMENT OF ORDERS.

...

- (b) Upon receipt of the documents, the support enforcement agency, without initially seeking to

register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of this State to enforce a support order or an income-withholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the support enforcement agency shall register the order pursuant to this [Act].

The due process requirement is met through the ability to contest with the onus of Registration placed on the support enforcement agency. The ability of the support enforcement agency to initially take an enforcement action that includes converting a currency amount would seem implicit and is explicit in UIFSA 2001 § 307.

SECTION 307. DUTIES OF SUPPORT ENFORCEMENT AGENCY.

...
(d) A support enforcement agency of this State that requests registration and enforcement of a support order, arrears, or judgment stated in a foreign currency shall convert the amounts stated in the foreign currency into the equivalent amounts in dollars under the applicable official or market exchange rate as publicly reported.

The issue that remains is the authority of the support enforcement agency to make periodic re-conversion of the prospective support. While it is an ability that certainly seems to derive from the initial administrative enforcement powers, policy and procedural issues may militate against its use.

- The second approach is to treat the fluctuation in currency exchange as a form of “cost of living”. There are a few states that currently have a process in place to adjust the prospective support based upon an established index set out in the support order. Implementing the adjustment involves sending a notice to the obligor of the re-calculation based upon the index and giving the obligor a period in which to contest before the new amount becomes effective. Given the paucity of international enforcement cases, having states adding or revising statutory authority to utilize this approach is problematic.

While the examples above are instructive in a single incident situation, the impact on an ongoing support obligation requires a more extended demonstration. A couple of examples can illustrate the conundrum in a varying exchange rate environment. Both examples start with an order issued in euros (€) 5 years ago in the amount of € 200 per month due the first day of the month. An agreed resolution was achieved 25 December of last year stipulating that the arrears as of 5 December were € 900.

In both examples, the obligor fully pays the ongoing support and fully complies with the agreement regarding payment of the arrears. The only variable is the change in the exchange rate. The approach is to use the “payment date” and for simplicity it is assumed the date the dollars are paid is the date the euro equivalence is applied. Admittedly, this makes the payment date the same as the conversion date. Obviously, this will seldom occur in the normal processing of payments; however, the operative conditions shown below will still exist.

Example 1					
On 25 December, € 1 = \$ 1.20					
Ongoing support of € 200 = \$ 240					
Arrears of € 900 = \$ 1080 to be paid in 9 months @ \$ 120					
Total \$ to be paid per month = \$ 360					
Date	\$ paid	€ 1 = \$	€ credit	€ to arrears	\$ 240 = €
1/1	360	1.22	295.08	95.08	196.72
2/1	360	1.25	288.00	88.00	192.00
3/1	360	1.28	281.25	81.25	187.50
4/1	360	1.30	276.92	76.92	184.62
5/1	360	1.32	272.73	72.73	181.82
6/1	360	1.35	266.67	66.67	177.78
7/1	360	1.34	268.66	68.66	179.10
8/1	360	1.38	260.87	60.87	173.91
9/1	360	1.40	257.14	57.14	171.43
Totals	3240		2467.32	667.32	1644.88
Total € owed			2700.00	900.00	1800.00

In this example, the value of the dollar is declining relative to the euro; that is, it takes more dollars to purchase the same, fixed amount of euros. This example shows that even full compliance with the dollar equivalence will leave a euro shortfall of € 232.68 or an additional \$ 325.75 on 9/1. It should be noted that even if no arrears were owed to start and all dollar equivalent payments were made, there is still a shortfall of € 155.12 (\$ 217.17) on 9/1.

Having paid over time does inure to the obligor's benefit. Had no payments been made during the interim, the full obligation of arrears and ongoing support of € 2700 would require payment on 9/1 of \$ 3,780. Instead, getting current as of 9/1 will involve a total outlay of \$ 3,565.75.

This situation is the circumstance discussed above where a US enforcing agency could use existing enforcement remedies to increase the amount of dollars paid towards the arrears to assure the gap caused solely by the exchange rate does not widen.

This example also demonstrates the inequity of applying the "judgment date" rule to even the arrears. Were the \$ 1080 to have not been paid until 9/1, that amount would be the 9/1 equivalent of € 771.43. As discussed below, the imposition of interest would play a role in increasing the ultimate amount owed in euros.

Example 2					
On 25 December, € 1 = \$ 1.40					
Ongoing support of € 200 = \$ 280					
Arrears of € 900 = \$ 1260 to be paid in 9 months @ \$ 140					
Total \$ to be paid per month = \$ 420					
Date	\$ paid	€ 1 = \$	€ credit	€ to arrears	\$ 280 = €
1/1	420	1.38	304.35	104.35	202.90
2/1	420	1.34	313.43	113.43	208.96
3/1	420	1.35	311.11	111.11	207.41
4/1	420	1.32	318.18	118.18	212.12
5/1	420	1.30	323.08	123.08	215.38
6/1	420	1.28	328.13	128.13	218.75
7/1	420	1.25	336.00	136.00	224.00
8/1	420	1.22	344.26	144.26	229.51
9/1	420	1.20	350.00	150.00	233.33
Totals	3780		2928.54	1128.54	1952.36
Total € owed			2700.00	900.00	1800.00

In this example, the value of the dollar is increasing relative to the euro; that is, it takes less dollars to purchase the same, fixed amount of euros. As a result, the obligor is overpaid using the same time period as Example 1.

It is true this example could be used to argue that an obligor is better off waiting until absolutely compelled to pay the accruing support since payment of the full € 2700 on 9/1 would only cost \$ 3240 instead of the \$ 3780 paid in compliance with the agreement.

It is well known that applying interest to a child support obligation exacerbates the ability to ultimately pay the full amount owed. However, in the situation where there is a foreign order and an increasing dollar vis-a-vis the currency of the order, it is the imposition of interest on the debt that becomes an incentive to pay timely. The numbers chosen for the example show an increase in value of around 14% over the nine months. This is unrealistically high. An interest rate in the 5% - 8% range should be sufficient to exceed most currency fluctuations and provide the impetus to pay when the obligation becomes due.

The last aspect of the practical implementation to be discussed is the wording that should be used to accomplish the currency conversion. What must be avoided is any suggestion that the tribunal is to substitute a dollar amount for the foreign currency amount. Particularly with respect to ongoing support, any attempt to “fix” the exchange rate should be viewed as an attempt to impose an impermissible modification on the order.

While it is certainly possible to apply the breach or judgment date rule to an arrears determination, it is not advisable. The breach date approach has the obvious problem that the

tribunal making the determination would have to convert the currency for each missed payment. As the examples demonstrate, while a judgment date approach has perhaps a greater viability than the breach date, it is the payment date that does the most to make both parties closer to being “made whole”.

To achieve the goal of using the payment date, the Restatement contains some suggested language for orders.

SECTION 7. JUDGMENTS AND AWARDS ON FOREIGN-MONEY CLAIMS; TIMES OF MONEY CONVERSION; FORM OF JUDGMENT.

...
(f) A judgment substantially in the following form complies with subsection (a):
[IT IS ADJUDGED AND ORDERED, that Defendant (insert name) pay to Plaintiff (insert name) the sum of (insert amount in the foreign money) plus interest on that sum at the rate of (insert rate - see Section 9) percent a year or, at the option of the judgment debtor, the number of United States dollars which will purchase the (insert name of foreign money) with interest due, at a bank-offered spot rate at or near the close of business on the banking day next before the day of payment, together with assessed costs of (insert amount) United States dollars.] [Note: States should insert their customary forms of judgment with appropriate modifications.]

Certainly, this language appears more than sufficient. However, for child support cases, some additions and revisions might be suggested. There are also some practical and logistical factors that come into play. One significant factor is whether the documents being used to process the case include some form of “official” or “verified” computation that also includes a currency conversion. If so, the allegations should conform to the equivalence provided.

When no conversion to dollars is provided, the default should be “document preparation” date. However, this does have some pitfalls. Caution must be taken when the computation date is different from the document preparation date. The examples below use the values in Example 1 above and posit that the document is being prepared on 9/1 using data provided with a calculation date of 12/25

Using the UIFSA registration process as a model, the following paragraphs are suggestions for possible use.

NOTICE OF REGISTRATION OF FOREIGN SUPPORT ORDER (UIFSA)

¶ The amount of the alleged arrearage is € 900 (Euros) having a United States of America Dollar equivalence of \$ 1080 as of 12/25/YYYY.

OR

¶ The amount of the alleged arrearage is € 900 (Euros) as of 12/25/YYYY having a United States of America Dollar equivalence of \$ 1260 as of 9/1/YYYY.

MOTION FOR ENFORCEMENT (UIFSA)

PRIOR ORDERS

- ¶ On 1/10/99 a tribunal ordered *Obligor* to pay regular child support of € 200 (Euros) monthly, beginning 1/1/99, and monthly thereafter. The amount and frequency of *Obligor's* child support obligation remains unchanged.

CHILD SUPPORT ARREARAGE

- ¶ *Obligor* failed to pay court ordered child support. The amount of the alleged arrearage is € 900 (Euros) having a United States of America Dollar equivalence of \$ 1080 as of 12/25/YYYY.

OR

- ¶ *Obligor* failed to pay court ordered child support. The amount of the alleged arrearage is € 900 (Euros) as of 12/25/YYYY having a United States of America Dollar equivalence of \$ 1260 as of 9/1/YYYY.

[NOTE: Using the same “as of” dates in the enforcement pleading presupposes the Registration documents are prepared at the same time as the Motion. If there is a significant time gap between the filings, the best practice is to seek an updated arrears calculation and use that date in the remedy pleading. In either situation, the pleadings should recite the support in the currency of the order along with an alleged dollar equivalence.]

ARREARAGE JUDGMENT

- ¶ The Court should confirm and enter judgment for the child support arrearage and accrued interest and order income withholding to liquidate the judgment.

[NOTE: The request for confirmation of the arrearage is combined with the request in the next paragraph for the tribunal to convert the current and arrears amounts into equivalent US dollars. At this point, the concepts of “judgment date” and “payment date” are merged. The tribunal in setting an equivalence is going to have to operate as if the prospective support and arrears amount is to be paid on the date of judgment. Using this approach, the amounts found most likely will be different than those used when the Registration or Enforcement pleadings were prepared.]

EXCHANGE RATE

- ¶ The Tribunal should find the United States of America Dollar equivalence of any foreign currency ordered payable by an appropriate foreign tribunal pursuant to [UIFSA § 305(f)]. The Tribunal should make all further monetary findings in United States of America Dollars based on the finding of United States of America Dollar equivalence.

[NOTE: Logistically, unless internet access is available immediately prior to or at court, it is impractical to use the conversion rate on the hearing date in setting the current support equivalence. Still, the best practice is to use the most recent information available. Fortunately, UIFSA 2001 § 102(15) provides the mechanism:

(15) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

This definition fits perfectly with the ability to print an Internet page. The use of Internet sites to obtain currency conversion information is permissible based upon UIFSA 2001 § 305(f):

(f) If requested to enforce a support order, arrears, or judgment or modify a support order stated in a foreign currency, a responding tribunal of this State shall convert the amount stated in the foreign currency to the equivalent amount in dollars under the applicable official or market exchange rate as publicly reported.

The internet site should be considered a source of a market exchange rate that is publically reported. The copy of the conversion computations along with web page prints showing the rate used should be submitted to the court as a "commercial publication" admissible under a state rule comparable to the Federal Rules of Evidence, Rule 803(17).

Rule 803. Hearsay Exceptions; Availability of Declarant Immaterial

1. The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

...

(17) Market reports, commercial publications. Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.

The major sites used for currency conversion are clearly utilized by currency traders.]

FOREIGN LAW

[Use only if applicable]

Pursuant to Rules of Evidence/Civil Procedure, Rule XXX, notice is hereby given of intent to raise an issue concerning the law of a foreign country. A copy of said foreign law is attached as Exhibit "?" and incorporated by reference.

[NOTE: This is **not** the conversion calculation mentioned above. This paragraph would be inserted if there is some provision of the law of the other nation that the court needs to be aware of. Examples might include: duration, interest, defenses, or limitations. The citation would be to the applicable law of the enforcing forum. Whether found in the Rules of Civil Procedure or Rules of Evidence, most states have a provision comparable to the Federal Rules of Civil Procedure, Rule 44.1

Rule 44.1.Determination of Foreign Law

A party who intends to raise an issue concerning the law of a foreign country shall give notice by pleadings or other reasonable written notice. The court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Federal Rules of Evidence. The court's determination shall be treated as a ruling on a question of law.

While it is certainly the best practice to provide the specific law, it is important to note that the ability to determine foreign law is an inherent power of the court and one that can be exercised by considering sources beyond those submitted by the parties. If the law is not attached or provided, the advocating party should assure that a request is made to take notice and the substance and citation is provided.]

ORDER ENFORCING CHILD SUPPORT OBLIGATION (UIFSA)

PRIOR ORDERS

The Court FINDS that on 1/10/99 a tribunal ordered *Obligor* to pay regular child support of € 200 (Euros), monthly, beginning 1/1/99 and monthly thereafter. The Court finds that the United States of America legal tender equivalent of the prospective child support ordered payable in foreign currency by the support ordering tribunal in this cause is \$ 250.00.

All further monetary findings regarding the support obligation, including prospective support and arrears, are stated in United States of America Dollar equivalency.

[NOTE: The most important aspect of obtaining enforcement of a foreign support order is to assure that nothing in the US order can be construed as an impermissible “modification” of the support amount or a “fixing” of the currency exchange. A statement by the tribunal that all US dollar recitations are an equivalence should make this clear. However, in an abundance of precaution, the attorney may want to repeat the approach of stating the order amount in the foreign currency with the dollar equivalency. The equivalency language should make clear that it applies to every payment recitation including the periodic payment on arrears. The only exception, noted above, is that court costs and fees incurred in the US court should be stated in US dollars only.]

JUDGMENT ON ARREARS

The Court FINDS and confirms that *Obligor* is in arrears in the amount of \$ 1,150.49 as of _____, 20____. This includes all unpaid child support and any balance owed on previously confirmed arrearage or retroactive support judgments as of the specified date, but does not include application of any child support paid on that date. The judgment for this amount is a cumulative judgment.

Court GRANTS and RENDERS judgment against *Obligor* and in favor of *Obligee* in the amount of \$ 1,150.49, with interest at the rate provided by the law of the jurisdiction that issued the controlling order, for collection and distribution according to law.

[NOTE: Like an interstate case, the law of the issuing tribunal determines the interest rate and methodology.]

The sites below have “publicly reported market exchange” rate information and provide historical rates as well as conversion calculators. The first two addresses have a conversion application that can be used to convert historical data.

www.oanda.com
www.fxtop.com
www.exchangerate.com

www.x-rates.com
www.xe.com

Conclusion

As opposed to the difficulties encountered in determining the correct amount of damages, a support obligation is akin to a debt expressed as a sum certain. Having made this sum certain

determination, the problem with converting the debt owed in one currency into another currency had existed for centuries. No “perfect” solution has or is available that will completely satisfy the competing interests of the creditor and debtor.

The developing, modern view is that satisfaction of the debt should be based upon payment of the amount of “local” currency needed to obtain the amount owed as of the date the debt is actually paid. This creates special problems for ongoing support obligations. The solution requires recognition that the exchange rate will vary over time. Thus, the amount to be paid in the currency of the enforcing forum must be stated as an equivalent to the currency ordered by the establishing forum.

The Interstate Child UCCJEA & UIFSA

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The Interstate Child

(As used in this paper, “family” means one child, at least, and the parents of that child, regardless of the marital status of the parents.)

Background

Historically, family law is a matter of state rather than federal law. However, for various reasons, people travel more. As a result, family law has to take on an interstate, and international component. The National Conference of Commissioners on Uniform State Laws (NCCUSL) is tasked with drafting laws on various subjects that attempt to bring a uniformity across state lines.

With respect to family law, different states had adopted different approaches to issues related to custody and visitation, a.k.a. “parenting time”, that often resulted in conflicting resolutions. To seek harmony in this area, the NCCUSL has promulgated the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).

Likewise, it also promulgated the Uniform Interstate Family Support Act (UIFSA) to govern issues related to family support. In doing so, the UIFSA was specifically written to stop the existing practice of creating multiple valid orders with differing support amounts that could be entered as an obligor moved around the country.

While each Act is deals with a different family related issue, they share very common features. Often, there are virtually identical provisions although the placement within the act and within a certain section varies.

UIFSA	UCCJEA
<ul style="list-style-type: none"> • is the successor to the Uniform Reciprocal Enforcement of Support Act (URESA) & the the Revised Uniform Reciprocal Enforcement of Support Act (RURESA) which had been adopted by different states with differing versions • was “mandated “ for adoption by all states under the provisions of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 • all states* have enacted the version promulgated in 1996 and 18 states have enacted the 2001 version • is in harmony with the federal Full Faith and Credit for Child Support Orders Act (FFCCSOA), 28 U.S.C.A.1738B 	<ul style="list-style-type: none"> • is the successor to the Uniform Child Custody Jurisdiction Act (UCCJA) • is not mandated for adoption • 45 states have adopted the UCCJEA with the others having some version of the UCCJA • is in harmony with the federal Full Faith and Credit Given to Child Custody Determinations more commonly known as the Parental Kidnaping Prevention Act (PKPA), 28 U.S.C.A. 1738A

* the “states” subject to the mandate are all 50 States plus the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands

The UCCJEA was approved by the NCCUSL in 1997 and has been unchanged. The UIFSA is more of a “work in progress”. Originally approved in 1992, it underwent revisions in 1996 primarily to accommodate the needs expressed by employers regarding the new ability to seek implementation of income withholding across state lines. The UIFSA was also revised in 2001 with the main focus on the processing of international cases. The excerpts used in this paper are from the UIFSA 2001, unless noted otherwise. Because not all states have adopted the 2001 revisions, to identify the changes made by UIFSA 2001, additions are underlined and deletions appear in ~~strikeout~~. It should be noted that a section of text that appears deleted in one section is most often found in a new or revised section. The revisions made in UIFSA 2001 were not intended to make any substantive changes from the 1996 version.

Part A - Basic Concepts

A-1 Subject Matter Jurisdiction

Both the UCCJEA and the UIFSA make clear exactly what aspects of the family dynamic are governed by which act. They do so using both inclusive and exclusive language. The most important feature of both acts is the specific exclusion of the subject matter covered by the other act. The UCCJEA also deliberately omits adoption proceedings and there are several Interstate Compacts that cover this issue.

One shared element that each act must deal with is the issue of parentage. Parentage may arise in the context of either getting a custody order or obtaining a support order. While parentage issues under the Uniform Parentage Act (UPA) are beyond the scope of this paper, the UPA is drafted to work in harmony with both the UCCJEA and the UIFSA.

While the primary focus of the UIFSA is upon child support, it is also the legal mechanism through which spousal support can be established, modified, and enforced.

UCCJEA	UIFSA
<p>SECTION 102. DEFINITIONS. In this [Act]:</p> <p>(3) “Child-custody determination” means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes a permanent, temporary, initial, and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.</p> <p>(4) “Child-custody proceeding” means a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under [Article] 3.</p>	<p>[Section 101 of UIFSA 96]</p> <p>SECTION 102. DEFINITIONS. In this [Act]:</p> <p>(23) “Support order” means a judgment, decree, or order, or directive, whether temporary, final, or subject to modification, <u>issued by a tribunal</u> for the benefit of a child, a spouse, or a former spouse, which provides for monetary support, health care, arrearages, or reimbursement, and may include related costs and fees, interest, income withholding, attorney’s fees, and other relief.</p> <p>[Section 106 of UIFSA 96]</p> <p>SECTION 104. REMEDIES CUMULATIVE.</p> <p>(a) Remedies provided by this [Act] are cumulative and do not affect the availability of remedies under other law, <u>including the recognition of a support order of a foreign country or political subdivision on the basis of comity.</u></p> <p>(b) <u>This [Act] does not:</u></p> <p><u>(1) provide the exclusive method of establishing or enforcing a support order under the law of this State; or</u></p>

<p>SECTION 103. PROCEEDINGS GOVERNED BY OTHER LAW. This [Act] does not govern an adoption proceeding or a proceeding pertaining to the authorization of emergency medical care for a child.</p>	<p><u>(2) grant a tribunal of this State jurisdiction to render judgment or issue an order relating to [child custody or visitation] in a proceeding under this [Act].</u></p>
---	--

A-2 Status vs Personal Jurisdiction

The most fundamental difference between the UCCJEA and the UIFSA is the approach to the “other” jurisdiction needed. In addition to the requisite subject matter jurisdiction, the UCCJEA requires a court have “status” jurisdiction vis-a-vis the child. This status jurisdiction is based on the location of the child and the significant connection the child has with the forum state. The ultimate determining factor is the “home state” of the child. The historical basis for the home state approach is that a state has an interest in the protection and use of “property” located in that state. While a state is empowered to make a custody determination without having personal jurisdiction over every individual, the UCCJEA recognizes that a binding effect can only be imposed on those who have been served or notified.

To impose a financial obligation upon an individual, the U. S. Constitution requires the forum to have “personal” jurisdiction over the obligor. However, the requirement for personal jurisdiction does not mean the obligor has to be currently residing in the forum state. The inquiry is whether the individual has taken some purposeful act which would create a reasonable expectation that the forum would have a justiciable interest in the action or the result of the action. In promulgating the UIFSA, the NCCUSL set forth several bases that are intended to encompass all conduct that is legally sufficient for personal jurisdiction.

UCCJEA	UIFSA
<p>SECTION 102. DEFINITIONS. In this [Act]: (7) “Home State” means the State in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child-custody proceeding. In the case of a child less than six months of age, the term means the State in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period.</p> <p>SECTION 201. INITIAL CHILD-CUSTODY JURISDICTION. (a) Except as otherwise provided in Section 204, a court of this State has jurisdiction to make an initial child-custody determination only if: (1) this State is the home State of the child on the date of the commencement of the proceeding, or was the home State of the child within six months before the commencement of the proceeding and the child is absent from this State but a parent or person acting as a parent</p>	<p>SECTION 201. BASES FOR JURISDICTION OVER NONRESIDENT. (a) In a proceeding to establish; or enforce; or modify a support order or to determine parentage, a tribunal of this State may exercise personal jurisdiction over a nonresident individual [or the individual’s guardian or conservator] if: (1) the individual is personally served with [citation, summons, notice] within this State; (2) the individual submits to the jurisdiction of this State by consent in a record, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction; (3) the individual resided with the child in this State; (4) the individual resided in this State and provided prenatal expenses or support for the child; (5) the child resides in this State as a result of the acts or directives of the individual; (6) the individual engaged in sexual intercourse in this State and the child may have been</p>

continues to live in this State;

(2) a court of another State does not have jurisdiction under paragraph (1), or a court of the home State of the child has declined to exercise jurisdiction on the ground that this State is the more appropriate forum under Section 207 or 208, and:

(A) the child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this State other than mere physical presence; and

(B) substantial evidence is available in this State concerning the child's care, protection, training, and personal relationships;

(3) all courts having jurisdiction under paragraph (1) or (2) have declined to exercise jurisdiction on the ground that a court of this State is the more appropriate forum to determine the custody of the child under Section 207 or 208; or

(4) no court of any other State would have jurisdiction under the criteria specified in paragraph (1), (2), or (3).

(b) Subsection (a) is the exclusive jurisdictional basis for making a child-custody determination by a court of this State.

(c) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child-custody determination.

SECTION 106. EFFECT OF CHILD-CUSTODY DETERMINATION.

A child-custody determination made by a court of this State that had jurisdiction under this [Act] binds all persons who have been served in accordance with the laws of this State or notified in accordance with Section 108 or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to those persons, the determination is conclusive as to all decided issues of law and fact except to the extent the determination is modified.

conceived by that act of intercourse; ~~or~~

(7) [the individual asserted parentage in the [putative father registry] maintained in this State by the [appropriate agency]]; or

(8)] there is any other basis consistent with the constitutions of this State and the United States for the exercise of personal jurisdiction.

(b) The bases of personal jurisdiction set forth in subsection (a) or in any other law of this State may not be used to acquire personal jurisdiction for a tribunal of the State to modify a child support order of another State unless the requirements of Section 611 or 615 are met.

SECTION 202. PROCEDURE WHEN EXERCISING JURISDICTION OVER NONRESIDENT-DURATION OF PERSONAL JURISDICTION.

Personal jurisdiction acquired by a tribunal of this State in a proceeding under this [Act] or other law of this State relating to a support order continues as long as a tribunal of this State has continuing, exclusive jurisdiction to modify its order or continuing jurisdiction to enforce its order as provided by Sections 205, 206, and 211.

~~A tribunal of this State exercising personal jurisdiction over a nonresident under Section 204 may apply Section 316 (Special Rules of Evidence and Procedure) to receive evidence from another State and Section 318 (Assistance with Discovery) to obtain discovery through a tribunal of another State. In all other respects, Articles 3 through 7 do not apply and the tribunal shall apply the procedural and substantive law of this State, including the rules on choice of law other than those established by this [Act].~~

[moved to Section 210 in UIFSA 2001]

A-3 ECJ/CEJ

The historical problem addressed by both the UCCJEA and the UIFSA was the practice of different courts or tribunals issuing different orders. The pervasive practice pre-UIFSA was for a state with current jurisdiction over an obligor to issue its own order setting a support amount even when there were previous orders in one or more states. The fundamental problem was that each of those orders was valid which resulted in the ultimate support obligation being a consolidation of the various amounts ordered, using the highest order in effect at the time. Often, the higher order was not the most recent order and not the order being actively enforced. The multiple order situation was confusing to both the obligor and obligee.

A similar problem existed when the current home state entered a custody or visitation order

different from the order entered in a previous home state. A federal attempt using the Parental Kidnaping Prevention Act (PKPA), 28 U.S.C.A. 1738A, had not resolved the problem.

Thus, both the UCCJEA and the UIFSA adopted a concept recognized in many states that there should be only one tribunal with the exclusive jurisdiction to modify the current arrangement. The UIFSA uses the term “continuing, exclusive jurisdiction”; the UCCJEA uses “exclusive, continuing jurisdiction”. It should be noted that the exclusivity to modify does not preclude another forum from enforcing the existing order. Especially for support, nothing precludes several forums from taking simultaneous enforcement actions based upon the location of the obligor or an obligor’s asset. Of course, the enforcement actions must be co-ordinated in order to prevent double payment by the obligor or one action having some preclusive effect on the other action.

UCCJEA	UIFSA
<p>SECTION 202. EXCLUSIVE, CONTINUING JURISDICTION.</p> <p>(a) Except as otherwise provided in Section 204, a court of this State which has made a child-custody determination consistent with Section 201 or 203 has exclusive, continuing jurisdiction over the determination until:</p> <p>(1) a court of this State determines that neither the child, the child’s parents, and any person acting as a parent do not have a significant connection with this State and that substantial evidence is no longer available in this State concerning the child’s care, protection, training, and personal relationships; or</p> <p>(2) a court of this State or a court of another State determines that the child, the child’s parents, and any person acting as a parent do not presently reside in this State.</p> <p>(b) A court of this State which has made a child-custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under Section 201.</p>	<p>SECTION 205. CONTINUING, EXCLUSIVE JURISDICTION TO MODIFY CHILD-SUPPORT ORDER.</p> <p>(a) A tribunal of this State <u>issuing that has issued</u> a child-support order consistent with the law of this State has <u>and shall exercise</u> continuing, exclusive jurisdiction <u>over a to modify its</u> child-support order <u>if the order is the controlling order and:</u></p> <p>(1) <u>as long as at the time of the filing of a request for modification this State remains is</u> the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or</p> <p>(2) <u>until all of the parties who are individuals have filed written consents with the tribunal of this State for a tribunal of another State to modify the order and assume continuing, exclusive jurisdiction even if this State is not the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued, the parties consent in a record or in open court that the tribunal of this State may continue to exercise jurisdiction to modify its order.</u></p> <p>(b) A tribunal of this State <u>issuing that has issued</u> a child-support order consistent with the law of this State may not exercise <u>its</u> continuing, <u>exclusive</u> jurisdiction to modify the order if <u>the order has been modified by a tribunal of another State pursuant to this [Act] or a law substantially similar to this [Act]:</u></p> <p>(1) <u>all of the parties who are individuals file consent in a record with the tribunal of this State that a tribunal of another State that has jurisdiction over at least one of the parties who is an individual or that is located in the State of residence of the child may modify the order and assume continuing, exclusive jurisdiction; or</u></p> <p>(2) <u>its order is not the controlling order.</u></p> <p>(c) <u>If a child-support order of this State is modified</u></p>

~~by a tribunal of another State pursuant to this [Act] or a law substantially similar to this [Act], a tribunal of this State loses its continuing, exclusive jurisdiction with regard to prospective enforcement of the order issued in this State, and may only:~~

~~(1) enforce the order that was modified as to amounts accruing before the modification;~~

~~(2) enforce nonmodifiable aspects of that order; and~~

~~(3) provide other appropriate relief for violations of that order which occurred before the effective date of the modification. (d) A tribunal of this State shall recognize the continuing, exclusive jurisdiction of—~~

~~If a tribunal of another State which has issued a child-support order pursuant to this [the Uniform Interstate Family Support Act] or a law substantially similar to this [that Act] which modifies a child-support order of a tribunal of this State, tribunals of this State shall recognize the continuing, exclusive jurisdiction of the tribunal of the other State.~~

~~(d) A tribunal of this State that lacks continuing, exclusive jurisdiction to modify a child-support order may serve as an initiating tribunal to request a tribunal of another State to modify a support order issued in that State.~~

~~(e) A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.~~

~~(f) A tribunal of this State issuing a spousal support order consistent with the law of this State has continuing, exclusive jurisdiction over a spousal support order throughout the existence of the support obligation. A tribunal of this State may not modify a spousal support order issued by a tribunal of another State having continuing, exclusive jurisdiction over that order under the law of that State.~~

[location of (f) in UIFSA 2001]

SECTION 211. CONTINUING, EXCLUSIVE JURISDICTION TO MODIFY SPOUSAL-SUPPORT ORDER.

(a) A tribunal of this State issuing a spousal-support order consistent with the law of this State has continuing, exclusive jurisdiction to modify the spousal-support order throughout the existence of the support obligation.

(b) A tribunal of this State may not modify a spousal-support order issued by a tribunal of another State having continuing, exclusive jurisdiction over that order under the law of that State.

(c) A tribunal of this State that has continuing,

	<p><u>exclusive jurisdiction over a spousal-support order may serve as:</u></p> <p><u>(1) an initiating tribunal to request a tribunal of another State to enforce the spousal-support order issued in this State; or</u></p> <p><u>(2) a responding tribunal to enforce or modify its own spousal-support order.</u></p>
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Part B - The Process

B-1 Courts, Tribunals, and Private Attorneys

The task of the NCCUSL is to draft uniform Acts for general use and applicability. It is certainly anticipated these will be used by private practitioners. However, in drafting the UIFSA, the NCCUSL was acutely aware of the role the state-based child support agencies (a.k.a. IV-D agencies, based on the section of the Social Security Act that created them) play in the establishment, modification, and enforcement of child support obligations. To seek harmony between the way these agencies operate and the legal structure imposed by the UIFSA, the Drafting Committee invited numerous Observers to participate.

One of the early issues identified is the fact that many states operate their child support programs using an administrative or quasi-judicial process. As a result, the UIFSA uses the term “tribunal” to describe the entity with the authority to handle support issues. Each state designates its particular tribunal. Some states have designated courts for some functions and administrative agencies for others.

Another area the drafters of the UIFSA were sensitive to was a possible perception that the Act could only be used by the child support agencies. To allay any concerns, the UIFSA contains a specific provision regarding private counsel representation.

As a general matter, the Title IV-D child support agencies are precluded from active involvement in child custody matters; however, local Domestic Relations Offices may offer these services. Due to the absence of most IV-D issues, the UCCJA contains neither the tribunal concept nor any specific language about private counsel involvement. The term “tribunal” will be used to include courts unless there is a need for a distinction.

UCCJEA	UIFSA
<p>SECTION 102. DEFINITIONS. In this [Act]:</p> <p>(6) “Court” means an entity authorized under the law of a State to establish, enforce, or modify a child-custody determination.</p>	<p>[Section 101 of UIFSA 96]</p> <p>SECTION 102. DEFINITIONS. In this [Act]:</p> <p>(24) “Tribunal” means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage.</p> <p>[Section 102 of UIFSA 96]</p> <p>SECTION 103. TRIBUNAL OF STATE. The [court, administrative agency, quasi-judicial entity, or combination] [is the tribunal] [are the tribunals] of this State.</p>

	<p>SECTION 309. PRIVATE COUNSEL. An individual may employ private counsel to represent the individual in proceedings authorized by this [Act].</p>
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B-2 Information Provided to the Tribunal

Both the UCCJEA and the UIFSA recognize they are inheriting a world in which some information must be shared and other information protected. Both acts also recognize they became effective in a world that had created multiple orders dealing with the same rights and duties. As a result, the UCCJEA requires the existence of other orders or other proceedings involving the child be revealed in the initial pleading. The court can then decide if it is appropriate for it to assert any jurisdiction.

The UIFSA dynamic regarding multiple orders contemplates the registration process will be utilized. [see C-1] In the UIFSA 96, a strict reading might lead to the conclusion that submission of all existing orders to the tribunal was duplicated by having them included both at the time of registration and when a pleading was filed, which could be simultaneously. The UIFSA 2001 revises this to provide a “fall back” requirement to include copies of multiple orders only if they have not been tendered as part of the registration process.

With respect to nondisclosure of identifying information to protect a person from potential harm or abuse, the UIFSA 96 adopted a process that was soon seen to be unworkable. Ostensibly, the party seeking protection had to pursue getting an order for nondisclosure in that person’s state. In the UIFSA 2001, the drafters adopted the process already in the UCCJEA, i.e. based upon a sworn affidavit or pleading filed in the state ruling on the custody or support issues, the tribunal would order the information not be disclosed unless the other party demonstrates a need for disclosure.

UCCJEA	UIFSA
<p>SECTION 209. INFORMATION TO BE SUBMITTED TO COURT.</p> <p>(a) [Subject to [local law providing for the confidentiality of procedures, addresses, and other identifying information], in] [In] a child-custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child’s present address or whereabouts, the places where the child has lived during the last five years, and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit must state whether the party:</p> <p>(1) has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the child and, if so, identify the court, the case number, and the date of the child-custody determination, if any;</p> <p>(2) knows of any proceeding that could affect the</p>	<p>SECTION 311. PLEADINGS AND ACCOMPANYING DOCUMENTS.</p> <p>(a) A In a proceeding under this [Act], a [petitioner] seeking to establish or modify a support order, or to determine parentage in a proceeding under the [Act], or to register and modify a support order of another State must verify the file a [petition]. Unless otherwise ordered under Section 312 (Nondisclosure of Information in Exceptional Circumstances), the [petition] or accompanying documents must provide, so far as known, the name, residential address, and social security numbers of the obligor and the obligee or the parent and alleged parent, and the name, sex, residential address, social security number, and date of birth of each child for whom whose benefit support is sought or whose parentage is to be determined. The Unless filed at the time of registration, the [petition] must be accompanied by a certified copy of any support order in effect known to have been</p>

current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding; and

(3) knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with, the child and, if so, the names and addresses of those persons.

(b) If the information required by subsection (a) is not furnished, the court, upon motion of a party or its own motion, may stay the proceeding until the information is furnished.

(c) If the declaration as to any of the items described in subsection (a)(1) through (3) is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and other matters pertinent to the court's jurisdiction and the disposition of the case.

(d) Each party has a continuing duty to inform the court of any proceeding in this or any other State that could affect the current proceeding.

(e) If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of identifying information, the information must be sealed and may not be disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety, or liberty of the party or child and determines that the disclosure is in the interest of justice.]

issued by another tribunal. The [petition] may include any other information that may assist in locating or identifying the [respondent].

(b) The [petition] must specify the relief sought. The [petition] and accompanying documents must conform substantially with the requirements imposed by the forms mandated by federal law for use in cases filed by a support enforcement agency.

SECTION 312. NONDISCLOSURE OF INFORMATION IN EXCEPTIONAL CIRCUMSTANCES.

~~Upon a finding, which may be made ex parte, that the health, safety, or liberty of a party or child would be unreasonably put at risk by the disclosure of identifying information, or if an existing order so provides, a tribunal shall order that the address of the child or party or other identifying information not be disclosed in a pleading or other document filed in a proceeding under this [Act].~~ If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of specific identifying information, that information must be sealed and may not be disclosed to the other party or the public. After a hearing in which a tribunal takes into consideration the health, safety, or liberty of the party or child, the tribunal may order disclosure of information that the tribunal determines to be in the interest of justice.

B-3 Choice of Law/Service of Process

Section 201(c) of the UCCJEA states that personal jurisdiction over a particular person is not necessary in order to enter a child custody determination. To effectuate this concept, the UCCJEA links when notice or joinder are required, and the effects of failure to join or notify, to the laws and procedures applicable to intrastate cases. However, it recognizes that an order entered without notice may not be enforceable against the person who did not receive the notice. For the initial establishment of an order under § 205, the UCCJEA provides that the method of service can be in accordance with the law of the forum or the location of the nonresident person. For enforcement of any custody determination, service must be in accordance with the law of the enforcing state. § 309.

Needing to have all affected parties properly noticed, the UIFSA specifies simply that the law of the forum state applies to all aspects. To obtain valid service, it must be accomplished in compliance with the forum's law. With respect to the establishment of the initial order or the

modification of the tribunal's own order, § 303 states the law of the forum will apply, but with exceptions. Those exceptions involve the modification or enforcement of another state's order.

When enforcing another state's order, basic choice of law concepts distinguish between the law applicable to substantive issues versus the law applicable to procedural aspects. Section 604 of the UIFSA sets out in detail the resolution. One interesting choice is that the statute of limitations of the order issuing or order enforcing forum, whichever is longer, applies. Clearly, the most vexing problem, particularly for the IV-D agencies, is interest. The collection of interest is a matter of substantive law; thus, linked to the law of the order issuing forum. When pursuing enforcement in another jurisdiction, the calculation can be problematic. The issue is compounded when there are multiple orders contributing portions to the consolidated arrears and is exacerbated when one jurisdiction modifies the order of another state. To give some clarity, the UIFSA 2001 provides that the law of the state whose order will govern prospective support should apply to the interest to be applied not only on missed payments in the future but also to the arrears.

UCCJEA	UIFSA
<p>SECTION 205. NOTICE; OPPORTUNITY TO BE HEARD; JOINDER.</p> <p>(a) Before a child-custody determination is made under this [Act], notice and an opportunity to be heard in accordance with the standards of Section 108 must be given to all persons entitled to notice under the law of this State as in child-custody proceedings between residents of this State, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child.</p> <p>(b) This [Act] does not govern the enforceability of a child-custody determination made without notice or an opportunity to be heard.</p> <p>(c) The obligation to join a party and the right to intervene as a party in a child-custody proceeding under this [Act] are governed by the law of this State as in child-custody proceedings between residents of this State.</p> <p>SECTION 108. NOTICE TO PERSONS OUTSIDE STATE.</p> <p>(a) Notice required for the exercise of jurisdiction when a person is outside this State may be given in a manner prescribed by the law of this State for service of process or by the law of the State in which the service is made. Notice must be given in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective.</p> <p>(b) Proof of service may be made in the manner prescribed by the law of this State or by the law of the State in which the service is made.</p> <p>(c) Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court.</p>	<p>SECTION 303. APPLICATION OF LAW OF STATE.</p> <p>Except as otherwise provided <u>by in</u> this [Act], a responding tribunal of this State <u>shall</u>:</p> <p>(1) shall apply the procedural and substantive law; including the rules on choice of law; generally applicable to similar proceedings originating in this State and may exercise all powers and provide all remedies available in those proceedings; and</p> <p>(2) shall determine the duty of support and the amount payable in accordance with the law and support guidelines of this State.</p> <p>SECTION 604. CHOICE OF LAW.</p> <p>(a) The <u>Except as otherwise provided in subsection (d), the law of the issuing State governs:</u></p> <p>(1) <u>the nature, extent, amount, and duration of current payments and other obligations of support and under a registered support order;</u></p> <p>(2) <u>the computation and payment of arrearages and accrual of interest on the arrearages under the support order; and</u></p> <p>(3) <u>the existence and satisfaction of other obligations under the support order.</u></p> <p>(b) <u>In a proceeding for arrearages arrears under a registered support order, the statute of limitation under the laws of this State or of the issuing State, whichever is longer, applies.</u></p> <p>(c) <u>A responding tribunal of this State shall apply the procedures and remedies of this State to enforce current support and collect arrears and interest due on a support order of another State registered in this State.</u></p> <p>(d) <u>After a tribunal of this or another State determines which is the controlling order and issues an order consolidating arrears, if any, a</u></p>

<p>SECTION 309. SERVICE OF PETITION AND ORDER. Except as otherwise provided in Section 311, the petition and order must be served, by any method authorized [by the law of this State], upon respondent and any person who has physical custody of the child.</p>	<p>tribunal of this State shall prospectively apply the law of the State issuing the controlling order, including its law on interest on arrears, on current and future support, and on consolidated arrears.</p>
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B-4 Evidence, Discovery, and Procedure

Some of the more significant provisions of both the UCCJEA and UIFSA are those that provide for use of technology in conducting hearings with parties and witnesses in places other than the hearing room.

Both Acts permit telephonic testimony and participation. However, there is a significant difference regarding the compulsion to appear. The UCCJEA makes specific provisions that enable a court to compel the appearance of a party with or without the child. This is appropriate since the matter to be resolved involves custody of the particular child and having the physical presence of the parent with physical possession of the child at the hearing may increase the ability to actually enforce the determination.

The UIFSA, especially in the 2001 version, takes the opposite approach in stating that physical presence is not required and telephonic testimony shall be used. Note that the language in the UIFSA should not be taken to mean physical presence is not required when the remedy sought requires it, i.e. when contempt is sought, the physical presence of the person is compelled to avoid a *caipias* or arrest warrant being issued.

Recognizing the interstate aspects of the issues involved, both acts allow the admission of documents and records without the requirement for production of the original. As use of technology and the internet increases, especially in child support cases, these Acts seek to make both custody and support proceedings as “user friendly” as possible while still assuring the due process and other rights of all parties.

Both Acts abolish any privilege or immunity deriving from the family relationship and the assertion of the right against self- incrimination can result in a negative inference.

The UIFSA contains a rather unique provision regarding the use of “standard forms”. Because of the substantial involvement of IV-D agencies in processing interstate support cases, the federal Office of Child Support Enforcement (OCSE) was authorized to promulgate forms that are routinely used. These include a General Testimony and Affidavit in Support of Establishing Paternity. They serve the purpose of providing evidence in the absence of the nonresident party. There is nothing in the UIFSA that prohibits use by private practitioners and the forms are readily available from the OCSE website.

UCCJEA	UIFSA
<p>SECTION 111. TAKING TESTIMONY IN ANOTHER STATE. (a) In addition to other procedures available to a party, a party to a child-custody proceeding may offer testimony of witnesses who are located in</p>	<p>SECTION 316. SPECIAL RULES OF EVIDENCE AND PROCEDURE. (a) The physical presence of the <u>petitioner</u> a <u>nonresident party who is an individual</u> in a <u>responding</u> tribunal of this State is not required for</p>

another State, including testimony of the parties and the child, by deposition or other means allowable in this State for testimony taken in another State. The court on its own motion may order that the testimony of a person be taken in another State and may prescribe the manner in which and the terms upon which the testimony is taken.

(b) A court of this State may permit an individual residing in another State to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated court or at another location in that State. A court of this State shall cooperate with courts of other States in designating an appropriate location for the deposition or testimony.

(c) Documentary evidence transmitted from another State to a court of this State by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission.

SECTION 210. APPEARANCE OF PARTIES AND CHILD.

(a) In a child-custody proceeding in this State, the court may order a party to the proceeding who is in this State to appear before the court in person with or without the child. The court may order any person who is in this State and who has physical custody or control of the child to appear in person with the child.

(b) If a party to a child-custody proceeding whose presence is desired by the court is outside this State, the court may order that a notice given pursuant to Section 108 include a statement directing the party to appear in person with or without the child and informing the party that failure to appear may result in a decision adverse to the party.

(c) The court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this section.

(d) If a party to a child-custody proceeding who is outside this State is directed to appear under subsection (b) or desires to appear personally before the court with or without the child, the court may require another party to pay reasonable and necessary travel and other expenses of the party so appearing and of the child.

SECTION 310. HEARING AND ORDER.

(c) If a party called to testify refuses to answer on the ground that the testimony may be self-incriminating, the court may draw an adverse inference from the refusal.

the establishment, enforcement, or modification of a support order or the rendition of a judgment determining parentage.

(b) ~~A verified [petition];~~ An affidavit, a document substantially complying with federally mandated forms, and or a document incorporated by reference in any of them, which would not be excluded under the hearsay rule if given in person, is admissible in evidence if given under oath-penalty of perjury by a party or witness residing in another State.

(c) A copy of the record of child-support payments certified as a true copy of the original by the custodian of the record may be forwarded to a responding tribunal. The copy is evidence of facts asserted in it, and is admissible to show whether payments were made.

(d) Copies of bills for testing for parentage, and for prenatal and postnatal health care of the mother and child, furnished to the adverse party at least [ten] days before trial, are admissible in evidence to prove the amount of the charges billed and that the charges were reasonable, necessary, and customary.

(e) Documentary evidence transmitted from another State to a tribunal of this State by telephone, telecopier, or other means that do not provide an original writing record may not be excluded from evidence on an objection based on the means of transmission.

(f) In a proceeding under this [Act], a tribunal of this State ~~may~~ shall permit a party or witness residing in another State to be deposed or to testify under penalty of perjury by telephone, audiovisual means, or other electronic means at a designated tribunal or other location in that State. A tribunal of this State shall cooperate with tribunals of other States in designating an appropriate location for the deposition or testimony.

(g) If a party called to testify at a civil hearing refuses to answer on the ground that the testimony may be self-incriminating, the trier of fact may draw an adverse inference from the refusal.

(h) A privilege against disclosure of communications between spouses does not apply in a proceeding under this [Act].

(i) The defense of immunity based on the relationship of husband and wife or parent and child does not apply in a proceeding under this [Act].

(j) A voluntary acknowledgment of paternity, certified as a true copy, is admissible to establish parentage of the child.

<p>(d) A privilege against disclosure of communications between spouses and a defense of immunity based on the relationship of husband and wife or parent and child may not be invoked in a proceeding under this [article].</p>	<p><u>SECTION 210. APPLICATION OF [ACT] TO NONRESIDENT SUBJECT TO PERSONAL JURISDICTION.</u> <u>A tribunal of this State exercising personal jurisdiction over a nonresident in a proceeding under this [Act], under other law of this State relating to a support order, or recognizing a support order of a foreign country or political subdivision on the basis of comity may receive evidence from another State pursuant to Section 316, communicate with a tribunal of another State pursuant to Section 317, and obtain discovery through a tribunal of another State pursuant to Section 318. In all other respects, Articles 3 through 7 do not apply and the tribunal shall apply the procedural and substantive law of this State.</u></p>
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B-5 Communication between tribunals

To have a legal structure that is designed for situations where not all parties reside in the same state, it is critical that tribunals in different states be able to communicate and assist each other. This is particularly true in custody and visitation disputes. Thus, in many situations under the UCCJEA, communication and co-ordination is required: § 204 - Temporary Emergency Jurisdiction, § 206 - Simultaneous Proceedings, and § 307 - Simultaneous Proceedings [see B-7].

Both acts go beyond basic communication and empower courts in one state to assist courts in other states with obtaining evidence. The UCCJEA contemplates another court can conduct hearings and order evaluations even when it is not the forum where the issues will be resolved.

UCCJEA	UIFSA
<p>SECTION 110. COMMUNICATION BETWEEN COURTS. (a) A court of this State may communicate with a court in another State concerning a proceeding arising under this [Act]. (b) The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made. (c) Communication between courts on schedules, calendars, court records, and similar matters may occur without informing the parties. A record need not be made of the communication. (d) Except as otherwise provided in subsection (c), a record must be made of a communication under this section. The parties must be informed promptly of the communication and granted access to the record. (e) For the purposes of this section, "record"</p>	<p>SECTION 317. COMMUNICATIONS BETWEEN TRIBUNALS. A tribunal of this State may communicate with a tribunal of another State <u>or foreign country or political subdivision</u> in <u>writing a record</u>, or by telephone or other means, to obtain information concerning the laws of that State, the legal effect of a judgment, decree, or order of that tribunal, and the status of a proceeding in the other State <u>or foreign country or political subdivision</u>. A tribunal of this State may furnish similar information by similar means to a tribunal of another State <u>or foreign country or political subdivision</u>. SECTION 318. ASSISTANCE WITH DISCOVERY. A tribunal of this State may: (1) request a tribunal of another State to assist in obtaining discovery; and (2) upon request, compel a person over whom it has jurisdiction to respond to a discovery order</p>

<p>means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.</p> <p>SECTION 112. COOPERATION BETWEEN COURTS; PRESERVATION OF RECORDS.</p> <p>(a) A court of this State may request the appropriate court of another State to:</p> <p>(1) hold an evidentiary hearing;</p> <p>(2) order a person to produce or give evidence pursuant to procedures of that State;</p> <p>(3) order that an evaluation be made with respect to the custody of a child involved in a pending proceeding;</p> <p>(4) forward to the court of this State a certified copy of the transcript of the record of the hearing, the evidence otherwise presented, and any evaluation prepared in compliance with the request; and</p> <p>(5) order a party to a child-custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.</p> <p>(b) Upon request of a court of another State, a court of this State may hold a hearing or enter an order described in subsection (a).</p> <p>...</p> <p>(d) A court of this State shall preserve the pleadings, orders, decrees, records of hearings, evaluations, and other pertinent records with respect to a child-custody proceeding until the child attains 18 years of age. Upon appropriate request by a court or law enforcement official of another State, the court shall forward a certified copy of those records.</p>	<p>issued by a tribunal of another State.</p>
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B-6 Immunity

Both Acts recognize the interplay of support and custody/visitation issues. All too frequently, one issue may be raised as a “defense” to the other. The UIFSA specifically states that custody and visitation issues should not be “linked” with the duty to pay support. Certainly, when one tribunal has both ECJ under the UCCJEA and CEJ under the UIFSA, it will be one place where both issues can be appropriately raised. The concern is when a tribunal without the required subject matter jurisdiction tries to enter an order that is void. The drafters of the UIFSA were particularly concerned about the potential to “ambush” the party exercising a visitation right by filing a motion to modify support.

In addition to the substantive restrictions on where an existing order can be modified, both acts provide a procedural “shield” so that a participant in a court action under that act is immune from most other civil process.

UCCJEA	UIFSA
SECTION 109. APPEARANCE AND LIMITED	SECTION 305. DUTIES AND POWERS OF

<p>IMMUNITY.</p> <p>(a) A party to a child-custody proceeding, including a modification proceeding, or a petitioner or respondent in a proceeding to enforce or register a child-custody determination, is not subject to personal jurisdiction in this State for another proceeding or purpose solely by reason of having participated, or of having been physically present for the purpose of participating, in the proceeding.</p> <p>(b) A person who is subject to personal jurisdiction in this State on a basis other than physical presence is not immune from service of process in this State. A party present in this State who is subject to the jurisdiction of another State is not immune from service of process allowable under the laws of that State.</p> <p>(c) The immunity granted by subsection (a) does not extend to civil litigation based on acts unrelated to the participation in a proceeding under this [Act] committed by an individual while present in this State.</p>	<p>RESPONDING TRIBUNAL.</p> <p>(d) A responding tribunal of this State may not condition the payment of a support order issued under this [Act] upon compliance by a party with provisions for visitation.</p> <p>SECTION 314. LIMITED IMMUNITY OF [PETITIONER].</p> <p>(a) Participation by a [petitioner] in a proceeding under this [Act] before a responding tribunal, whether in person, by private attorney, or through services provided by the support enforcement agency, does not confer personal jurisdiction over the [petitioner] in another proceeding.</p> <p>(b) A [petitioner] is not amenable to service of civil process while <u>physically</u> present in this State to participate in a proceeding under this [Act].</p> <p>(c) The immunity granted by this section does not extend to civil litigation based on acts unrelated to a proceeding under this [Act] committed by a party while physically present in this State to participate in the proceeding.</p>
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B-7 Emergency and Simultaneous Proceedings/ “Clean Hands”

The paramount concern of both acts is to make determinations that are in the best interest of the children involved. While it is certainly important to provide for the support of a child (or spouse in appropriate situations), it is more important to provide the child with a safe and stable physical environment. The UCCJA provides a structure that enables a court to enter temporary emergency orders when needed while acting consistently with the concept that there is to be one court with exclusive, continuing jurisdiction. The UIFSA has no such compelling need for a second tribunal to enter a temporary emergency support order.

Given the emotional subject matter combined with the interstate aspect, a “race to the courthouse” is a very real possibility under both the UCCJA and the UIFSA. The resolutions taken by each act are slightly different. Under the UCCJEA, the simultaneous proceeding issue should most often be moot as there will be only one “home state” at a time. Modifications are completely finessed by the ECJ concept. If there is no home state, no court with ECJ and both courts are in states with a “significant connection”; then, the first court to have the proceeding commenced is the “winner”.

The UIFSA resolution takes a couple of additional steps. When a pleading is filed in the first state, the second pleading must be filed in the second state within the time allowed for a responsive pleading challenging the jurisdiction of the first state and an timely challenge must be made to the original filing. At that point, if the matter is purely one of subject matter or personal jurisdiction, it should be able to be resolved based upon prevailing law. More commonly, both states may have the requisite subject matter and personal jurisdiction. In those situations, the “home state” of the child will be the “winner”. It should be noted that this one time use of the “home state” concept in the UIFSA is based upon the same definition of “home state” which appears in and is used throughout the UCCJEA. The UIFSA section is also limited to only establishment actions in recognition that the CEJ concept precludes simultaneous filings for modification.

In resolving both the potential need for temporary emergency orders and well as which court prevails when simultaneous proceedings are filed, the UCCJEA imposes the requirement that the person seeking the relief not have engaged in “unjustifiable conduct” (more often described as “having clean hands”). This same doctrine is applicable when resolving the Inconvenient Forum issue discussed in B-8. Such a person is also potentially subject to extensive costs and other remedies. [see B-9] There is no comparable provision in the UIFSA.

As mentioned in B-5, there is also the requirement under the UCCJEA that a court being asked to issue an emergency order or that becomes aware of simultaneous proceedings is to communicate with other appropriate courts to make the appropriate resolution. There is no comparable requirement for tribunal communication under the UIFSA; however, there is also no prohibition. Ostensibly, the timing of the UIFSA related pleadings filed in the other state can be used to resolve the issue. Nevertheless, the tribunals in an action under the UIFSA may want to communicate to assure the support issue is timely resolved by some tribunal.

UCCJEA	UIFSA
<p>SECTION 204. TEMPORARY EMERGENCY JURISDICTION.</p> <p>(a) A court of this State has temporary emergency jurisdiction if the child is present in this State and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.</p> <p>(b) If there is no previous child-custody determination that is entitled to be enforced under this [Act] and a child-custody proceeding has not been commenced in a court of a State having jurisdiction under Sections 201 through 203, a child-custody determination made under this section remains in effect until an order is obtained from a court of a State having jurisdiction under Sections 201 through 203. If a child-custody proceeding has not been or is not commenced in a court of a State having jurisdiction under Sections 201 through 203, a child-custody determination made under this section becomes a final determination, if it so provides and this State becomes the home State of the child.</p> <p>(c) If there is a previous child-custody determination that is entitled to be enforced under this [Act], or a child-custody proceeding has been commenced in a court of a State having jurisdiction under Sections 201 through 203, any order issued by a court of this State under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the State having jurisdiction under Sections 201 through 203. The order issued in this State remains in effect until an order is obtained from the other State within the period specified or the period expires.</p>	<p>SECTION 204. SIMULTANEOUS PROCEEDINGS IN ANOTHER STATE.</p> <p>(a) A tribunal of this State may exercise jurisdiction to establish a support order if the [petition] or comparable pleading is filed after a pleading is filed in another State only if:</p> <p>(1) the [petition] or comparable pleading in this State is filed before the expiration of the time allowed in the other State for filing a responsive pleading challenging the exercise of jurisdiction by the other State;</p> <p>(2) the contesting party timely challenges the exercise of jurisdiction in the other State; and</p> <p>(3) if relevant, this State is the home State of the child.</p> <p>(b) A tribunal of this State may not exercise jurisdiction to establish a support order if the [petition] or comparable pleading is filed before a [petition] or comparable pleading is filed in another State if:</p> <p>(1) the [petition] or comparable pleading in the other State is filed before the expiration of the time allowed in this State for filing a responsive pleading challenging the exercise of jurisdiction by this State;</p> <p>(2) the contesting party timely challenges the exercise of jurisdiction in this State; and</p> <p>(3) if relevant, the other State is the home State of the child.</p>

(d) A court of this State which has been asked to make a child-custody determination under this section, upon being informed that a child-custody proceeding has been commenced in, or a child-custody determination has been made by, a court of a State having jurisdiction under Sections 201 through 203, shall immediately communicate with the other court. A court of this State which is exercising jurisdiction pursuant to Sections 201 through 203, upon being informed that a child-custody proceeding has been commenced in, or a child-custody determination has been made by, a court of another State under a statute similar to this section shall immediately communicate with the court of that State to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

SECTION 206. SIMULTANEOUS PROCEEDINGS.

(a) Except as otherwise provided in Section 204, a court of this State may not exercise its jurisdiction under this [article] if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another State having jurisdiction substantially in conformity with this [Act], unless the proceeding has been terminated or is stayed by the court of the other State because a court of this State is a more convenient forum under Section 207.

(b) Except as otherwise provided in Section 204, a court of this State, before hearing a child-custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to Section 209. If the court determines that a child-custody proceeding has been commenced in a court in another State having jurisdiction substantially in accordance with this [Act], the court of this State shall stay its proceeding and communicate with the court of the other State. If the court of the State having jurisdiction substantially in accordance with this [Act] does not determine that the court of this State is a more appropriate forum, the court of this State shall dismiss the proceeding.

(c) In a proceeding to modify a child-custody determination, a court of this State shall determine whether a proceeding to enforce the determination has been commenced in another State. If a proceeding to enforce a child-custody determination has been commenced in another State, the court may:

(1) stay the proceeding for modification pending the entry of an order of a court of the other State

enforcing, staying, denying, or dismissing the proceeding for enforcement;
(2) enjoin the parties from continuing with the proceeding for enforcement; or
(3) proceed with the modification under conditions it considers appropriate.

SECTION 208. JURISDICTION DECLINED BY REASON OF CONDUCT.

(a) Except as otherwise provided in Section 204 [or by other law of this State], if a court of this State has jurisdiction under this [Act] because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless:

(1) the parents and all persons acting as parents have acquiesced in the exercise of jurisdiction;

(2) a court of the State otherwise having jurisdiction under Sections 201 through 203 determines that this State is a more appropriate forum under Section 207; or

(3) no court of any other State would have jurisdiction under the criteria specified in Sections 201 through 203.

(b) If a court of this State declines to exercise its jurisdiction pursuant to subsection (a), it may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the unjustifiable conduct, including staying the proceeding until a child-custody proceeding is commenced in a court having jurisdiction under Sections 201 through 203.

...

B-8 Inconvenient or Inappropriate Forum

The UCCJEA has several sections that establish when it is appropriate for a court to exercise its jurisdiction. As discussed in B-7, resolution of the issue can also be affected by the “clean hands” of a person seeking relief. Even if it is determined that the court is an appropriate forum and there is no compelling basis to refuse to assert jurisdiction, the court may still decline jurisdiction. While specific factors to consider are enumerated, the abiding concern is to have the matter resolved in a forum with the best ability to obtain the information necessary while also considering the relative impact on the participants. One interesting consideration is (b)(5) which allows the parties to agree on a preferred jurisdiction. There appears to be no time limit such that the agreement could be made prior to the litigation.

The UIFSA makes no provision for an inconvenient forum. Presumably, the general concept of *forum non conveniens* would be applicable. What the UIFSA does provide is for one tribunal to forward documents to another tribunal when appropriate. This provision recognizes the difficulty often faced by an obligee in trying to obtain a support remedy against a person who will frequently move to intentionally avoid the process.

UCCJEA	UIFSA
<p>SECTION 207. INCONVENIENT FORUM.</p> <p>(a) A court of this State which has jurisdiction under this [Act] to make a child-custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another State is a more appropriate forum. The issue of inconvenient forum may be raised upon motion of a party, the court's own motion, or request of another court.</p> <p>(b) Before determining whether it is an inconvenient forum, a court of this State shall consider whether it is appropriate for a court of another State to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:</p> <ul style="list-style-type: none"> (1) whether domestic violence has occurred and is likely to continue in the future and which State could best protect the parties and the child; (2) the length of time the child has resided outside this State; (3) the distance between the court in this State and the court in the State that would assume jurisdiction; (4) the relative financial circumstances of the parties; (5) any agreement of the parties as to which State should assume jurisdiction; (6) the nature and location of the evidence required to resolve the pending litigation, including testimony of the child; (7) the ability of the court of each State to decide the issue expeditiously and the procedures necessary to present the evidence; and (8) the familiarity of the court of each State with the facts and issues in the pending litigation. <p>(c) If a court of this State determines that it is an inconvenient forum and that a court of another State is a more appropriate forum, it shall stay the proceedings upon condition that a child-custody proceeding be promptly commenced in another designated State and may impose any other condition the court considers just and proper.</p> <p>(d) A court of this State may decline to exercise its jurisdiction under this [Act] if a child-custody determination is incidental to an action for divorce or another proceeding while still retaining jurisdiction over the divorce or other proceeding.</p>	<p>SECTION 306. INAPPROPRIATE TRIBUNAL.</p> <p>If a [petition] or comparable pleading is received by an inappropriate tribunal of this State, <u>if the tribunal</u> shall forward the pleading and accompanying documents to an appropriate tribunal in this State or another State and notify the [petitioner] where and when the pleading was sent.</p>

B-9 Costs

It has been a requirement for interstate support cases since the promulgation of URESA in

1950 that there be no filing fee assessed. Under URESA and RURESAs, the provision specifically applied to fees assessed against an obligee. Recognizing that obligors may also utilize the UIFSA, it provides for no filing fees from the petitioner. While usually considered in the context of a nonresident party seeking relief, the section could be read as applying when a resident files the petition seeking relief against a nonresident. When it comes to enforcement under the UIFSA, it allows costs to be assessed against the obligor if the obligee prevails with no corresponding assessment if the obligor prevails.

The UCCJEA has the more balanced approach. Although stated in different ways, the UCCJEA provides that the “winner” recover costs from the “loser”.

Neither act can serve as the legal basis for imposition of costs against a state agency involved in the case although other state law’s may allow for the assessment.

UCCJEA	UIFSA
<p>SECTION 112. COOPERATION BETWEEN COURTS; PRESERVATION OF RECORDS. (c) Travel and other necessary and reasonable expenses incurred under subsections (a) and (b) may be assessed against the parties according to the law of this State.</p> <p>SECTION 208. JURISDICTION DECLINED BY REASON OF CONDUCT. (c) If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to subsection (a), it shall assess against the party seeking to invoke its jurisdiction necessary and reasonable expenses including costs, communication expenses, attorney’s fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees are sought establishes that the assessment would be clearly inappropriate. The court may not assess fees, costs, or expenses against this State unless authorized by law other than this [Act].</p> <p>Article 3 - Enforcement SECTION 310. HEARING AND ORDER. (b) The court shall award the fees, costs, and expenses authorized under Section 312 and may grant additional relief, including a request for the assistance of [law enforcement officials], and set a further hearing to determine whether additional relief is appropriate.</p> <p>SECTION 312. COSTS, FEES, AND EXPENSES. (a) The court shall award the prevailing party, including a State, necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses,</p>	<p>SECTION 313. COSTS AND FEES. (a) The [petitioner] may not be required to pay a filing fee or other costs. (b) If an obligee prevails, a responding tribunal may assess against an obligor filing fees, reasonable attorney’s fees, other costs, and necessary travel and other reasonable expenses incurred by the obligee and the obligee’s witnesses. The tribunal may not assess fees, costs, or expenses against the obligee or the support enforcement agency of either the initiating or the responding State, except as provided by other law. Attorney’s fees may be taxed as costs, and may be ordered paid directly to the attorney, who may enforce the order in the attorney’s own name. Payment of support owed to the obligee has priority over fees, costs and expenses. (c) The tribunal shall order the payment of costs and reasonable attorney’s fees if it determines that a hearing was requested primarily for delay. In a proceeding under Article 6 (Enforcement and Modification of Support Order After Registration), a hearing is presumed to have been requested primarily for delay if a registered support order is confirmed or enforced without change.</p>

attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees or expenses are sought establishes that the award would be clearly inappropriate.

(b) The court may not assess fees, costs, or expenses against a State unless authorized by law other than this [Act].

SECTION 317. COSTS AND EXPENSES.

If the respondent is not the prevailing party, the court may assess against the respondent all direct expenses and costs incurred by the [prosecutor or other appropriate public official] and [law enforcement officers] under Section 315 or 316.
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Part C - Going Interstate

C-1 Registration

When an action is taken regarding an order issued by a tribunal in one state, a procedure is needed to bring the order to the attention of the tribunal in another state. Classically, the taking of judicial notice under the second state's Rules of Evidence is the process. However, both the UCCJEA and the UIFSA established a "registration" process. Except for some difference in the information to be contained in the respective documents, the procedures for registration are basically the same:

- A. The proponent of the order requests the Clerk of the appropriate court or tribunal issue a Notice of Registration
- B. The Notice of Registration asserts the validity of the order (and includes a calculation of arrears under the UIFSA) and puts the nonregistering party on notice that the nonregistering party must contest the assertions regarding the validity of the order (and the arrears)
- C. Failure of the nonregistering party to contest results in confirmation of the validity of the order (and the arrears) by operation of law.
- D. If contested, there are limited defenses.

The major change wrought by the Registration process is a shifting of the burden to obtain confirmation of the order (and arrears).

The Registration process is made explicit in the UIFSA for either enforcement or modification actions. While explicit only for enforcement under the UCCJEA, it should be considered a viable procedure regarding modifications as well.

Actions for support can often involve the enforcement of several orders issued by different tribunals over time. The procedure for this in the UIFSA 96 was an implicit registration of each order. Under the UIFSA 2001, only the alleged "controlling" order for prospective support is actually registered along with an assertion of the consolidated arrears. Failure to contest either the controlling order assertion or the consolidated arrears amount results in confirmation by operation of law. For a greater discussion of the multiple order issues, see D-3.

UCCJEA	UIFSA
<p>SECTION 305. REGISTRATION OF CHILD-CUSTODY DETERMINATION.</p> <p>(a) A child-custody determination issued by a court of another State may be registered in this State, with or without a simultaneous request for enforcement, by sending to [the appropriate court] in this State:</p> <p>(1) a letter or other document requesting registration;</p> <p>(2) two copies, including one certified copy, of the determination sought to be registered, and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified; and</p> <p>(3) except as otherwise provided in Section 209, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child-custody determination sought to be registered.</p> <p>(b) On receipt of the documents required by subsection (a), the registering court shall:</p> <p>(1) cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form; and</p> <p>(2) serve notice upon the persons named pursuant to subsection (a)(3) and provide them with an opportunity to contest the registration in accordance with this section.</p> <p>(c) The notice required by subsection (b)(2) must state that:</p> <p>(1) a registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this State;</p> <p>(2) a hearing to contest the validity of the registered determination must be requested within 20 days after service of notice; and</p> <p>(3) failure to contest the registration will result in confirmation of the child-custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.</p> <p>(d) A person seeking to contest the validity of a registered order must request a hearing within 20 days after service of the notice. At that hearing, the court shall confirm the registered order unless the person contesting registration establishes that:</p> <p>(1) the issuing court did not have jurisdiction under [Article] 2;</p> <p>(2) the child-custody determination sought to be registered has been vacated, stayed, or modified by a court having jurisdiction to do so under [Article] 2; or</p>	<p>SECTION 601. REGISTRATION OF ORDER FOR ENFORCEMENT.</p> <p>A support order or an income-withholding order issued by a tribunal of another State may be registered in this State for enforcement.</p> <p>SECTION 602. PROCEDURE TO REGISTER ORDER FOR ENFORCEMENT.</p> <p>(a) A support order or income-withholding order of another State may be registered in this State by sending the following documents <u>records</u> and information to the [appropriate tribunal] in this State:</p> <p>(1) a letter of transmittal to the tribunal requesting registration and enforcement;</p> <p>(2) two copies, including one certified copy, of an <u>orders the order</u> to be registered, including any modification of an <u>the</u> order;</p> <p>(3) a sworn statement by the party seeking <u>person requesting</u> registration or a certified statement by the custodian of the records showing the amount of any arrearage;</p> <p>(4) the name of the obligor and, if known:</p> <p>(A) the obligor's address and social security number;</p> <p>(B) the name and address of the obligor's employer and any other source of income of the obligor; and</p> <p>(C) a description and the location of property of the obligor in this State not exempt from execution; and</p> <p>(5) <u>except as otherwise provided in Section 312,</u> the name and address of the obligee and, if applicable, the agency or person to whom support payments are to be remitted.</p> <p>(b) On receipt of a request for registration, the registering tribunal shall cause the order to be filed as a foreign judgment, together with one copy of the documents and information, regardless of their form.</p> <p>(c) A [petition] or comparable pleading seeking a remedy that must be affirmatively sought under other law of this State may be filed at the same time as the request for registration or later. The pleading must specify the grounds for the remedy sought.</p> <p><u>(d) If two or more orders are in effect, the person requesting registration shall:</u></p> <p><u>(1) furnish to the tribunal a copy of every support order asserted to be in effect in addition to the documents specified in this section;</u></p> <p><u>(2) specify the order alleged to be the controlling order, if any; and</u></p> <p><u>(3) specify the amount of consolidated arrears, if</u></p>

(3) the person contesting registration was entitled to notice, but notice was not given in accordance with the standards of Section 108, in the proceedings before the court that issued the order for which registration is sought.

(e) If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law and the person requesting registration and all persons served must be notified of the confirmation.

(f) Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

SECTION 306. ENFORCEMENT OF REGISTERED DETERMINATION.

(a) A court of this State may grant any relief normally available under the law of this State to enforce a registered child-custody determination made by a court of another State.

(b) A court of this State shall recognize and enforce, but may not modify, except in accordance with [Article] 2, a registered child-custody determination of a court of another State

any.

(e) A request for a determination of which is the controlling order may be filed separately or with a request for registration and enforcement or for registration and modification. The person requesting registration shall give notice of the request to each party whose rights may be affected by the determination.

SECTION 603. EFFECT OF REGISTRATION FOR ENFORCEMENT.

(a) A support order or income-withholding order issued in another State is registered when the order is filed in the registering tribunal of this State.

(b) A registered order issued in another State is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of this State.

(c) Except as otherwise provided in this article, a tribunal of this State shall recognize and enforce, but may not modify, a registered order if the issuing tribunal had jurisdiction.

SECTION 605. NOTICE OF REGISTRATION OF ORDER.

(a) When a support order or income-withholding order issued in another State is registered, the registering tribunal shall notify the nonregistering party. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

(b) ~~The~~A notice must inform the nonregistering party:

(1) that a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this State;

(2) that a hearing to contest the validity or enforcement of the registered order must be requested within [20] days after notice;

(3) that failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages; and

(4) of the amount of any alleged arrearages.

(c) If the registering party asserts that two or more orders are in effect, a notice must also:

(1) identify the two or more orders and the order alleged by the registering person to be the controlling order and the consolidated arrears, if any;

(2) notify the nonregistering party of the right to a determination of which is the controlling order;

(3) state that the procedures provided in subsection (b) apply to the determination of which

is the controlling order; and
(4) state that failure to contest the validity or enforcement of the order alleged to be the controlling order in a timely manner may result in confirmation that the order is the controlling order.

(d) Upon registration of an income-withholding order for enforcement, the registering tribunal shall notify the obligor's employer pursuant to [the income-withholding law of this State].

SECTION 606. PROCEDURE TO CONTEST VALIDITY OR ENFORCEMENT OF REGISTERED ORDER.

(a) A nonregistering party seeking to contest the validity or enforcement of a registered order in this State shall request a hearing within [20] days after notice of the registration. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrearages pursuant to Section 607 (~~Contest of Registration or Enforcement~~).

(b) If the nonregistering party fails to contest the validity or enforcement of the registered order in a timely manner, the order is confirmed by operation of law.

(c) If a nonregistering party requests a hearing to contest the validity or enforcement of the registered order, the registering tribunal shall schedule the matter for hearing and give notice to the parties of the date, time, and place of the hearing.

SECTION 607. CONTEST OF REGISTRATION OR ENFORCEMENT.

(a) A party contesting the validity or enforcement of a registered order or seeking to vacate the registration has the burden of proving one or more of the following defenses:

(1) the issuing tribunal lacked personal jurisdiction over the contesting party;

(2) the order was obtained by fraud;

(3) the order has been vacated, suspended, or modified by a later order;

(4) the issuing tribunal has stayed the order pending appeal;

(5) there is a defense under the law of this State to the remedy sought;

(6) full or partial payment has been made; or

(7) the statute of limitation under Section 604 (~~Choice of Law~~) precludes enforcement of some or all of the alleged arrearages; or

(8) the alleged controlling order is not the controlling order.

(b) If a party presents evidence establishing a full

	<p>or partial defense under subsection (a), a tribunal may stay enforcement of the registered order, continue the proceeding to permit production of additional relevant evidence, and issue other appropriate orders. An uncontested portion of the registered order may be enforced by all remedies available under the law of this State.</p> <p>(c) If the contesting party does not establish a defense under subsection (a) to the validity or enforcement of the order, the registering tribunal shall issue an order confirming the order.</p> <p>SECTION 608. CONFIRMED ORDER. Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.</p> <p>SECTION 609. PROCEDURE TO REGISTER CHILD-SUPPORT ORDER OF ANOTHER STATE FOR MODIFICATION. A party or support enforcement agency seeking to modify, or to modify and enforce, a child-support order issued in another State shall register that order in this State in the same manner provided in Part 1 if the order has not been registered. A [petition] for modification may be filed at the same time as a request for registration, or later. The pleading must specify the grounds for modification.</p> <p>SECTION 610. EFFECT OF REGISTRATION FOR MODIFICATION. A tribunal of this State may enforce a child-support order of another State registered for purposes of modification, in the same manner as if the order had been issued by a tribunal of this State, but the registered order may be modified only if the requirements of Section 611, 613, or 615 (Modification of Child-Support Order of Another State) have been met.</p>
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C-2 Assuming Modification Jurisdiction

Both the ECJ and CEJ concepts have the **exclusive** jurisdiction to **modify** remain with the issuing state so long as one of the parties (parent per UCCJEA; obligor/obligee per UIFSA) or the child continues to reside in the order issuing state. However, since both acts are focused upon situations where not all family members reside in the same state, provisions are made for the assumption (“transfer”) of jurisdiction to modify.

Under general “transfer” provisions, transfer is sought by returning to the original tribunal for an order transferring the case from that tribunal to another tribunal. The UCCJEA retains this return to the original court approach in the situation where either all family members have left

the state or not all members have left but there is a “more convenient” forum. UIFSA does not vest the original tribunal with the ability to transfer the case to a tribunal in another state based on the “more convenient” concept.

The major change to “moving” jurisdiction in both the UCCJEA and the UIFSA is when all family members have left the original order issuing state. The tribunal where one on the parties resides is empowered, under certain circumstances, to “assume” jurisdiction. Under the UCCJEA, the assumption would be most often by a court in the child’s “home state”. Under the UIFSA, the party seeking the support modification has to have modification jurisdiction assumed by the tribunal where the other party resides. When all parties have left the original jurisdiction and the assumption action is taken by the tribunal in the successor jurisdiction, the “losing” tribunal has no authority to stop the assumption.

There is one significant change to the movement of jurisdiction that has occurred under the UIFSA. The general principle is that subject matter jurisdiction can not be conferred upon a tribunal by agreement. The original version of the UIFSA created an exception by allowing the parties to agree for the jurisdiction where the child currently resides or that has personal jurisdiction over one of the parties to assume CEJ even though someone remained in the original order issuing state. This “choice of forum” capability was expanded by UIFSA 2001 to allow the parties to agree the issuing forum retains jurisdiction even when all parties have left that state. See § 205(a)(2) in A-3.

Upon assuming jurisdiction to modify, there is an important limitation under the UIFSA to the tribunal’s powers. The assuming tribunal is to apply its support guidelines in determining the amount of prospective support. However, the tribunal is not empowered to modify the duration of the support obligation.

UCCJEA	UIFSA
<p>SECTION 102. DEFINITIONS. In this [Act]: (11) “Modification” means a child-custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.</p> <p>SECTION 203. JURISDICTION TO MODIFY DETERMINATION. Except as otherwise provided in Section 204, a court of this State may not modify a child-custody determination made by a court of another State unless a court of this State has jurisdiction to make an initial determination under Section 201(a)(1) or (2) and: (1) the court of the other State determines it no longer has exclusive, continuing jurisdiction under Section 202 or that a court of this State would be a more convenient forum under Section 207; or (2) a court of this State or a court of the other State determines that the child, the child’s parents, and any person acting as a parent do not presently reside in the other State.</p>	<p>SECTION 611. MODIFICATION OF CHILD-SUPPORT ORDER OF ANOTHER STATE. (a) After <u>If Section 613 does not apply, except as otherwise provided in Section 615, upon [petition] a tribunal of this State may modify a child-support order issued in another State has been which is registered in this State, the responding] tribunal of this State may modify that order only if Section 613 does not apply and if, after notice and hearing it, the tribunal finds that:</u> (1) the following requirements are met: <u>(A) neither the child, nor the individual obligee who is an individual, and nor the obligor do not reside in the issuing State;</u> <u>(B) a [petitioner] who is a nonresident of this State seeks modification; and</u> <u>(C) the [respondent] is subject to the personal jurisdiction of the tribunal of this State; or</u> (2) <u>this State is the State of residence of the child, or a party who is an individual is subject to the personal jurisdiction of the tribunal of this State, and all of the parties who are individuals have filed a written consents in a record in the</u></p>

issuing tribunal for a tribunal of this State to modify the support order and assume continuing, exclusive jurisdiction ~~over the order~~. However, if the issuing State is a foreign jurisdiction that has not enacted a law or established procedures substantially similar to the procedures under this [Act], the consent otherwise required of an individual residing in this State is not required for the tribunal to assume jurisdiction to modify the child-support law.

(b) Modification of a registered child-support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of this State and the order may be enforced and satisfied in the same manner.

(c) ~~▲~~ Except as otherwise provided in Section 615, a tribunal of this State may not modify any aspect of a child-support order that may not be modified under the law of the issuing State, including the duration of the obligation of support. If two or more tribunals have issued child-support orders for the same obligor and same child, the order that controls and must be so recognized under Section 207 establishes the aspects of the support order which are nonmodifiable.

(d) In a proceeding to modify a child-support order, the law of the State that is determined to have issued the initial controlling order governs the duration of the obligation of support. The obligor's fulfillment of the duty of support established by that order precludes imposition of a further obligation of support by a tribunal of this State.

(e) On the issuance of an order by a tribunal of this State modifying a child-support order issued in another State, ~~a~~ the tribunal of this State becomes the tribunal having continuing, exclusive jurisdiction.

SECTION 613. JURISDICTION TO MODIFY CHILD-SUPPORT ORDER OF ANOTHER STATE WHEN INDIVIDUAL PARTIES RESIDE IN THIS STATE.

(a) If all of the parties who are individuals reside in this State and the child does not reside in the issuing State, a tribunal of this State has jurisdiction to enforce and to modify the issuing State's child-support order in a proceeding to register that order.

(b) A tribunal of this State exercising jurisdiction under this section shall apply the provisions of Articles 1 and 2, this article, and the procedural and substantive law of this State to the proceeding for enforcement or modification. Articles 3, 4, 5, 7, and 8 do not apply.

C-3 Enforcement

With respect to enforcing an existing order, the differences between the UCCJEA and the UIFSA are based on the ultimate goal of each. When custody or visitation issues are involved, the focus of the court is getting the child into the appropriate physical possession. Thus, the emphasis for the UCCJEA is orders granting possession with the ability to issue warrants to take physical custody of the child. To prevent a person who is in wrongful possession of the child from getting a favorable, “home town” order, courts in one state are to give full faith and credit to enforcement orders entered by another state. In appropriate circumstances, the enforcing court does have the ability to enter emergency orders. See B-7.

The enforcement objective under the UIFSA is for the obligor to pay the current and back support owed. To effectuate that goal, the tribunal is given a panoply of remedies. In situations where the obligor is charged with criminal non-support, the governor of the charging state can seek the extradition of the obligor from the state where the obligor currently resides.

UCCJEA	UIFSA
<p>SECTION 303. DUTY TO ENFORCE.</p> <p>(a) A court of this State shall recognize and enforce a child-custody determination of a court of another State if the latter court exercised jurisdiction in substantial conformity with this [Act] or the determination was made under factual circumstances meeting the jurisdictional standards of this [Act] and the determination has not been modified in accordance with this [Act].</p> <p>(b) A court of this State may utilize any remedy available under other law of this State to enforce a child-custody determination made by a court of another State. The remedies provided in this [article] are cumulative and do not affect the availability of other remedies to enforce a child-custody determination.</p> <p>SECTION 307. SIMULTANEOUS PROCEEDINGS. If a proceeding for enforcement under this [article] is commenced in a court of this State and the court determines that a proceeding to modify the determination is pending in a court of another State having jurisdiction to modify the determination under [Article] 2, the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.</p> <p>SECTION 308. EXPEDITED ENFORCEMENT OF CHILD-CUSTODY DETERMINATION.</p> <p>(a) A petition under this [article] must be verified. Certified copies of all orders sought to be enforced and of any order confirming registration must be attached to the petition. A copy of a</p>	<p>SECTION 305. DUTIES AND POWERS OF RESPONDING TRIBUNAL.</p> <p>(a) When a responding tribunal of this State receives a [petition] or comparable pleading from an initiating tribunal or directly pursuant to Section 301(b)(c) (Proceedings Under this [Act]), it shall cause the [petition] or pleading to be filed and notify the [petitioner] where and when it was filed.</p> <p>(b) A responding tribunal of this State, to the extent otherwise authorized <u>not prohibited</u> by other law, may do one or more of the following:</p> <ol style="list-style-type: none"> (1) issue or enforce a support order, modify a child-support order, <u>determine the controlling child-support order</u>, or render a judgment to determine parentage; (2) order an obligor to comply with a support order, specifying the amount and the manner of compliance; (3) order income withholding; (4) determine the amount of any arrearages, and specify a method of payment; (5) enforce orders by civil or criminal contempt, or both; (6) set aside property for satisfaction of the support order; (7) place liens and order execution on the obligor's property; (8) order an obligor to keep the tribunal informed of the obligor's current residential address, telephone number, employer, address of employment, and telephone number at the place of employment; (9) issue a [bench warrant; capias] for an obligor who has failed after proper notice to appear at a hearing ordered by the tribunal and enter the [bench warrant; capias] in any local and State

certified copy of an order may be attached instead of the original.

(b) A petition for enforcement of a child-custody determination must state:

(1) whether the court that issued the determination identified the jurisdictional basis it relied upon in exercising jurisdiction and, if so, what the basis was;

(2) whether the determination for which enforcement is sought has been vacated, stayed, or modified by a court whose decision must be enforced under this [Act] and, if so, identify the court, the case number, and the nature of the proceeding;

(3) whether any proceeding has been commenced that could affect the current proceeding, including proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding;

(4) the present physical address of the child and the respondent, if known;

(5) whether relief in addition to the immediate physical custody of the child and attorney's fees is sought, including a request for assistance from [law enforcement officials] and, if so, the relief sought; and

(6) if the child-custody determination has been registered and confirmed under Section 305, the date and place of registration.

(c) Upon the filing of a petition, the court shall issue an order directing the respondent to appear in person with or without the child at a hearing and may enter any order necessary to ensure the safety of the parties and the child. The hearing must be held on the next judicial day after service of the order unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The court may extend the date of hearing at the request of the petitioner.

(d) An order issued under subsection (c) must state the time and place of the hearing and advise the respondent that at the hearing the court will order that the petitioner may take immediate physical custody of the child and the payment of fees, costs, and expenses under Section 312, and may schedule a hearing to determine whether further relief is appropriate, unless the respondent appears and establishes that:

(1) the child-custody determination has not been registered and confirmed under Section 305 and that:

(A) the issuing court did not have jurisdiction under [Article] 2;

(B) the child-custody determination for which

computer systems for criminal warrants;

(10) order the obligor to seek appropriate employment by specified methods;

(11) award reasonable attorney's fees and other fees and costs; and

(12) grant any other available remedy.

(c) A responding tribunal of this State shall include in a support order issued under this [Act], or in the documents accompanying the order, the calculations on which the support order is based.

. . .

(e) If a responding tribunal of this State issues an order under this [Act], the tribunal shall send a copy of the order to the [petitioner] and the [respondent] and to the initiating tribunal, if any.

(f) If requested to enforce a support order, arrears, or judgment or modify a support order stated in a foreign currency, a responding tribunal of this State shall convert the amount stated in the foreign currency to the equivalent amount in dollars under the applicable official or market exchange rate as publicly reported.

SECTION 801. GROUNDS FOR RENDITION.

(a) For purposes of this article, "governor" includes an individual performing the functions of governor or the executive authority of a State covered by this [Act].

(b) The governor of this State may:

(1) demand that the governor of another State surrender an individual found in the other State who is charged criminally in this State with having failed to provide for the support of an obligee; or

(2) on the demand by of the governor of another State, surrender an individual found in this State who is charged criminally in the other State with having failed to provide for the support of an obligee.

(c) A provision for extradition of individuals not inconsistent with this [Act] applies to the demand even if the individual whose surrender is demanded was not in the demanding State when the crime was allegedly committed and has not fled therefrom.

SECTION 802. CONDITIONS OF RENDITION.

(a) Before making a demand that the governor of another State surrender an individual charged criminally in this State with having failed to provide for the support of an obligee, the governor of this State may require a prosecutor of this State to demonstrate that at least [60] days previously the obligee had initiated proceedings for support pursuant to this [Act] or that the proceeding would be of no avail.

(b) If, under this [Act] or a law substantially

enforcement is sought has been vacated, stayed, or modified by a court having jurisdiction to do so under [Article] 2;

(C) the respondent was entitled to notice, but notice was not given in accordance with the standards of Section 108, in the proceedings before the court that issued the order for which enforcement is sought; or

(2) the child-custody determination for which enforcement is sought was registered and confirmed under Section 304, but has been vacated, stayed, or modified by a court of a State having jurisdiction to do so under [Article] 2.

SECTION 310. HEARING AND ORDER.

(a) Unless the court issues a temporary emergency order pursuant to Section 204, upon a finding that a petitioner is entitled to immediate physical custody of the child, the court shall order that the petitioner may take immediate physical custody of the child unless the respondent establishes that:

(1) the child-custody determination has not been registered and confirmed under Section 305 and that:

(A) the issuing court did not have jurisdiction under [Article] 2;

(B) the child-custody determination for which enforcement is sought has been vacated, stayed, or modified by a court of a State having jurisdiction to do so under [Article] 2; or

(C) the respondent was entitled to notice, but notice was not given in accordance with the standards of Section 108, in the proceedings before the court that issued the order for which enforcement is sought; or

(2) the child-custody determination for which enforcement is sought was registered and confirmed under Section 305 but has been vacated, stayed, or modified by a court of a State having jurisdiction to do so under [Article] 2.

...

SECTION 311. WARRANT TO TAKE PHYSICAL CUSTODY OF CHILD.

(a) Upon the filing of a petition seeking enforcement of a child-custody determination, the petitioner may file a verified application for the issuance of a warrant to take physical custody of the child if the child is immediately likely to suffer serious physical harm or be removed from this State.

(b) If the court, upon the testimony of the petitioner or other witness, finds that the child is imminently likely to suffer serious physical harm or be removed from this State, it may issue a

similar to this [Act], ~~the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act~~ the governor of another State makes a demand that the governor of this State surrender an individual charged criminally in that State with having failed to provide for the support of a child or other individual to whom a duty of support is owed, the governor may require a prosecutor to investigate the demand and report whether a proceeding for support has been initiated or would be effective. If it appears that a proceeding would be effective but has not been initiated, the governor may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(c) If a proceeding for support has been initiated and the individual whose rendition is demanded prevails, the governor may decline to honor the demand. If the [petitioner] prevails and the individual whose rendition is demanded is subject to a support order, the governor may decline to honor the demand if the individual is complying with the support order

warrant to take physical custody of the child. The petition must be heard on the next judicial day after the warrant is executed unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The application for the warrant must include the statements required by Section 308(b).

(c) A warrant to take physical custody of a child must:

(1) recite the facts upon which a conclusion of imminent serious physical harm or removal from the jurisdiction is based;

(2) direct law enforcement officers to take physical custody of the child immediately; and

(3) provide for the placement of the child pending final relief.

(d) The respondent must be served with the petition, warrant, and order immediately after the child is taken into physical custody.

(e) A warrant to take physical custody of a child is enforceable throughout this State. If the court finds on the basis of the testimony of the petitioner or other witness that a less intrusive remedy is not effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances of the case, the court may authorize law enforcement officers to make a forcible entry at any hour.

(f) The court may impose conditions upon placement of a child to ensure the appearance of the child and the child's custodian.

SECTION 313. RECOGNITION AND ENFORCEMENT.

A court of this State shall accord full faith and credit to an order issued by another State and consistent with this [Act] which enforces a child-custody determination by a court of another State unless the order has been vacated, stayed, or modified by a court having jurisdiction to do so under [Article] 2.

C-4 Agency Involvement

The drafters of both acts recognized a major impediment to processing interstate cases is the inability of the nonresident person to obtain legal services in the state where an action needs to be taken. Thus, both Acts build upon common structures in each state for obtaining necessary services.

Under the UCCJEA, agency involvement does not occur until an order is being enforced. At that point, a local prosecutor or some other public official is permitted ("may") to assist in the enforcement of the order. And, as expected, law enforcement personnel in the enforcing state may be called upon for assistance.

The UIFSA inherits the IV-D agency structure. Pursuant to federal regulations, each state has a “state information agency”, often referred to as the “central registry”. Compatible with these regulations, the UIFSA empowers this information agency to provide information and receive and process documents. It then applies the same duties in an interstate case to the “support enforcement agency” that provides services in intrastate cases. Lastly, it designates a public official to oversee and assure both the state information agency and state enforcement agency perform their respective duties and functions.

An issue that has raised concerns, particularly in the IV-D community, is the legal relationship between attorneys employed by the IV-D agency and the individual who is being provided services. Most often, the attorneys may be providing services to someone they have never met. Like prosecutors, the IV-D agency attorneys are employed by their respective agency and sometimes the agency may have a position different from that of the person receiving services. Acknowledging the situation, both the UCCJEA and the UIFSA specifically provide that agency or government attorneys do not have an attorney-client relationship with the person receiving services under either Act.

Because of the availability of numerous support enforcement remedies that are automated (lottery, unemployment benefits, and tax intercepts; passport denial), the support enforcement agencies are empowered to begin these actions without the necessity of registering another state’s order. It is only when the enforcement action is contested that registration is necessary. In many instances, the contest can even be resolved without the necessity for registration.

UCCJEA	UIFSA
<p>SECTION 315. ROLE OF [PROSECUTOR OR PUBLIC OFFICIAL]. (a) In a case arising under this [Act] or involving the Hague Convention on the Civil Aspects of International Child Abduction, the [prosecutor or other appropriate public official] may take any lawful action, including resort to a proceeding under this [article] or any other available civil proceeding to locate a child, obtain the return of a child, or enforce a child-custody determination if there is:</p> <ul style="list-style-type: none"> (1) an existing child-custody determination; (2) a request to do so from a court in a pending child-custody proceeding; (3) a reasonable belief that a criminal statute has been violated; or (4) a reasonable belief that the child has been wrongfully removed or retained in violation of the Hague Convention on the Civil Aspects of International Child Abduction. <p>(b) A [prosecutor or appropriate public official] acting under this section acts on behalf of the court and may not represent any party.</p> <p>SECTION 316. ROLE OF [LAW ENFORCEMENT]. At the request of a [prosecutor or other appropriate public official] acting under Section 315, a [law enforcement officer] may take any</p>	<p>SECTION 307. DUTIES OF SUPPORT ENFORCEMENT AGENCY. (a) A support enforcement agency of this State, upon request, shall provide services to a [petitioner] in a proceeding under this [Act]. (b) A support enforcement agency <u>of this State</u> that is providing services to the [petitioner] as appropriate shall:</p> <ul style="list-style-type: none"> (1) take all steps necessary to enable an appropriate tribunal in this State or another State to obtain jurisdiction over the [respondent]; (2) request an appropriate tribunal to set a date, time, and place for a hearing; (3) make a reasonable effort to obtain all relevant information, including information as to income and property of the parties; (4) within [two] days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a written notice <u>in a record</u> from an initiating, responding, or registering tribunal, send a copy of the notice to the [petitioner]; (5) within [two] days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a written communication <u>in a record</u> from the [respondent] or the [respondent’s] attorney, send a copy of the communication to the [petitioner]; and (6) notify the [petitioner] if jurisdiction over the [respondent] cannot be obtained.

lawful action reasonably necessary to locate a child or a party and assist [a prosecutor or appropriate public official] with responsibilities under Section 315.

(c) A support enforcement agency of this State that requests registration of a child-support order in this State for enforcement or for modification shall make reasonable efforts:

(1) to ensure that the order to be registered is the controlling order; or

(2) if two or more child-support orders exist and the identity of the controlling order has not been determined, to ensure that a request for such a determination is made in a tribunal having jurisdiction to do so.

(d) A support enforcement agency of this State that requests registration and enforcement of a support order, arrears, or judgment stated in a foreign currency shall convert the amounts stated in the foreign currency into the equivalent amounts in dollars under the applicable official or market exchange rate as publicly reported.

(e) A support enforcement agency of this State shall [issue or] request a tribunal of this State to issue a child-support order and an income-withholding order that redirect payment of current support, arrears, and interest if requested to do so by a support enforcement agency of another State pursuant to Section 319 of the Uniform Interstate Family Support Act.

(f) This [Act] does not create or negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency.

SECTION 308. DUTY OF [~~ATTORNEY GENERAL~~ STATE OFFICIAL OR AGENCY].

(a) If the ~~Attorney General~~ [appropriate state official or agency] determines that the support enforcement agency is neglecting or refusing to provide services to an individual, the ~~Attorney General~~ [state official or agency] may order the agency to perform its duties under this [Act] or may provide those services directly to the individual.

(b) The [appropriate state official or agency] may determine that a foreign country or political subdivision has established a reciprocal arrangement for child support with this State and take appropriate action for notification of the determination.

SECTION 310. DUTIES OF [STATE INFORMATION AGENCY].

(a) The [Attorney General's Office, State Attorney's Office, State Central Registry or other information agency] is the state information agency under this [Act].

(b) The state information agency shall:

(1) compile and maintain a current list, including addresses, of the tribunals in this State which have jurisdiction under this [Act] and any support enforcement agencies in this State and transmit a copy to the state information agency of every other State;

(2) maintain a register of names and addresses of tribunals and support enforcement agencies received from other States;

(3) forward to the appropriate tribunal in the place [county] in this State in which the ~~individual~~ obligee who is an individual or the obligor resides, or in which the obligor's property is believed to be located, all documents concerning a proceeding under this [Act] received from an initiating tribunal or the state information agency of the initiating State; and

(4) obtain information concerning the location of the obligor and the obligor's property within this State not exempt from execution, by such means as postal verification and federal or state locator services, examination of telephone directories, requests for the obligor's address from employers, and examination of governmental records, including, to the extent not prohibited by other law, those relating to real property, vital statistics, law enforcement, taxation, motor vehicles, driver's licenses, and social security.

SECTION 507. ADMINISTRATIVE ENFORCEMENT OF ORDERS.

(a) A party or support enforcement agency seeking to enforce a support order or an income-withholding order, or both, issued by a tribunal of another State may send the documents required for registering the order to a support enforcement agency of this State.

(b) Upon receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of this State to enforce a support order or an income-withholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the support enforcement agency shall register the order pursuant to this [Act].

Part D - Unique Provisions

From the analyses above, it can be seen that the UCCJEA and UIFSA share many common concepts and processes. However, there are certain aspects of each act that have no counterpart.

D-1 UCCJEA - Expedited Processing

Certainly mindful of due process considerations, the goal of the UCCJEA is to resolve custody and visitation disputes so the child is residing with the proper party as quickly as possible. Thus, determining whether a court is initially empowered to act is to be resolved expeditiously. Likewise, appeals are to be expedited to obtain finality.

UCCJEA
<p>SECTION 107. PRIORITY. If a question of existence or exercise of jurisdiction under this [Act] is raised in a child-custody proceeding, the question, upon request of a party, must be given priority on the calendar and handled expeditiously.</p> <p>SECTION 314. APPEALS. An appeal may be taken from a final order in a proceeding under this [article] in accordance with [expedited appellate procedures in other civil cases]. Unless the court enters a temporary emergency order under Section 204, the enforcing court may not stay an order enforcing a child-custody determination pending appeal.</p>

D-2 Temporary Visitation

The primary focus of the UCCJEA is resolution of custody issues. Nevertheless, being able to exercise visitation is an important right as well. If the custody order has a specific visitation schedule, it can, and should, be enforced. If visitation is authorized in the custody order but the details are not specified, an enforcing court can enter a temporary visitation order while a specific order is sought in the court with ECJ.

UCCJEA
<p>SECTION 304. TEMPORARY VISITATION.</p> <p>(a) A court of this State which does not have jurisdiction to modify a child-custody determination, may issue a temporary order enforcing:</p> <ul style="list-style-type: none">(1) a visitation schedule made by a court of another State; or(2) the visitation provisions of a child-custody determination of another State that does not provide for a specific visitation schedule. <p>(b) If a court of this State makes an order under subsection (a)(2), it shall specify in the order a period that it considers adequate to allow the petitioner to obtain an order from a court having jurisdiction under the criteria specified in [Article] 2. The order remains in effect until an order is obtained from the other court or the period expires.</p>

D-3 UIFSA - Multiple Orders

One of the major challenges facing the drafters of the UIFSA was dealing with the multiple support orders that were created under URESA and RURESAs. Based on a series of cases holding an order for support could always be modified as circumstances changed, an existing

order was not entitled to full faith and credit. Assuming the issuing court had subject matter and personal jurisdiction, it could enter an order that set a different amount of support as well as a different duration.

The task under the UIFSA became to set out a process to make one of the existing multiple orders be the “controlling” order. The resolution is founded upon what state is in the best situation to address the needs of the child or the ability of the obligor to pay. As a starting point, if there is only one order, it is the controlling order even if no one currently resides in the state that issued it. When there are at least two orders:

- A. The order issued by a “home “ state is the controlling order.
- B. If only one of the states that issued one of the orders has a person residing in that state, it is the controlling order.
- C. If no one resides in any of the states that entered the orders, there is no controlling order *per se* and a tribunal that currently has subject matter and personal jurisdiction is to establish a “replacement” order that will be the controlling order.

The important aspect of a controlling order determination is that it determines the one order entitled to prospective enforcement. Attached to this prospective enforcement is the exclusivity to modify the prospective support obligation, i.e. the controlling order establishes the tribunal with CEJ to modify.

What a controlling order determination does not do is impact the amount of the consolidated arrears. Case law and a specific provision in RURESA established the concept that a successive order did not nullify or supercede the existing order(s) so that support continued to accrue. What does occur is the support amounts accrue simultaneously and not in the aggregate. The UIFSA and its predecessors specifically provide that payments made pursuant to one order are to be applied to the support accruing under another order in existence during the same time period.

<p>UIFSA</p> <p>SECTION 207. RECOGNITION DETERMINATION OF CONTROLLING CHILD-SUPPORT ORDER.</p> <p>(a) If a proceeding is brought under this [Act] and only one tribunal has issued a child-support order, the order of that tribunal controls and must be so recognized.</p> <p>(b) If a proceeding is brought under this [Act], and two or more child-support orders have been issued by tribunals of this State or another State with regard to the same obligor and <u>same</u> child, a tribunal of this State <u>having personal jurisdiction over both the obligor and individual obligee</u> shall apply the following rules in determining <u>and by order shall determine</u> which order <u>controls</u> to recognize for purposes of continuing, exclusive jurisdiction:</p> <p>(1) If only one of the tribunals would have continuing, exclusive jurisdiction under this [Act], the order of that tribunal controls and must be so recognized.</p> <p>(2) If more than one of the tribunals would have continuing, exclusive jurisdiction under this [Act]:</p> <p>(A) an order issued by a tribunal in the current home State of the child controls; and must be so recognized; but</p> <p>(B) if an order has not been issued in the current home State of the child, the order most recently issued controls and must be so recognized.</p> <p>(3) If none of the tribunals would have continuing, exclusive jurisdiction under this [Act], the tribunal of this State having jurisdiction over the parties shall issue a child-support order, which controls and must be so recognized.</p> <p>(c) If two or more child-support orders have been issued for the same obligor and <u>same</u> child, and if the obligor or the individual obligee resides in this State, an individual <u>upon request of a party who is an individual or a support enforcement agency, may request</u> a tribunal of this State <u>having personal jurisdiction over both the obligor and the obligee who is an individual shall</u> to determine which order</p>
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controls and must be so recognized under subsection (b). ~~The request must be accompanied by a certified copy of every support order in effect. The requesting party shall give notice of the request to each party whose rights may be affected by the determination. The request may be filed with a registration for enforcement or registration for modification pursuant to Article 6, or may be filed as a separate proceeding.~~

(d) A request to determine which is the controlling order must be accompanied by a copy of every child-support order in effect and the applicable record of payments. The requesting party shall give notice of the request to each party whose rights may be affected by the determination.

(e) The tribunal that issued the controlling order under subsection (a), (b), or (c) is the tribunal that has continuing, exclusive jurisdiction under Section to the extent provided in Section 205 or 206.

(f) A tribunal of this State which that determines by order the identity of which is the controlling order under subsection (b)(1) or (2) or (c), or which that issues a new controlling order under subsection (b)(3), shall state in that order:

(1) the basis upon which the tribunal made its determination;

(2) the amount of prospective support, if any; and

(3) the total amount of consolidated arrears and accrued interest, if any, under all of the orders after all payments made are credited as provided by Section 209.

(g) Within [30] days after issuance of an order determining the identity of which is the controlling order, the party obtaining the order shall file a certified copy of it with in each tribunal that issued or registered an earlier order of child support. A party who obtains or support enforcement agency obtaining the order and that fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the controlling order.

(h) An order that has been determined to be the controlling order, or a judgment for consolidated arrears of support and interest, if any, made pursuant to this section must be recognized in proceedings under this [Act].

SECTION 209. CREDIT FOR PAYMENTS.

~~Amounts—A tribunal of this State shall credit amounts collected and credited for a particular period pursuant to a support order any child-support order against the amounts owed for the same period under any other child-support order for support of the same child issued by a tribunal of this or another State must be credited against the amounts accruing or accrued for the same period under a support order issued by the tribunal of this State.~~

D-4 UIFSA - Minor as a Party

The immutable fact is that minors are the parents of children. Lest there be doubt about the capacity of a minor to bring an action for support, the UIFSA makes it clear a minor can pursue obtaining support without the necessity of going through a “next friend”.

UIFSA

SECTION 302. ACTION PROCEEDING BY MINOR PARENT. A minor parent, or a guardian or other legal representative of a minor parent, may maintain a proceeding on behalf of or for the benefit of the minor’s child.

D-5 UIFSA - Defense of Nonparentage

There are several defenses that can be raised at the time of registration of another state’s order. See C-1. There are other defenses that can be raised to the specific remedy sought. One issue that can not be raised collaterally is parentage. Any attack on that issue must be made in the forum that issued the original order.

UIFSA
SECTION 315. NONPARENTAGE AS DEFENSE. A party whose parentage of a child has been previously determined by or pursuant to law may not plead nonparentage as a defense to a proceeding under this [Act].

Part E - Interjurisdictional applications

E-1 Tribes

The Indian Child Welfare Act (ICWA) applies primarily in custody situations where placement is being sought in institutions or with persons other than the parents. The UCCJEA seeks harmony with the ICWA by deferring to tribal proceedings and recognizing a tribal order when appropriate. The UIFSA recognizes the authority of tribal courts to enter valid support orders and treats a tribe the same as other “states”. It should be noted that FFCCSOA applies both to states and tribes.

UCCJEA	UIFSA
<p>SECTION 104. APPLICATION TO INDIAN TRIBES.</p> <p>(a) A child-custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq., is not subject to this [Act] to the extent that it is governed by the Indian Child Welfare Act.</p> <p>[(b)] A court of this State shall treat a tribe as if it were a State of the United States for the purpose of applying [Articles] 1 and 2.]</p> <p>[(c)] A child-custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this [Act] must be recognized and enforced under [Article] 3.]</p>	<p>SECTION 102. DEFINITIONS. In this [Act]:</p> <p>(21) “State” means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes:</p> <p>(A) an Indian tribe; and</p>

E-2 International

The UCCJEA provides a general legal framework for recognition and enforcement of foreign custody and visitation decrees originating from foreign jurisdictions. It specifies that a decree made by a party to the Hague Convention on the Civil Aspects of International Child Abduction will be enforced and the United State is a party to Hague Convention on the Civil Aspects of International Child Abduction.

The United State is not a party to any international convention or agreement regarding child or spousal support. However, the UIFSA does provide for recognition of foreign support orders. The basis for recognition under the UIFSA 96 was solely a substantial similarity between the laws and procedures. The UIFSA 2001 was revised to implement federal law that empowers the State Department in conjunction with OCSE to declare a foreign jurisdiction to be a reciprocating “state”. It also empowers a State to make such a declaration in the absence of a federal declaration. One the foreign jurisdiction is declared to be a “state”, the other provisions of the UIFSA apply.

One issue that does have distinct treatment is the ability of a U. S. State to modify the support order of a foreign jurisdiction. If no one resides in the foreign jurisdiction that issued the order, the general modification provisions apply. The issue arose when one party remained in the foreign jurisdiction with the order. In the UIFSA 96 § 611(a)(2), a foreign resident could almost unilaterally obtain a modification in the U. S.. [see C-2] In the UIFSA 2001, either party was given the opportunity to seek a modification in the U. S., but only upon a showing that the foreign jurisdiction where the party resides “will not or may not” modify it’s order.

UCCJEA	UIFSA
<p>SECTION 105. INTERNATIONAL APPLICATION OF [ACT]. (a) A court of this State shall treat a foreign country as if it were a State of the United States for the purpose of applying [Articles] 1 and 2. (b) Except as otherwise provided in subsection (c), a child-custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this [Act] must be recognized and enforced under [Article] 3. (c) A court of this State need not apply this [Act] if the child custody law of a foreign country violates fundamental principles of human rights.</p> <p>SECTION 302. ENFORCEMENT UNDER HAGUE CONVENTION. Under this [article] a court of this State may enforce an order for the return of the child made under the Hague Convention on the Civil Aspects of International Child Abduction as if it were a child-custody determination.</p>	<p>SECTION 102. DEFINITIONS. In this [Act]: (21) “State” means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes: . . . (B) a foreign country or political subdivision jurisdiction that: (i) <u>has been declared to be a foreign reciprocating country or political subdivision under federal law;</u> (ii) <u>has established a reciprocal arrangement for child support with this State as provided in Section 308; or</u> (iii) <u>has enacted a law or established procedures for the issuance and enforcement of support orders which are substantially similar to the procedures under this [Act]; the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.</u></p> <p>SECTION 615. JURISDICTION TO MODIFY CHILD-SUPPORT ORDER OF FOREIGN COUNTRY OR POLITICAL SUBDIVISION. (a) <u>If a foreign country or political subdivision that is a State will not or may not modify its order pursuant to its laws, a tribunal of this State may assume jurisdiction to modify the child-support order and bind all individuals subject to the personal jurisdiction of the tribunal whether or not the consent to modification of a child-support order otherwise required of the individual pursuant to Section 611 has been given or whether the individual seeking modification is a resident of this State or of the foreign country or political subdivision.</u> (b) <u>An order issued pursuant to this section is the controlling order.</u></p>

TAB 25

Determining Self-Employment Income

*Hon. Denise Motter &
Ms. Stacie Rappleye*

Determining Self-Employment Income: Using Indirect Methods to Calculate Income

18th Annual AB 1058 Child Support
Training Conference
September 30-October 3, 2014

- IRS and the Family Code
- Similar definition of income
- All sources of income and cash flow may be used, unless specifically exempted

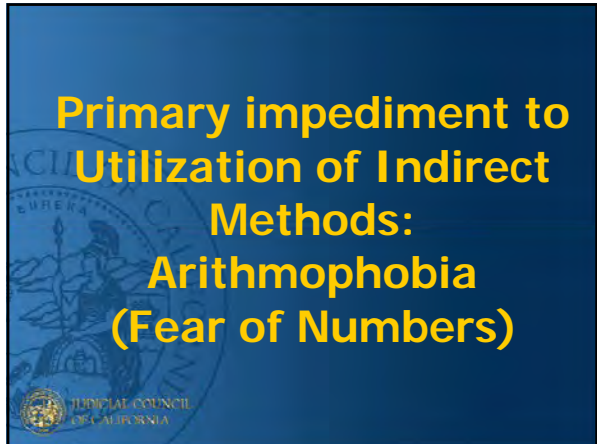


Overview of Indirect Methods

- Simple Bank Deposit Analysis
- Bank Deposit Analysis, including Cash Expenses
- Source -- Application of Funds
- Changes in Financial Position



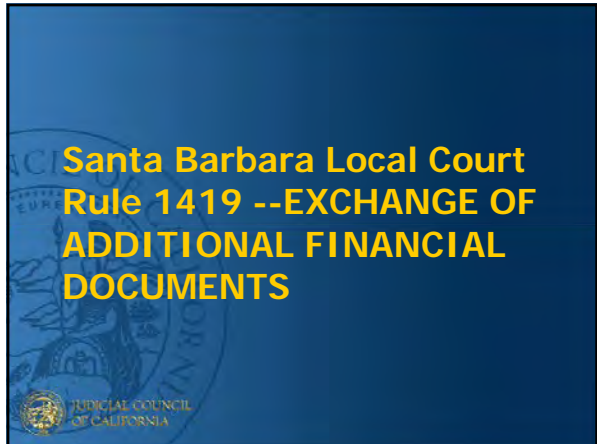
Primary impediment to Utilization of Indirect Methods: Arithmophobia (Fear of Numbers)



- Court needs legally defensible position when including unacknowledged income
- Based on legal, intelligent, and logical analysis
- *Not* arbitrary and capricious
- Common sense *can* be a factor



Santa Barbara Local Court Rule 1419 --EXCHANGE OF ADDITIONAL FINANCIAL DOCUMENTS



2. If the moving party is self-employed:

- a. Copies of the last two years individual federal income tax returns, including all schedules;
- b. Copies of all W-2 and 1099 forms reflecting income received during the last 12 months but not attached to individual tax returns;



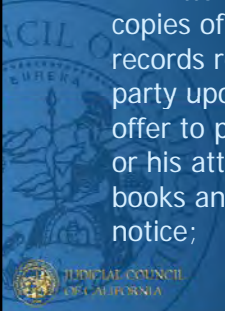
- c. Copies of all periodic profit and loss statements and balance sheets prepared in the ordinary course of business for the last twelve months;
- d. Copies of all business and personal bank account statements and corresponding check registers for the last twelve months.



- e. Copies of all loan applications submitted within the past 12 months to financial institutions or third persons on behalf of the moving party;

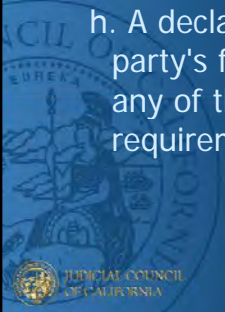


f. A written offer to either supply copies of the business books and records requested by the opposing party upon five days notice or an offer to permit the opposing party or his attorney to inspect such books and records upon five days notice;



JUDICIAL COUNCIL OF CALIFORNIA


h. A declaration explaining the party's failure to comply with any of the foregoing requirements



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Process to bring Indirect Method before the Court

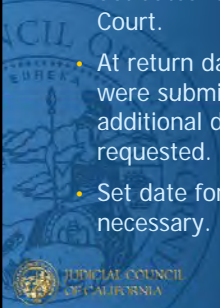
- DCSS files Motion to Modify Support and comply with Local Court Rule



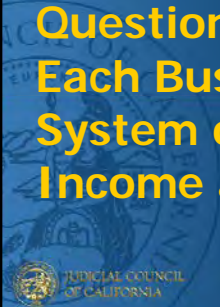
JUDICIAL COUNCIL OF CALIFORNIA



- Parties appear, perhaps with some documents.
- Discuss nature of business
- Discuss method of tracking income and expenses.



- Set dates for submission and returning to Court.
- At return date, confirm that documents were submitted, and address any additional documents or information being requested.
- Set date for evidentiary hearing, if necessary.



Questions to Determine Each Business's Unique System of Tracking Income and Expenses

Simple Bank Deposit Analysis

- requires 12+ months of bank statements
- covering same twelve-month period as a financial statement or tax return.



The Process:

- Total all deposits from the twelve-month period and compare to the gross income reported for that same period.
- Account for any differences.



Example:

- Tax return reflects gross income of \$120,000.
- but the bank statements for January – December of the same year total \$200,000.
- Why is there a difference?



Bank Statement Analysis, including Cash Expenses

- Initial process similar to Simple Bank Statement Analysis.
- Also accounts for cash flow that isn't run through the bank.
- Goal is to identify payments made with funds outside the bank account.



Requires the DCSS to look at

- Deposits *and* expenses on the bank statements
- Compare to expenses on financial statement and/or tax return
- And with the *Income and Expense Declaration (I&E)*
- To identify payments made with cash.




Example:

- Tax return reflects gross income of \$120,000
- bank statements for January – December of the same year total, \$120,000.




- However, in reviewing the bank statements,
- there are no payments for groceries or gasoline,
- Although the party's I&E reflects \$500 for each of these expenses each month.
- This process applies to both personal and business expenses.




Source and Application of Funds

- At the simplest level, this can be addressed solely with the parent's *Income and Expense Declaration*.



Process:

- All expenses are totaled.
- Parent must account for all funds used to pay the expenses.
- Any amount not adequately verified as being paid from reported income or a "non-child-support-source" is included as net income for the computation of child support.



Example:

- Parent reflects \$4,360 as total expenses on page 3 of *Income and Expense*, with \$600 paid by someone else, \$1,000 child support order, and only \$2,000 in self employment income.

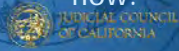


Expenses on I&E	\$4,360	
Child support	<u>\$1,000</u>	\$5,360
Less: acknowledged income (2,000)		
Contribution from partner	<u>(\$ 600)</u>	
Additional cash flow	<u>\$2,760</u>	



Changes in Financial Position/Net Worth

- This analysis is more challenging
- Arises when the parent demonstrates a lifestyle
- that cannot be accounted for
- with reported income and cash flow.



Example:

- Absent parent drives a hot car,
- lives in a home free and clear,
- travels to Tahiti several times each year to dive the coral reefs.
- Evidence is usually provided by the other parent
 - with reports from the children
 - screen prints from Facebook.



Process

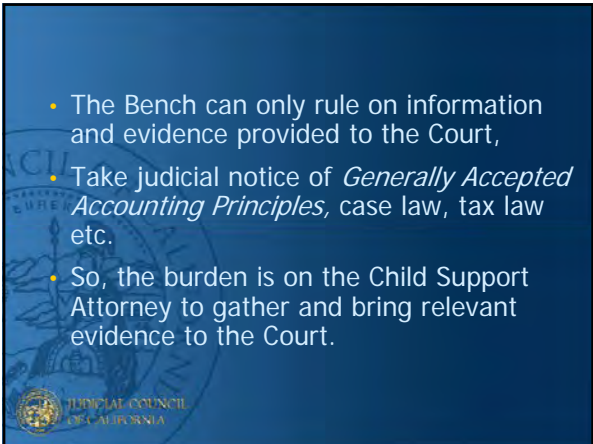
- Quantify each expense,
- In addition to the other income and expenses acknowledged on the I&E
- compare the sources of cash flow.



Summary:

- Each Indirect Method adds an additional layer of financial analysis.
- Arithmophobes should probably start with the most basic analysis and, with practice, experience, and a receptive Bench, move on to the more complex methods.



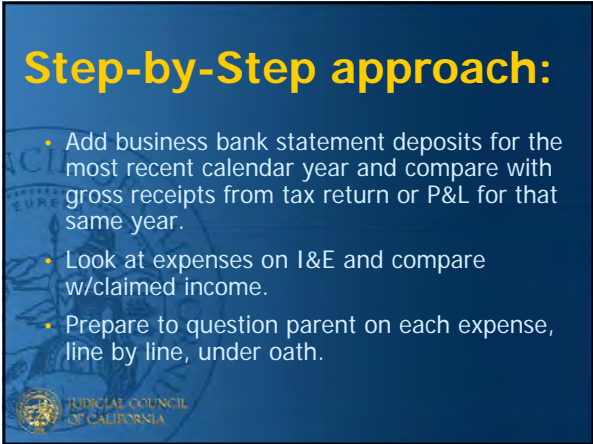


- The Bench can only rule on information and evidence provided to the Court,
- Take judicial notice of *Generally Accepted Accounting Principles*, case law, tax law etc.
- So, the burden is on the Child Support Attorney to gather and bring relevant evidence to the Court.



To discuss the preparation of evidence and argument:


Stacie Rappleye
Child Support Attorney
Santa Barbara County




Step-by-Step approach:

- Add business bank statement deposits for the most recent calendar year and compare with gross receipts from tax return or P&L for that same year.
- Look at expenses on I&E and compare w/claimed income.
- Prepare to question parent on each expense, line by line, under oath.


- Review loan applications for stated income. *IRMO Calcaterra and Badakhsh* (2005) 132 Cal.App.4th 28; *IRMO Chakko* (2004) Cal.App.4th 104.
- Review bank statements to see if all claimed business expenses are coming out of the account and to see if personal expenses can be identified.



- See if there are patterns in withdrawals or checks written to cash in even numbers.
- Prepare to question the parent under oath about cash handling in the business.
- Question large deposits or withdrawals.



- Review bank statements to see if there are transfers to or deposits from other accounts that have not been disclosed.



TAB 26

Ethics Electives for Child Support Commissioners

*Hon. Yvette Durant, Hon. Dylan Sullivan
& Mr. Rod Cathcart*

**Materials were distributed in the class,
not available online.**

TAB 27

**Domestic Violence Issues in a Court
Setting: What Child Support
Professionals Need to Know**

*Ms. Noël Harlow, Ms. Terra Marroquin,
Ms. Kristine Rowe & Ms. Fariba R.
Soroosh (Moderator)*

**Domestic Violence Issues in a Court Setting:
What Child Support Professionals Need to Know**

Ms. Noel Harlow, Ms. Terra Marroquin, & Ms. Kristine Rowe (*Presenters*)
Ms. Fariba R. Soroosh (*Moderator*)

18th Annual Child Support Training Conference
Los Angeles Airport Marriott Hotel
October 3, 2014

Family Code Definition

Family Code 6211

"Domestic violence" is abuse perpetrated against any of the following persons: (a) A spouse or former spouse. (b) A cohabitant or former cohabitant, as defined in Section 6209. (c) A person with whom the respondent is having or has had a dating or engagement relationship. (d) A person with whom the respondent has had a child, where the presumption applies that the male parent is the father of the child of the female parent under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12). (e) *A child of a party or a child who is the subject of an action under the Uniform Parentage Act, where the presumption applies that the male parent is the father of the child to be protected.* (f) Any other person related by consanguinity or affinity within the second degree.

Penal Code Definition

Penal Code 13700 (b)

"Domestic violence" means abuse committed against an adult or a minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship. For purposes of this subdivision, "cohabitant" means two *unrelated adult persons* living together for a substantial period of time, resulting in some permanency of relationship. Factors that may determine whether persons are cohabiting include, but are not limited to, (1) sexual relations between the parties while sharing the same living quarters, (2) sharing of income or expenses, (3) joint use or ownership of property, (4) whether the parties hold themselves out as husband and wife, (5) the continuity of the relationship, and (6) the length of the relationship.

Professional Definition

"**Domestic violence**" is abuse by an intimate partner (current or former dating partner, boyfriend/girlfriend, spouse, fiancé) that may include the use of physical and sexual violence, threats and intimidation, emotional abuse and economic deprivation. Domestic violence can occur between heterosexual and same sex couples; teens, adults, and elderly individuals; and can happen to anyone regardless of gender, ethnicity, culture economic class and religion.

-National DV Hotline

Myths and Misconceptions



If the abuse is so terrible, why do victims stay?

Examples:

- Economic dependence: Who will support me and the children?
- Parenting: Wanting a second parent for the children
- Religious Belief: pressure to keep the family together
- Extended Family pressure to keep the family together
- Fear of being alone and on one's own: fear that I can't cope with home and children by myself
- Survival: Fear about my safety if I leave because he/she has threatened to find me, and to kill me, the kids, and/or my family

Types of Abuse

- Physical
- Emotional/Psychological
- Verbal
- Sexual
- Financial/Economic
- Spiritual

National Prevalence

- 1 in 4 women (24.3%) and 1 in 7 men (13.8%) aged 18 and older in the United States have been the victim of severe physical violence by an intimate partner in their lifetime.
- IPV alone affects more than 12 million people each year.
- Most female victims of intimate partner violence were previously victimized by the same offender, including 77% of females ages 18 to 24, 76% of females ages 25 to 34, and 81% of females ages 35 to 49.
- In 2000, 1,247 women were killed by an intimate partner. In the same year, 440 men were killed by an intimate.

California Prevalence

- Of those experiencing physical intimate partner violence, 75% of victims had children under the age of 18 years at home.
- California law enforcement agencies received 157,634 domestic violence-related calls in 2012.
- There were 147 domestic violence fatalities in CA in 2011, 129 of the victims were female and 18 were male.

Gender and Domestic Violence



Table 7.4
Lifetime Prevalence of Rape, Physical Violence, and/or Stalking by an Intimate Partner by State of Residence—U.S. Women, NISVS 2010

State	Weighted %	(95% C.I.)	Estimated Number of Victims ^a	(95% C.I.) ^b
United States Total	35.6	(34.1-37.1)	42,420,000	(40,310,000-44,529,000)
Alabama	31.0	(23.6-39.6)	582,000	(428,000-735,000)
Alaska	44.2	(34.9-53.9)	109,000	(81,000-137,000)
Arizona	36.5	(27.5-46.5)	891,000	(611,000-1,170,000)
Arkansas	37.3	(29.2-46.1)	420,000	(311,000-529,000)
California	32.9	(27.9-38.4)	4,563,000	(3,751,000-5,375,000)
Colorado	32.7	(24.8-41.6)	618,000	(439,000-797,000)
Connecticut	32.9	(24.4-42.7)	462,000	(317,000-607,000)
Delaware	34.9	(23.6-48.1)	124,000	(85,000-162,000)

Table 7.5
Lifetime Prevalence of Rape, Physical Violence, and/or Stalking¹ by an Intimate Partner by State of Residence—U.S. Men, NISVS 2010

State	Weighted %	(95% C.I.)	Estimated Number of Victims ^a	(95% C.I.) ^b
United States Total	28.5	(27.0-30.1)	32,280,000	(30,310,000-34,251,000)
Alabama	26.9	(17.5-38.1)	458,000	(242,000-877,000)
Alaska	25.0	(17.5-34.3)	67,000	(46,000-87,000)
Arizona	27.1	(19.0-37.1)	657,000	(418,000-896,000)
Arkansas	35.6	(28.8-45.5)	375,000	(258,000-491,000)
California	27.3	(22.4-32.9)	3,737,000	(2,866,000-4,509,000)
Colorado	28.6	(20.9-37.9)	545,000	(360,000-729,000)
Connecticut	33.9	(24.1-45.4)	442,000	(289,000-615,000)
Delaware	36.8	(23.9-51.9)	118,000	(58,000-180,000)

Homicide and Gender

- Females made up 70% of victims killed by an intimate partner in 2007, a proportion that has changed very little since 1993.

~Bureau of Justice Statistics



Homicide and Gender

- Men are affected too
- In 2007 intimate partners committed 14% of all homicides in the U.S.
- The total estimated number of intimate partner homicide victims in 2007 was 2,340. 1,640 women and 700 men

~Bureau of Justice Statistics.



Impacts on Children

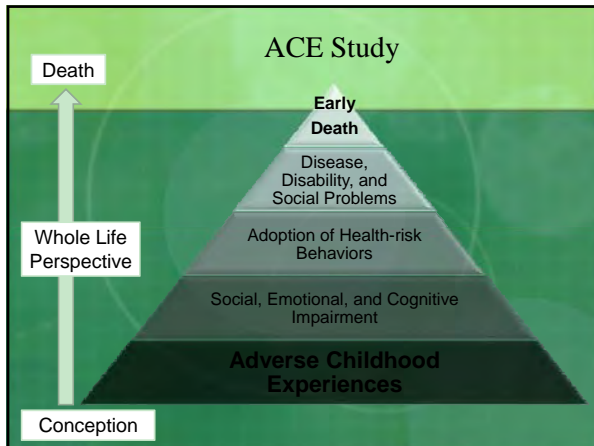


•80% of those in psychiatric hospitals experienced physical or sexual abuse as children.

•Boys who experience or witness violence are **1000x** more likely to commit violence than those who do not.

•66% of those in Substance Abuse treatment report childhood abuse or neglect.

•90% of alcoholic women were sexually abused or suffered violence at the hand of a parent.



- ### ACE Study
- Alcoholism and alcohol abuse
 - Chronic obstructive pulmonary disease
 - Depression
 - Fetal death
 - Health-related quality of life
 - Illicit drug use
 - Liver disease
 - Risk for Intimate Partner Violence
 - Sexually transmitted diseases
 - Smoking
 - Suicide attempts
 - Unintended pregnancies
 - Ischemic heart disease



Recognizing Serious Risk Factors

- Several risk factors have been associated with serious injury and homicide.
- Your ability to communicate with a victim and batterer in both a supportive and direct manner in order to determine risk factors present in the case is critical for assessing risk.

Ask The Right Questions

Risk Assessment

Top Lethality Risk Factors for Domestic Violence May Include (Not Limited To):

1. Ready access to firearms; knives; other deadly weapons
2. Separation violence - lived together within the past year and recently left
3. Suspect is unemployed
4. Threats or use of firearms or other weapons against victim
5. Has made specific threats to harm or kill

[J.Campbell]

Risk Assessment

6. Strangulation/Choking
7. Has avoided being arrested for domestic violence
8. Constantly jealous; obsessive/possessive behaviors; controlling of daily activities
9. Victim has a child(ren) that is not the suspect's child
10. Forced sex or sexual acts

[J.Campbell]

Homicide Risk Assessment

- Physical violence that has increased in frequency and/or severity in the past year
- Perceived betrayal such as victim is in process of leaving relationship or victim has recently left, victim in new relationship, child custody/child support filings, etc.
- Current/history of restraining order violations with intimate partners/family members
- Alcohol abuse, illicit drug use (meth/speed, cocaine, crack, etc), prescription drug abuse
- Mental health challenges; suicidal thoughts/gestures, and/or behaviors (past or current)

Homicide Risk Assessment

- Threats or physical harm to others including children, family members, pets, etc.
- Stalking behaviors such as monitoring the victim's whereabouts, phone or computer use
- Physical violence during pregnancy
- Isolation from friends, family, coworkers, others

Recognizing Risk Factors



Where physical evidence is not present

It is important to recognize that significant risks can be present in a case without the presence of visual evidence such as signs of physical abuse.

Risks to Children and Others

- *Important Note:* Risks for lethality and serious injury in relationships with domestic violence often extend beyond the intimate partner victim; to her/his children and other family members, co-workers, new intimate partners, others living in the home, etc.

What to Do When Risk Factors are Present...



Post-Separation Violence

- Statistics show that when a victim leaves the perpetrator, it is the most dangerous time for them.
- Violence escalates after perpetrator realizes that it is over for good, and that the honeymoon stage is no longer effective in getting the victim back.
- Statistics for violence increase dramatically when petitions for divorce or separation are filed.
- DV is reported 14 times as often for individuals that have left the perpetrator, than for victims still living with the abuser.
- The degree of violence also increases, making lethality a greater possibility.
- Collateral violence also increases (friends and loved ones)

If Risk Factors are Identified, Consider the Following

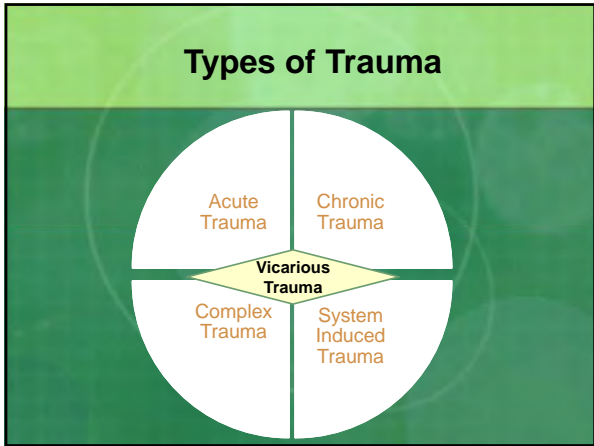
- Do what you can to avoid revealing information which could expose customer or their children to additional risk
- Do facilitate Custody and Visitation arrangements that are done at a *professional safe exchange location*
- Do Give information about an Emergency Protective Order, if a restraining order is not already in place
- Do ensure that the customer receives DV Hotline numbers and tested, appropriate DV Referrals and Court Approved Programs

Courthouse Safety

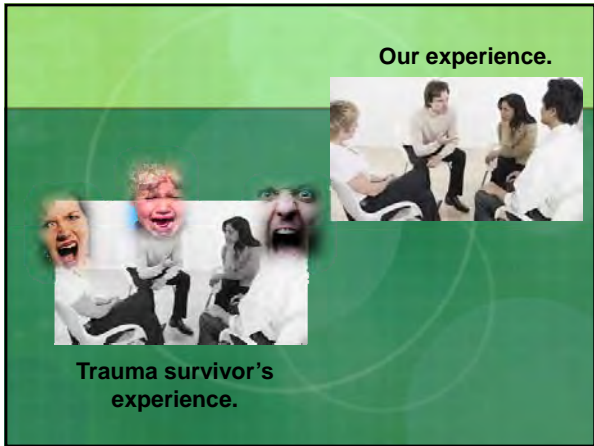
- **Safety prior to arrival at court:**
 - Transportation
 - Telephonic Appearance
- **Safety after arrival at court:**
 - Awaiting Your Turn
 - Courtroom Protocol
- **Safety when leaving the court:**
 - Staggered Exit
 - Deputy Escort

Trauma Definition

- A common definition of trauma is the experience, threat, or witnessing of physical harm, that overwhelms a person's ability to cope.







A Paradigm Shift

- Social Services Policies and Procedures
- Trauma Informed Environment
- Shift in services
- Shift in roles
- You can help!

Core Values



Language

- Punitive / Negative
- Supportive / Positive
- Body Language
- Compassionate Stance

- *What would you say to a customer who just cursed at you?*
- *What would you do if you felt threatened?*

10 Principles of Trauma Informed Services

1. Recognize the impact of violence and victimization on coping skills
2. Establish recovery from trauma as a primary goal
3. Employ empowerment/trauma informed model
4. Maximize choices and control over treatment
5. Base services on relational collaboration

10 Principles of Trauma Informed Services

6. Provide an environment designed to ensure safety, respect and acceptance
7. Highlight strengths and resiliency
8. Minimize possibility of re-traumatization
9. Strive to become culturally competent and understand the client from context of their life experience
10. Solicit customer's input and feedback when designing and evaluating services.

Effects on Provider's Tasks

- How can trauma-informed care make provider jobs easier?
- Ways provider jobs can be improved:
 - Goals
 - Communication
 - Morale
 - Support
 - Collaboration
 - Workload
 - Empowerment
 - Consistency

“Warm” Hand-Off

1. Have an updated resource list available.
2. Take the time to become familiar with local resources. If you know the names of agencies or individuals who offer services, let the customer know who to contact and what to expect.
3. If time allows, and with the consent of the customer, look up the information or contact the service provider and “hand-off” the customer in a manner which helps them to safely and confidently seek services.

San Diego’s Models for Collaboration

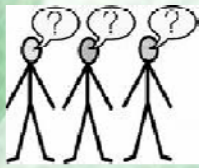
- Domestic Violence Council www.sddvc.org
- Domestic Violence Fatality Review Team <http://www.sdccda.org/helping/domestic-violence-fatality-review-team.html>
- Domestic Violence High Risk Case Response Team
- Child Fatality Review and Elder Death Review
- CWS Team Decision Making
- Methamphetamine Strike Force
- And more....

Resources

- Navigating Custody and Visitation Evaluations in Cases with Domestic Violence: Judge’s Guide <http://www.afccnet.org/Portals/0/PublicDocuments/ProfessionalResources/BenchGuide.pdf>
- National Consensus Guidelines on Identifying and Responding to DV <http://www.futureswithoutviolence.org/userfiles/file/Consensus.pdf>
- Futures Without Violence <http://www.futureswithoutviolence.org/judicial-education/>

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- Fariba Soroosh, Esq.
FSoroosh@scscourt.org



Questions?

RECOGNIZING RISK FACTORS

Several risk factors have been associated with serious injury and homicide. It is important to recognize that significant risks can be present in a case without the presence of visual evidence such as signs of physical abuse.

Important Note: Risks can extend beyond the victim and batterer to her/his children and other family members, co-workers, new intimate partners, others living in the home, etc.

Lethality Risk Factors for Domestic Violence May Include (Not Limited To):

- **Ready access to firearms; knives; other deadly weapons**
- **Lived together within the past year and recently left**
- **Batterer is unemployed**
- **Threats or use of firearms or other weapons against victim**
- **Has made specific threats to harm or kill**
- **Has avoided being arrested for domestic violence**
- **Constantly jealous; obsessive/possessive behaviors; controlling of daily activities**
- **Victim has a child(ren) that is not the suspect's child**
- **Forced sex or sexual acts**
- **Physical violence that has increased in frequency and/or severity in the past year**
- **Perceived betrayal** such as victim is in process of leaving relationship or victim has recently left, victim in new relationship, child custody/child support filings, etc.
- **Current/history of restraining order violations** with intimate partners/family members
- **Current or history of strangulation/"choking"**
- **Alcohol abuse, illicit drug use** (meth/speed, cocaine, crack, etc), prescription drug abuse
- **Mental health challenges;** suicidal thoughts/gestures, and/or behaviors (past or current)
- **Threats or physical harm to others** including children, family members, pets, etc.
- **Stalking behaviors** such as monitoring the victim's whereabouts, phone or computer use
- **Physical violence during pregnancy**
- **Isolation** from friends, family, coworkers, others

If Risk Factors are Identified, Consider the Following:

- Request an Emergency Protective Order, if a restraining order is not already in place
- When applicable, consider requesting a bail enhancement or no bail until arraignment
- Ensure that the victim receives the DV hotline numbers and DV Resource Guide

Assessing Victim and Batterer for Suicide:

- Have you ever felt so bad that didn't want to go on living? Do you feel that way now?
- Have you ever attempted or thought about suicide in the past?
- Are you thinking about killing yourself? Do you have a plan?

RESTRAINING ORDERS CHEAT SHEET

EPRO (Family Code §§6240 et seq)	
EPROs may have enforcement precedence over other restraining or protective orders. (Penal Code §136.2(e)(2))	
Proof	<ul style="list-style-type: none"> Reasonable grounds of immediate & present danger of DV, abuse, abduction or stalking¹, <i>and</i> EPRO is necessary to prevent occurrence or recurrence of DV, abuse, abduction or stalking. (FC §6251, PC §646.91)
Action	<ul style="list-style-type: none"> Person in immediate & present danger of domestic violence based on person's allegation of recent abuse or threat of abuse (see FC §6203 for definition of abuse) (FC §6250(a)), <i>or</i> Child in immediate & present danger of abuse by family or household member based on allegation of recent abuse or threat of abuse (FC §6250(b)), <i>or</i> Child in immediate or present danger of abduction by parent or relative based on allegation of recent attempt to abduct or flee jurisdiction or threat to abduct or flee jurisdiction (FC §6250(c)), <i>or</i> Elder or dependent adult in immediate & present danger of WIC §15610.07 abuse based on allegation of recent abuse or threat of abuse. (FC §6250(d) (No EPRO for financial abuse only), <i>or</i> Person in immediate danger of stalking¹ based on allegation that s/he has been willfully, maliciously, & repeatedly followed or harassed by another person (must be credible threat made with intent to place person in reasonable fear for his/her safety or safety of immediately family.) (PC §646.91; FC §6274), <i>or</i> School/campus peace officer asserts reasonable grounds to believe there is demonstrated threat to campus safety, if MOU in place (FC §6250.5)
Required Relationship for EPRO Based on Domestic Violence	Per FC §6211 domestic violence is abuse vs: <ul style="list-style-type: none"> Spouse/former spouse, <i>or</i> Cohabitant/former cohabitant³ FC §6209 <i>or</i> Dating/engagement partner⁴ (past or present) FC § 6210, <i>or</i> Party with whom have child(ren), <i>or</i> Child of party or child subject to paternity action, <i>or</i> Consanguinity or affinity to 2nd degree (parents, grandparents, siblings, children)
Who Can Be Protected	Person & child(ren) in danger
Orders	<ul style="list-style-type: none"> Personal conduct (FC §§6252(a), 6218(a), 6320) Stay away (FC §§6252(a), 6218(a), 6320) Residence exclusion (§§6252(a), 6218(b), 6321) Temporary care/control of child (FC §6252(b)) Temp care/control of endangered child or other children in home (FC §6252(c), W&I §213.5) Temporary care/control of child in danger of abduction (FC §6252(d)) WIC §15657.03 orders; protect elders (§6252(e))
Duration	Earlier of (a) close of business on 5 th court day after day of issuance or (b) 7th calendar day following day of issuance. (FC §6256)
Notice	Police personally serves respondent if can locate & gives copy to protected party. (FC §6271)

DVPA (Family Code §§6200 et seq)					
Proof	TRO: Reasonable proof of past act(s) of abuse (FC §6300) OAH: Preponderance of evidence (Evidence Code §115)				
Abuse §6203	<ul style="list-style-type: none"> Intentionally or recklessly cause/attempt to cause bodily injury, <i>or</i> Sexual assault, <i>or</i> Place person in reasonable apprehension of imminent serious bodily injury to that person or another, <i>or</i> FC §6320 behavior that has been or could be enjoined: molest, attack, strike, stalk¹, threaten, sexually assault, batter, harass, telephone (including annoying telephone calls per Penal Code § 653m²), destroy personal property, contact directly/indirectly by mail or otherwise, come within specified distance, disturb peace 				
Required Relationship	Per FC §6211, domestic violence is abuse against: <ul style="list-style-type: none"> Spouse or former spouse, <i>or</i> Cohabitant/former cohabitant³ FC §6209, <i>or</i> Past or present dating/engagement partner⁴ §6210 <i>or</i> Party with whom have child(ren), <i>or</i> Child of party or child subject to paternity action, <i>or</i> Consanguinity or affinity to 2nd degree (parents, grandparents, siblings, children) 				
Who Can Be Protected	Petitioner; named family or household members (FC §6320a) Minor 12, older needs no GAL (FC §6301a, CCP §372(b)(1))				
Mutual Orders	Not allowed unless 1) both parties personally appear, 2) both present written evidence of abuse, <i>and</i> 3) court makes detailed findings of fact that both acted primarily as aggressors & neither acted primarily in self-defense. (FC §6305)				
Orders	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 50%; text-align: center;">Ex Parte TRO</th> <th style="width: 50%; text-align: center;">OAH</th> </tr> </thead> <tbody> <tr> <td> <ul style="list-style-type: none"> Personal conduct (§6320 (a)) No contact; stay away (§6320 (a)) Animals: care, stay away(6320b) Residence exclusion (§6321) Other restraints necessary to effectuate court's orders (§6322) Prohibit getting address(§6322.7) Firearms/ammunition (§6389) Temporary custody & visitation (§§6323, 6346) Temporary property use/possession, debt payment(§6324) Parentage by stipulation (§6323(b)(2)) </td> <td> <ul style="list-style-type: none"> All ex parte orders (§6340(a)) Child support (§6341a) Spousal support (§6341c) Restitution for loss of earnings & out-of-pocket expenses (§6342) Batterer's intervention program (§6343) Attorney's fees & costs (§6344) </td> </tr> </tbody> </table>	Ex Parte TRO	OAH	<ul style="list-style-type: none"> Personal conduct (§6320 (a)) No contact; stay away (§6320 (a)) Animals: care, stay away(6320b) Residence exclusion (§6321) Other restraints necessary to effectuate court's orders (§6322) Prohibit getting address(§6322.7) Firearms/ammunition (§6389) Temporary custody & visitation (§§6323, 6346) Temporary property use/possession, debt payment(§6324) Parentage by stipulation (§6323(b)(2)) 	<ul style="list-style-type: none"> All ex parte orders (§6340(a)) Child support (§6341a) Spousal support (§6341c) Restitution for loss of earnings & out-of-pocket expenses (§6342) Batterer's intervention program (§6343) Attorney's fees & costs (§6344)
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Duration	21 days; 25 days if good cause (FC §242) Re-issuance: until the date of the hearing (FC §245)				
Notice (§243)	Ex parte TRO: personal service at least 5 days bef hearing (§b) Response: at least 2 days before hearing (§f) Renewal: personal service at least 5 days before hearing				
Renewal	5 years or permanently, filed within 3 months before expiration of order, without showing of further abuse since issuance of original order. (§6345) See Avalos v. Perez (2011) 196 Cal.App4th 773 and Loeffler v. Medina (2009) 174 Cal.App.4th 1495.				
Continuance	Respondent gets one continuance upon request, for reasonable time to respond (FC §243(d)); Petitioner not entitled to continuance unless response served less than 2 days before hearing, (FC §243(a) & (f))				
Fees	Filing: No fee for petition or response. (FC §6222) Service: No fee for service from sheriff.				

¹ **Stalking (Penal Code §646.9)**

- Willfully, maliciously & repeatedly following *or* willfully & maliciously harassing another person, *and*
- Making credible threat with intent to place person in reasonable fear for his/her safety or safety of immediate family.

² **Harassing by phone (Penal Code §653m)**

- With intent to annoy: telephones or makes contact by means of electronic communication device, & addresses to or about other person any obscene language or addresses to other person threat to inflict injury to person, property of person, or member of person's family, *or*
- Makes repeated telephone calls or makes repeated contact by means of electronic communication device with intent to annoy other person at residence, whether or not conversation ensues from call or electronic contact. Does not apply to calls/contacts made in good faith.

³ **Cohabitant (Family Code §6209)**

- Person who regularly resides in household; must be social unit, not roommates or sub lessees. (O'Kane v. Irvine, 47 CA4th 207 (1996))

⁴ **Dating relationship (Family Code §6210)**

- Frequent, intimate association characterized by expectation of affection or sexual involvement independent of financial considerations.

⁵ For a copy of a research memorandum supporting this interpretation of the law, contact Hon. Shawna Schwarz at sschwarz@scscourt.org.

Civil Harassment (CCP §527.6)		Workplace Violence (CCP § 527.8)	
Proof	TRO: Reasonable proof of harassment by respondent, and great or irreparable harm would result to petitioner (§527.6(d)) Injunction: Clear & convincing evidence (§527.6(i))	TRO: Reasonable proof of unlawful violence or credible threat of violence by respondent, and great or irreparable harm would result to employee (§527.8(e)) Injunction: Clear & convincing evidence (§527.8(j))	
Action	Petitioner has suffered harassment (§527.6(b)(3)): <ul style="list-style-type: none"> • Unlawful violence – assault, battery, or stalking²; not lawful self defense or defense of others (§527.6(b)(7)), or • Credible threat of violence – knowing & willful statement or course of conduct that would place reasonable person in fear for self or immediate family, and serves no legitimate purpose, §527.6(b)(2), or • Knowing & willful course of conduct directed at specific person that seriously alarms, annoys, or harasses person & that serves no legitimate purpose (§527.6(b)(3)) <ul style="list-style-type: none"> ▪ “Course of conduct” is pattern of conduct composed of series of acts over period of time, however short, evidencing continuity of purpose (§527.6(b)(1)) ▪ Conduct would cause reasonable person to suffer substantial emotional distress, & actually caused petitioner substantial emotional distress (§527.6(b)(3)) 	Employee has suffered unlawful act of violence or credible threat of violence from any person that can be reasonably construed to be carried out or to have been carried out at workplace (§527.8(a)) <ul style="list-style-type: none"> • Credible threat of violence – knowing & willful statement or course of conduct that would place reasonable person in fear for self or immediate family, and serves no legitimate purpose, §527.8(b)(2). • Course of conduct – pattern of conduct composed of series of acts over time, however short, evidencing continuity of purpose, including following or stalking employee to/from workplace; entering workplace; following employee during work hours; making telephone calls to employee; sending correspondence by any means, including, use of public, private or interoffice mails, fax, or computer e-mail. (§527.8(b)(1)) 	
Who Can Petition	No relationship between petitioner & respondent required. Minor under 12 needs CCP §374 GAL (§527.6(a)(2)) Minor 12 and older does not need GAL (CCP§372(b)(1)(A))	Employer files on behalf of employee (§527.8(a)). Employer/employee per Labor Code §350 (§527.8(b)(3)) Minor 12 and older does not need GAL (CCP§372(b)(1)(B))	
Who Can Be Protected	Petitioner & all household members (§527.6(c))	Employee; for good cause, household members & others employed at workplace or other workplaces (§527.8(d))	
Mutual Orders	Respondent may file cross-petition. (§527.6(h))		
Orders	<ul style="list-style-type: none"> • Personal conduct & stay away orders (§527.6(b)(6)(A)) & §527.8(b)(6)(A), but not residence exclusion per Marquez-Luque v. Marquez 192 Cal.App.3d 1513 (1987)) • Firearms/ammunition: no own/possess; relinquish those owned (§527.6(t) & §527.8(r) & §527.9) • Attorneys fees/costs for prevailing party (specifically authorized in civil harassment only §527.6(r)) 		
Duration	TRO: 21 days; 25 days if good cause (§527.6(f) & (g)) Re-issuance: until date set for hearing (§527.6(o)(1)) Injunction: not more than 3 years (§527.6(j))	TRO: 21 days; 25 days if good cause (§527.8(g) & (h)) Re-issuance: until date set for hearing (§527.8(o)(1)) Injunction: not more than 3 years (§527.8(k))	
Notice	TRO: personal service at least 5 days before hearing (§527.6(m) & §527.8(m)) Answer: any time up to date of hearing (If 11 th hour service prejudices petitioner, continue hearing to cure prejudice). ⁵		
Renewal	For not more than 3 years, upon request of party, without showing of any further harassment (CH) or violence/threat of violence (WV) since issuance of original order; brought within three months of expiration (§527.6(j)(1) & §527.8(k)(1)).		
Continuance	Discretionary (CRC 3.1332). (§527 says respondent gets 1 continuance but cases have not read §527 into other statutes.) ⁵		
Fees	Filing: <ul style="list-style-type: none"> • No filing fee for petition that alleges that respondent has 1) inflicted or threatened violence against petitioner/employee, 2) stalked petitioner/employee, or 3) acted or spoken in manner that has placed petitioner/employee in reasonable fear of violence. (§527.6(w) & §527.8(v)) • No fee for filing response to petition alleging these acts. (§527.6(w) & §527.8(v)) Service: <ul style="list-style-type: none"> • No fee for service by sheriff if 1) order based on stalking, or 2) order based on unlawful violence or credible threat of violence. (§527.6(x) & §527.8(w)) 		

Elder Abuse (WIC §15657.03)

Proof	Abuse	Who Can Petition	Who Is Protected	Mutual Orders	Continuance	Ex parte TRO	Injunction
	<ul style="list-style-type: none"> • Physical abuse (§15610.63); neglect (§15610.57); financial abuse (§15610.30); abandonment (§15610.05); isolation (§15610.43); abduction (§15610.06); or treatment with resulting physical harm, pain or mental suffering (§15610.53), or • Deprivation by care custodian of goods or services necessary to avoid physical harm or mental suffering. (§15610.07) 	Elder or dependent adult; conservator; trustee; attorney-in-fact; guardian ad litem; or other person authorized (§a).	<ul style="list-style-type: none"> • Elder adult: 65 or older (§15610.27); or • Dependent adult: adult between ages 18 & 64 w/ physical or mental limitations that restrict ability to carry out normal activities or to protect rights. Includes those who have physical/developmental disabilities, or whose physical/mental abilities have diminished because of age, or who is between those ages & is admitted as inpatient to 24-hour health facility. (§15610.23(a)) • Family or household member, or conservator, in discretion of court for good cause (§(b)(3)(A)) 	Respondent may file cross-complaint if elder or dependent adult (§15657.03); otherwise, file civil harassment.	Discretionary (CRC 3.1332). ⁵	<ul style="list-style-type: none"> • Personal conduct (§(b)(3)(A)) • Stay away (§(b)(3)(A)) • Residence exclusion (§(b)(3)(B)), (d)(1)) • Other restraints to effectuate court's orders (§(b)(3)(C)) • Firearms/ammunition: no own/possess; relinquish; except financial abuse only (§t) 	<ul style="list-style-type: none"> • Residence exclusion (§h) • All ex parte orders (§h) • Attorney's fees & costs (§s)
						Orders <ul style="list-style-type: none"> • Personal conduct (§(b)(3)(A)) • Stay away (§(b)(3)(A)) • Residence exclusion (§(b)(3)(B)), (d)(1)) • Other restraints to effectuate court's orders (§(b)(3)(C)) • Firearms/ammunition: no own/possess; relinquish; except financial abuse only (§t) 	
						Duration <ul style="list-style-type: none"> • 21 days; 25 days good cause (§f) • Re-issuance: until date of hearing (§m) 	Not more than 5 years (§(i)(1))
						Notice <ul style="list-style-type: none"> • TRO: personal service at least 5 days before hearing (§k) • Response: any time up to date of hearing (If 11th hour service prejudices petitioner, continue hearing to cure).⁵ 	
						Renewal <ul style="list-style-type: none"> • For five years or permanently, upon request of party; without showing of further abuse since issuance of the original order; may be brought at any time within the three months before the expiration of the order. (§(i)(1)) 	
						Fee <ul style="list-style-type: none"> • Filing: No fees for petition or response. (§q) • Service: No fee for service from sheriff. (§r) 	



SAN DIEGO REGIONAL GUIDE DOMESTIC VIOLENCE RESOURCES



National Domestic Violence Hotline 1-800-799-SAFE (7233)

DOMESTIC VIOLENCE SERVICES AND SHELTERS

YWCA (Central)	619/234-3164
Center for Community Solutions (East County)	619/697-7477
Center for Community Solutions (North County)	760/747-6282
Community Resource Center (North County)	877/633-1112
Women's Resource Center (North County)	760/757-3500
Center for Community Solutions (Coastal)	858/272-5777
South Bay Community Services (South County)	800/640-2933

OTHER DOMESTIC VIOLENCE SERVICES (Partial list)

Family Justice Center (Central)	619/533-6000
North County Family Violence Prevention Center (North County)	760/798-2835
Jewish Family Services – Project Sarah	858/637-3200
Rancho Coastal Humane Society - Animal Safehouse Program (North County)	760/753-6413
Stalking Information Line (County of San Diego District Attorney's Office)	619/515-8900
Lesbian, Gay, Bisexual, Transgender, Questioning, (LGBTQ) Community Center	619/692-2077
SD District Attorney's Office, Victim Assistance Program: Central: 619/531-4041, East: 619/441-4538, Juvenile: 858/694-4595, South: 619/498-5650, North:	760/806-4079

OTHER 24 HOUR HOTLINES (Partial list)

Access & Crisis Line	888/724-7240
Children Welfare Services & the Child Abuse Hotline	800/344-6000
Aging and Independence Services & Adult Protective Services	800/510-2020
Center for Community Solutions - Sexual Assault Crisis Line	888/385-4657
Lesbian, Gay, Bisexual, Transgender, Questioning (LGBTQ) Heidorn	858/212-LIFE (5433)
National DV Crisis Intervention, Information and Referral	800/799-SAFE (7233)
Rape, Abuse, Incest National Network (RAINN) Hotline	800/656-HOPE (4673)
211	211 (cell 800-227-0997)
Meth Hotline	877/NO-2-METH (877-662-6384)

SPANISH SPEAKING AGENCIES (SE HABLA ESPAÑOL) (Partial list)

San Diego Domestic Violence Hotline 24 hour (Domestic Violence & Sexual Assault)	888/DVLINKS (385-4657)
Access & Crisis 24-Hour Hotline	888/724-7240
Casa Familiar	619/428-1115
Chicano Federation of San Diego County, Inc.	619/ 285-5600
Children's Hospital's Family Violence Program	619/533-3529
North County Lifeline	760/726-4900
San Diego Family Justice Center	866/933-HOPE (4673)
South Bay Community Services 24-Hour Hotline and Services	800/640-2933

MILITARY RESOURCES (Partial list)

For referrals for family service and advocacy centers serving Camp Pendleton, MCAS Miramar, MCRD, Naval Base San Diego, NAS North Island, & Sub Base Fleet:
Call the Family Justice Center Military Liaison 619/533-3592 (confidential) or SD County DV Hotline 888/385-4657 (confidential)
For other resources referrals & assistance, you may call Military OneSource at 800/342-9647 (24-hour hotline)

CHILDREN'S RESOURCES (Partial list)

Child Welfare Services & the Child Abuse Hotline	800/344-6000
District Attorney's Office Child Abduction Unit	619/531-4345
Rady's Children's Hospital, Chadwick Center - Trauma Counseling Program (Main Center)	858/966-5803
Rady's Children's Hospital, Chadwick Center - Trauma Counseling Program (South)	619/420-5611
Rady's Children's Hospital, Chadwick Center - Trauma Counseling Program (North)	760/967-7082, opt 3

Taking time to think about steps to increase your safety and the safety of your children is important, whether you have left, are considering leaving, or are currently in an abusive relationship. You may want to consider calling a domestic violence advocacy agency to assist you in safety planning. Call **888-DV-LINKS** (888-385-4657) to speak with a confidential advocate or to be referred to an agency that specializes in domestic violence.

You may also view the National DV Hotline's website for safety planning ideas and steps for internet safety: <http://www.thehotline.org/get-help/safety-planning/>

JAIL NOTIFICATION

Inmates may be released at any time of the day. By calling to set up a "jail notification," you may receive a call (usually about one hour) ahead of when your partner is to be released. You can go online to make these arrangements at <http://www.sdsheriff.net/victims> or based on your area code you may call any one of the following: (619) 610-1647 (760) 936-0014 Two attempts will be made to contact you at the number you provide.

DOMESTIC VIOLENCE SHELTERS

There are shelters in San Diego County specifically geared to assisting domestic violence victims. In addition to housing and accommodations, most provide such services as advocacy, legal assistance, and counseling onsite. See the DV Services and Shelters section of the phone guide.

ORDERING POLICE REPORT(S)

Victims have a right to a free copy of their police report. Contact the responding law enforcement agency in the jurisdiction in which the incident occurred. Requests for reports can be made to most jurisdictions through the mail or in-person. The following information is necessary to identify the requested report: parties involved, date and location of occurrence, and the report number if available. Bring identification if you go in-person to pick up your report. The crime incident report is available no later than 48 business hours and the reports are available no later than 5 business days after they are taken.

SAFE AT HOME - CONFIDENTIAL MAILING ADDRESS

Program participants are provided a confidential mailing address, at no cost, so that they may use this instead of their home address. This *mail forwarding program* allows participants to safeguard their address when receiving first-class mail, opening a bank account, completing a confidential name change, filling out government documents, registering to vote, getting a driver's license, enrolling a child in school, and more. You may call toll-free at 1-877-322-5227 or visit <http://www.sos.ca.gov/safeathome/applicants-participants.htm> for information and a local enrolling agency.

RESTRAINING ORDERS

You can file at no cost for a restraining order, which may be granted by a judge to last up to 5 years.

There are no cost domestic violence clinics available to assist you in the application process.

For updated TRO Clinics and Family Law Facilitators locations and hours call 888-DV-LINKS or go to the following website: www.sdcourt.ca.gov. Select the "Family" tab and select "Domestic Violence."

Arrive at a minimum of 2 hours before the clinic closes. Be prepared to spend a minimum of one-half of a day to a full day at the court to obtain your restraining order. Space is limited at child care facilities at each court house. You are encouraged to make other child care arrangements.

Things to bring with you when you complete your paperwork, if available: The address for the person you would like restrained; Date of birth for the person you would like restrained; Physical description of the person you would like restrained; Photographs of any injuries; Copy of the police report(s).

TAB 28

**Legal and Psychosocial Issues: Family
Court after the U.S. Supreme Court
Decisions**

*Mr. Adam P. Romero, Ms. Teresa
DeCrescenzo, Ms. Brenda Thompson &
Mr. Tony Viramontes*

LGBT PEOPLE: A VIEW FROM THE DATA AND FAMILY LAW

AB 868 TRAINING

Adam P. Romero

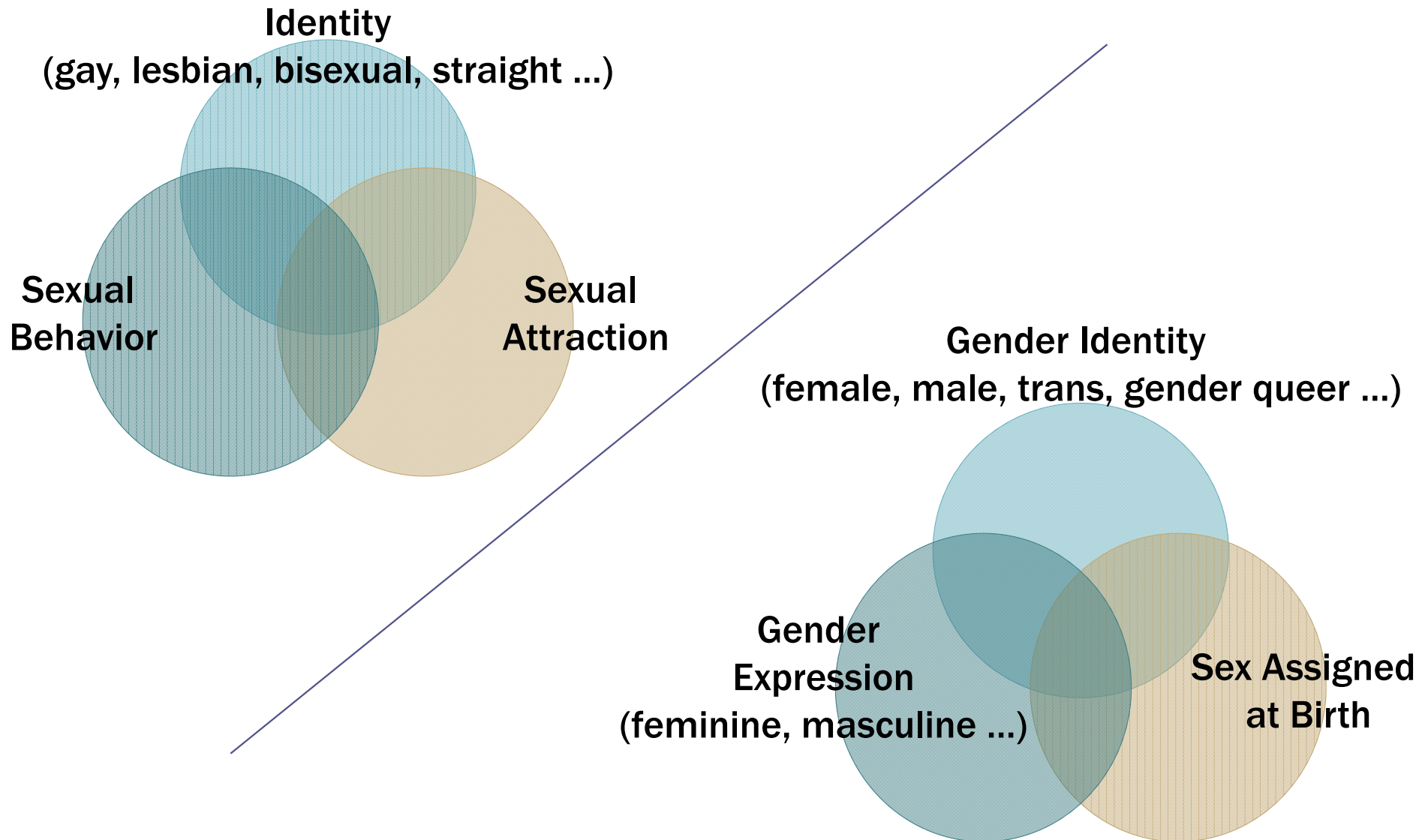
Senior Counsel and Arnold D. Kasoy Scholar of Law
The Williams Institute, UCLA School of Law



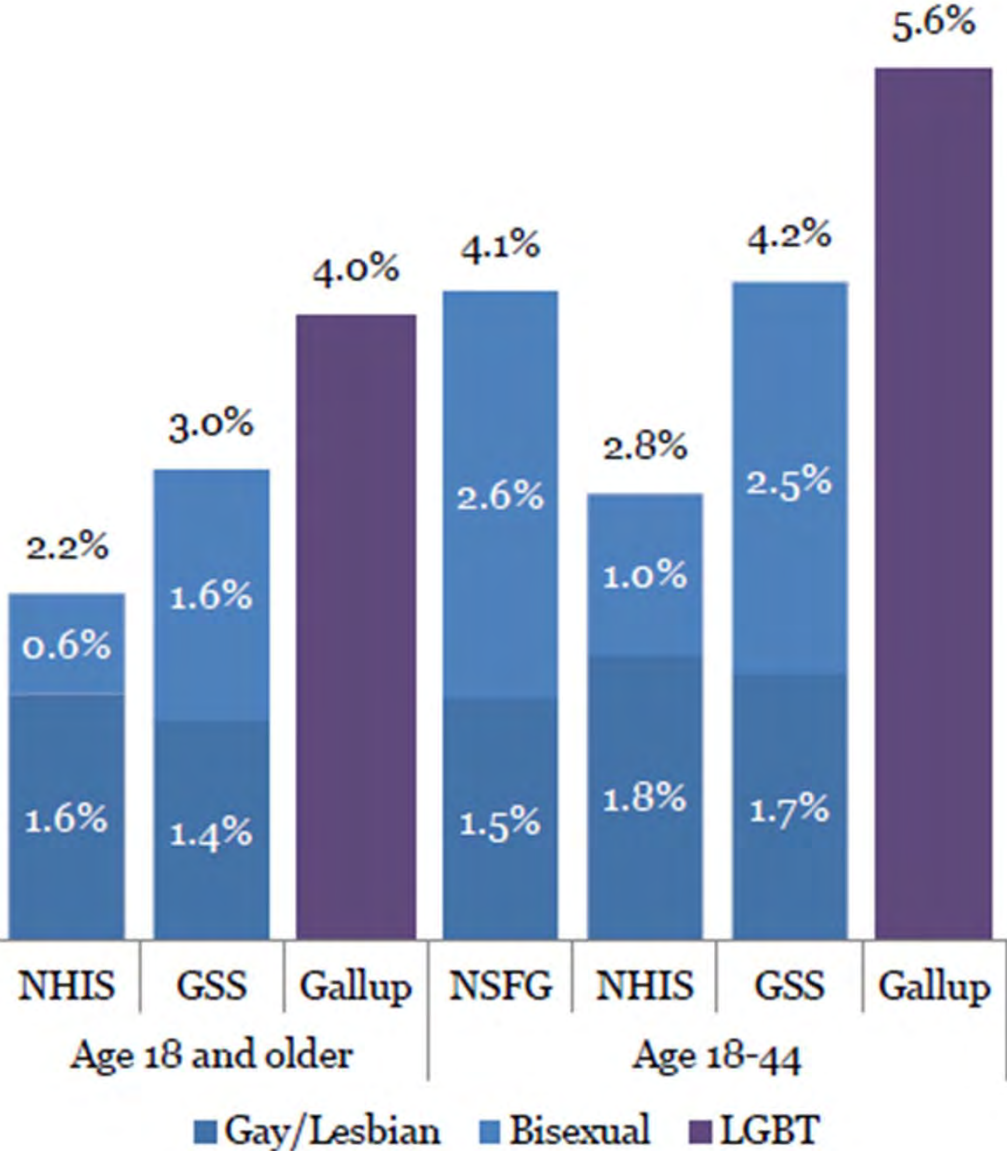
the
Williams
INSTITUTE

**DEMOGRAPHIC AND
SOCIOECONOMIC
CHARACTERISTICS OF
LGBT INDIVIDUALS AND
SAME-SEX COUPLES**

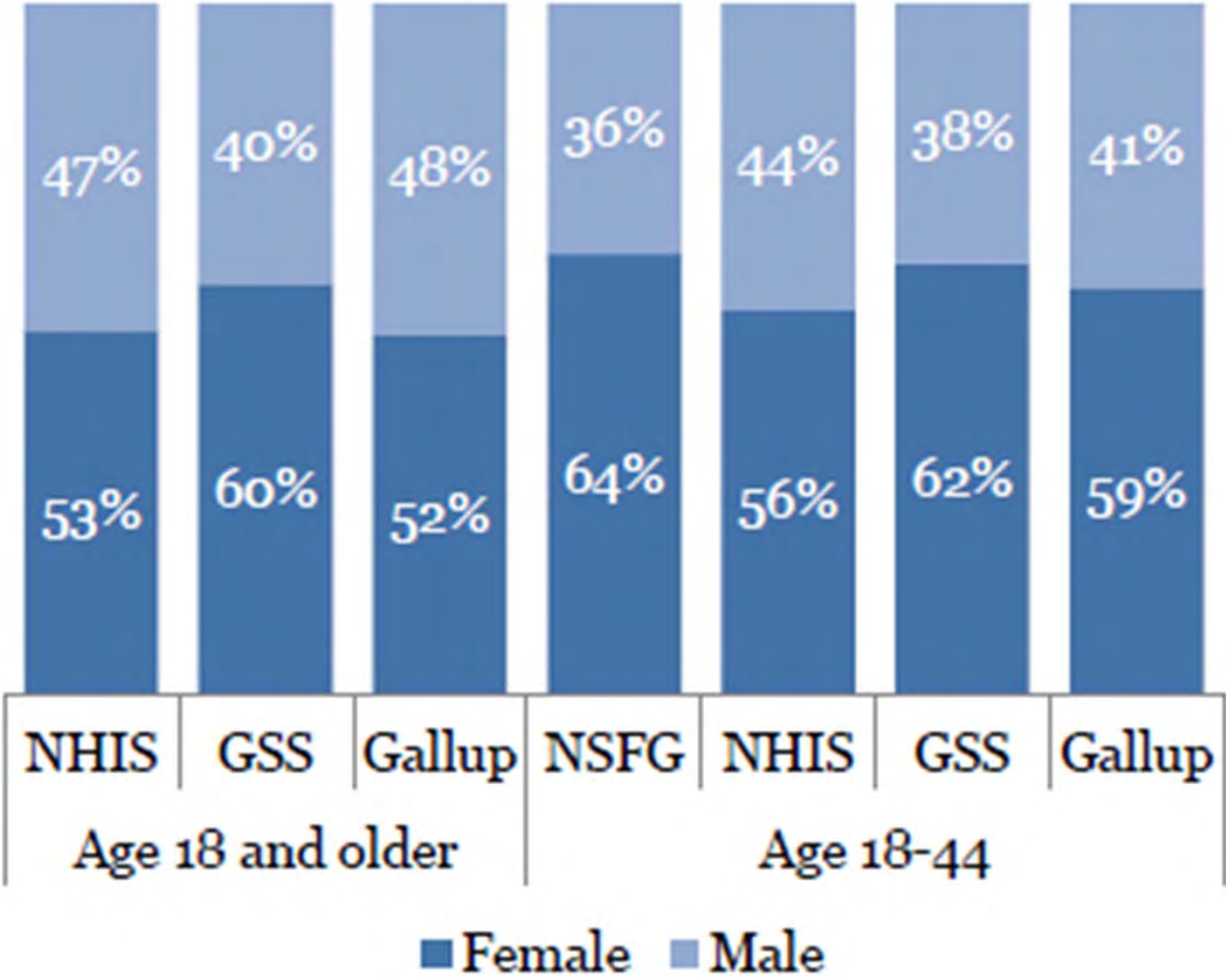
Sexual Orientation and Gender Identity Are Distinct and Complex Concepts



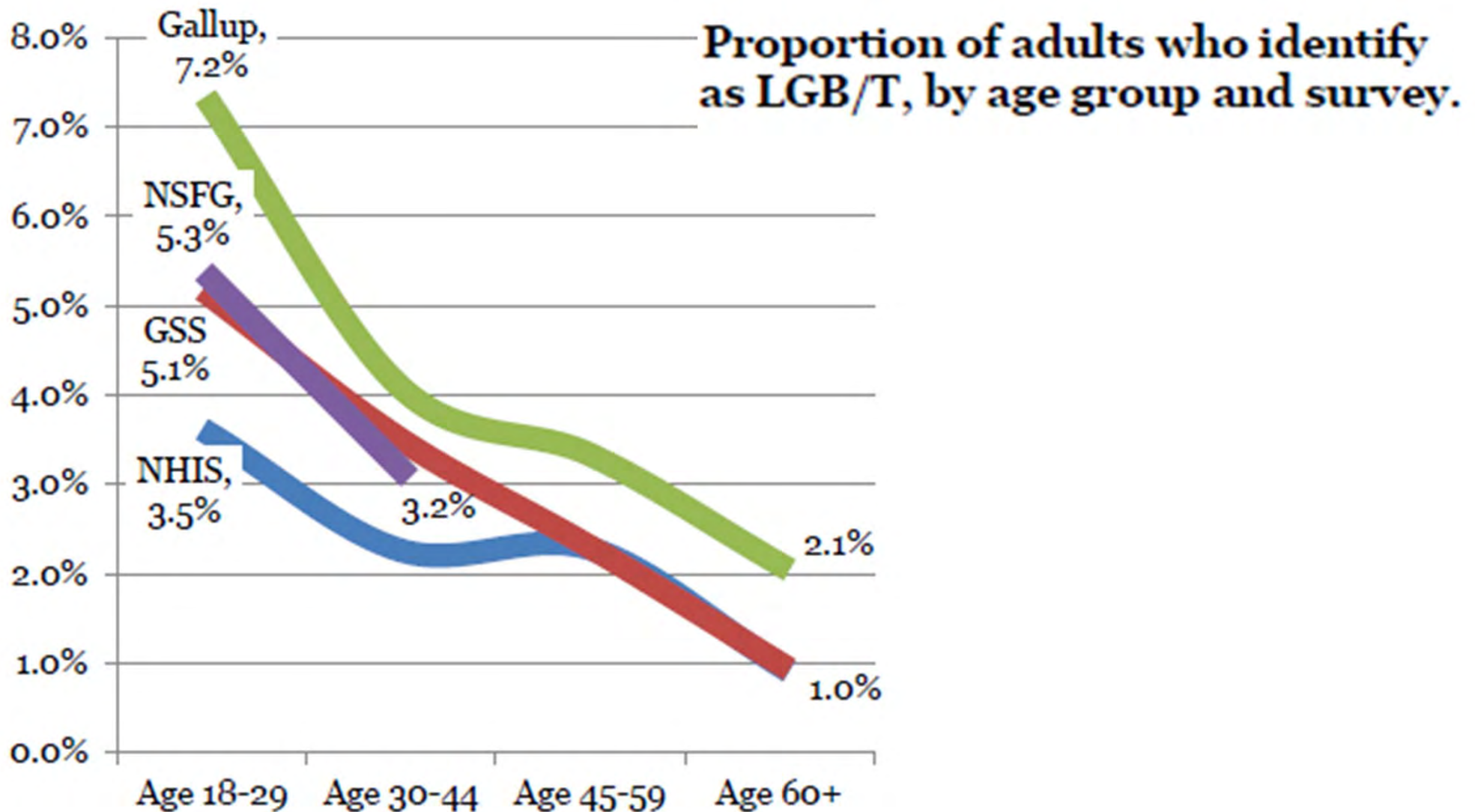
What Proportion of Adults Identify as LGBT?



Women Are More Likely To Identify as LGBT



Younger People Are More Likely To Identify As LGBT

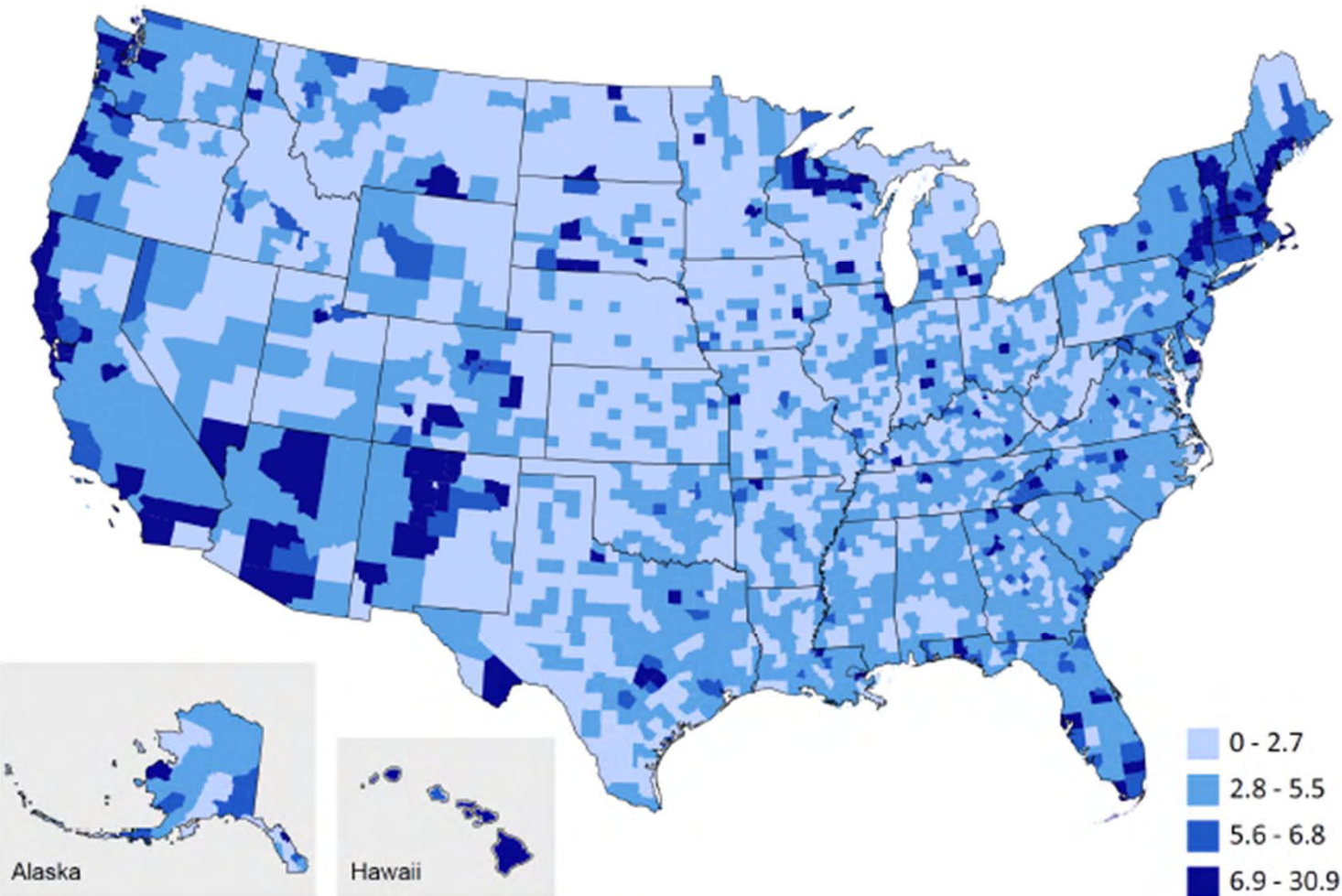


Top 10 States for Same-Sex Couples and LGBT Adults

- Which states have the most same-sex couples?
- Which states have the highest concentration of same-sex couples?
- Which states have the highest percentage of adults identifying as LGBT?

Census 2010: Cohabiting Same-Sex Couples

Same-sex couples per 1,000 households
by county (adjusted)*



- 646,464 couples
- 5.5 same-sex couples per 1000 households
- 51% female
- All states and 93% of counties

* Same-sex couples were identified in 93% of all US counties

Top 10 States for Same-Sex Couples and LGBT Adults

Rank	Number of Same-sex Couples (Census 2010)	Same-sex Couples Per 1,000 Households (Census 2010)	% LGBT Among All Adults (Gallop 2012)
1	California (98,153)	DC (18.08)	District of Columbia (10%)
2	New York (48,932)	Vermont (8.36)	Hawaii (5.1%)
3	Florida (48,496)	Massachusetts (7.95)	Vermont/Oregon (4.9%)
4	Texas (46,401)	California (7.80)	Maine (4.8%)
5	Illinois (23,049)	Oregon (7.75)	Rhode Island (4.5%)
6	Pennsylvania (22,336)	Delaware (7.73)	Mass./South Dakota (4.4%)
7	Georgia (21,318)	New Mexico (7.36)	Nevada (4.2%)
8	Ohio (19,684)	Washington (7.25)	California/Washington (4.0%)
9	Washington (19,003)	Hawaii (7.11)	Kentucky/Arizona (3.9%)
10	North Carolina (18,309)	Maine (7.10)	NY/MI/IL (3.8%)

LGBT People Are Racially and Ethnically Diverse

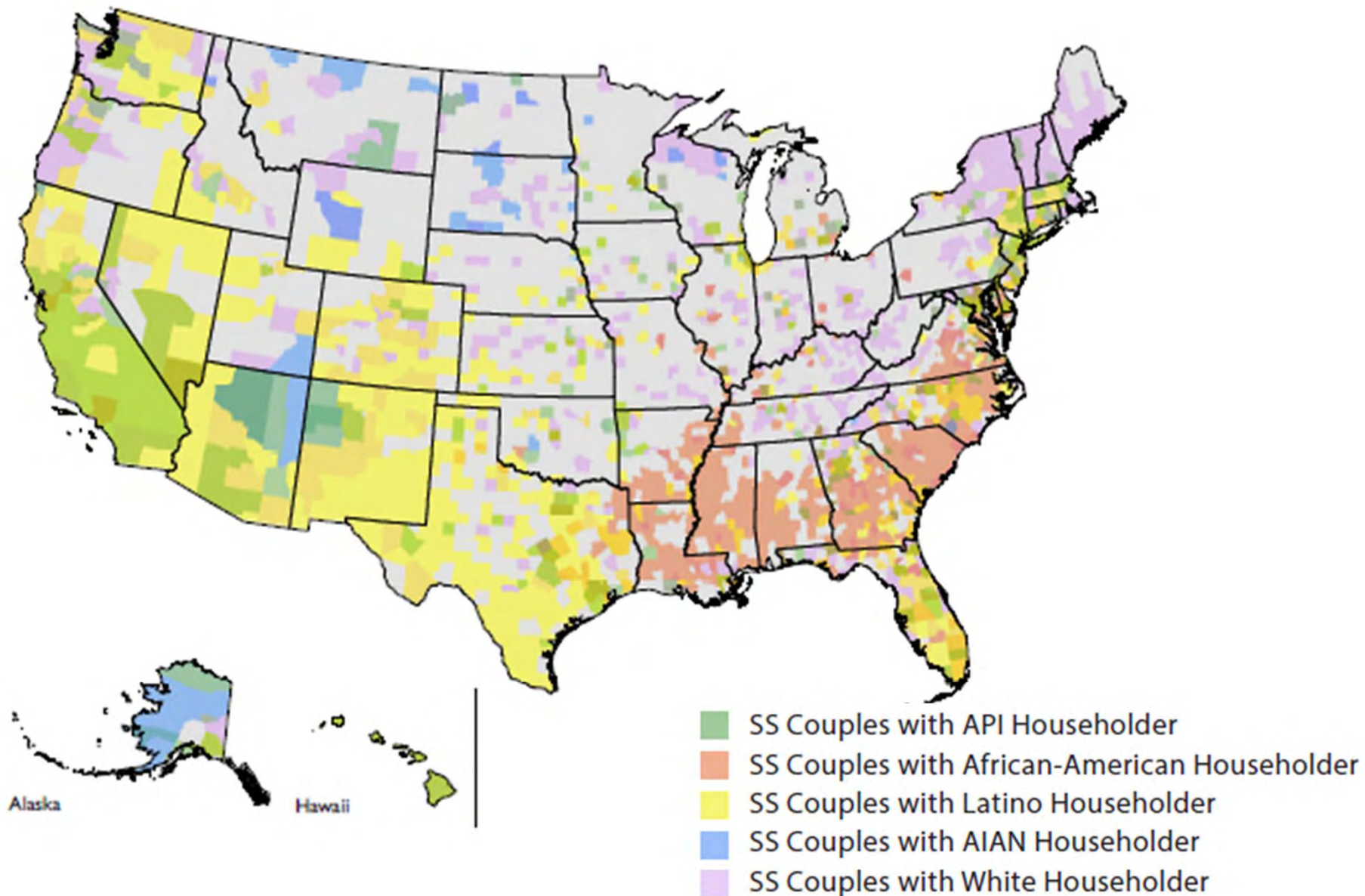
Do you, personally, identify as lesbian, gay, bisexual, or transgender?

	Yes	No	DK/Ref
	%	%	%
Non-Hispanic white	3.2	93.9	2.8
Black	4.6	90.1	5.3
Hispanic	4.0	90.2	5.8
Asian	4.3	92.0	3.7

Gallup Daily tracking
June 1-Sept. 30, 2012

GALLUP®

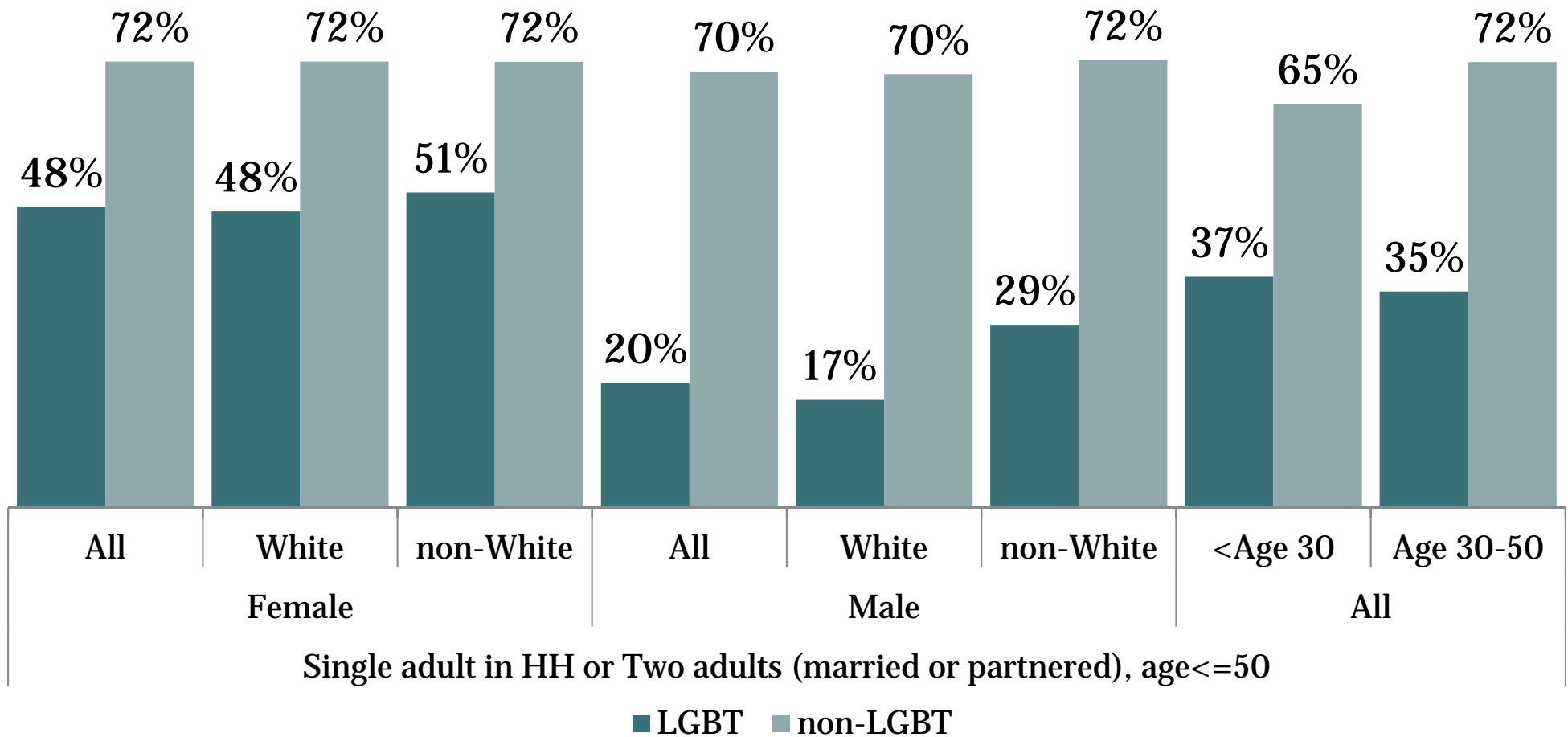
Highest Proportion of Same-sex Couples of Each Racial/Ethnic Group Among Households



Many LGBT People Are Raising Children

% With children under age 18 in the home

Gallup Daily Tracking, 2012

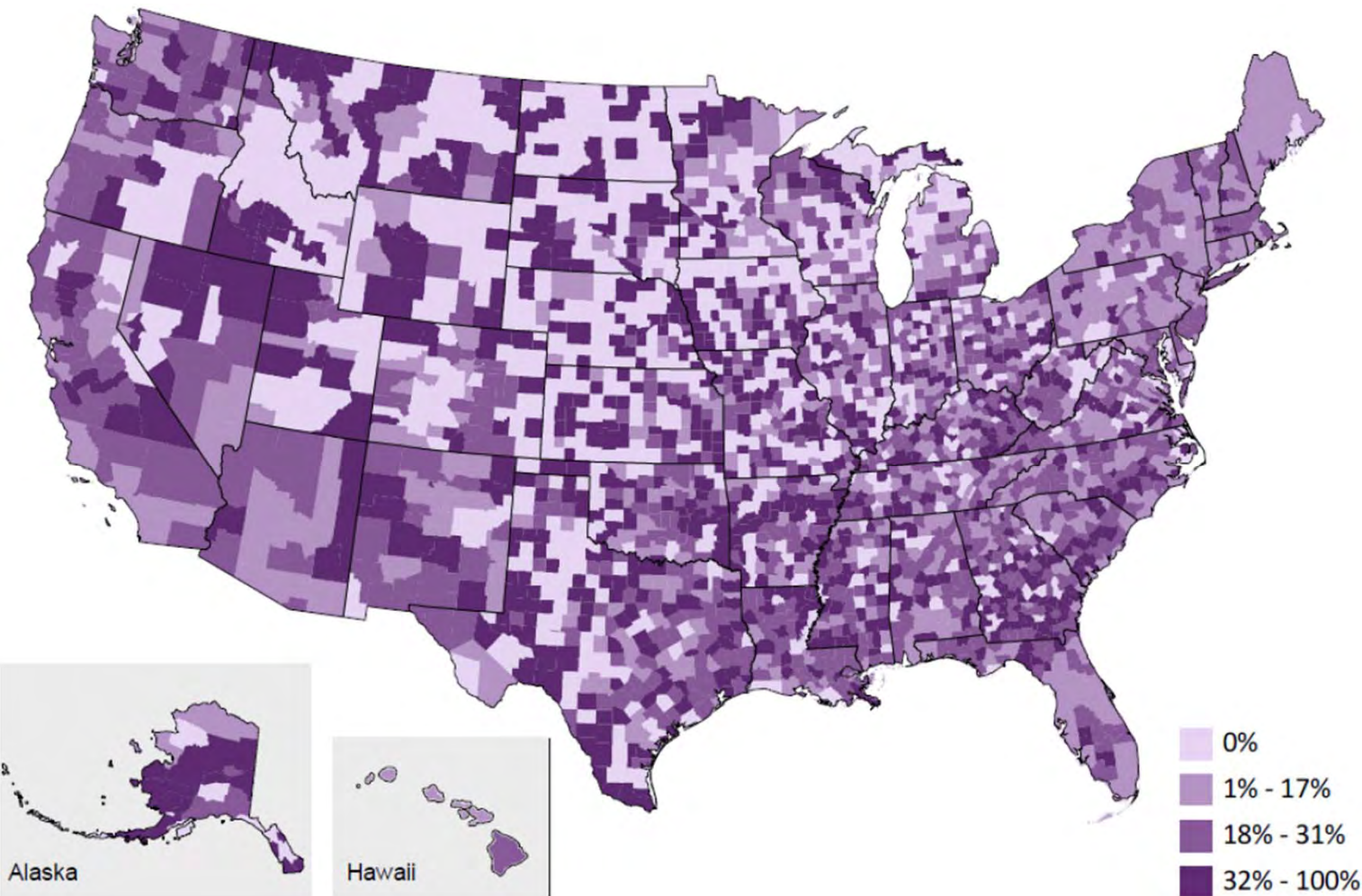


Top 10 States for Cohabiting Same-Sex Couples Raising Children

- **Which states have the highest percentage of same-sex couples raising children?**



Census 2010: Cohabiting Same-Sex Couples Raising Children

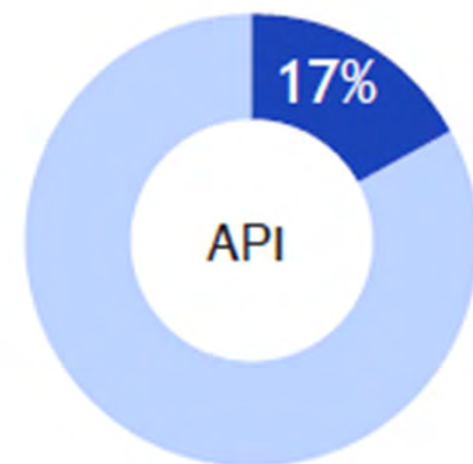
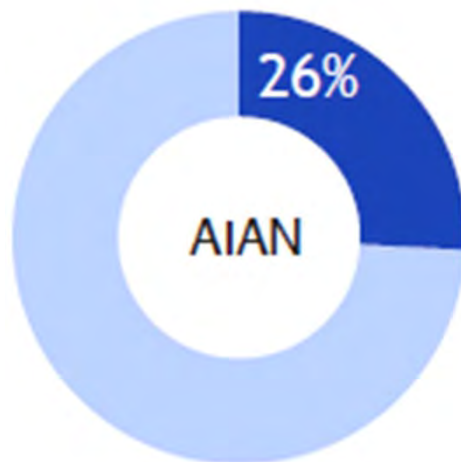
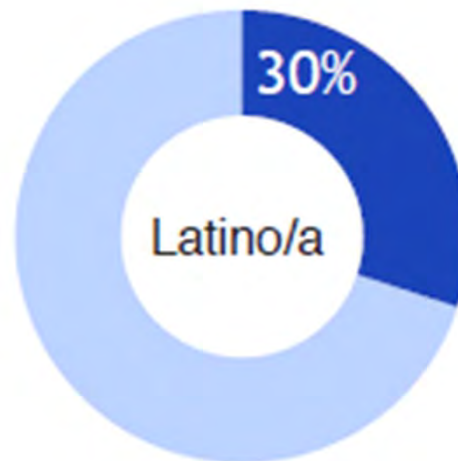
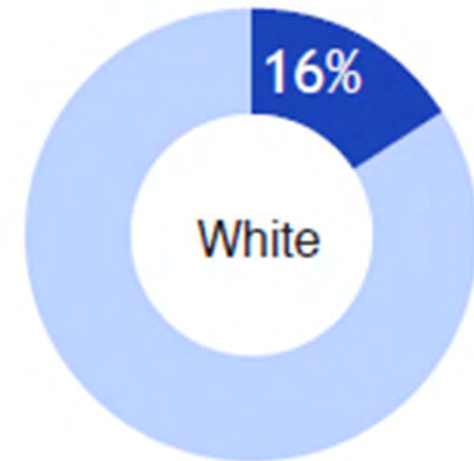
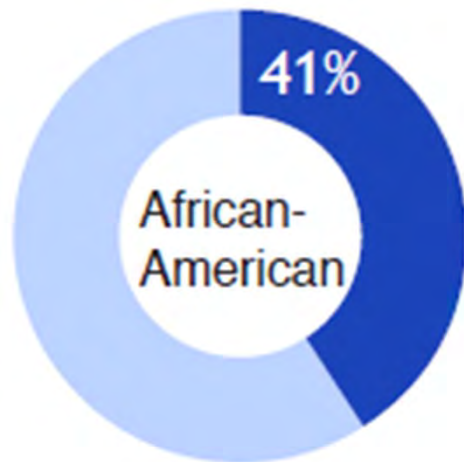


- 111,033 (17%) of same-sex couples
- 41,194 (31%) of same-sex couples who identify as spouses
- 69,839 (14%) of same-sex couples who identify as unmarried partners

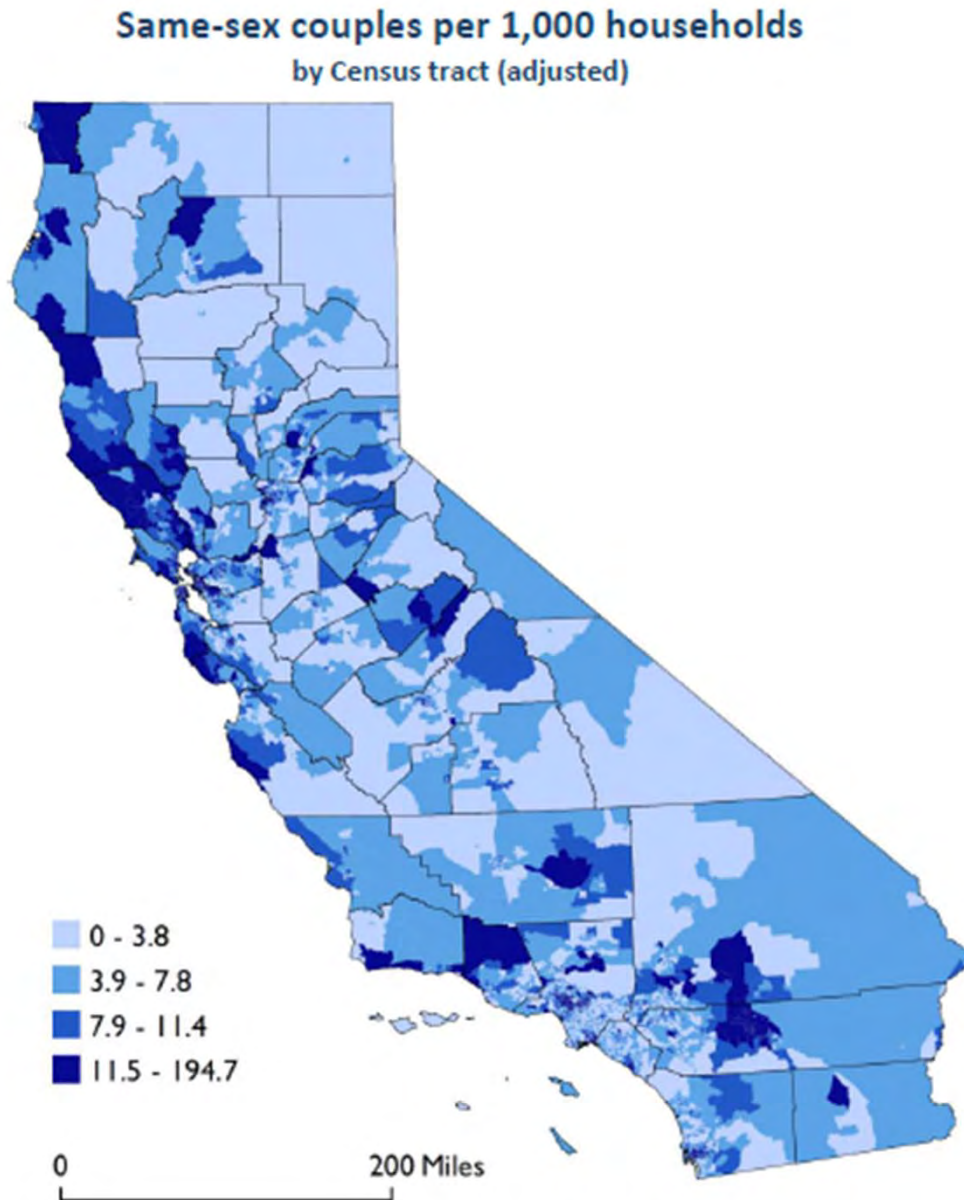
Census 2010: Top 10 States for Cohabiting Same-Sex Couples Raising Children

Rank	State	Percent Raising Biological, Adopted, or Step Children
1	Mississippi	26%
2	Wyoming	25%
3	Alaska	23%
4	Idaho	22%
4	Montana	22%
4	Kansas	22%
4	North Dakota	22%
8	Arkansas	21%
8	South Dakota	21%
8	Oklahoma	21%

Cohabiting Same-sex Couples Raising Children



Census 2010: Cohabiting Same-Sex Couples



- 98,153 couples
- 7.8 same-sex couples per 1000 households
- 47% female, 53% male
- Live in all but one county
- 28,312 identified as spouses
- 69,841 identified as unmarried partners
- 15,698 (16%) raising “own” children
- 4% of individuals self-identify as LGBT (Gallop)

Top 10 California Counties for Same-Sex Couples

- Which CA county has the greatest number of same-sex couples?
- Which CA county has the highest concentration of same-sex couples?

Top California Counties for Same-Sex Couples

- Which CA county have the greatest number of same-sex couples?

Los Angeles (26,300)



Top California Counties for Same-Sex Couples

- Which CA county has the highest concentration of same-sex couples?

**San Francisco
(30 same-sex couples
per 1000 households)**



Census 2010: Cohabiting Same-Sex Couples – Top CA Counties Ranked by Concentration

State rank	County	Per 1,000 households	Same-sex couples	% Raising “own” children
1	San Francisco	30.22	10,451	7%
2	Sonoma	12.14	2,255	13%
3	Alameda	12.09	6,593	18%
4	Santa Cruz	10.71	1,010	22%
5	Riverside	10.55	7,237	10%
6	Marin	9.69	1,001	16%
7	Mendocino	9.15	320	17%
12	San Diego	8.14	8,852	13%
13	Los Angeles	8.11	26,286	16%

Census 2010: Cohabiting Same-Sex Couples – Top Cities in Southern California

State rank	City	Per 1,000 households	Same-sex couples
1	Palm Springs	107.28	2,440
3	West Hollywood	62.05	1,397
4	Rancho Mirage	52.29	462
5	Cathedral City	46.33	790
6	Signal City	37.85	157
9	Laguna Beach	27.16	294
10	Desert Hot Springs	22.56	195
14	Long Beach	19.13	3,128
17	Altadena	16.30	248

Census 2010: Cohabiting Same-Sex Couples – Top Cities in the Bay Area

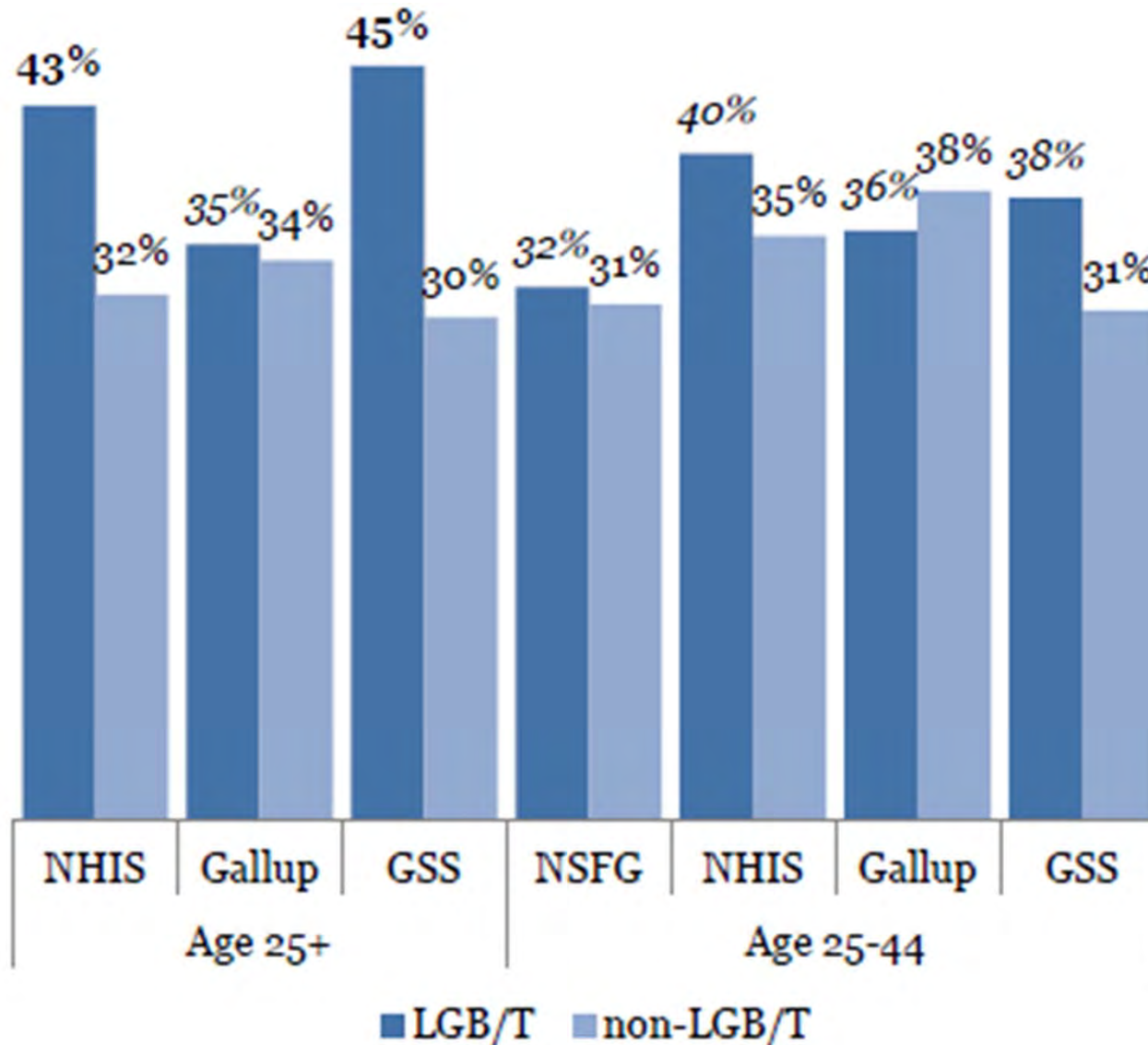
State rank	City	Per 1,000 households	Same-sex couples
2	Guerneville	80.36	185
7	Brisbane	32.39	59
8	San Francisco	30.25	10,461
11	Oakland	21.84	3,359
12	Emeryville	20.71	118
13	Berkeley	20.61	949
15	El Cerrito	17.60	178
16	Santa Cruz	16.56	359
18	Pacifica	15.31	214

True or False?

LGBT people are less likely to have completed college than non-LGBT people?

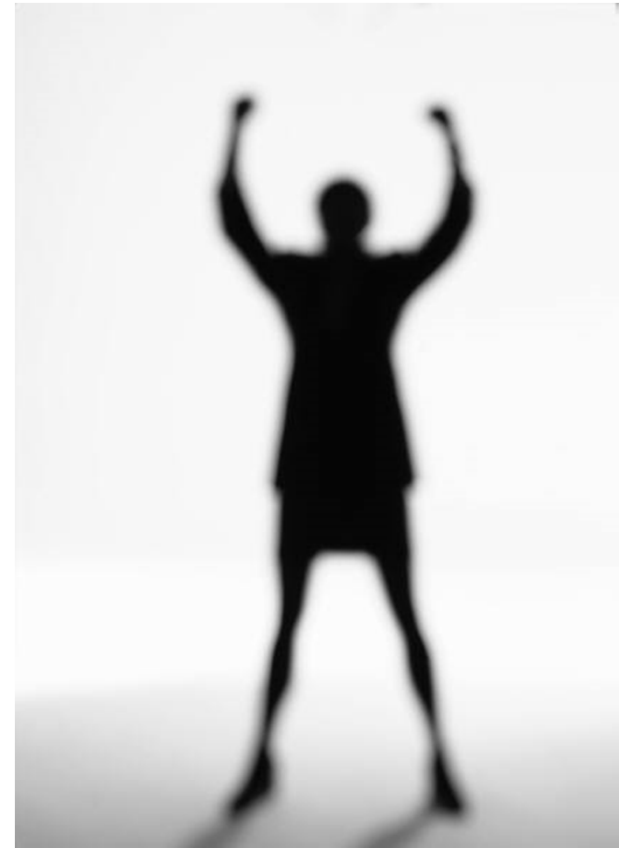


Educational Attainment: Proportion with College Degree



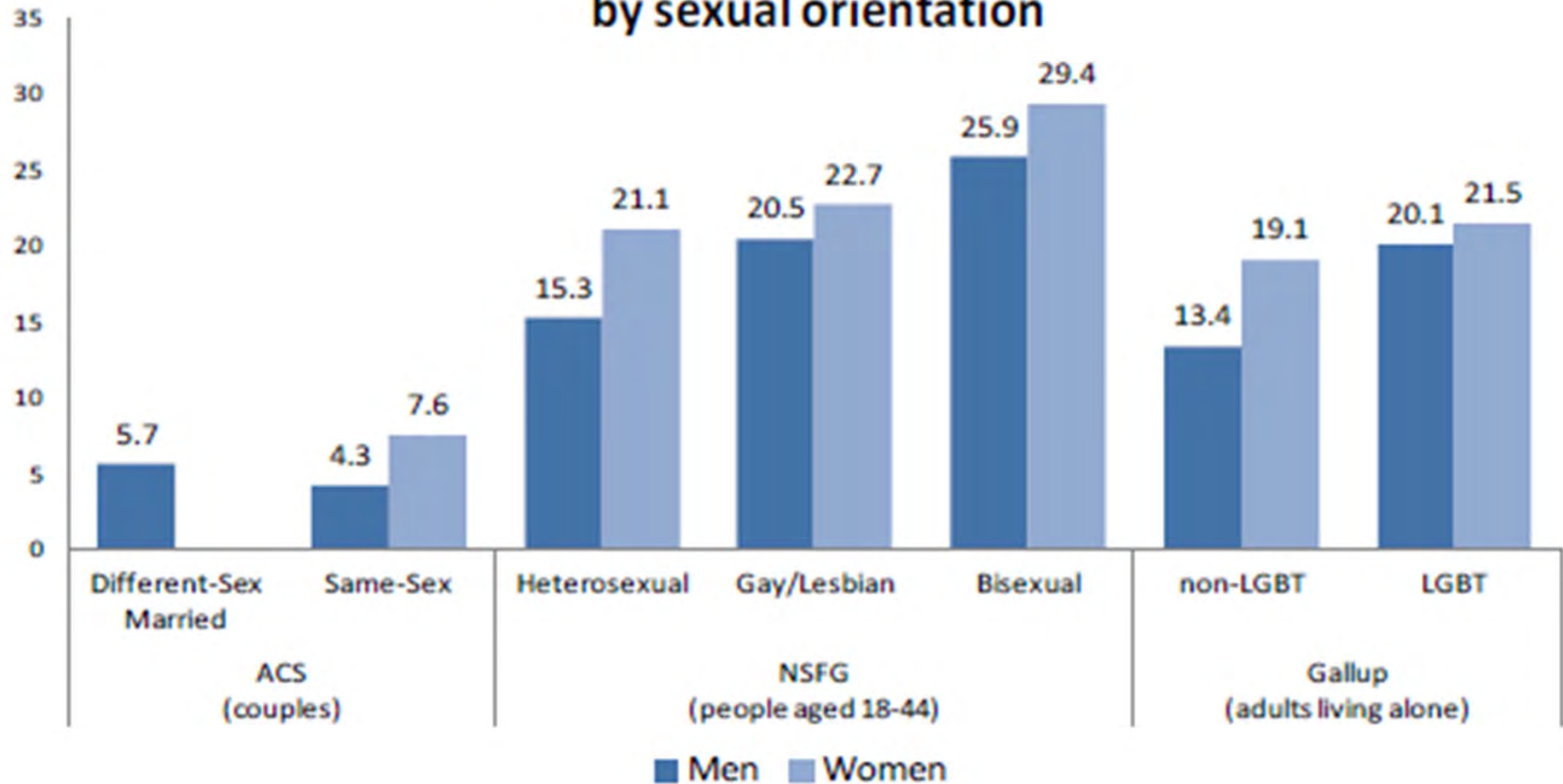
True or False?

LGBT people are more vulnerable to poverty than non-LGBT people?



Poverty in the LGBT Community

Summary of poverty rates from national surveys by sexual orientation



Couples: Geography

Table 6b: Percent of Poor Householders and Partners in Coupled Families by Region and Metropolitan Status, 2010 American Community Survey

	Married Different Sex	Male Same-Sex	Female Same-Sex
<u>All</u>	5.7	4.3*	7.6*
Big Metro	5.4	3.3**	4.5
Med Metro	5.6	5.3	11.1**
Small Metro	5.5	10.2*	8.7*
Non-Metro	6.5	5.9	14.1**

Source: Authors' tabulation of the 2010 ACS.

* denotes different from married different-sex at 10% level

** denotes different from married different-sex at 5% level

Couples: Race and Ethnicity

Table 6a: Percent of Poor Householders and Partners in Coupled Families by Race and Ethnicity

	Married Different Sex	Male Same-Sex	Female Same-Sex
<u>All</u>	5.7	4.3*	7.6*
<u>Race</u>			
White	4.8	3.1**	5.8*
Black	8.0	18.8**	17.9**
Native American	12.6	8.1	18.4
Asian	6.7	7.6	2.0**
Other Race	15.5	8.6**	16.9
<u>Ethnicity</u>			
Hispanic	16.3	8.5**	12.4*
Non-Hispanic	4.3	3.7	6.9**

Source: Authors' tabulation of the 2010 ACS.

* denotes different from married different-sex at 10% level

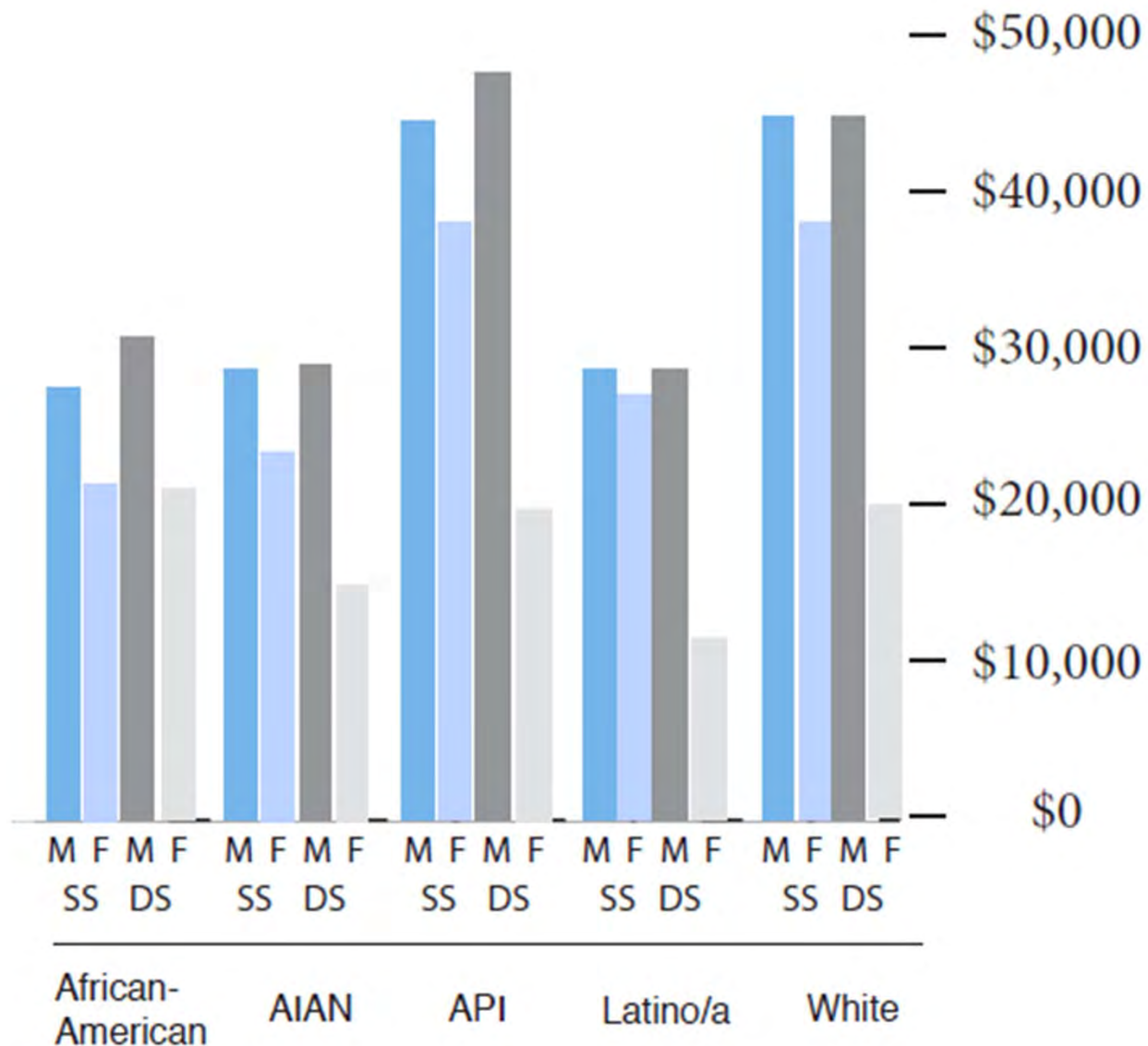
** denotes different from married different-sex at 5% level

True or False?

- **Women in same-sex couples earn more, on average, than women in different-sex couples?**
- **Men in same-sex couples earn more, on average, than men in different-sex couples?**
- **Men in same-sex couples earn less, on average, than women in same-sex couples?**

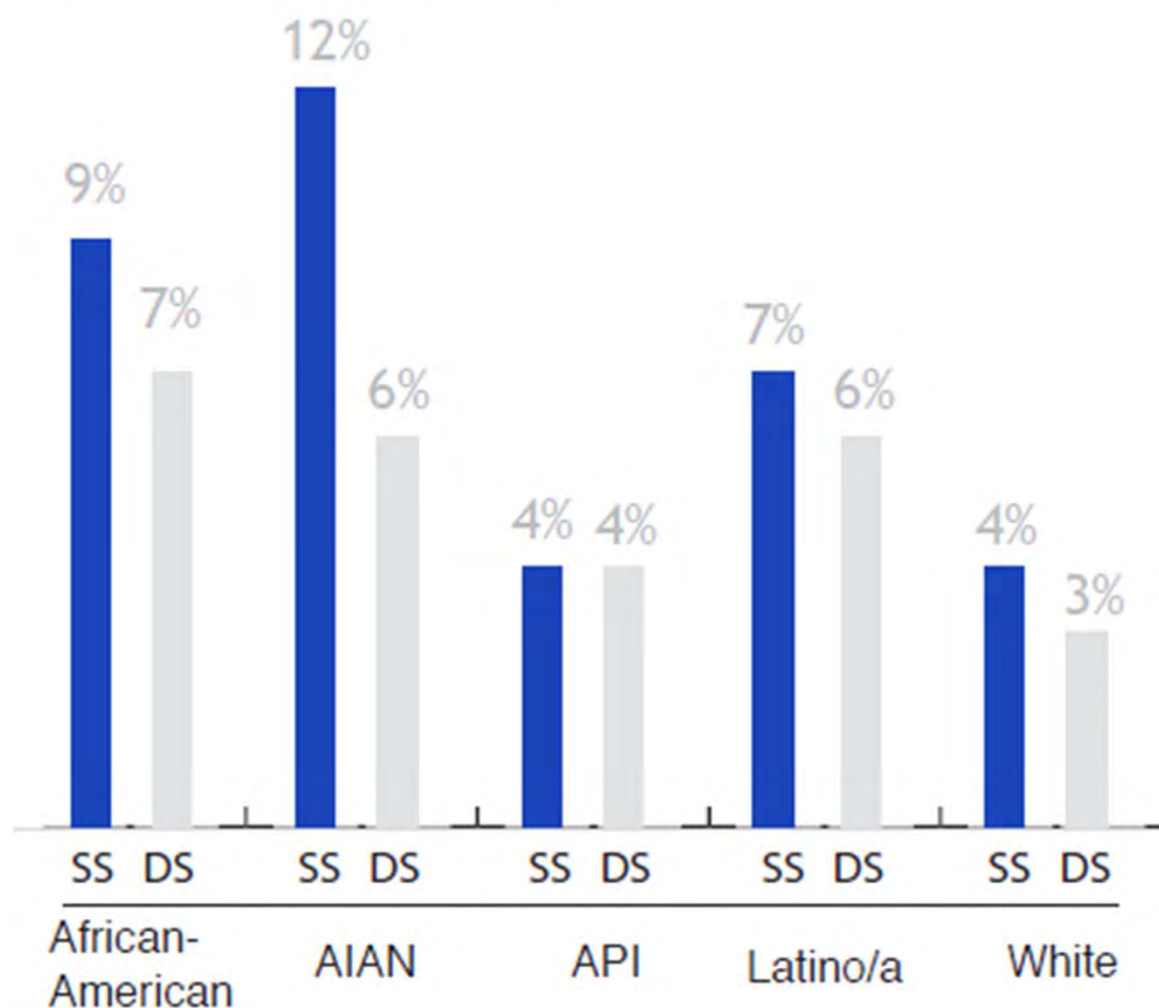


American Community Survey 2008-2010: Individuals in Same-sex Couples – Median Income



American Community Survey 2008-2010: Individuals in Same-Sex Couples

Unemployment Rates



True or False?

The average household income is higher among same-sex couples with children than different-sex spouses with children?



True or False?

The average household income is higher among same-sex couples with children than different-sex couples with children?

False – \$63,900 v. \$74,000



Health Disparities (NHIS 2013)

- **Health behavior disparities**

- Higher percentages of LGBs smoke
- Higher percentages of LGBs had 5 or more drinks in one sitting
- Higher percentages of LGBs met aerobic activity guidelines

- **Health status disparities**

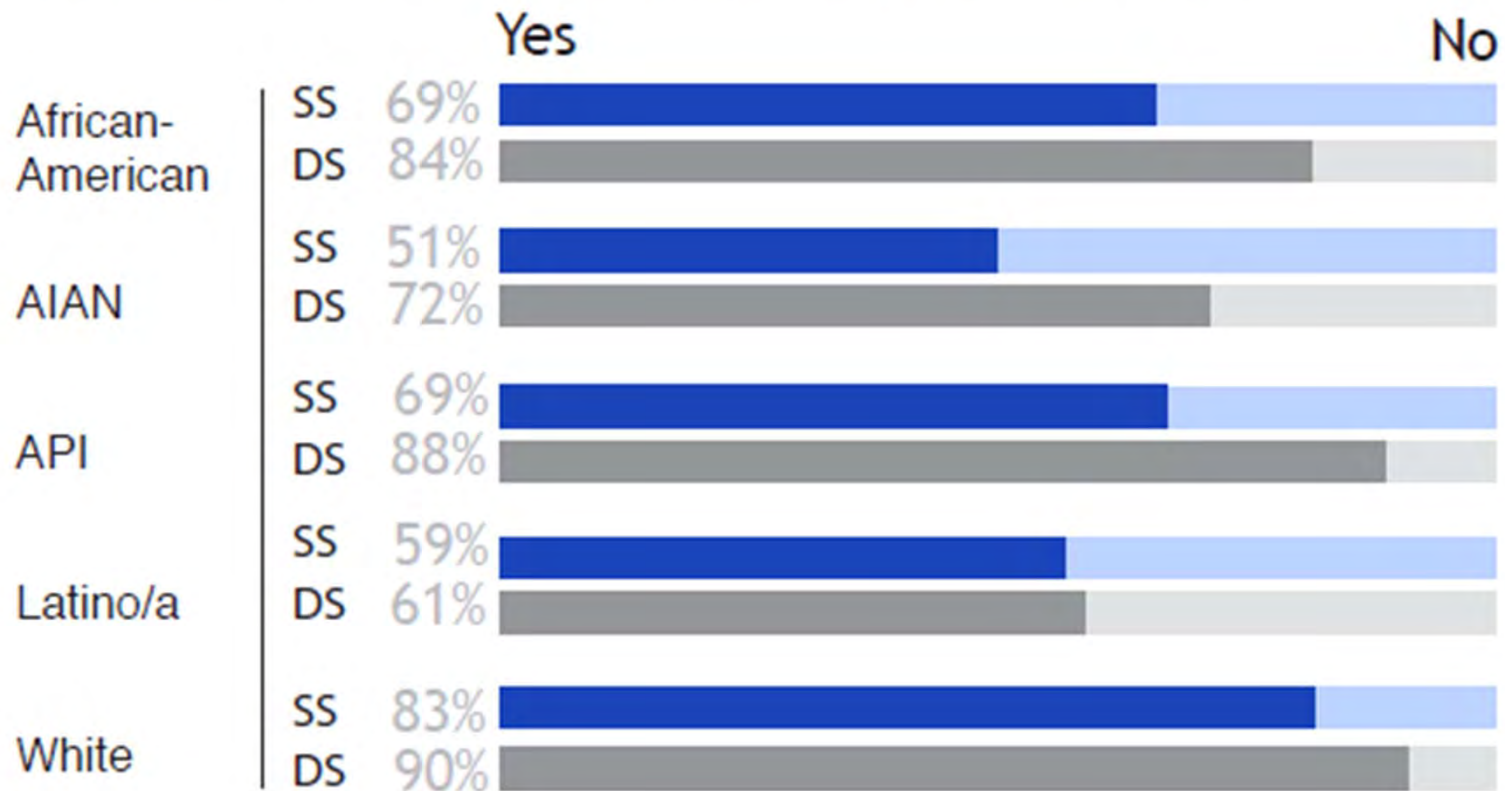
- Higher percentages of LGBs experienced serious psychological distress in past 30 days
- Obesity - Higher percentage of LGB women; lower percentage of GB men

- **Healthcare utilization disparities**

- Lower percentage of LGB women had a usual place to go for medical care
- Higher percentage of LGB women failed to obtain needed medical care
- Higher percentage of GB men received flu vaccinations
- Higher percentage of LGBs tested for HIV, especially GB men

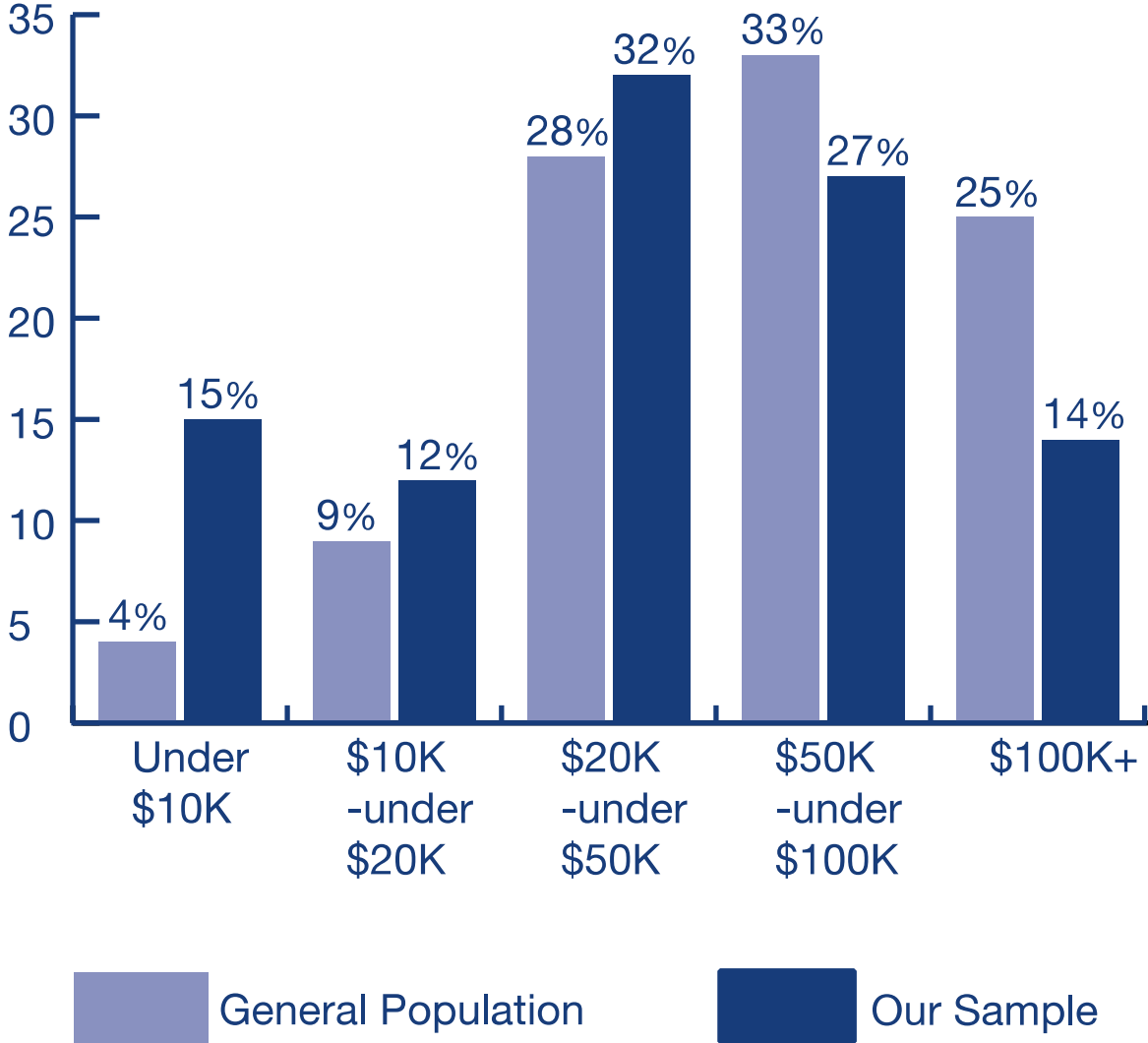
American Community Survey 2008-2010: Same-Sex Couples Raising Children

Individuals Reporting Health Insurance



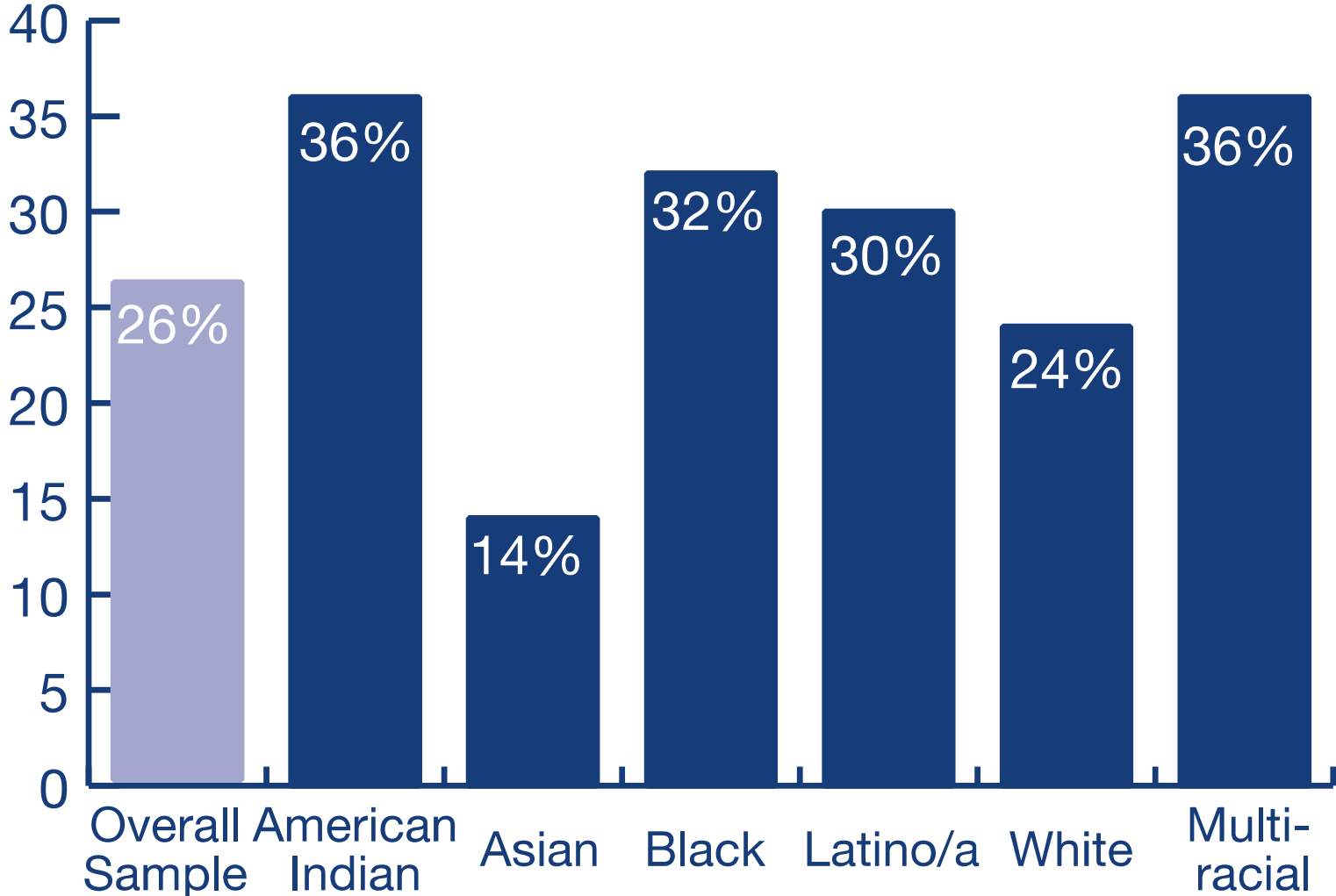
National Transgender Discrimination Survey

Household Income of Respondentsⁱⁱⁱ



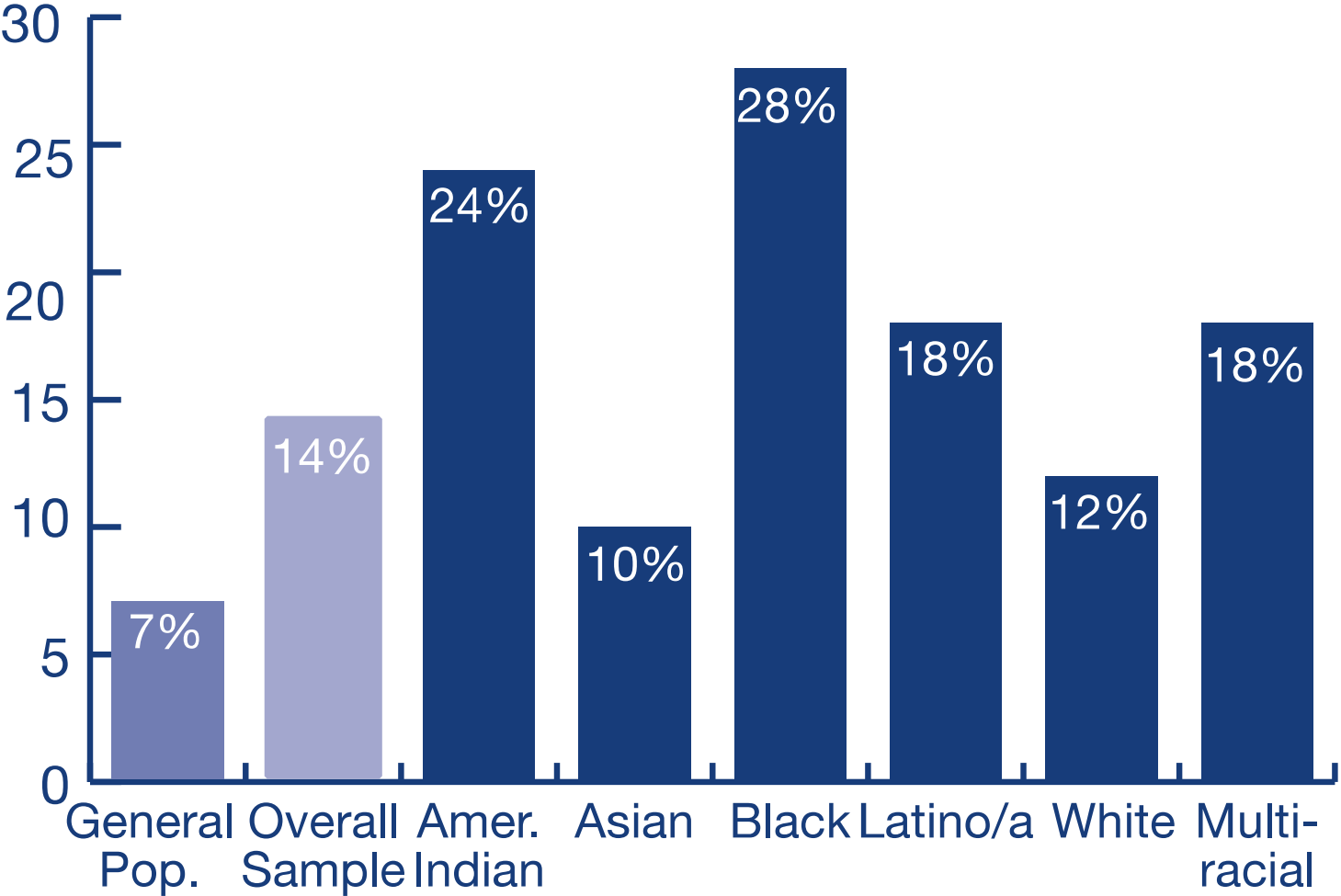
National Transgender Discrimination Survey

Job Loss Due to Bias By Race



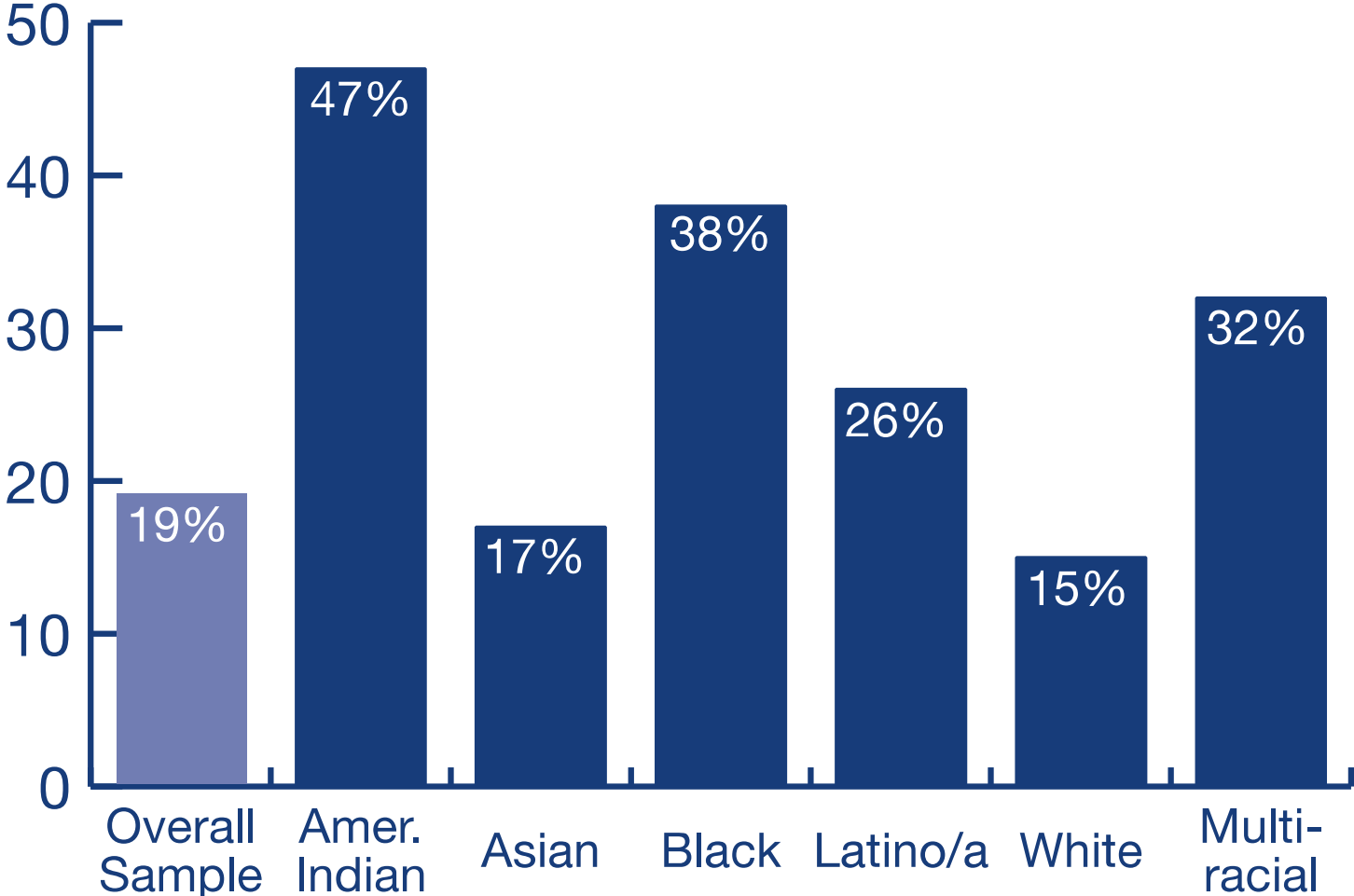
National Transgender Discrimination Survey

Unemployment Rate By Race

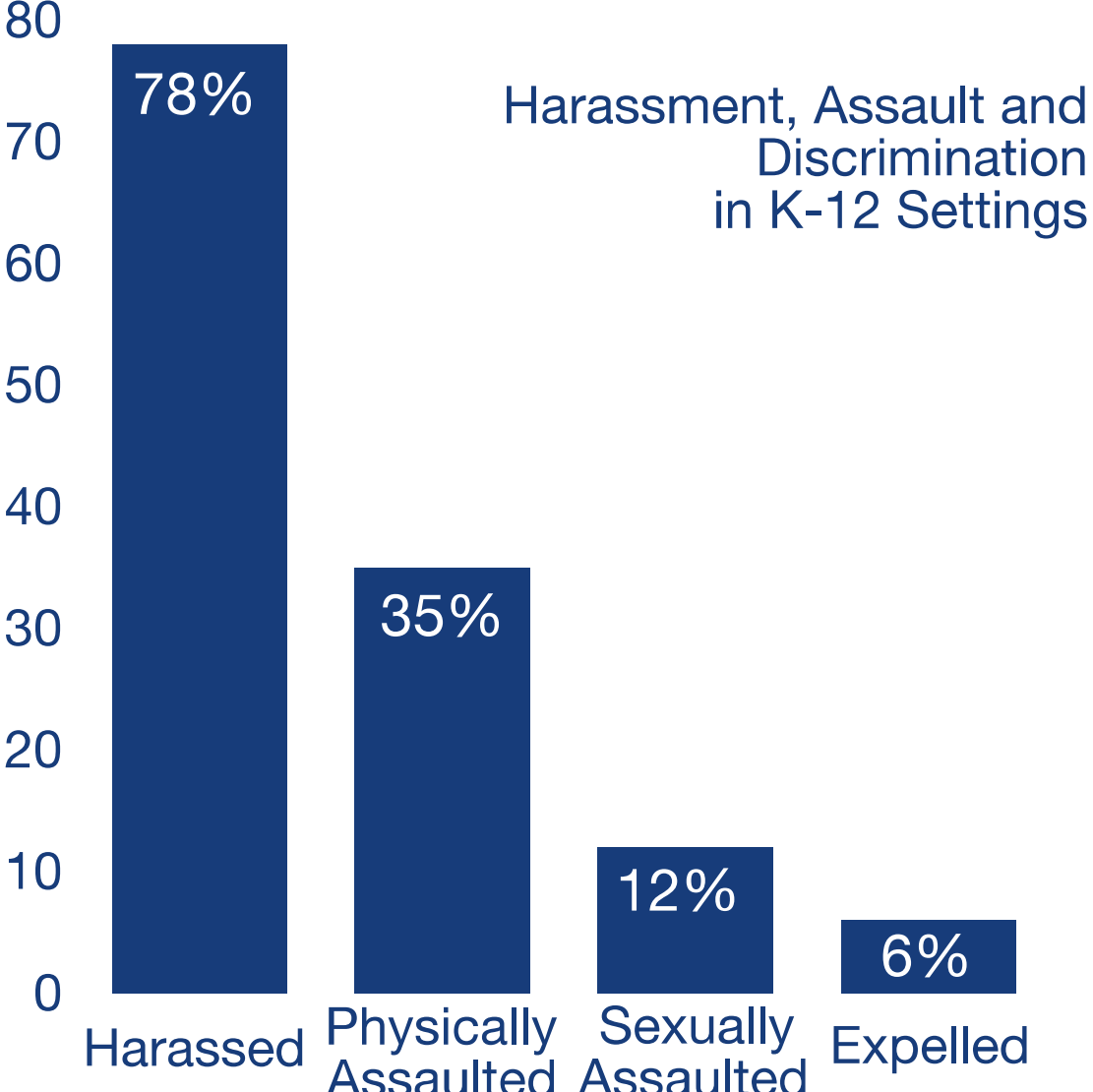


National Transgender Discrimination Survey

“I was denied a home/apartment” by Race

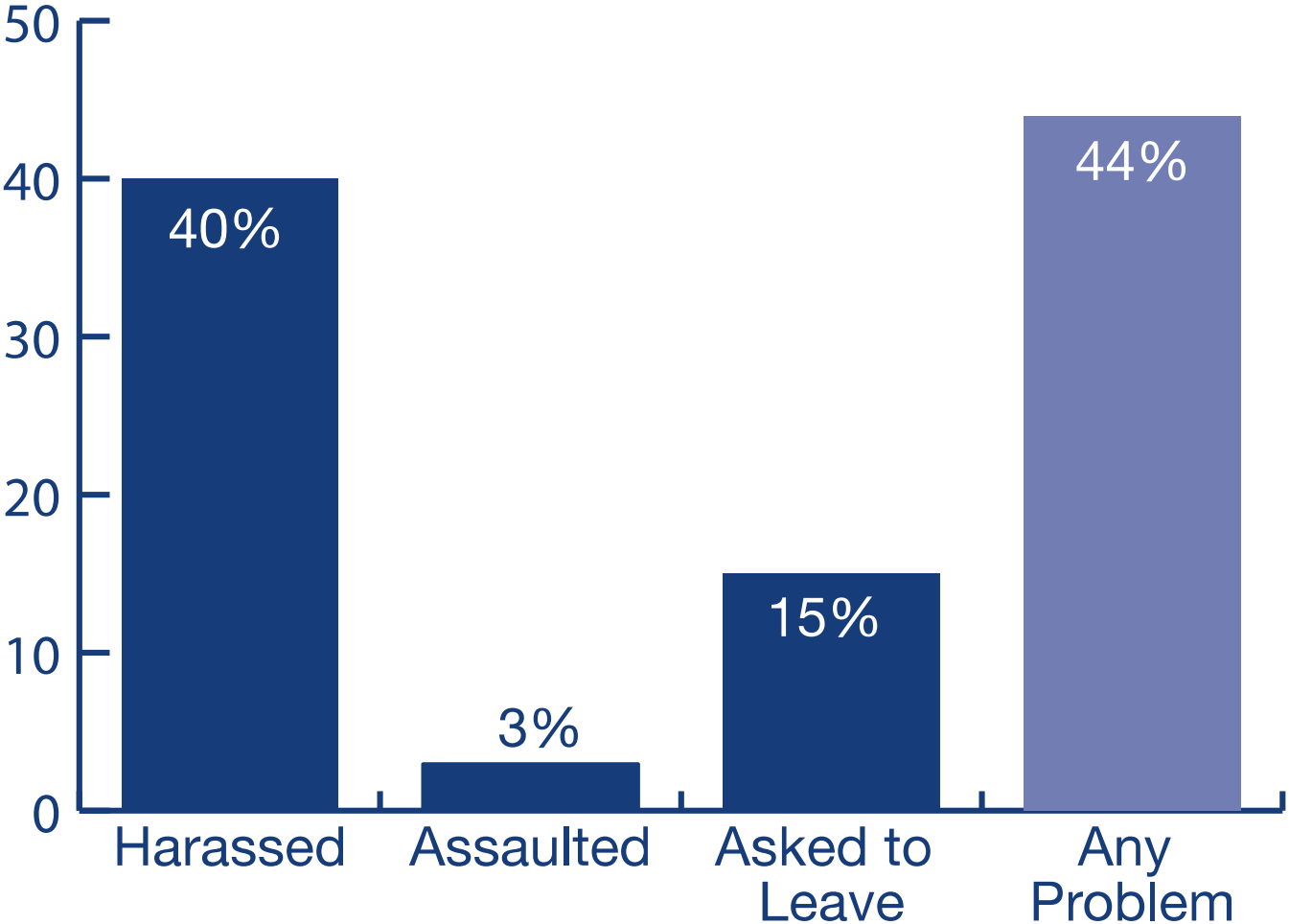


National Transgender Discrimination Survey



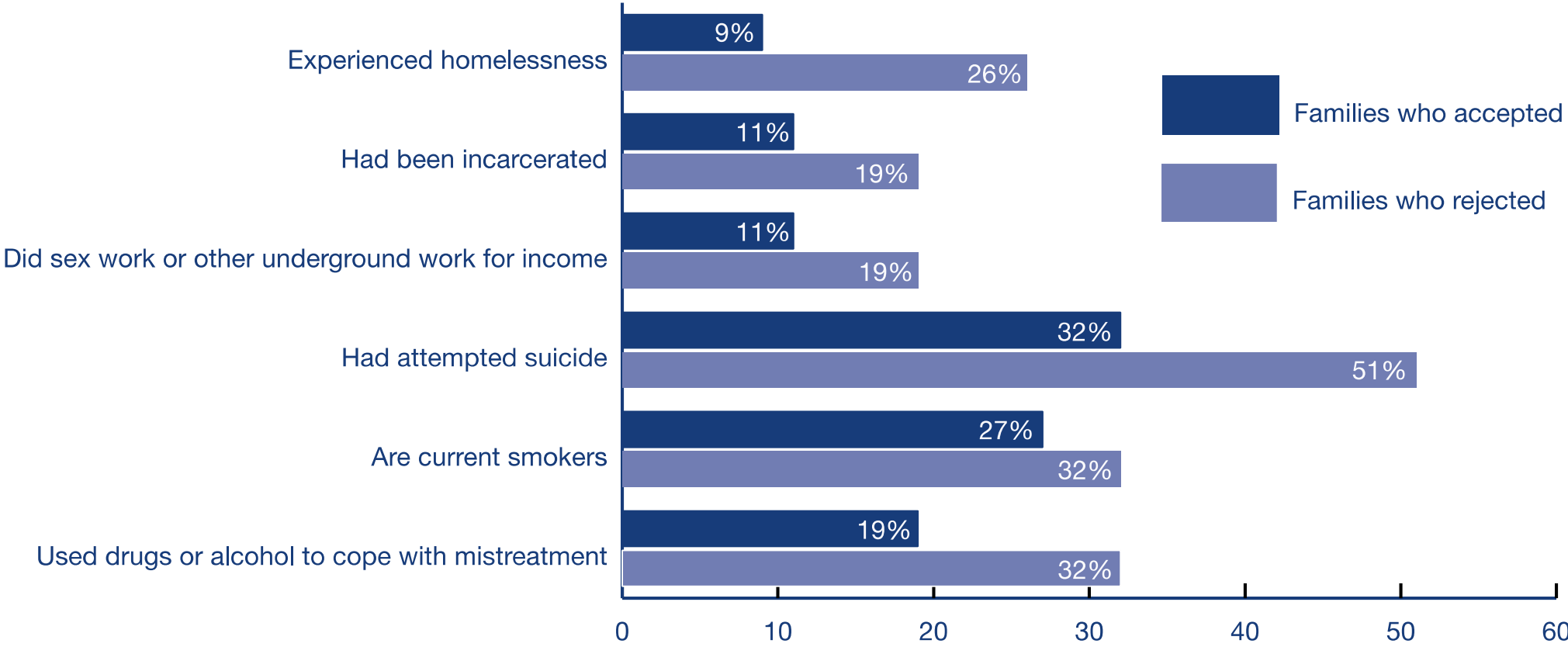
National Transgender Discrimination Survey

Harassment and Violence When Presenting Incongruent Identity Documents



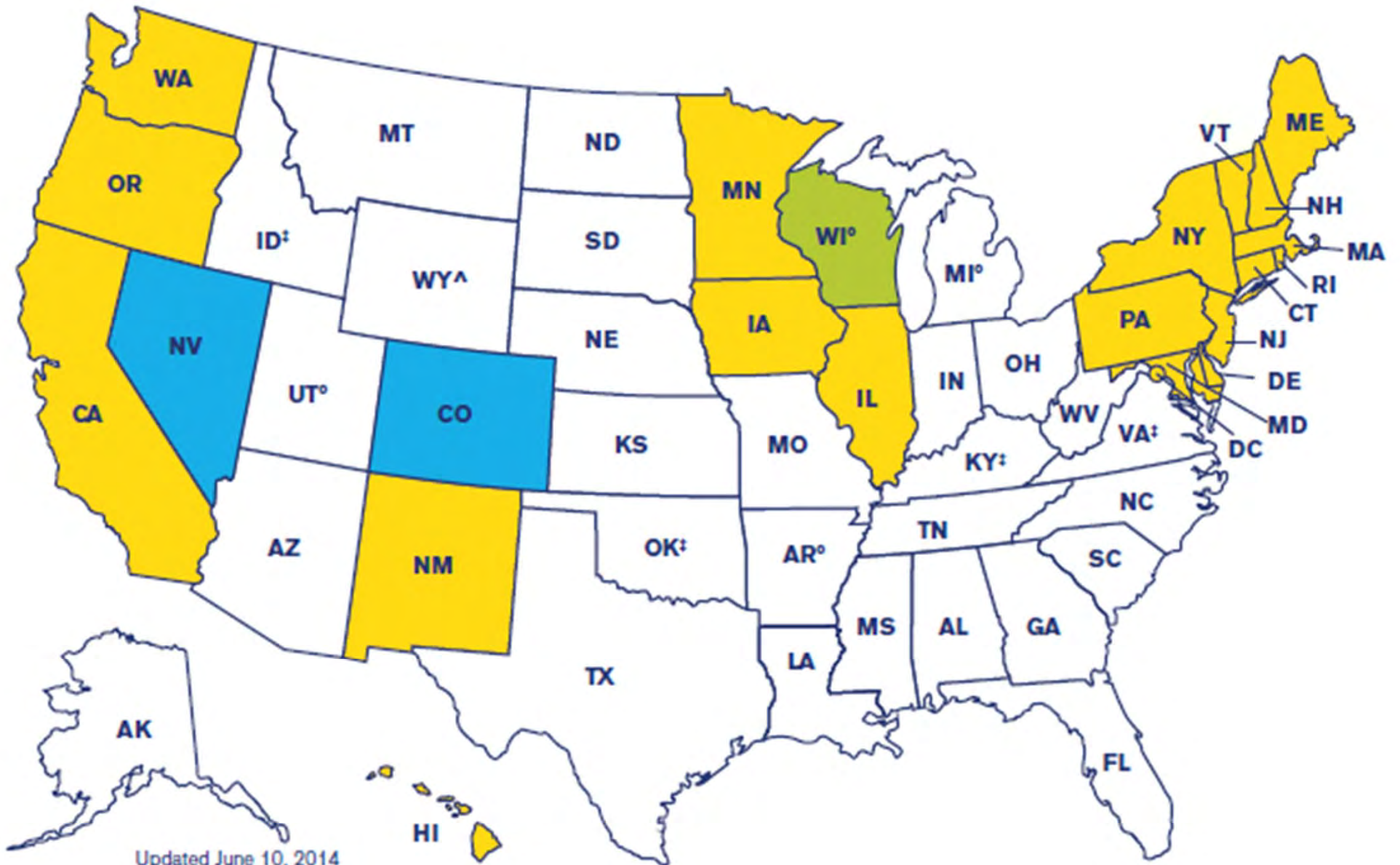
National Transgender Discrimination Survey

Impact of Family Acceptance



**LEGAL LANDSCAPE:
MARRIAGE FOR
SAME-SEX COUPLES**

Relationship Recognition For Same-Sex Couples



Marriage for Same-Sex Couples in California

- *In re Marriage Cases*, 43 Cal. 4th 757 (May 2008)
- Proposition 8 (Nov. 2008)

CALIFORNIA CONSTITUTION
ARTICLE 1 DECLARATION OF RIGHTS

SEC. 7.5. Only marriage between a man and a woman is valid or recognized in California.

- *Strauss v. Horton*, 46 Cal. 4th 364 (2009)
 - Prop 8 valid but existing same-sex marriages are valid

Recent Supreme Court Decisions

- *Hollingsworth v. Perry*, 133 S. Ct. 2652 (2013)
 - California's Proposition 8

- *United States v. Windsor*, 133 S. Ct. 2675 (2013)
 - Section 3 of DOMA

Hollingsworth v. Perry

Marriage for Same-sex Couples in California

- Proposition 8 proponents have no standing to appeal the district court's judgment.
 - As a result, Prop 8 is voided under a lower court decision.
- No resolution regarding:
 - Equal protection challenge to state marriage laws, including constitutionality of separate non-marital recognition.
 - Level of scrutiny for sexual orientation-based classifications.
 - Fundamental right to marry claim by same-sex couples.

Federal Recognition of Same-Sex Marriages – Defense of Marriage Act (DOMA)

- Section 2: States do not have to recognize same-sex marriages from other states.
- **Section 3: Federal government cannot recognize marriages of same-sex couples.**

Federal Recognition of Same-Sex Marriages – Over 1000 Federal Benefits and Obligations

- Federal Employee Benefits
- Taxes: Income & Estate Taxes
- Social Security Benefits
- Family Medical Leave Act (FMLA)
- Military & Veteran Spousal Benefits
- Medicaid & Medicare Benefits
- Welfare and Food Stamps
- Bankruptcy Filing
- Student Aid
- Immigration (no deportation of spouses)

United States v. Windsor

Federal Recognition of Same-sex Marriages

■ What *Windsor* Did:

- Section 3 of DOMA is unconstitutional
- Married same-sex couples gain federal recognition and receive federal rights and benefits

■ What *Windsor* Did Not Do:

- Strike down Section 2 of DOMA
- Establish a constitutional right to marry
- Establish a level of scrutiny for sexual orientation discrimination

Federal Recognition of Same-sex Marriages After *Windsor*

- Place-of-Celebration Rule
 - Majority approach (e.g., IRS and immigration)
- Place-of-Residence Rule
 - Minority approach (e.g., FMLA, Social Security)
- No rights extended to non-marital relationships (domestic partnerships or civil unions)

Looming Question: Are state laws restricting marriage for same-sex couples unconstitutional?

- Roberts, C.J., dissenting: “The Court does not have before it, and the logic of its opinion does not decide, the distinct question whether the States . . . may continue to utilize the traditional definition of marriage.”
- Scalia, J., dissenting: “[T]he view that this Court will take of state prohibition of same-sex marriage is indicated beyond mistaking by today’s opinion.”
- Kennedy, J.: “The differentiation demeans the couple, whose moral and sexual choices the Constitution protects, and whose relationship the State has sought to dignify. And it humiliates tens of thousands of children now being raised by same-sex couples.”

Pending Litigations Challenging Marriage Prohibitions

- 93 lawsuits in 33 states
 - 60 cases in federal court, 16 on appeal
 - 4th, 7th, 10th Circuit Courts of Appeals have struck down the bans in Virginia, Indiana, Wisconsin, Utah, and Oklahoma
 - 7 petitions for a writ of certiorari have been filed with the Supreme Court
 - 5th, 6th, 9th, and 11th Circuits considering the bans in Texas, Louisiana, Tennessee, Michigan, Kentucky, Ohio, Nevada, Idaho, and Florida
 - 33 cases in state court, 14 cases on appeal
- 40 decisions against the bans, 2 in favor

The Importance of Research: Fourth and Seventh Circuits Relying on Williams Institute Research

In the
United States Court of Appeals
For the Seventh Circuit

Nos. 14-2386 to 14-2388

MARILYN RAE BASKIN, *et al.*,

Plaintiffs-Appellees,

v.

PENNY BOGAN, *et al.*,

Defendants-Appellants.

Appeals from the United States District Court
 for the Southern District of Indiana, Indianapolis Division.
 Nos. 1:14-cv-00355-RLY-TAB, 1:14-cv-00404-RLY-TAB,
 1:14-cv-00406-RLY-MJD — Richard L. Young, *Chief Judge.*

No. 14-2526

VIRGINIA WOLF, *et al.*,

Plaintiffs-Appellees,

v.

SCOTT WALKER, *et al.*,

Defendants-Appellants.

Appeal from the United States District Court
 for the Western District of Wisconsin.
 No. 3:14-cv-00064-bbc — Barbara B. Crabb, *Judge.*

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obtain a special use permit. *Id.* at 447-50. The city did not
 impose the same requirement on similar structures, such as

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PUBLISHED
 UNITED STATES COURT OF APPEALS
 FOR THE FOURTH CIRCUIT

No. 14-1167

TIMOTHY B. BOSTIC; TONY C. LONDON; CAROL SCHALL; MARY
 TOWNLEY,

Plaintiffs - Appellees,

JOANNE HARRIS; JESSICA DUFF; CHRISTY BERGHOFF; VICTORIA
 KIDD, on behalf of themselves and all others similarly
 situated,

Intervenor,

v.

GEORGE E. SCHAEFER, III, in his official capacity as the
 Clerk of Court for Norfolk Circuit Court,

Defendant - Appellant,

and

JANET M. RAINEY, in her official capacity as State Registrar
 of Vital Records; ROBERT F. MCDONNELL, in his official
 capacity as Governor of Virginia; KENNETH T. CUCCINELLI, II,
 in his official capacity as Attorney General of Virginia,

Defendants,

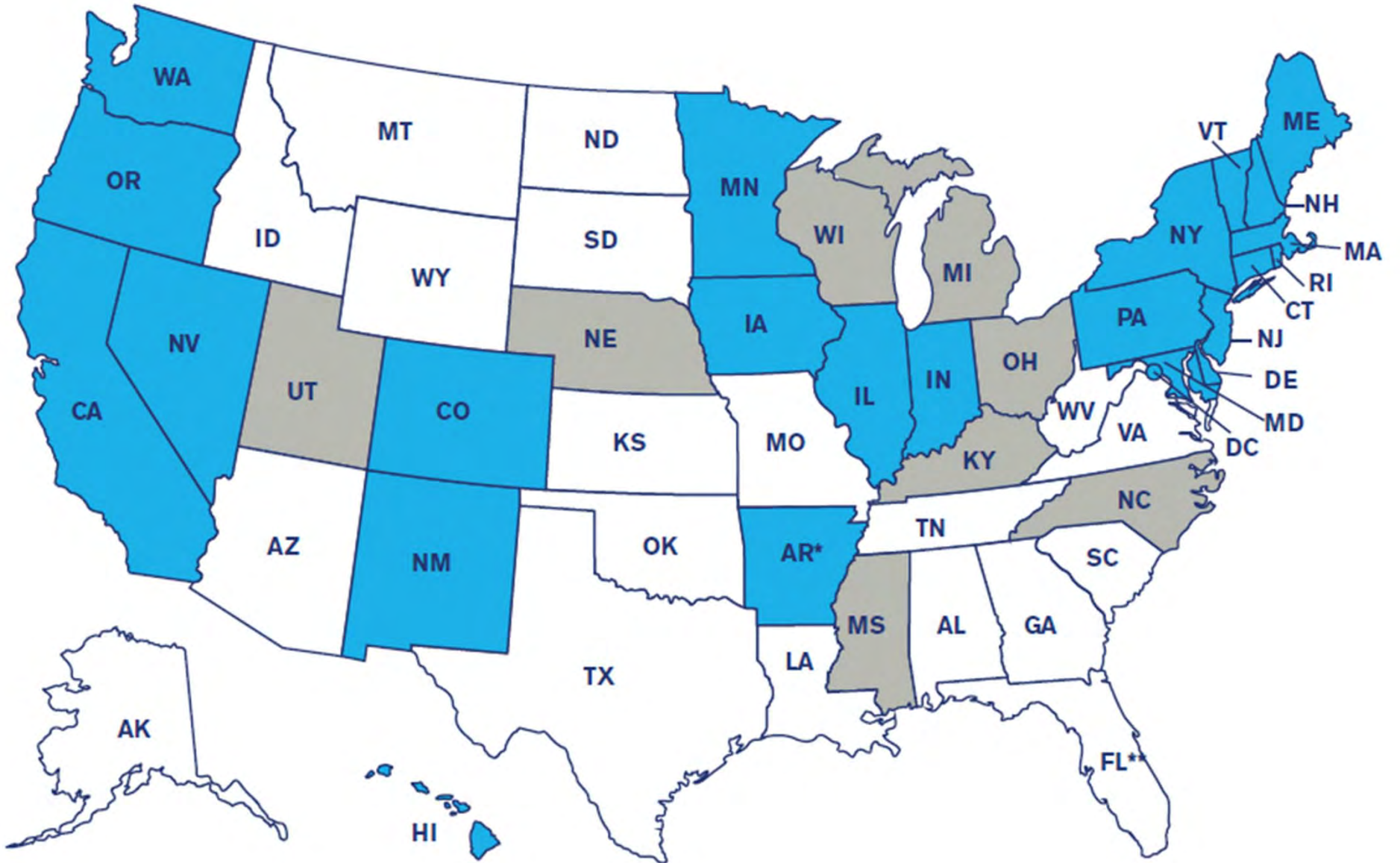
MICHÈLE MCQUIGG,

Intervenor/Defendant.

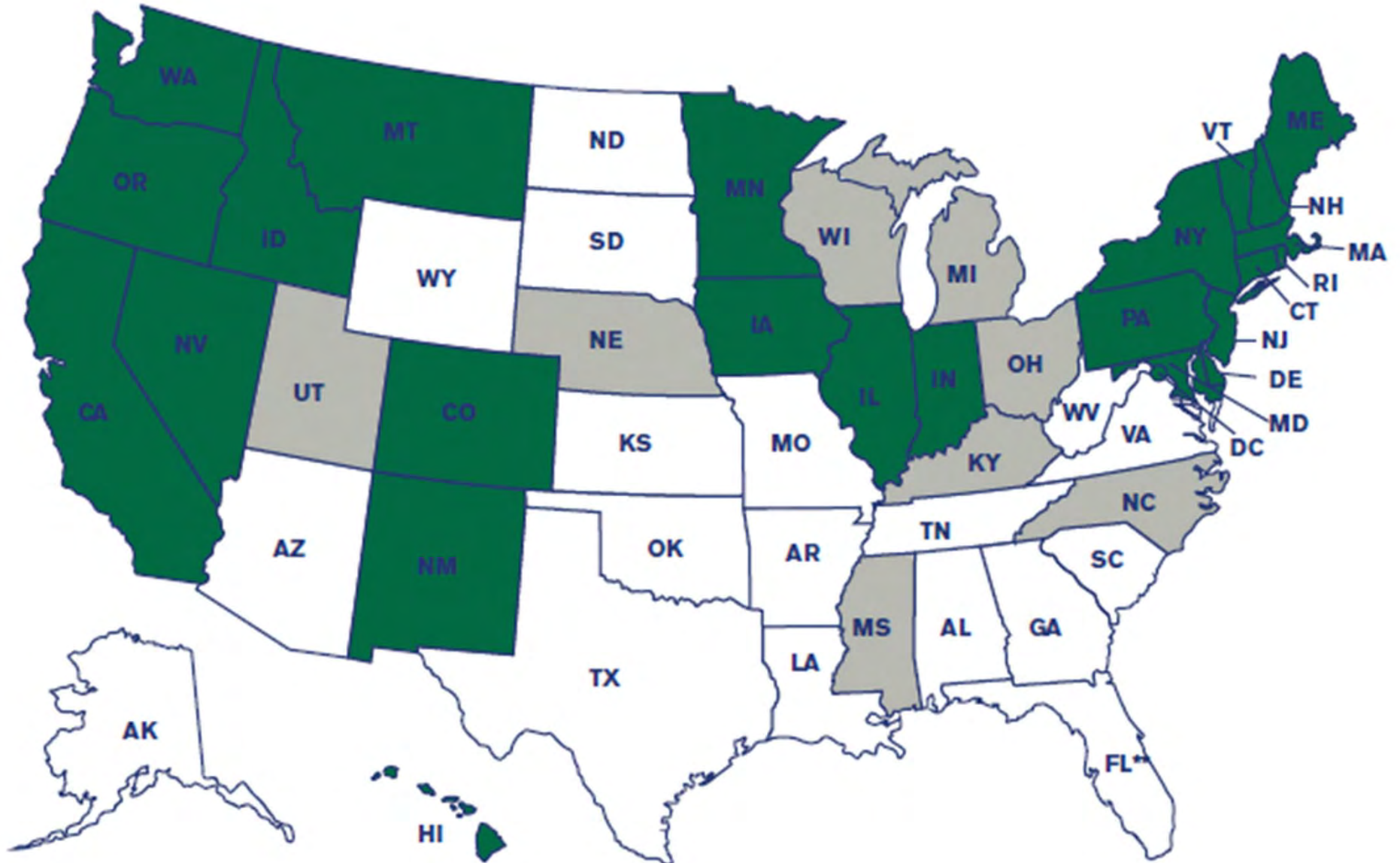
DAVID A. ROBINSON; ALAN J. HAWKINS; JASON S. CARROLL; NORTH
 CAROLINA VALUES COALITION; LIBERTY, LIFE, AND LAW
 FOUNDATION; SOCIAL SCIENCE PROFESSORS; FAMILY RESEARCH
 COUNCIL; VIRGINIA CATHOLIC CONFERENCE, LLC; CENTER FOR
 CONSTITUTIONAL JURISPRUDENCE; STATE OF WEST VIRGINIA;

LEGAL LANDSCAPE: PARENTAL RIGHTS

Joint Adoption



Second Parent Adoption



California – Rights of LGB Parents

- second-parent adoption – *Sharon S. v. Sup. Ct.* (Cal. 2003)
- *K.M. v. E.G.* (Cal. 2005) – surrogacy
 - See AB 1217 (regulating surrogacy, providing for UPA actions for intended parents)
- *Elisa B.* (Cal. 2005) – non-biological mother through “holding out” presumption under UPA (7611(d))
- Domestic Partnership (CAL. FAM. CODE § 297.5(d))
 - Stepparent adoption (2001)
 - Presumptions (2005) – “The rights and obligations of registered domestic partners with respect to a child of either of them shall be the same as those of spouses.”
- Marriage – Presumptions applicable to spouses
 - Including 7613 (Alternative Insemination by Donor)

SB 274: More Than Two Parents?

- The purpose of this bill is to abrogate *In re M.C.* Cal. App. 4th 197 (2011), insofar as it held that where there are more than two people who have a claim to parentage under the Uniform Parentage Act, courts are prohibited from recognizing more than two of these people as the parents of a child, regardless of the circumstances.
- This bill does not change any of the requirements for establishing a claim to parentage under the Uniform Parentage Act. It only clarifies that where more than two people have claims to parentage, the court may, if it would otherwise be detrimental to the child, recognize that the child has more than two parents.

SB 1172 – Sexual Orientation Change Efforts

- SB1172, enacted in 2012, prohibits “any practices by mental health providers that seek to change an individual's sexual orientation [,] ... includ[ing] efforts to change behaviors or gender expressions, or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same sex.”
- The legislature’s stated purpose in enacting SB 1172 was to “protect [] the physical and psychological well-being of minors, including lesbian, gay, bisexual, and transgender youth, and [to] protect[] its minors against exposure to serious harms caused by sexual orientation change efforts.”

Pickup v. Brown (9th Cir. 2013)

- “SB 1172 does just one thing: it requires licensed mental health providers in California who wish to engage in 'practices ... that seek to change a [minor's] sexual orientation' either to wait until the minor turns 18 or be subject to professional discipline. Thus, SB 1172 regulates the provision of medical treatment, but leaves mental health providers free to discuss or recommend treatment and to express their views on any topic.”



the
Williams
INSTITUTE

www.williamsinstitute.law.ucla.edu

williamsinstitute@law.ucla.edu

COMMUNITY, FRIENDSHIP,
HOPE.



The LGBT Center OC

Tony Viramontes
Director of Prevention Services

The Center Orange County
1605 N. Spurgeon Street
Santa Ana, CA 92701
714.953.LGBT (5428) x207
fax 714.246.8907

antonio.viramontes@thecenteroc.org
www.lgbtcenteroc.org

Mission

- The mission of The Center Orange County is to advocate on behalf of the orange county LGBT community, and to provide services that ensure its well-being and positive identity.

Services

Youth Program

Rainbow days and Nights-This is a drop-in group for LGBTQ youth and allies ages 14-21.

Center Orientation squared (co²)-Our new after-school drop-in program, CO2, is open to youth ages 13-19 who need a safe place to hang out after school.

YETA (Youth Empowered To Act)- an advocacy group fully comprised of youth who advocate on behalf of their LBGT peers.

Lifeguard Men's Program

This English language men's program advances the health and well-being of the gay, bisexual, and curious male community through social activities, educational workshops, community activism and a weekly discussion group.

Latino Program

- ▣ The Center OC offers programming in Spanish, including outreach, educational workshops, discussion groups and social events.



Hermosa y Protegida

- ▣ The Center OC celebrates 20 years of beauty, education and prevention with Hermosa y Protegida, the longest running transgender beauty pageant of its kind in the nation.



Women's Program

- ▣ The Center OC offers women-focused, fun programming for lesbian, bisexual and transgender women on health topics and other issues of interest.



Mental Health

- The mental health program offers confidential counseling in multiple languages for individuals, couples, children and families. Day time and evening hours are available. Fees are based on individual income in an effort to keep them affordable.

Mental Health

Services include:

- Brief counseling for specific issues.
- Individual short-term counseling.
- Long-term counseling where indicated.
- Relationship counseling for couples and families.
- Referrals for psychological assessment and psychiatric care as needed.

HIV Testing

- The Center OC offers Free and anonymous HIV testing with results in 20 minutes.



Support Groups

- ❑ The Center is home to a variety of support groups addressing special needs including: coming out, men's issues, Latino/Latina issues, women's issues, HIV positive status, and transgender issues.





Trans*itions

- ❑ A trans* affirming health and wellness program
- ❑ Hormone therapy
- ❑ Prescription delivery
- ❑ Emotional Wellness

The Center OC's Trans* program offers:

- ❑ Transgeneros En Acción: A weekly Spanish-speaking group for transgender women
- ❑ Trans*Fusion: A group for transgender youth
- ❑ Trans*Forum: A therapeutic support group
- ❑ Being Me: A group for male-to-female transgender individuals
- ❑ OCFIM: A group for female-to-male and transmasculine identified individuals.

Other LGBT community centers in CA

1. Bayview LGBT Folsom, California 95630	11. Pacific Center for Human Growth Berkeley, California 94704
2. Beverly Hills Center of Choice Beverly Hills, California 90210	12. Bayview Community Center of Contra Costa County Antioch, California 94509
3. LA LGBT+ Resource Center Los Angeles, California 90012	13. The OC/Inland Center - Inland Valley Fountain Valley, California 92708
4. The LGBT+ Center Long Beach Long Beach, California 90802	14. Los Angeles LGBT Center Los Angeles, California 90012
5. North County LGBT+ Resource Center Troy, California 95061	15. The LGBT+ Community Center of the Desert - Palm Springs Palm Springs, California 92262
6. Presbyterian Public Center Pasadena, California 91103	16. Transgender LGBT Community Center Pasadena, California 91102
7. The San Diego Lesbian, Gay, Bisexual, & Transgender Community Center San Diego, California 92104	17. San Francisco LGBT Community Center San Francisco, California 94102
8. Sanjour Center for Lesbian, Gay, Bisexual & Transgender Community San Jose, California 95128	18. The Center Orange County Santa Ana, California 92701
9. Pacific Pride Foundation Pasadena, California 91103	19. The Diversity Center: The Santa Cruz LGBT Community Center Santa Cruz, California 95062
10. The South Bay Lesbian, Gay, Bisexual & Transgender Community Organization Torrance, California 90503	

CENTERLINK LGBT COMMUNITY CENTER MEMBER DIRECTORY

CenterLink Member Centers in California

Welcome to the CenterLink Directory of LGBT Community Centers. This database contains information about member LGBT Community Centers and member Affiliates in the United States and around the world. [Add or update listings here.](#)

Please note that the information contained in this Directory is subject to change. We recommend that you contact a Center before visiting to confirm operating hours, locations, etc.



There are 19 CenterLink Member LGBT Community Centers Listed in California.

Los Angeles LGBT Center

- ❑ Hormone therapy, including education and management
- ❑ Pre- and post- surgical care
- ❑ Trans-sensitive pap smears, pelvic exams and prostate exams
- ❑ Legal Clinic



Primary Care

McDonald/Wright Building
 3525 N. Schrader Boulevard
 Los Angeles, CA 90029-4213
 323-993-7500

Building Hours:
 Mon - Fri 8 a.m. - 5 p.m.
 Sat 9 a.m. - 1 p.m.
 Sun Closed

Click here to contact us.

The Center San Diego

- ❑ **TRANSGENDER SERVICES**
- ❑ All of The Center's programs are transgender-inclusive and supportive, but we also offer services designed specifically for the transgender community through Project TRANS, our Transgender Services Program. Project TRANS (Transgender Referrals, Assistance, Networking and Services) offers discussion groups, behavioral health services, HIV prevention services, youth services and more. In addition, the program focuses on advocacy, referrals, outreach, sensitivity trainings, social activities and events, workshops and networking with community agencies. Through a partnership with the Transgender Law Center, Project TRANS will also provide assistance with legal documents. For more information, contact the Project Trans coordinator at trans@thecentersd.org or 619.692.2077 x109.

The Center Palm Springs

- ❑ "The Center, it's for everyone!"



- ❑ **Transgender Services**
- ❑ **Transgéneros Unidas**
- ❑ **Herman@s de Luna y Sol**



- ❑ For additional information please contact **Victor Martínez**, Director of Prevention Programs at (323) 727-7896 ext. 107 or at vmartinez@bienestar.org

National Resources

- ❑ [GLAD Transgender Resources](#)
- ❑ [HRC Transgender Resources](#)
- ❑ [National Center for Transgender Equality](#)
- ❑ [Transgender Law Center](#)
- ❑ [Transgender Rights Toolkit](#)



Transgender Health Program

- ❑ Trans-specific services, including hormone replacement therapy and referrals for gender confirming surgeries
 - ❑ Referrals to transgender advocates, legal support, and other services including assistance with name and/or gender marker changes
 - ❑ Primary and preventive care - medical, dental, and pharmacy
 - ❑ Behavioral and mental health care - individual counseling, family counseling, and support groups
 - ❑ HIV and STI testing, counseling, and treatment
 - ❑ Health insurance enrollment
- ❑ To make an appointment with Dr. Ware, contact Aydin Kennedy, Transgender Health Program Coordinator, at 323-541-1600 ext. 1068

Why trans* services matter

- ❑ **Transphobia**- An irrational fear and distorted view of Transgender people.
- ❑ **Added discrimination**- Gender Variant people also grapple with discrimination based on age, race, ethnicity, religion, disability, and other factors.

Stigma and Rejection

- ❑ Can lead to a number of health and mental health issues.
- ❑ Can affect the level of social support a person has and the care they receive.

Improving Services

- ❑ Create a safe space.
- ❑ Zero tolerance for slurs/hurtful language.
- ❑ Be sensitive to gender issues.
- ❑ Use correct pronouns. If unsure use the persons name. Ask how they would like to be addressed when appropriate.

Do

- ❑ Know that likely there have been previous bad experiences - trust may be an issue.
- ❑ Make referrals to LGBT culturally competent providers if you need help.
- ❑ Integrate LGBT examples and issues into programming and services.

Do

- ❑ Create a restroom that is “gender” neutral
- ❑ Refrain from asking inappropriate questions
- ❑ Respect privacy
- ❑ Create forms that allow for multiple “gender” options
- ❑ Focus on the person and their needs, not their sexual orientation or gender identity.

Thank you

Tony Viramontes
HIV Prevention Specialist

The Center Orange County
1605 N. Spurgeon Street
Santa Ana, CA 92701
tel 714.953.LGBT (5428) x207
fax 714.246.8907

antonio.viramontes@thecenteroc.org
www.thecenteroc.org



TAB 29

**Neutrality: Ethics in Self Help and
Family Law Assistance Centers**

*Ms. Rachel McKenzie &
Ms. Lollie A. Roberts*

Neutrality: Ethics in Self Help and Family Law Assistance Centers

Presenters

- Rachel McKenzie, Staff Attorney, Santa Cruz and San Benito County Superior Courts
- Lollie Roberts, Supervising Family Law Facilitator, Sacramento Superior Court

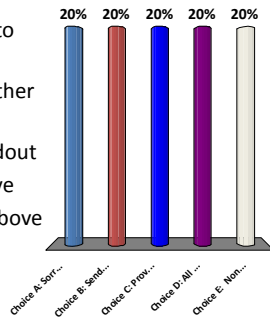
Hypo 1

A litigant tells you he is here to complete the necessary process to adopt his step-daughter. Step-parent adoption is not on your SHC's menu of services. Do you:

1. Tell him that you are sorry, but we are unable to help you.
2. Explain that although this is legally possible, the SHC is unable to help since it is a service we do not provide, but he can research at the Law Library, speak with a private attorney, or work with other community organizations.
3. You give him a handout on the process and tell him he is on his own.
4. All of the above
5. None of the above

Hypo 1

1. **Choice A:** Sorry, unable to help you.
2. **Choice B:** Send him to other resources.
3. **Choice C:** Provide a handout
4. **Choice D:** All of the above
5. **Choice E:** None of the above



Defining Scope

- Funding
- Complexity
- Necessity
- Efficiency
- Practicality

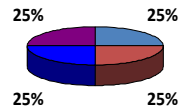
Hypo 2

An SRL comes in and wants to subpoena a witness, as well as propound discovery (Request for Documents, Interrogatories, etc) on the other party. He demands that you help him and requests that you also help him set this issue for trial. Although your SHC is not funded to help with Discovery and trial matters, you know what he needs to do, and how to do it. Do you:

- A. Tell him you are not funded to help him figure out how to properly prepare and serve discovery, but you can help him set for trial right now.
- B. Explain different resources for him to research the discovery process; explain what needs to be finished before the Court will allow him to request a trial; and inform him of what a trial brief is and what it contains.
- C. Refer him to a private attorney because your SHC will not help.
- D. None of the above.

Hypo 2

1. **Choice A:** Tell him you are not funded. . . .
2. **Choice B:** Explain different resources . . .
3. **Choice C:** Refer him to a private attorney. . .
4. **Choice D:** None of the above



Choice A: Tell hi... Choice B: Explain...
Choice C: Refer h... Choice D: None of...

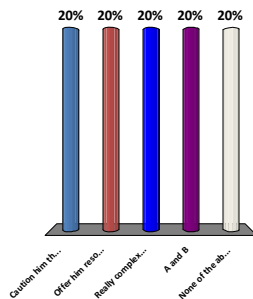
Hypo 3

A Customer comes to the SHC for help preparing a QDRO. After you inform him that you cannot help with this (because it is not one of the services your SHC provides), the Customer says he will just prepare it himself. Do you:

1. Caution him that this is a very technical area of the law, and if it is not proper, the plan may not honor it.
2. Offer him resources that will help him in this matter
3. Tell him it is way over his head, really complex, and to hire an attorney to do it
- D. A and B
- E. None of the above

Hypo 3

1. Caution him that this is a very technical area of the law, and if it is not proper, the plan may not honor it.
2. Offer him resources
3. Really complex, and hire an attorney
4. A and B
5. None of the above



Explaining Complexity

- Legal Knowledge
- Strategy
- Risk
- Cost

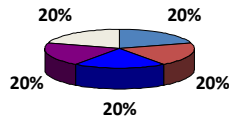
Hypo 4

A litigant has a referral from Court for the Self Help Center to help prepare a motion for Contempt on the other party. The SHC does not help with contempt, and you have specifically discussed this with the Judge on several occasions. What do you do?

- Tell the SRL that the Judge was wrong, and the SHC will not help her with a contempt motion.
- Apologize to the SRL that the SHC doesn't help with Contempt, but explain to the litigant what resources are available to her to help her put the motion together; then speak with your supervisor about a possible miscommunication with the judge and/or discuss with the judge yourself.
- Help prepare the contempt motion because the Judge said the SHC would do it.
- Explain the contempt process and why it is not advisable for a party without an attorney to attempt it on her own and refer her to the lawyer referral service.
- None of the above.

Hypo 4:

- Choice A:** Tell the SRL that the Judge was wrong,
- Choice B:** Apologize to the SRL that the SHC doesn't help with Contempt
- Choice C:** Help prepare the contempt motion. . . .
- Choice D:** Explain the contempt process. . . .
- Choice E:** None of the above



Choice A: Tell th... Choice B: Apolog... Choice C: Help pr...
Choice D: Explain... Choice E: None of...

Judicial Referrals

- Competence
- Neutrality
- Appearance of Impropriety
- Ex Parte Communication
- Legal Advice

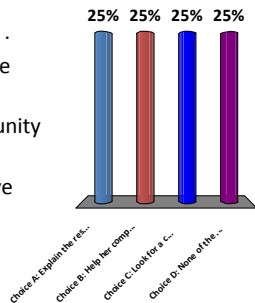
Hypo 5

A customer who only speaks Hmong, which no one in the office speaks, comes in with a friend who has limited English. The Customer has an EPO from the police, and a referral from the DV agency, because they do not speak Hmong either. Clearly, she is distressed, in need of a restraining order, and has been getting the run around since no one has been able to help her. Do you:

- Explain the restraining order process through the “interpreter”; give her the necessary packet, and let her know she needs to find someone to help her complete the paperwork.
- Help her complete the paperwork, forms, and declaration using her friend as an interpreter.
- Look for a community resource that you can send her to for assistance in her native language.
- None of the above

Hypo 5

- Choice A:** Explain the restraining order process . . .
- Choice B:** Help her complete the paperwork. . . .
- Choice C:** Look for a community resource
- Choice D:** None of the above



Equal Access

- FC § 10001
- FC § 10006
- FC §10013
- CRC Appendix C (3) and (5)
- Professional Rules of Conduct 2-400

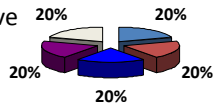
Hypo 6

A SRL walks in with a service dog and, during triage, declares he is blind. Although you can tell he can see, and although he filled out his intake on his own, he requests that you complete his Name Change forms for him, since he is legally blind under the ADA. Do you:

- Fill his forms out for him
- Suggest he take the forms home, have someone help him with the forms, since the SHC does not provide that level of service, but remind him that he can come back for Form review.
- Tell him he needs to do his forms himself, and you know he can see and write (since he completed his intake)
- Provide him an ADA Accommodation Request form and directions on how to submit it so that his request can be considered by a judge.
- None of the above

Hypo 6

- Choice A:** Fill his forms out for him
- Choice B:** Suggest he take the forms home. . .
- Choice C:** Tell him he needs to do his forms. . .
- Choice D:** Provide him an ADA . . .
- Choice E:** None of the above



Choice A: Fill his forms out for him
Choice B: Suggest he take the forms home. . .
Choice C: Tell him he needs to do his forms. . .
Choice D: Provide him an ADA . . .
Choice E: None of the above

ADA Accommodations

- Qualified Disability
- Reasonable
- Judicial Approval
- Procedure
- How to Accommodate

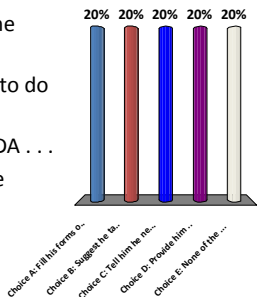
Hypo 7

A SRL walks in and declares that he is unable to read and write. Although he filled out his intake on his own, he requests that you complete his Name Change forms for him, since he is illiterate. Do you:

- A. Fill his forms out for him
- B. Suggest he take the forms home, have someone help him with the forms, since the SHC does not provide that level of service, but remind him that he can come back for Form review.
- C. Tell him he needs to do his forms himself, and you know he can read and write (since he completed his intake)
- D. None of the above

Hypo 7

1. **Choice A:** Fill his forms out for him
2. **Choice B:** Suggest he take the forms home. . .
3. **Choice C:** Tell him he needs to do his forms. . .
4. **Choice D:** Provide him an ADA . . .
5. **Choice E:** None of the above



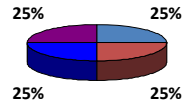
Hypo 8

A woman comes in and says her son is involved in a divorce but needs help with some forms and paperwork. She states he cannot come in while the SHC is open because he works, so she has come to ask his questions and file the necessary paperwork for him. She shows you his Preliminary Disclosures which are only partially completed, but signed by him. She wants you to review them, so she can complete them and then file for him. Do you:

- A. Review the documents, tell her what is incorrect, and then have her go file.
- B. Tell her that you are sorry, but your policy is only to work with the party. It is necessary that if her son would like to use the SHC services, he needs to come himself.
- C. Tell your front desk/triage person (in front of the woman) that this woman never should have made it in the door, and we can't do anything for her.
- D. None of the above

Hypo 8

- 1. **Choice A:** Review the documents. . .
- 2. **Choice B:** Tell her that you are sorry
- 3. **Choice C:** Tell your front desk/triage person . .
- 4. **Choice D:** None of the above



Choice A: Review .. Choice B: Tell he...
Choice C: Tell ya... Choice D: None of...

Third Parties

- Purpose of Self Help
- Support Persons
- Assistants
- Interpreters
- Children
- Both Parties

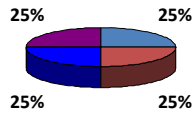
Hypo 9

SRL comes with his new wife to modify his custody and visitation from a previous relationship. When you ask him what it is he would like to modify, he states simply that he would like to have the child more. His new wife then states that he actually wants full custody (instead of joint – which is the current order), that child's mother is a drunk and a drug addict, and should only have supervised visitation. Do you:

- A. Help prepare the motion for sole custody and supervised visitation.
- B. Ask new wife to sit away from Dad while you discuss this motion with him.
- C. Explain the process of modification – including mediation, what sole custody actually means, and provide the forms for him to complete.
- D. None of the above.

Hypo 9

1. **Choice A:** Help prepare the motion. . .
2. **Choice B:** Ask new wife to sit away . . .
3. **Choice C:** Explain . . .
4. **Choice D:** None of the above



Choice A: Help pr... Choice B: Ask new...
Choice C: Explain... Choice D: None of...

Guiding Principles

- Competence
- Neutrality
- Equal Access
- Scope
- Standing

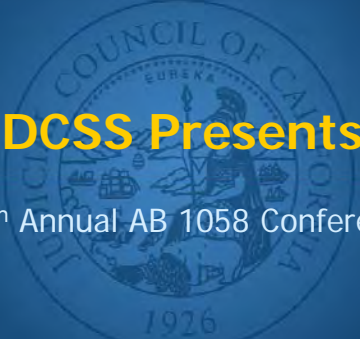
Questions to Ask

- What is the Issue?
- Do We Help with this?
- Is the customer eligible for services?

TAB 30

DCSS Presents

*Ms. Vickie Contreras, Ms. Kristen
Donadee & Mr. Robert Jones*



DCSS Presents
18th Annual AB 1058 Conference



**2015-2019
DRAFT Strategic
Plan**
Vickie Contreras, Deputy
Director
Child Support Services Division



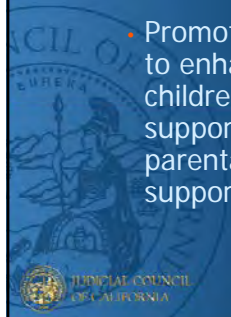
Approach

- Collaborative process with LCSAs, OCSE and Judicial Council
- Focus on the WHY
- Outcomes for families and customers

JUDICIAL COUNCIL OF CALIFORNIA

Mission

- Promote parental responsibility to enhance the well-being of children by providing child support services to establish parentage and collect child support

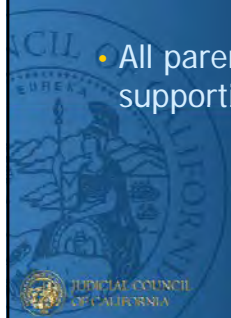


JUDICIAL COUNCIL OF CALIFORNIA

4

Vision Statement

- All parents are engaged in supporting their children

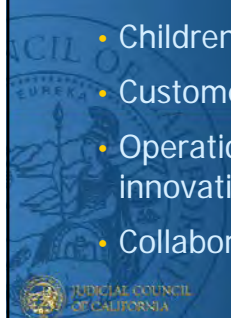


JUDICIAL COUNCIL OF CALIFORNIA

5

We Value

- Children and families
- Customer service excellence
- Operational excellence and innovation
- Collaboration and cooperation



JUDICIAL COUNCIL OF CALIFORNIA

6

We Value

- Integrity, fairness and respect
- Professional and ethical conduct
- A skilled and knowledgeable workforce



7

Structure of Plan



8

Goal 1:

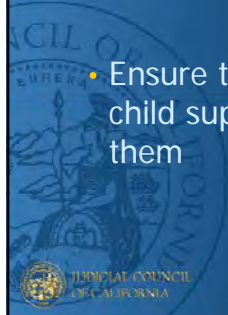
Increase support for California's children



9

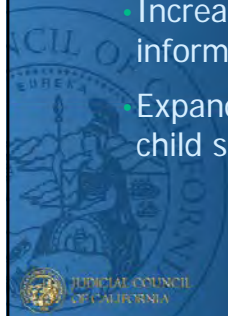
Objective 1:

- Ensure that families who need child support services receive them



10

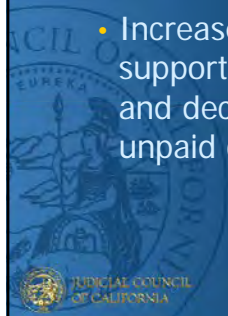
- Strategies
 - Increase accessibility to information and services
 - Expand public awareness of child support services



11

Objective 2:

- Increase the reliability of child support payments to families and decrease the amount of unpaid child support



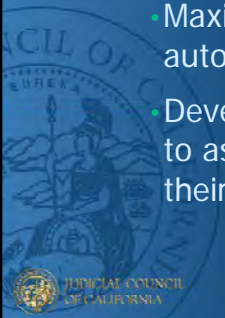
12



- Strategies:
 - Proactively manage cases
 - Analyze and use data to increase collections
 - Establish timely and appropriate orders

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13




- Strategies cont'd
 - Maximize and expand automated processes
 - Develop additional methods to assist parents to meet their obligations

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Goal 2:

Deliver excellent and consistent customer services statewide

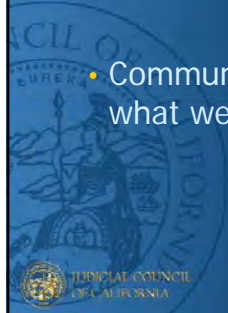


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Objective 1:

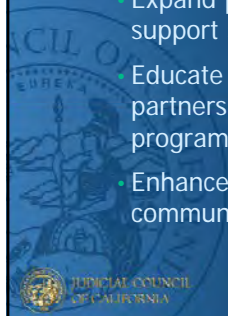
- Communicate who we are and what we do



16

Strategies:

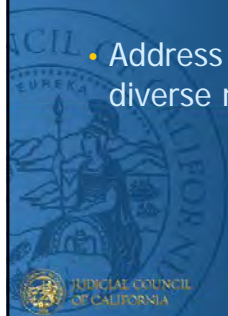
- Expand public awareness of child support services
- Educate our customers and partners on the child support program
- Enhance and promote effective communication methods



17

Objective 2:

- Address the evolving and diverse needs of our customers



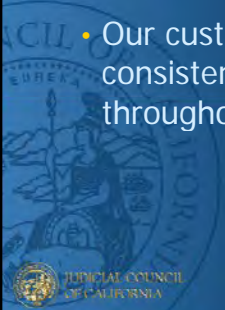
18



- Strategies:
 - Provide services in a culturally sensitive manner
 - Communicate in various languages to meet customer needs

19

Objective 3:



- Our customers receive consistent and uniform services throughout California

20

- Strategies:
 - Define and improve quality product and service standards and expectations
 - Train staff in customer service



21

- Strategies, cont'd
 - Measure and evaluate customer satisfaction for continuous improvement
 - Develop efficient and uniform business processes and practices statewide

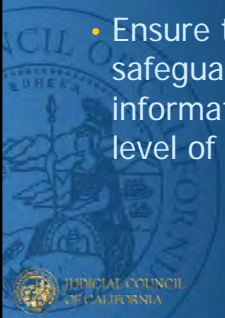


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Objective 4:

- Ensure the security and safeguarding of confidential information to maintain a high level of customer confidence



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- Strategies:
 - Proactively secure information and data from threats and vulnerabilities
 - Reinforce our culture of confidentiality and information security




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Goal 3:

Enhance program performance and sustainability




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25

Objective 1:

- Improve on program outcomes and federal performance measures



JUDICIAL COUNCIL OF CALIFORNIA

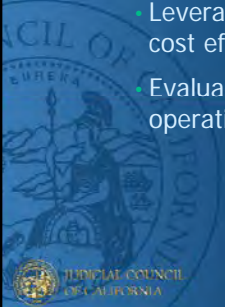
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- Strategies:
 - Set annual goals and explore methods to improve program performance
 - Produce accurate, timely reports to monitor performance



JUDICIAL COUNCIL OF CALIFORNIA

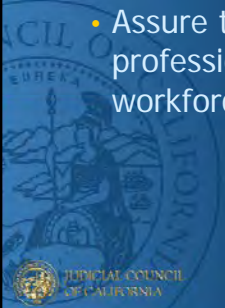
27



- Strategies, cont'd
 - Leverage resources to be more cost effective
 - Evaluate and expand efficiencies in operations statewide

28

Objective 2:



- Assure that we are a professional, diverse and skilled workforce

29

- Strategies
 - Recruit, develop and retain a quality workforce
 - Develop innovative, empowered and collaborative employees
 - Provide opportunities for knowledge transfer and leadership development

30

Goal 4:

Develop and strengthen collaborative partnerships



31

Objective 1:

- Partner to improve the lives of children



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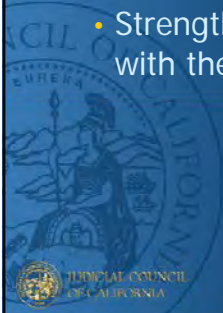
- Strategies
 - Ensure planning includes strategic partners at the earliest opportunity
 - Cultivate programmatic understanding amongst strategic partners
 - Work to achieve mutually beneficial outcomes



33

Objective 2:

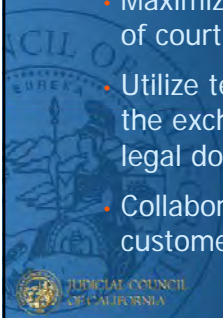
- Strengthen the partnership with the Judicial Branch



34

Strategies

- Maximize the effective utilization of court services
- Utilize technology to streamline the exchange of information and legal documents
- Collaborate to achieve quality customer service outcomes



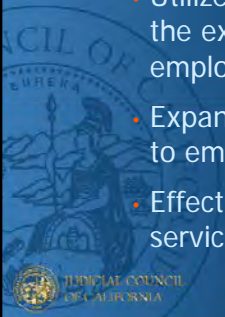
35

Objective 3:

- Partner with employers to meet the needs of families



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- Strategies
 - Utilize technology to streamline the exchange of information with employers
 - Expand education and outreach to employers
 - Effectively meet customer service needs of employers

37

Goal 5:


Be innovative in meeting the needs of families



38

Objective 1:

- Use technology to improve the delivery of program services




39



- Strategies
 - Adopt technology solutions to maintain an efficient technology platform
 - Identify new technology and evaluate opportunities to enhance delivery and accessibility of program services
 - Implement new and improved business processes and practices

40

Objective 2:



- Ensure that policies, procedures and laws meet the needs of families

41



- Strategies:
 - Identify changing family structures and address the impacts on the child support program
 - Pursue opportunities to strengthen, update and align child support laws, regulations, policies and procedures

42

Next Steps

- October 16 & 17 Statewide Directors Meeting
- Review data & processes for improvements
- Develop our FFY 2015 Plans



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MOU with Yurok Tribe

- Yuroks approved Comprehensive IV-D Agency January 2014
- MOU in review to establish case transfer process



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Court Collaboration

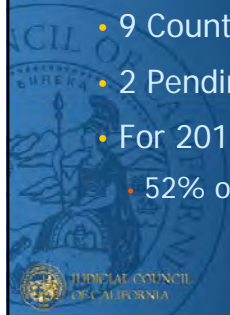
Kristen Erickson Donadee
DCSS Attorney



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E-Filing Status

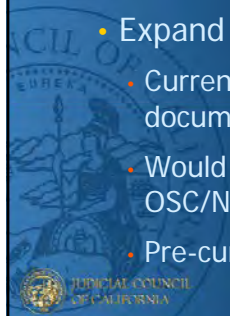
- 9 Counties currently e-filing
- 2 Pending RFCs to expand
- For 2014 so far:
 - 52% of S&Cs are e-filed



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E-File Expansion

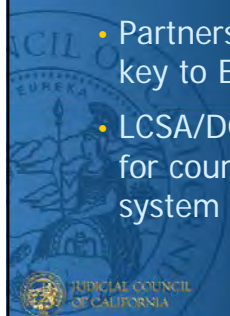
- Expand *type* of document
- Currently limited in type of document
- Would like to expand to OSC/NOM
- Pre-cursor RFC in works



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E-File Partnership

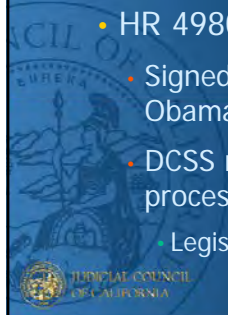
- Partnership with local courts is key to E-File success
- LCSA/DCSS must be a partner for court case management system development



48

UIFSA 2008

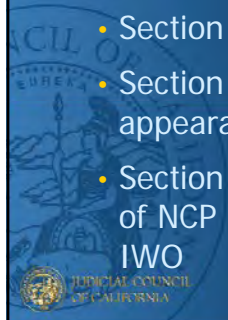
- HR 4980 Passed Congress
- Signed into law by President Obama on September 29
- DCSS must spearhead adoption process
 - Legislation, Regulation, Training



49

UIFSA 2008: Key Points

- Section 312: Non-Disclosure
- Section 316: Telephonic appearance – “shall” allow
- Section 506: Expanded ability of NCP to contest out-of-state IWO

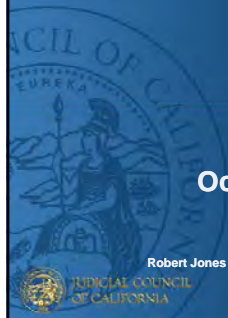


50

Unlocking a Better Customer Experience



October 3, 2014



Robert Jones – Deputy Director Operations Division

51

Customer Experience

Defining the customer experience, understanding where it counts the most, requires us to establish a refined view of who customers are and what matters to them.

Customers want more!

More respect, more choice, and more help

And ...

- They also want less! Less hassle, fewer procedures, less aggravation.
- They want a better experience every time they deal with you.



52

Unlocking New Services

- What's in store...?



53

Evolving our Services

Expanding the number of services available to our customers.



54

Evolving our Services

Interactive Voice Response system

Time for a check up! (Complete end to end system assessment)

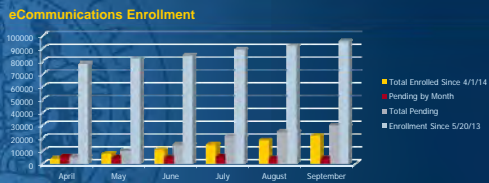


55

Evolving our Services

eCommunication

Increase subscription
Offer new products (Notifications)



56

Evolving our Services

New Payment Options

Flexible options for cash payors



Payment Kiosks



57

DCSS Mobile App The evolution

Mobile App Phase 1	Mobile App Part 2
<ul style="list-style-type: none"> Convert DCSS public website pages for participants into mobile friendly formats (www.childsup.ca.gov) Create a mobile application to provide "one touch access" to current Customer Connect online functions 	<ul style="list-style-type: none"> Modify CSE to issue a notification to a participant <ul style="list-style-type: none"> Payment is received or due Appointment is coming up Allow participants to opt in to receive an email for the notification Additional Mobile Web Features Link with eCommunications

JUDICIAL COUNCIL OF CALIFORNIA 58

DCSS Mobile App Phase 1 – CACHildSup Mobile Application



CACHildSup - "Landing Page"

Released on October 20th, 2013

- Downloaded to a participants mobile device
- Compatible w/ Android 2.2 – 4.x
- Compatible w/ iOS 4.3-7.x



Customer Connect Mobile Web Access

JUDICIAL COUNCIL OF CALIFORNIA 59

About DCSS Mobile App



The CACHildSup mobile app provides easy and secure access to your child support account on the go.

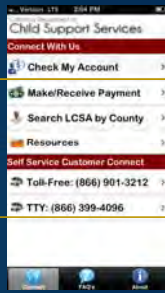
- Check My Account** provides the latest account information via Customer Connect. View upcoming appointments, amounts owed and payments made.
- Make a Payment** connects you to the State Disbursement Unit where you can make an electronic payment, establish direct deposit or sign up to receive an Electronic Payment Card.
- Search Local Child Support Agency** provides you with a phone number, address, website and directions to your local county child support agency.
- Resources and FAQs** provide more information about the services available at the California Department of Child Support Services.

JUDICIAL COUNCIL OF CALIFORNIA 60

DCSS Mobile App Design

Geared Towards Active Participants

- ✓ Provides Commonly Accessed Info
 - ✓ Static Contents (FAQs)
 - ✓ Look and Feel
- Based on *ChildSup.ca.gov*



61

DCSS Mobile Approach

Solution: Detect and Adjust Web Format for Mobile



Desktop on Mobile

- Functions Overlap
- Scrunched Links
- Not user friendly

With Mobile Detect

- Mobile Friendly
- Responsive Format
- Utilizes CTA Guidelines



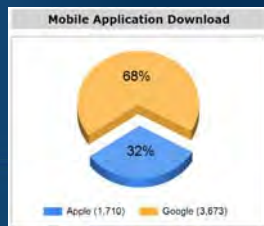
62

Application Downloads & Statistics

Total As of 09/25/2014:

Android- 36,595
Apple- 19,158

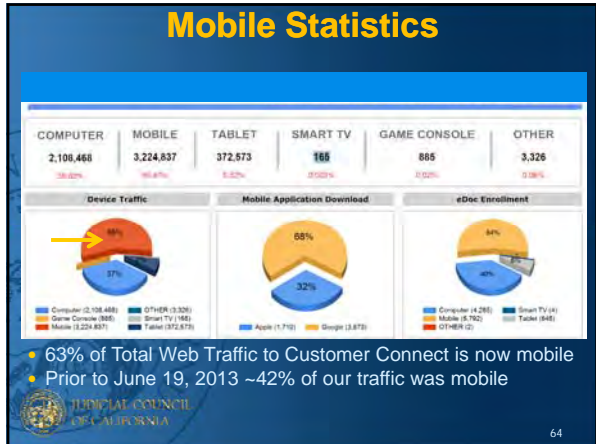
Total Downloads - 55753

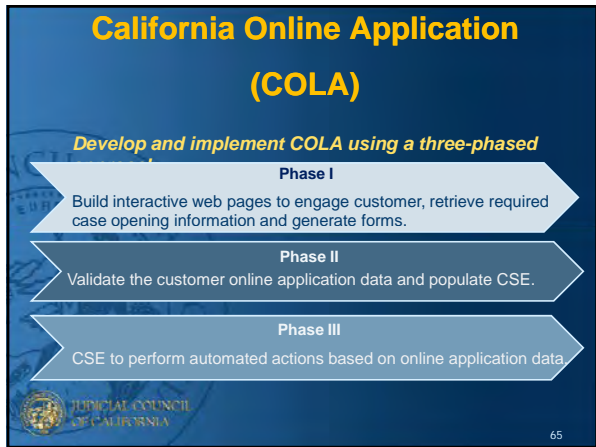


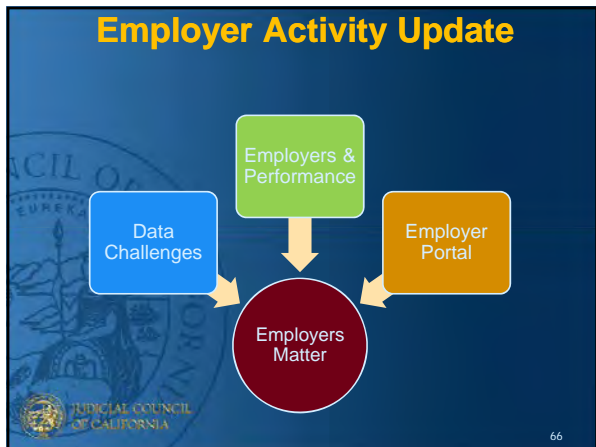
September 2014
~5,000 downloads per month

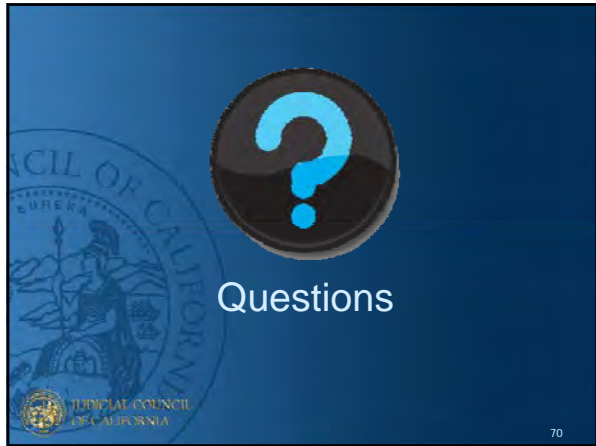


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70



Child Support Compliance Predictor

Compliance Probability
Green = 60% or Greater
Yellow = 40% - 60%
Red = Less than 40%

NCP Monthly Income	Order Amount															
	\$50	\$75	\$100	\$125	\$150	\$175	\$200	\$225	\$250	\$275	\$300	\$325	\$350	\$375	\$400	
\$ 1,450	3%	5%	7%	9%	10%	12%	14%	16%	17%	19%	21%	22%	24%	26%	28%	
\$ 1,400	4%	5%	7%	9%	11%	13%	14%	16%	18%	20%	21%	23%	25%	27%	29%	
\$ 1,350	4%	6%	7%	9%	11%	13%	15%	17%	19%	20%	22%	24%	26%	28%	30%	
\$ 1,300	4%	6%	8%	10%	12%	13%	15%	17%	19%	21%	23%	25%	27%	29%	31%	
\$ 1,250	4%	6%	8%	10%	12%	14%	16%	18%	20%	22%	24%	26%	28%	30%	32%	
\$ 1,200	4%	6%	8%	10%	13%	15%	17%	19%	21%	23%	25%	27%	29%	31%	33%	
\$ 1,150	4%	7%	9%	11%	13%	15%	17%	20%	22%	24%	26%	28%	30%	33%	35%	
\$ 1,100	5%	7%	9%	11%	14%	16%	18%	20%	23%	25%	27%	30%	32%	34%	36%	
\$ 1,050	5%	7%	10%	12%	14%	17%	19%	21%	24%	26%	29%	31%	33%	36%	38%	
\$ 1,000	5%	8%	10%	13%	15%	18%	20%	23%	25%	28%	30%	33%	35%	38%	40%	
\$ 950	5%	8%	11%	13%	16%	18%	21%	24%	26%	29%	32%	34%	37%	39%	42%	
\$ 900	6%	8%	11%	14%	17%	19%	22%	25%	28%	31%	33%	36%	39%	42%	44%	
\$ 850	6%	9%	12%	15%	18%	21%	24%	26%	29%	32%	35%	38%	41%	44%	47%	
\$ 800	6%	9%	13%	16%	19%	22%	25%	28%	31%	34%	38%	41%	44%	47%	50%	

TAB 31

**Letters Rogatory: Asking for Help and
Taking the Fear Out of Service
Award Abroad**

*Ms. Alexandra López, Ms. Pamela J.
Peery & Ms. Rheeah Yoo*

**Letters Rogatory:
Asking for Help and Taking the Fear
out of Service Abroad**

AB1058 Conference October 3, 2014
California Family Law Facilitator's Association
Prepared by Alexandra Lopez, Esq., Pamela J. Peery Esq., and Rheeah Yoo, Esq.

1

Goals

- Identify whether country is a signatory to Hague Service and/or Inter-American Letters Rogatory Conventions.
- Identify what types of service can be requested through a letter rogatory
- Draft a letter rogatory with its essential components.
- Identify the stages of a letter rogatory.

2

Service in CA

- Governed by CCP 413.10 et seq.
- Summons shall be served
 - a) Within this state as provided in this chapter.
 - b) Outside of state but within US as provided in this chapter or as prescribed by the law of place where person served.
 - c) Outside of the United States ...

3

Service outside the US

- CCP 413.10 (c)
Outside the United States, as provided in this chapter or directed by the court in which the action is pending, or if the court before or after service finds that the service is reasonably calculated to give actual notice, **as prescribed by the law of the place where the person is served** or as **directed by the foreign authority in response to a letter rogatory**. These rules are **subject to the provisions of the Convention on the "Service Abroad of Judicial and Extrajudicial Documents" in Civil or Commercial Matters** (Hague Service Convention).

4

Why do things different if a CA court permits us to go forward?



5

Why do we need to do this?

- Why do you have to serve according to these conventions?
 - In re Vanessa Q., 187 Cal.App.4th 128 (2010)
 - Volkswagenwerk Aktiengesellschaft v Schlunk (1988) 486 U.S. 700
 - In re Jennifer O., 184 Cal.App.4th 539 (2010)
 - In re Alyssa F., 112 Cal.App.4th 846 (2003)
 - In re Jorge G., 164 Cal.App.4th 125 (2008)
 - Kern County Dept. of Human Services v. Superior Court, 187 Cal.App.4th 302 (2010)
 - Honda Motor co. v. Superior Court, 10 Cal.App.4th 1043 (1992)

6

Does the Hague Convention on Service or OAS Letter Rogatory Treaty Apply to all Countries?

- Some countries have not signed up for either convention. In the absence of a treaty of executive agreement, letters rogatory are the customary method of obtaining assistance from abroad.
 - US Attorney's Manual
http://www.justice.gov/usao/eousa/foia_reading_room/usam/title9/crm00275.htm.
 - Foreign Affairs Manual, Volume 7, item953.1
<http://www.state.gov/documents/organization/86743.pdf>.

7

What's a Letter(s) Rogatory?

- It is a letter of request.
- It is sent from a judge to the judiciary of a foreign country requesting the performance of an act, which, if done without the sanction of the foreign court, would constitute a violation of that country's sovereignty.

8

Who can send a letter rogatory?

If you are:	Hague Convention	Inter-Am. Conv.**
Judge	okay	Okay
Attorney	okay	Not okay
Self represented	Not okay*	Not okay
Administrative Law Judges	Many countries will not accept letters rogatory issued by an Administrative Law Judge. In administrative cases, it is possible to obtain letters rogatory issued by a federal district court under the All Writs Act, 28 U.S.C. 1651.	

*See <http://www.hcch.net/upload/outline14e.pdf> (footnote 3) and <http://www.hcch.net/upload/faq14e.pdf> (item #8)

**Additional Protocol, Article 1

9

Which countries are signatories?



This is impossible



What steps do we take?

- First ask, is the country a Signatory to the Hague Convention on Service?
- If yes, are there objections or reservations?
- Does the Inter-American Convention on Letters Rogatory apply?
- Select a type a service and proceed.
- If neither convention applies, prepare a Letter Rogatory.

Where are the Signatories listed?

- Refer to the “Basics” slide for lists.
- For Hague Service Convention:
 - http://www.hcch.net/index_en.php?act=text.display&tid=44
- For OAS Letters Rogatory Convention:
 - <http://www.oas.org/juridico/english/sigs/B-36.html>
- For OAS Letters Rogatory Additional Protocol:
 - <http://www.oas.org/juridico/english/sigs/b-46.html>

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What does a letters rogatory look like?

- Please refer to addendum A
- Sources online can be found at:
 - <http://www.imperial.courts.ca.gov/courtforms/FL-18A.pdf>
 - <http://www.oas.org/juridico/english/treaties/b-46.html>
 - <http://travel.state.gov/content/travel/english/legal-considerations/judicial/obtaining-evidence/preparation-letters-rogatory.html>

17

What does the Letter Rogatory need?

- Order for issuance of letters rogatory
- The letter rogatory with a form containing essential information
- Certified copy of the pleadings, including order for issuance
- Apostille
- Translation
- Extra copy of English original and translation
- Certificate of execution or non-execution of service.

18

Let's do some together!



19

Serving the Summons and Petition: Types of Service

Types of Service	Hague Convention Article 5	Inter-Am. Conv. Article 10
Personal	Permitted	Make the request in LR
Substituted	If country permits*	
Mail	If country permits*	
Publication	Never permitted	
Posting	Never permitted	
Other	If country permits	V V V V

* See "table reflecting applicability" to check out your destination country, http://www.hcch.net/index_en.php?act=text.display&tid=44 and the table at <http://www.hcch.net/upload/applicability14e.pdf>

20

Pick a country

- USA
- Others countries: _____.

21

Example: Service in Canada

- Let's pick British Columbia
- Check first, is Canada a signatory to the Hague Service Convention?
- Review their declarations, do they object to any articles, how about Article 10?
 - <http://www.hcch.net/upload/applicability14e.pdf>
 - http://www.hcch.net/index_en.php?act=conventions.authorities&cid=17
- Are they a signatory to the Inter-American Convention on Letters Rogatory?
- Did they sign the Additional Protocol?

22

Example: Canada

California service types	Permitted by Hague Conv.?	Permitted by Inter-Am. Conv.?	Does British Columbia recognize similar types of service?*
Personal Service**	Yes	Not a signatory	Yes
Substituted Service	Yes	Not a signatory	Yes
Mail***	Yes	Not a signatory	Yes
Publication	No	Not a signatory	Yes
Posting	No	Not a signatory	Yes

*Refer to part 4 of Code of Civil Procedure, British Columbia, Canada:
http://www.bclaws.ca/civix/document/LOC/complete/statreg/--%20C%20--/Court%20Rules%20Act%20RSBC%201996%20c.%2080/05_Regulations/17_168_2009%20%20Supreme%20Court%20Civil%20Rules/168_2009_01.xml#subrule_d2e4147

**By a competent authority, not just some adult.

***Note that the Hague Convention permits service by mail, but countries all take different positions.

23

Example: Service in Mexico

- Check first, is Mexico a signatory to the Hague Service Convention?
- Review their declarations, do they object to any articles, how about Article 10?
 - <http://www.hcch.net/upload/applicability14e.pdf>
 - http://www.hcch.net/index_en.php?act=conventions.authorities&cid=17
- Are they a signatory to the Inter-American Convention on Letters Rogatory?
- Did they sign the Additional Protocol?

24

Example continued

California service types	Permitted by Hague Conv.?	Permitted by Inter-Am. Conv.?	Does Mexico recognize similar types of service?*
Personal Service**	Yes	Yes	Yes
Substituted Service	Yes	Yes	Yes
Mail	No***	Ask	No
Publication	No	Ask	Yes
Posting	No	Ask	Yes

*The Mexican federal code of civil procedure articles 309, 310, and 315 permit service personally, by substitution, and by publication respectively, see <http://www.diputados.gob.mx/LeyesBiblio/index.htm>

**By a competent authority, not just someone you know over 18.

***Note that the Hague Convention permits service by mail, but Mexico has objected to this type of service.

25

Translations

- Not-certified translations are okay
 - Declaration: http://www.hcch.net/index_en.php?act=status.comment&csid=412&disp=resdn
 - The questionnaire from Mexico indicating translation requirements (its in item #15, code section 553): <http://www.hcch.net/upload/wop/2008mexico14.pdf>
 - The Mexican Code of Federal Civil Procedure (see article 553, scroll way down): <http://info4.juridicas.unam.mx/ijure/fed/5/>

26

What needs to be Certified?

- Questions and responses,
- 2008 (Hague) For Mexican code citations and responses to questionnaire see: <http://www.hcch.net/upload/wop/2008mexico14.pdf> see item 15 for translation requirements.
- 2013 http://www.hcch.net/index_en.php?act=conventions.publications&dtid=33&cid=17

27

STAGE ONE: File your request

File your request for the court to grant an issuance of a Letters Rogatory.

File it with the proposed letters rogatory and certified copy of the pleadings.

28

STAGE TWO: Authenticate the Judge's and Clerk's signatures

Send signed original to secretary of state for apostille.

Translate everything else in the meantime.

29

STAGE THREE: Complete translations and send to Mexican court

Translate all the forms into Spanish, including seals.

30

STAGE FOUR: Send to proper Mexican Court for service

Send the packet, translation and copies, a directory of Mexican family law courts in each state is included in the packet.

Wait for certificate of execution to be returned. Sometimes it will be the entire file that will be returned.

File the certificate of execution, with translation if in Spanish.

31

Why is this important?



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Links

- Hague Convention home page (find link to treaty, participating countries, central authorities, applicability table, etc.): http://www.hcch.net/index_en.php?act=text.display&tid=44
- Website for fill-able Hague Service Forms: http://www.hcch.net/index_en.php?act=text.display&tid=47#pdf
- Imperial County local court forms FL-18 series Letters Rogatory templates (includes chart of Mexican state courts and state codes: <http://www.imperial.courts.ca.gov/courtforms/courtforms.html>)
- Mexican federal code not requiring translations to Spanish be certified translations: <http://info4.iuridicas.unam.mx/iiure/fed/5/558.htm?s=>
- Website containing links to Mexican federal and state codes: <http://www.law.uh.edu/libraries/fi/MexicanLawGuide06.asp>
- Tracking in Mexico only: <http://webapps.sre.gob.mx/rogatorias/Consulta.htm?CONTINUAR=Continuar>

33

Links continued

- Questions and responses
- 2008 (Hague) For Mexican code citations and responses to questionnaire see:
<http://www.hcch.net/upload/wop/2008mexico14.pdf>
- 2013
http://www.hcch.net/index_en.php?act=conventions.publications&dtid=33&cid=17
- (Hague) Mexican Central Authority Contact information:
http://www.hcch.net/index_en.php?act=authorities.details&aid=267
- (Hague) The Central Authority of Mexico offers tracking:
<http://webapps.sre.gob.mx/rogatorias/Consulta.htm?CONTINUAR=Continuar>

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Contact

ALEXANDRA LOPEZ	PAMELA J. PEERY	RHEEAH YOO
Family Law Facilitator Riverside County Superior Court Self-Help Center 3535 10 th Street, 2 nd Floor Riverside, CA 92501 (951) 777-3528 Alexandra.lopez@river side.courts.ca.gov	Family Law Facilitator Riverside County Superior Court 46200 Oasis Street Indio, CA 92201 (760)393-2298 Pamela.Peery@riversi de.courts.ca.gov	Access Center Supervisor and Family Law Facilitator Imperial County Superior Court 939 W. Main Street El Centro CA 92243 760-482-2230 rheeah.yoo@imperial.cour ts.ca.gov

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ADDENDUM - Examples

Elements of a Letter Rogatory

- A statement that a request for international judicial assistance is being made in the interests of justice;
- A brief synopsis of the case, including identification of the parties and the nature of the claim and relief sought to enable the foreign court to understand the issues involved;
- The type of case [e.g. civil, criminal, administrative];
- The nature of the assistance required [compel testimony or production of evidence; service of process];
- Name, address and other identifiers, such as corporate title, of the person overseas to be served or from whom evidence is to be compelled, documents to be served;
- A list of questions to be asked, where applicable, generally in the form of written interrogatories;
- A list of documents or other evidence to be produced;
- A statement from the requesting court expressing a willingness to provide similar assistance to judicial authorities of the receiving state;
- Statement that the requesting court or party is willing to reimburse the judicial authorities of the receiving state for costs incurred in executing the requesting court's letters rogatory.

Use non-technical language.

Source: <http://travel.state.gov/content/travel/english/legal-considerations/judicial/obtaining-evidence/preparation-letters-rogatory.html>

The following pages include three examples: from the U.S. State Department, Imperial County Superior Court, and from the Organization of American States Additional Protocol to the Convention on Letters Rogatory.

Example 1

Source: <http://travel.state.gov/content/travel/english/legal-considerations/judicial/obtaining-evidence/preparation-letters-rogatory.html>

NAME OF COURT IN SENDING STATE REQUESTING JUDICIAL ASSISTANCE

NAME OF PLAINTIFF

V.

NAME OF DEFENDANT

DOCKET NUMBER

REQUEST FOR INTERNATIONAL JUDICIAL ASSISTANCE (LETTERS ROGATORY)

(NAME OF THE REQUESTING COURT) PRESENTS ITS COMPLIMENTS TO THE APPROPRIATE JUDICIAL AUTHORITY OF (NAME OF RECEIVING STATE), AND REQUESTS INTERNATIONAL JUDICIAL ASSISTANCE TO (OBTAIN EVIDENCE/EFFECT SERVICE OF PROCESS) TO BE USED IN A (CIVIL, CRIMINAL, ADMINISTRATIVE) PROCEEDING BEFORE THIS COURT IN THE ABOVE CAPTIONED MATTER. A (TRIAL/HEARING) ON THIS MATTER IS SCHEDULED AT PRESENT FOR (DATE) IN (CITY, STATE, COUNTRY).

THIS COURT REQUESTS THE ASSISTANCE DESCRIBED HEREIN AS NECESSARY IN THE INTERESTS OF JUSTICE. THE ASSISTANCE REQUESTED IS THAT THE APPROPRIATE JUDICIAL AUTHORITY OF (NAME OF RECEIVING STATE) (COMPEL THE APPEAR OF THE BELOW NAMED INDIVIDUALS TO GIVE EVIDENCE/PRODUCE DOCUMENTS) (EFFECT SERVICE OF PROCESS UPON THE BELOW NAMED INDIVIDUALS).

(NAMES OF WITNESSES/PERSONS TO BE SERVED)

(NATIONALITY OF WITNESSES/PERSONS TO BE SERVED)

(ADDRESSED OF WITNESSES/PERSONS TO BE SERVED)

(DESCRIPTION OF DOCUMENTS OR OTHER EVIDENCE TO BE PRODUCED)

FACTS

(THE FACTS OF THE CASE PENDING BEFORE THE REQUESTING COURT SHOULD BE STATED BRIEFLY HERE, INCLUDING A LIST OF THOSE LAWS OF THE SENDING STATE WHICH GOVERN THE MATTER PENDING BEFORE THE COURT IN THE RECEIVING STATE.)

(QUESTIONS)

(IF THE REQUEST IS FOR EVIDENCE, THE QUESTIONS FOR THE WITNESSES SHOULD BE LISTED HERE).

(LIST ANY SPECIAL RIGHTS OF WITNESSES PURSUANT TO THE LAWS OF THE REQUESTING STATE HERE).

(LIST ANY SPECIAL METHODS OR PROCEDURES TO BE FOLLOWED).

(INCLUDE REQUEST FOR NOTIFICATION OF TIME AND PLACE FOR EXAMINATION OF WITNESSES/DOCUMENTS BEFORE THE COURT IN THE RECEIVING STATE HERE).

RECIPROCITY

THE REQUESTING COURT SHOULD INCLUDE A STATEMENT EXPRESSING A WILLINGNESS TO PROVIDE SIMILAR ASSISTANCE TO JUDICIAL AUTHORITIES OF THE RECEIVING STATE.

REIMBURSEMENT FOR COSTS

THE REQUESTING COURT SHOULD INCLUDE A STATEMENT EXPRESSING A WILLINGNESS TO REIMBURSE THE JUDICIAL AUTHORITIES OF THE RECEIVING STATE FOR COSTS INCURRED IN EXECUTING THE REQUESTING COURT'S LETTERS ROGATORY.

SIGNATURE OF REQUESTING JUDGE

TYPED NAME OF REQUESTING JUDGE

NAME OF REQUESTING COURT

CITY, STATE, COUNTRY

DATE

(SEAL OF COURT)

Example 2

Source: <http://www.imperial.courts.ca.gov/courtforms/courtsforms.html>

SUPERIOR COURT OF CALIFORNIA, COUNTY OF IMPERIAL 939 W. MAIN STREET EL CENTRO, CA 92243	FOR COURT USE ONLY
PETITIONER: RESPONDENT:	
REQUEST FOR INTERNATIONAL JUDICIAL ASSISTANCE FOR SERVICE OF PROCESS IN MEXICO	CASE NUMBER:

FROM THE SUPERIOR COURT OF CALIFORNIA, IN AND FOR THE COUNTY OF IMPERIAL, UNITED STATES OF AMERICA, TO THE APPROPRIATE JUDICIAL AUTHORITY IN THE REPUBLIC OF MEXICO IN REGARD TO THE SERVICE OF PROCESS IN _____, MEXICO:
(City and state)

This Court presents its compliments to the appropriate judicial authority of City: _____, State: _____ Mexico, (Name and Title of Presiding Judge) _____, and requests international judicial assistance for the Service of Process in a family law proceeding before this Court in the above-captioned matter, as necessary in the interests of justice.

This request is made under California Code of Civil Procedure Section 413.10(c), the Inter-American Convention on Letters Rogatory, Principles of International Reciprocity, the Mexican Federal Code of Civil Procedures, Sections 549–551, 568–571, and the Code of Civil Procedure Sections _____ for the Mexican State of _____.

The facts of the case pending before the requesting court are as follows: On (date): _____, a

- Petition for Dissolution of Marriage Other: _____
- Petition for Legal Separation _____
- Petition for Nullity Other: _____
- Petition to Establish Parental Relationship _____

was filed by _____, Petitioner, against _____, Respondent, in case number _____, requesting

- dissolution of marriage based on _____ (Cite legal grounds)
- legal separation based on _____ (Cite legal grounds)
- nullity of marriage based on _____ (Cite legal grounds)
- establishment of parental relationship of the minor child(ren).

- The minor children include: 1. _____ (name) _____ (date of birth)
- 2. _____ (name) _____ (date of birth)
- 3. _____ (name) _____ (date of birth)
- 4. _____ (name) _____ (date of birth).

- The Petition requests joint legal custody, or sole legal custody of the minor child(ren) for the Petitioner Respondent joint physical custody, or sole physical custody of the minor child(ren) for the Petitioner Respondent
 - visitation rights for the Petitioner Respondent
 - possible child support orders
 - spousal support for Petitioner Respondent
 - termination of jurisdiction to award spousal support to Petitioner Respondent
 - property division
 - other: _____

The address of the Petitioner is: _____.

**REQUEST FOR INTERNATIONAL JUDICIAL ASSISTANCE
FOR SERVICE OF PROCESS IN MEXICO**

CASE NUMBER:

The undersigned judicial authority has the honor to transmit the documents listed below in duplicate, and requests prompt service of process of one copy thereof on Respondent (name) _____ at the address of _____. The undersigned judicial authority further requests that service be carried out in the following manner: (a) by personal service on the identified addressee, or (b) if personal service is not possible, then, in accordance with the law of the State of destination.

If Respondent cannot be located for personal or substitute service, the undersigned judicial authority requests that service be accomplished by publication or posting in accordance with the law of the State of destination. A Declaration of Diligence Regarding Attempts to Locate Respondent in California and Mexico signed by Petitioner is included with the documents to be served.

<p>The marriage dissolution documents marked to be served are authenticated copies of:</p> <ul style="list-style-type: none"><input type="checkbox"/> Summons<input type="checkbox"/> Petition for Dissolution of Marriage<input type="checkbox"/> Petition for Legal Separation<input type="checkbox"/> Petition for Nullity<input type="checkbox"/> Property Declaration<input type="checkbox"/> Declaration of Disclosure (Preliminary)<input type="checkbox"/> Income and Expense Declaration<input type="checkbox"/> Schedule of Assets and Debts<input type="checkbox"/> Copy of this Letter Rogatory<input type="checkbox"/> Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)<input type="checkbox"/> Declaration of Diligence Regarding Attempts to Locate Respondent<input type="checkbox"/> Notice of Family Law Case Management Conference<input type="checkbox"/> Blank Response to Petition for Dissolution of Marriage, Legal Separation or Nullity<input type="checkbox"/> Blank Property Declaration<input type="checkbox"/> Blank Declaration of Disclosure<input type="checkbox"/> Blank Income and Expense Declaration<input type="checkbox"/> Blank Schedule of Assets and Debts<input type="checkbox"/> Blank Case Management Questionnaire<input type="checkbox"/> <p>Other: _____</p>	<p>The Uniform Parentage Act documents marked to be served are authenticated copies of:</p> <ul style="list-style-type: none"><input type="checkbox"/> Summons<input type="checkbox"/> Petition to Establish Parental Relationship<input type="checkbox"/> Income and Expense Declaration<input type="checkbox"/> Copy of this Letter Rogatory<input type="checkbox"/> Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)<input type="checkbox"/> Declaration of Diligence Regarding Attempts to Locate Respondent<input type="checkbox"/> Notice of Family Law Case Management Conference<input type="checkbox"/> Blank Response to Petition to Establish Parental Relationship<input type="checkbox"/> Blank Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)<input type="checkbox"/> Blank Income and Expense Declaration<input type="checkbox"/> Blank Case Management Questionnaire<input type="checkbox"/> Other: _____
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This Court further requests that the judicial authority of the State of destination return to this Court an executed Certificate of Execution, as attached hereto, once service of process is complete. The requesting Court agrees to willingly provide similar assistance to the judicial authorities of the Receiving State, _____, Mexico.

Date _____

The Honorable:
Judge of the Superior Court of California, County of Imperial

**REQUEST FOR INTERNATIONAL JUDICIAL ASSISTANCE
FOR SERVICE OF PROCESS IN MEXICO**

CASE NUMBER:

AUTHENTICATION

As Clerk of the Court for the Superior Court of California, County of Imperial, I do hereby certify that the Honorable _____, whose signature is affixed to the Request for International Judicial Assistance for Service of Process Abroad, annexed hereto, was at the time and date thereof, Judge of the Superior Court of California, County of Imperial; that the official acts and doings of said Judge are entitled to full faith and credit; and that the attestation to said Request is in due form of law. I further certify that the seal attached to said Request is the official seal of the Court.

WITNESS my hand and seal of said Court in the County of Imperial, State of California, on this _____ day of _____, 20____.

Kristine S. Kussman, Clerk of the Superior Court

[Seal]

AUTHENTICATION

As Judge of the Superior Court of California, County of Imperial, I do hereby certify that _____, whose signature is affixed hereto, was at the time and date thereof, Clerk of the Court for the Superior Court of California, County of Imperial; that the official acts and doings of said Clerk are entitled to full faith and credit; and that this authentication to said Request is in due form of law.

WITNESS my hand and seal of said Court in the County of Imperial, State of California, on this _____ day of _____, 20____.

The Honorable :
Judge of the Superior Court of California, County of Imperial

SHORT TITLE:

CASE NUMBER:

ESSENTIAL INFORMATION FOR RESPONDENT

You are hereby informed that on (date) _____ the Petitioner filed a Petition for Dissolution of Marriage Petition for Legal Separation Petition for Nullity Petition to Establish Parental Relationship Other _____ against you as Respondent, in case number _____. The Petition requests a dissolution of marriage legal separation nullity of marriage based on _____ other

establishment of parental relationship.

The minor children include:

- 1. _____ (name) _____ (date of birth)
- 2. _____ (name) _____ (date of birth)
- 3. _____ (name) _____ (date of birth)
- 4. _____ (name) _____ (date of birth)

In addition, the Petition requests the following orders:

- joint legal custody or sole legal custody to the Petitioner Respondent,
- joint physical custody or sole physical custody of the minor child(ren) to the Petitioner

Respondent,

- visitation rights for petitioner respondent, possible child support orders,
- spousal support to the Petitioner Respondent,
- termination of jurisdiction to award spousal support to petitioner respondent,
- property division,
- other: _____.

The address of the Petitioner is _____. This form is attached to the Letter Rogatory giving rise to the service of these documents.

Also attached are:

Copies of the Petition initiating the action in which the Letter Rogatory was issued, copies of documents filed concurrently with the petition, and any rulings that ordered the issuance of the Letter Rogatory. The Summons grants you 30 calendar days from the date of service to file the Response, and warns that if you do not, the case may be determined by default (without your participation) and that the court may make orders affecting your marriage or domestic partnership, property, debts, custody of children, and may order you to pay support, attorney's fees and costs. You are required by the local rules of the Imperial County Superior Court to file a Case Management Questionnaire no later than fifteen calendar days before your Case Management Hearing.

Other: _____.

The first paper fee to file the Response is \$435.00 (U.S. Dollars). If you cannot afford to pay the filing fee, you may apply to the court for an order waiving the filing fee and other fees. Information about obtaining a fee waiver may be found at <http://www.courts.ca.gov/documents/fw001info.pdf>.

Legal information and assistance is available at the Family Law Facilitator's Office in the courthouse where your case was filed. For a list of all Family Law Facilitator's locations in the state of California, see <http://www.courts.ca.gov/9497.htm>. Assistance is also available at the Access Center, Superior Court of California, County of Imperial, 939 W. Main Street, El Centro, CA 92243, email accesscenter@imperial.courts.ca.gov.

Example 3

Source: <http://www.oas.org/juridico/english/treaties/b-46.html>

LETTER ROGATORY

<p>1</p> <p>REQUESTING JUDICIAL OR OTHER ADJUDICATORY AUTHORITY</p> <p>Name</p> <p>Address</p>	<p>2</p> <p>CASE:</p> <p>Docket No.:</p>
<p>3</p> <p>CENTRAL AUTHORITY OF THE STATE OF ORIGIN</p> <p>Name</p> <p>Address</p>	<p>4</p> <p>CENTRAL AUTHORITY OF THE STATE OF DESTINATION</p> <p>Name</p> <p>Address</p>
<p>5</p> <p>REQUESTING PARTY</p> <p>Name</p> <p>Address</p>	<p>6</p> <p>COUNSEL TO THE REQUESTING PARTY</p> <p>Name</p> <p>Address</p>
<p>PERSON DESIGNATED TO ACT IN CONNECTION WITH THE LETTER ROGATORY</p> <p>Name Is this person responsible for costs and expenses?</p> <p>Address YES _/ NO_ /</p> <p>* If not, check in the amount of _____ is attached</p> <p>* Or proof of payment is attached</p>	

* Delete if inapplicable.

The Central Authority signing this letter rogatory has the honor to transmit to you in triplicate the documents listed below and, in conformity with the Protocol to the Inter-American Convention on Letters Rogatory:

* A. Requests their prompt service on: _____.

The undersigned authority requests that service be carried out in the following manner:

* (1) In accordance with the special procedure or additional formalities that are described below, as provided for in the second paragraph of Article 10 of the above-mentioned Convention; or

* (2) By service personally on the identified addressee or, in the case of a legal entity, on its authorized agent; or

* (3) If the person or the authorized agent of the entity to be served is not found, service shall be made in accordance with the law of the State of destination.

* B. Requests the delivery of the documents listed below to the following judicial or administrative authority:

Authority: _____.

* C. Requests the Central Authority of the State of destination to return to the Central Authority of the State of origin one copy of the documents listed below and attached to this letter rogatory, and an executed Certificate on the attached Form C.

Done at _____ this ____ date of _____, 19 ____.

Signature and stamp of the judicial or
other adjudicatory authority of the State of
origin

Signature and stamp of the Central
Authority of the State of origin

Title or other identification of each document to be delivered:

(Attach additional pages, if necessary.)

* Delete if inapplicable.

ESSENTIAL INFORMATION FOR THE ADDRESSEE¹

To (Name and address of the person being served): _____.

You are hereby informed that (Brief statement of nature of service): _____.

A copy of the letter rogatory that gives rise to the service or delivery of these documents is attached to this document. This copy also contains essential information for you. Also attached are copies of the complaint or pleading initiating the action in which the letter rogatory was issued, of the documents attached to the complaint or pleading, and of any rulings that ordered the issuance of the letter rogatory.

ADDITIONAL INFORMATION

I*

FOR SERVICE

A. The document being served on you (original or copy) concerns the following: _____.

B. The remedies sought or the amount in dispute is as follows: _____.

C. By this service, you are requested: _____.

D. *In case of service on you as a defendant you can answer the complaint before the judicial or other adjudicatory authority specified in Form A, Box 1 (State place, date and hour): _____.

* You are being summoned to appear as:

* Delete if inapplicable.

* If some other action is being requested of the person served, please describe: _____.

E. If you fail to comply, the consequences might be:

F. You are hereby informed that a defense counsel appointed by the Court or the following legal aid societies are available to you at the place where the proceeding is pending:

Name:

Address:

The documents listed in Part III are being furnished to you so that you may better understand and defend your interests.

II*

FOR INFORMATION FROM JUDICIAL OR ADMINISTRATIVE AUTHORITY

To: (Name and address of the judicial or administrative authority)

You are respectfully requested to furnish the undersigned authority with the following information: _____.

The documents listed in Part III are being furnished to you to facilitate your reply.

* Delete if inapplicable

III

LIST OF ATTACHED DOCUMENTS

(Attach additional pages if necessary.)

Done at _____ this _____ day of _____ 19

Signature and stamp of the judicial or other
adjudicatory authority of the State of origin

Signature and stamp of the Central
Authority of the State of Origin

TAB 32

Managing Cultural Complexities

*Hon. Bobbi Tillmon &
Prof. Alison Dundes Renteln*

Cross-cultural justice and the logic of reciprocity: When Westerners run afoul of the law in other countries

by ALISON DUNDES RENTELN

Sudanese protesters hold a newspaper carrying a photo of British teacher Gillian Gibbons during a protest in Khartoum, Sudan. The protestors called for the execution of Gibbons, who was convicted of insulting Islam for letting her students name a teddy bear Muhammad.



AP PHOTOS/ABD RAOUF

The cultural defense is a controversial policy whose validity is often questioned because it may interfere with the assimilation of the newly arrived.¹ Those opposed to taking cultural factors into account in legal proceedings usually refer to the adage “When in Rome, do as the Romans do.” The gist of the proverb is that one should follow local customs, and a corollary of this saying is the doctrine that ignorance of the law is no excuse, or *Ignorantia iuris neminem excusat*.²

If legal systems persist in their adherence to the monocultural paradigm upon which this proverb relies,³ it is worth considering the logical implications of rejecting the cultural defense for “Westerners” who venture abroad. The basic question is whether individuals who cross borders should always be held fully responsible when their conduct ostensibly violates the law of the country in which they find themselves.

To what extent, if at all, should a legal system allow the cultural defense? For those disinclined to permit the consideration of cultural evidence in the courtroom, it is important to recognize the consequences. If “Westerners” in other countries engage in customs taken for granted as

If there is resistance to the proposition that U.S. courts should take cultural considerations into account, then it may be unreasonable to expect mercy for North Americans who find themselves in predicaments overseas.

part of their lifestyle, they may be surprised either because the action itself is considered a crime or because the offense is associated with much harsher penalties.

Although those who live or travel abroad are generally subject to the laws there, some are beyond the reach of the law for technical reasons. For instance, if they perform diplomatic functions, serve in the military, or have some other governmental role that gives them some form of immunity, courts may not be able to exercise jurisdiction over them. Nevertheless, foreign countries have methods of dealing with violations of local laws. Individuals may be deported, sent home as a *persona non grata*, or prosecuted if their home country waives immunity.

Others will be unable to escape the reach of the law.

1. Alison Dundes Renteln, *THE CULTURAL DEFENSE* (New York: Oxford University Press, 2004); Marie-Claire Foblets and Alison Dundes Renteln (eds.), *MULTICULTURAL JURISPRUDENCE: COMPARATIVE PERSPECTIVES ON THE CULTURAL DEFENSE* (Oxford: Hart, 2009).

2. Vera Bolgar, *The Present Function of the Maxim Ignorantia Iuris Neminem Excusat—A Comparative Study*, 62 IOWA L. REV. 626-656 (1967).

3. Alison Dundes Renteln, *The Cultural Defense: Challenging the Monocultural Paradigm*, in Marie-Claire Foblets, Jean-Francois Gaudreault-Desbiens, and Alison Dundes Renteln (eds.), *CULTURAL DIVERSITY AND THE LAW: STATE RESPONSES FROM AROUND THE WORLD* (Brussels: Bruylant, forthcoming, 2009).

For them the question of whether judges in other nations will take into account the nature of the legal system in their countries of origin may well be crucial. The situations that involve this sort of dilemma vary with regard to whether the cultural difference relates to the interpretation of the act or the evaluation of its magnitude.

Types of issues

Sometimes the act itself may be socially unacceptable, but the conduct would ordinarily not result in punishment. For example, although there are public decency laws in many countries, what behavior is considered serious enough to warrant prosecution varies in different cultural contexts.⁴ A striking illustration involved a British couple, Michelle Palmer and Vince Acors, who were allegedly inebriated while they engaged in sexual activity on a beach in Dubai. They denied that they were having sex, saying it was only kissing and hugging in public, and they were astonished to be arrested. The case attracted massive media attention with reporters portraying the matter as “a clash between Western permissiveness and Islamic values.” A Dubai court found them guilty of “unmarried sex” and could have sentenced them to two

years in prison.⁵ Instead they were sentenced to three months in prison, a fine of \$272 for drinking alcohol in public, and deportation. Palmer was also fired from her position as a publisher at a Dubai-based company. It was unclear whether the disposition of the case hinged on the court’s view of the sex offense or the lesser charge of indecency.

Evidently the case proceeded without the due process protections guaranteed in Anglo-American courts. Palmer said she was questioned without having received any warnings, she was required to sign a written statement in Arabic, and the press was not allowed to follow the proceedings in court. The consequences of violating legal standards abroad may compel individuals to participate in courts that function quite differently from those to which they are accustomed. The Dubai case shows how a simple outing to the beach can result in a legal nightmare. Insisting on adherence to the “When in Rome...” philosophy would seemingly require the rejection of any plea for leniency even by couples inspired by romantic coastal scenery.

Sometimes the cultural clash centers on the treatment of sexual matters in the media, rather than the acts themselves. What some may consider as being in poor taste in one jurisdiction can be regarded as a serious legal matter in another. For example, erotic photographs of the late Robert Mapplethorpe that were controversial in the United States could not be sold in Japan for several years; the Tokyo High Court ruled them indecent in 2003. In fact, it was not until February 2008 that the Supreme Court of Japan decided that the photographs did not violate obscenity laws.⁶

When *Playboy* published its first edition in Indonesia containing the usual photos of “scantly clad women,” the editor was prosecuted. A year later he was exonerated.⁷ Some claimed that the magazine had more demure pictures than local publications but had been targeted by Islamist groups because it symbolized the Western decadence

or “Western pollution of traditional Islamic morals.” Indonesia’s Mujahedin Council proposed a law banning pornography, a concept that it defined in broad terms. Thousands protested against the bill in Bali, including some opponents who argued that it would undermine the rights of minorities whose traditional garb falls within the ambit of the proposed law.⁸ Despite the vocal opposition and widespread protest, the Indonesian legislature passed the law, which the president subsequently signed.⁹ The media reported that Indonesian folk dancers had received warnings that their movements and attire might be considered erotic, subjecting them to punishment under the new law.

When the repugnant behavior occurs on television, it seems to have the most dramatic effects. For example, when Richard Gere kissed an Indian actress a few times on the cheek on Indian television, there was a huge public outcry. One article described the extremely angry response: “Effigies of both actors were burnt in various parts of the country with people protesting against such un-Indianness in public.”¹⁰ Gere’s action was seen as an affront, particularly because it was part of a televised charity event to raise awareness about AIDS. Gere apologized, but that did not appear to mollify those who had been offended by his conduct. Because Gere had frequently been to India, his faux pas was considered especially surprising.

Gere was accused of obscene conduct, and an Indian lawyer filed a complaint in Jaipur. The local judge watched a video of the infamous kiss on television and concluded that Gere had violated section 294 of the Indian Penal Code, India’s public obscenity law.¹¹ It says: “Whoever, to the annoyance of others, does any obscene act in any public place, or sings, recites, or utters any obscene song, ballad or words, in or near any public place, will be punished with imprisonment up to three months or fine.” Ultimately, the Indian Supreme Court dismissed the case, finding that the lawsuit against

4. Weston LaBarre, *Obscenity: An Anthropological Appraisal*, in W. La Barre, *CULTURE IN CONTEXT: SELECTED WRITING OF WESTON LA BARRE* 258-268 (Durham: Duke University Press, 1980).

5. *Couple accused of beach sex: Let us go home*, Associated Press. MSNBS.com. September 2, 2008.

6. *Mapplethorpe Okd in Japan*, Los Angeles Times, February 20, 2008, at E3.

7. Paul Watson, *Editor of Playboy in Indonesia Exonerated*, Los Angeles Times, April 6, 2007, at A3.

8. Paul Watson, *A Modesty Proposal in Indonesia*, Los Angeles Times, October 14, 2008, at A5.

9. *Indonesia Approves Anti-Porn Measure*, Los Angeles Times, October 31, 2008, at A6. Abdul Khalik, *SB””Y Signs Porn Law, Protesters Despair*, The Jakarta Post, Dec. 9, 2008, at www.thejakartapost.com

10. Dipa Dube, *Some Reflections on Interplay of Law and Morality in Contemporary India*, January 29, 2008. Electronic copy available at Law and Morality in Contemporary India. Available at SSRN: <http://ssrn.com/abstract=1088298>

11. Swati Vashishta, *Gere gets arrest warrant from court*. www.ibnlive.com/news/gere-gets-arrest-warrant-from-court/39238-8.html?from=search-relatedstories; Gere ‘kissing’ case hearing on May 26. <http://www.ibnlive.com/news/gere-kissing-case-hearing-on-may-26/39833-8.html?from=search-relatedstories>.

Gere was frivolous.¹²

For those unfamiliar with cultural prohibitions against the public display of affection, the reaction to Gere's kisses might have seemed unfathomable. But in India there was no question, that his amorous behavior violated a cultural taboo that still mattered. Emily Wax, in the *Washington Post*, noted that "[n]ewspapers called it 'the kiss that became a kissa,' Hindi for drama or story."¹³

While a kiss in public may be regarded as highly offensive, the naming of a toy, a stuffed animal, seems even more harmless and an occurrence so trivial that it would hardly become a legal matter. Much to the surprise of Anglo-Americans, Gillian Gibbons, a 54-year-old British teacher in a private school in Sudan, got into trouble after she allowed her class of seven-year-olds to vote on what to name a teddy bear, a class mascot used for lessons on animals.¹⁴ Rejecting her suggestion of "Faris," the children selected Muhammad (naming the bear supposedly after a popular boy in the class). Some of the parents considered the naming blasphemous because Muhammad is a sacred name associated with the Prophet in the *Qur'an*. Although the name Muhammad is common among Muslims, some considered it an insult "to use it for a toy." In short, this naming constituted blasphemy, according to local authorities.

Gibbons was arrested and charged with inciting religious hatred under Article 125 of criminal law for "insulting the Prophet Muhammad." Subsequently, a Sudanese court convicted her of insulting Islam and sentenced her to 15 days in prison and deportation, although the crime was evidently punishable by up to 40 lashes, a fine, and six months in prison. The school director told the BBC: "This was a completely innocent mistake. Miss Gibbons would have never wanted to insult Islam."¹⁵ A spokesman at the Sudanese embassy in London agreed: "She had no idea what she was doing, we are convinced of that."¹⁶ Nonetheless, the incident infuriated the community: "...thousands of Sudanese,

many armed with clubs and swords and beating drums, burned pictures of her and demanded her execution during a rally in Khartoum."¹⁷ After an international campaign to secure her release, she eventually received a presidential pardon and returned home to England.

From the media accounts it is not entirely clear whether it was the naming of the bear that really caused offense. The teacher had put a picture of the bear on the cover of a journal, and the children took turns carrying it home so they could write in it. Putting an image of a bear named Muhammad on the book may have been the more egregious offense. Regardless of what incensed members of the community in Khartoum, it is clear that Gibbons' position was that she had not realized that her conduct constituted blasphemy. Implicit in her stance was the notion that her action would not be considered a crime in her country of origin. Yet a blasphemy law was still on the books in Britain. When this came to the attention of governmental officials, there was a move to repeal the law and the Parliament voted to remove the charge of blasphemy from British law.¹⁸

Appropriate punishment

In other situations involving cross-cultural justice, the act in question is undeniably classified as an offense in both countries, but there are culturally differing views as to what punishment is appropriate.¹⁹ Insofar as different criminal justice systems evaluate crimes as more or less grave, the question is whether this should influence judges in their decisions as to what constitutes condign punishment. Because mitigating factors are ordinarily taken into account during the sentencing phase of trials, to ensure that justice is done, comparative analysis of the gravity of the offense is arguably a relevant consideration.

A famous example of this issue involved the flogging of Michael Fay in Singapore for vandalism. Fay, an 18-year-old teenager from Ohio, had been living in Singapore with his

family for two years when, along with several friends, he was accused of spray-painting cars. After Fay admitted guilt during an interrogation (though he later claimed his confession had been coerced), he pleaded guilty to two charges of vandalism and mischief and was sentenced to four months in prison, a fine of \$3,500 (Singaporean dollars), and six strokes of the cane.²⁰

An international outcry ensued because although damaging the property of another person was unquestionably a crime in the United States, in Ohio the maximum sentence would have been 60 days in jail, a \$500 fine, and restitution.²¹ As caning involves hitting the naked buttocks with a rattan cane, a procedure that inflicts extraordinarily intense pain, it appeared to some as excessive, cruel, and inhumane. To critics, the punishment simply did not fit the crime; it was a disproportionately harsh penalty. Commentators in the United States have analyzed whether caning violated the 8th Amendment prohibition against

12. *Richard Gere cleared of obscenity*, BBC News, March 15, 2008. The judge who issued the arrest warrant reportedly was transferred from his post in Jaipur to the small town of Kishangarh several hours away. *Report: Indian judge who issued Richard Gere arrest warrant transferred*, AP, May 3, 2007.

13. Emily Wax, *Indians Divided on Kissing A Cultural Taboo Goodbye; Debate Over Displays of Affection Mirrors Broader Differences*, *Washington Post*, May 20, 2007, at A17.

14. Kevin Sullivan, *Sudan charges the teacher in teddy bear naming case*, *San Francisco Chronicle*, November 29, 2007, at A10.

15. *'Muhammad' teddy teacher arrested*, BBC News, November 26, 2007.

16. Janet Stobart, *After Sudan ordeal, Briton is home*, *Los Angeles Times*, December 2, 2007, at A3.

17. *British lawmakers seek to free teacher*, *Los Angeles Times*, December 2, 2007, at A13.

18. Kim Murphy, *A British law is no longer sacred*, *Los Angeles Times*, March 6, 2008, at 1.

19. Piers Beirne, *Cultural Relativism and Comparative Criminology*, 7 *CONTEMP. CRISES* 371-391 (1983). Sandra Evans Skovron, Joseph E. Scott, and P. Kamalakara Rao, *Cross Cultural Perceptions of Offense Severity: The United States, India, and Kuwait*, 11 *INT'L J. COMP. AND APPLIED CRIM. JUST.* 47-60 (1987); Richard Frase, *Comparative Perspectives on Sentencing Policy and Research*, in Michael Tonry and Richard S. Frase (eds.), *SENTENCING AND SANCTIONS IN WESTERN COUNTRIES* 259-292 (New York: Oxford, 2001).

20. Vinay Lal, *The Flogging of Michael Fay: Culture of Authoritarianism*, 29 *ECON. AND POL. WEEKLY* 1386-1388 (June 4, 1994); Philip Shenon, *A Flogging Sentence Brings a Cry of Pain*, *New York Times*, March 16, 1994.

21. Scott Bloom, *Spare the Rod, Spoil the child? A Legal Framework for Recent Corporal Punishment Proposals*, 25 *GOLDEN GATE U. L. REV.* 361-389 (1995).



American Michael Fay, 19, leaves the Queenstown Prison in Singapore. Fay, who pleaded guilty to spray-painting cars, became the focus of an international uproar when he was sentenced to flogging for vandalism.

cruel and unusual punishment. Although the sentence was consistent with Singaporean constitutional and criminal law, some also questioned whether the practice violated international human rights law.²²

The U.S. government intervened on Fay's behalf. A spokesman for the U.S. Embassy in Singapore told the press that even though "...U.S. citizens are subject to the laws of the host country, ...U.S. officials feel there is a discrepancy between the offense and the punishment."²³ President Clinton requested clemency saying: "This punishment is extreme and we hope very much...it will be reconsidered."²⁴ Evidently out of

22. Firouzeh Bahrapour, *The Caning of Michael Fay: Can Singapore's Punishment Withstand the Scrutiny of International Law*, 10 AM. U. J. OF INT'L L. & POL'Y 1075 (1995).

23. Karen Fawcett, *Americans in Singapore condemn caning for teen*, USA Today, March 9, 1994.

24. Andrea Stone, *Whipping penalty judged too harsh - by some*, USA Today, March 10, 1994.

25. Editorial, *Travel Advisory - When in Rome—Singapore flogging case: Obey foreign laws*, Los Angeles Times, March 14, 1994.

26. Renteln, *supra* n. 1, at 92.

respect for Clinton, the Singaporean government reduced the sentence to 4 lashes.

Singaporeans criticized the government's decision because this would make it difficult to control foreign nationals.

The reality that the "When in Rome" presumption may be problematic appears to have hit home in the Fay case. *The Los Angeles Times* published an editorial, "Travel Advisory—when in Rome—Singapore Flogging case: Obey Foreign Laws," which concluded:

In the interests of good relations Singapore should not insist on corporal punishment for Fay. In the interests of their own well-being, Americans who travel should understand that their own country's constitutional protections don't accompany them abroad. Violate local law in Saudi Arabia, Sudan, Pakistan and other countries and a flogging could result. Violate anti-drug laws in some countries—Malaysia, for one—and hanging can follow. Law-abiding travelers don't have to be too concerned. Others had better beware.²⁵

Individuals from Australia and Britain caught carrying drugs like heroin have faced the death penalty.

In some cases government representatives have attempted to intercede on their behalf, usually to no avail. The logic of "When in Rome..." requires that foreigners accept the consequences for their actions, even if the sentences would be less severe had they been prosecuted for the same offenses in their home countries. In such cases there is thought to be no question of ignorance of the law. That is because when individuals arrive by plane, they receive a notice on the embarkation form that capital punishment is imposed for those convicted of drug trafficking. Nevertheless, those actually engaged in drug trafficking, while they deserve to be severely punished, arguably should not be sentenced to death. Allowing a cultural defense for Westerners in countries like Malaysia and Singapore would help mitigate their sentences.²⁶

Normative issues

If the cultural defense is not allowed as a matter of public policy, then this logically implies that Westerners will not be able to benefit from it if they get into trouble abroad, whether on the beach, on television, in the classroom, or elsewhere. The question these cases raise is whether the principle of reciprocity should apply in cultural defense cases. To the extent that the courts in North America and Europe allow the consideration of how a particular issue would be handled in the person's country of origin, this would seem to imply that individuals who travel from these regions abroad would also benefit from a more flexible, potentially lenient approach. If, however, there is continued resistance to the proposition that courts can take cultural considerations into account, then it would be unreasonable to expect mercy for North Americans and Europeans who find themselves in predicaments overseas. No one would be permitted to invoke the cultural defense.

Another issue that deserves attention is the question of how international law applies. While it is beyond the scope of this article to delve into

this deeply, suffice it to say that a number of principles are relevant: the right to a fair trial, the right to culture, and others.²⁷ When principles of international human rights law are incorporated into domestic legal systems, this requires that they take into consideration the legal system of the country from which an immigrant comes. They may involve the analysis of not only state law but also customary and religious law. We must address squarely the question of what difference it makes that individuals grew up adhering to codes of conduct that diverge sharply from the legal systems in which they now find themselves.

It is likely that the degree to which legal systems can accommodate cultural claims depends on the type of offense involved in a given case. There are different kinds of crimes. For victimless crimes, legal systems can afford to consider arguments tied to differing cultural laws. As justice requires that punishment be proportionate, recognizing that the judgment as to what is considered fair varies from one culture to the next is consistent with this goal. In some cases individuals commit acts that are crimes in both legal systems, that of the homeland and that of the country in which the offense occurred. The issue then centers on what type of punishment is most appropriate. Damaging a car is illegal in various legal systems, but how it should be punished differs as between Singapore and the United States. When in doubt, and where cross-cultural misunderstandings may have occurred, courts should err in favor of the less onerous punishment. At least that is what the examples considered in this article suggest.

In some situations what must be decided is whether the act itself is a crime. Here there may be disagreement, not only between countries but among individuals in the country. As the media did not report public opinion data on attitudes toward the British school teacher in Sudan, it is not possible to ascertain the range of views that may have existed.

We have seen that societies have

differing views of what is morally improper. Lest we conclude that only other countries have peculiar views, we should remember that the U.S. itself has been in the limelight for episodes such as Janet Jackson's "breast-baring" wardrobe malfunction" during the 2004 Super Bowl for which CBS was fined \$550,000 for a half-second of nudity,²⁸ Attorney General Ashcroft's decision to put drapes costing \$8,000 on a naked statue so breasts would not appear in photographs, and a "nurse in" at an airport organized by women to challenge policies prohibiting nursing in public. Where others are sensitive about public displays of affection, Americans have our own oddities.²⁹

Ignorance of the law is relevant in some of the cases like that of the

reduce the punishment or allow the defendants to return home. This suggests that acknowledging responsibility for having transgressed may be beneficial. Rather than insisting on innocence, it may be preferable to express regret for the offensive conduct. While this might seem contrary to expectation, admitting that the act caused harm may result in less punishment rather than more.

When international legal standards are incorporated in domestic legal systems, they will eventually necessitate a rethinking of the monocultural paradigm. This will lead to the realization that individuals have vastly different life experiences, and that divergent conceptions of justice are relevant to the proper functioning of a legal order. It is time to

Justice requires that cultural factors influence the disposition of cases for individuals who travel across borders.

British teacher in the Sudan. It may be that when individuals genuinely are unaware that their conduct is offensive to the point of violating the law, courts should be willing to consider this. Sometimes doctrines may need to be revised or discarded.

Westerners who travel abroad should pay attention to the notices distributed on planes before they land. Until such time as cultural defenses are incorporated in legal systems, they cannot reasonably expect mercy on the part of judges. If draconian punishment is authorized, it will not matter that a person grew up accustomed to different standards of justice.

Lessons to be drawn

Are there any lessons from the traumatic experiences of Westerners described above? There is some evidence that a contrite demeanor is beneficial. When individuals or governments offered apologies, sometimes there was a willingness to

reconsider the "When in Rome" philosophy. Justice requires that cultural factors influence the disposition of cases for individuals who travel across borders. ☛

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27. Renteln, *supra* n. 3.

28. The Court of Appeals for the Third Circuit reversed the FCC decision, *CBS v. FCC*, 535 F.3d 167 (2008), and the FCC then appealed to the U.S. Supreme Court.

29. Frederick S. Lane, *THE DECENCY WARS: THE CAMPAIGN TO CLEANSE AMERICAN CULTURE* (New York: Prometheus Books, 2006).

Making Room for Culture in the Court

By Alison Dundes Renteln

As more and more cases involving unknown cultural traditions reach the courtroom, judges will have to decide how to take these customs into account, if at all. Should different world views influence the disposition of cases that enter the courtroom? There is a growing jurisprudence, somewhat beneath the radar screen, concerning the cultural rights of ethnic minorities that deserves much greater consideration. For example, in one case, members of a Brazilian sect living in New Mexico sued the U.S. government because the government claimed that hoasca tea, a sacramental beverage containing a mild hallucinogen, violated the Controlled Substances Act. The U.S. Supreme

Court held that the law unjustifiably burdened their right to religious freedom¹ and carved out an exemption from the federal narcotics law. In another case, a court had to decide whether Ruth Friedman, a woman who, in a state of hysteria, catapulted herself out of a ski lift chair to avoid being trapped alone with a man after dark in violation of Orthodox Jewish law could receive damages. The judge, after listening to testimony from a rabbi confirming this interpretation of Jewish law, awarded her nearly \$40,000.² In yet another decision, a babysitter reported seeing a father kissing his two-year-old son's penis. Mr. Kargar, a refugee from Afghanistan, explained that this way of showing affection was accepted in

his culture and had no sexual meaning. Many members of the Afghani community supported his claim. Despite this argument, he was convicted of two counts of gross sexual assault. Eventually, the Supreme Court of Maine agreed with the defense and vacated the judgment of the district court.³

Some traditions may be unfamiliar to jurists and hence subject to misinterpretation. Given the reality that courts will encounter litigants from an increasingly wide range of backgrounds, judges might want to consider how best to handle cultural arguments. Demonstrating respect for the traditions of ethnic groups within their jurisdictions will improve judges' standing in their own communities.

Ultimately, public confidence in the judiciary may depend on avoiding ethnocentrism and the appearance of cultural bias. Yet, there are, to be sure, risks associated with the introduction of cultural evidence that must be taken into account. This article focuses on the question of when judges should allow cultural considerations to influence the disposition of the cases that come before them.

Individuals from different cultural backgrounds sometimes ask that courts take into consideration evidence that explains their behavior. The custom may be relevant in the context of a criminal case, in a lawsuit seeking an exemption from a general statute, or in a civil action. Cultural factors figure into legal proceedings in a wide array of cases, including arson, bribery, child abuse, civil rights, employment discrimination, homicide, marriage and divorce, political asylum, religious worship, unauthorized autopsies, and zoning.⁴ In all of this litigation, it is necessary to understand the cultural dimensions of the dispute. In the absence



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of this factual data, judges and juries have difficulty comprehending what happened in a particular case.

Why Culture Is Relevant for Legal Decision Making: The Theory of Enculturation

There is a tendency to think that cultural evidence is not relevant in legal proceedings. The standard response is “When in Rome, do as the Romans do.” However, social science forces us to question this “monocultural paradigm.”⁵ This is because there are many notions as to what constitutes “reasonable” behavior. What is deemed reasonable depends on one’s upbringing.

The reality is that all individuals are subject to the process of enculturation. Culture shapes our perceptions and behavior without our being aware of it. In fact, the process by which individuals acquire the cultural categories of their societies is largely an unconscious one, and yet cultural forces influence our behavior in profound ways. As the famous anthropologist Ruth Benedict once said: “we do not see the lens through which we look.”⁶ For instance, in some parts of the world, children are socialized to use the left hand only for urination and defecation. When they see someone from another culture put food in his mouth with his left hand, they find it repulsive.

There are many other manifestations of the effects of culture on human interactions. For example, in some societies kissing in public is considered obscene. A cultural conflict occurred in 2007 when the American actor Richard Gere kissed an Indian actress on Indian television. Much to the surprise of Americans, this led to protests (including the burning of effigies of Gere), death threats, and the issuance of an arrest warrant for Gere. Although the trial court’s decision was reversed on appeal, the strength of the

public reaction in India demonstrated the seriousness of this cultural faux pas.⁷

Another classic example of cultural relativity concerns food taboos. The idea that some animals can be eaten but not others varies from one society to the next. Horse meat is, for example, popular in France, though not eaten in many other places.⁸ Sometimes conflicting notions about food wind up in the legal system, as when two Cambodian immigrants in Long Beach, California, were arrested preparing to eat a dog. Once it became clear that there was actually no California statute prohibiting the consumption of dogs, a campaign was launched to enact one. The violation of a social norm led to the adoption of a law prohibiting the eating of pets but without specifying which animals are to be considered pets.⁹

Americans do not often reflect on their own cultural presuppositions.¹⁰ We take for granted, for example, that we can eat beef but not dogs and that monogamy is the correct form of marriage, not polygamy (though we do allow multiple marriages over time). Enculturation makes us predisposed to act in certain ways, and we are at best only dimly aware of this process. If we are not cognizant of our own

The use of cultural evidence can help judges avoid making ethnocentric judgments.

cultural biases, then our evaluations are prone to subjectivity. The use of cultural evidence can help judges avoid making ethnocentric judgments in many types of litigation.¹¹

Ethnic and religious minorities are sometimes astonished to find that their traditions are considered crimes in their new homeland. Although “ignorance of the law is no excuse,” the newly arrived may contend they were not given notice as to what the law requires, as, for instance, in some cases involving the chewing of khat.¹² In some instances, immigrants face a dilemma: If they follow their customary law, they violate the law of the

new country; however, if they adhere to the law of the new country, then they must violate their folk law. Because many individuals are caught in this predicament, the cultural traditions central to these disputes deserve careful consideration.

Criminal Law

In many cases, it is nearly impossible to understand a defendant's state of mind without considering the cultural context of the action central to a dispute. Cultural defenses have been raised in homicide cases, such as the highly publicized *Kimura* case. Fumiko Kimura became distraught after learning that her husband had had an affair, and she attempted to commit *oyaku-shinju*, or parent-child suicide, by walking into the ocean with her two young children. Although the children drowned, she was rescued and prosecuted for first-degree murder with special circumstances, which could have brought the death penalty. She sought to raise a cultural defense, emphasizing the culturally motivated aspects of her conduct as part of an insanity argument. According to her world view, it was more cruel for her to leave the children behind with no one to look after them than for her to take them with her to the afterlife. Thousands of members of the Japanese American community signed a petition arguing that Japanese law should be applied in this case. Through a plea negotiation, she received a sentence of time served, counseling, and probation. Although parent-child suicide is illegal in Japan, it occurs there on a regular basis and would certainly be understood in Japan; evidently, the punishment there would have been roughly equivalent to what Mrs. Kimura received in the United States. This case highlights differences in world view, and a court would unquestionably have difficulty grasping the cultural imperative for her action without information about the meaning and significance of *oyaku-shinju*.¹³

Other homicide cases have involved husbands who became enraged upon discovering that their wives had been unfaithful to them. After killing them, they invoked a provocation defense. For

instance, Aphaylath bludgeoned his wife to death after she admitted receiving a phone call from a former boyfriend.¹⁴ The public defender tried to introduce evidence showing that Aphaylath had experienced tremendous difficulty adjusting to life in the United States ("culture shock") and that the infidelity of his wife brought great shame sufficient to trigger his rage. Although the trial court judge excluded this evidence because jealousy is universal and therefore not beyond the ken of ordinary jurors, the court of appeal found that disallowing the cultural evidence constituted a reversible error. Even if jealousy is universal, whether one is permitted to act on those feelings may vary from one society to the next.

In some cases, the defendant is provoked by an insult apparently unfamiliar to the average reasonable person. For example, in *Trujillo-Garcia v. Rowland*,¹⁵ two Mexican Americans were playing poker and one man, Padilla, lost \$140 to the second man, Trujillo-Garcia. Padilla returned a few days later demanding his money back. When Trujillo-Garcia refused, the other man responded with an extremely offensive phrase in Spanish. At that point, Trujillo-Garcia took out a gun and shot Padilla to death. At the trial, he tried unsuccessfully to raise a provocation defense. Although he could show that he had been provoked, he could not prove that an "objective reasonable person" would have been provoked by a phrase in Spanish (in an English-only state), thereby failing to meet the other requirement of the test. After his appeals in state court failed, he argued unsuccessfully in federal court that the exclusion of cultural evidence constituted a violation of equal protection. Whereas juries could easily comprehend provocation in most instances, without an explanation of the insult in this case, he could not effectively raise the provocation defense.

While some may believe that individuals should exercise self-control even when insulted, the provocation defense is well established in jurisprudence as one of the most ancient defenses in the criminal law. Members of the dominant

culture can reduce a charge of murder to manslaughter by demonstrating adequate provocation, but defendants from other cultures fail because they cannot show that a so-called objective reasonable person would have been provoked by what counts as an insult in their culture.¹⁶ If defendants similarly situated can never win a partial excuse by invoking a provocation defense, this arguably constitutes a violation of equal protection.¹⁷

Not only does the principle of equality support the use of a cultural defense, but so, too, does the constitutional right to effective assistance of counsel. For example, in some cases, defense counsel failed to make clear that the stoic demeanor of the defendant did not signify a lack of remorse. In some cultures, even those under extreme emotional distress are socialized from an early age not to display any emotion. Juries misinterpreting body language have imposed the death penalty instead of life imprisonment.¹⁸ Although there is no way of knowing whether nonverbal communication was the sole or main reason for the jury's decision, it could have played a role in their decision making. Failure to present cultural evidence in circumstances such as these may constitute a violation of the Sixth Amendment right to effective assistance of counsel. If so, attorneys must present adequate information to ensure that the cultural context of a defendant's action is well understood.

Cultural arguments also are advanced in child abuse and neglect cases, as differing child-rearing practices exist around the world. In one particularly disturbing case, an Albanian-Muslim father touched his daughter in a public gymnasium during a martial arts tournament in which his son was competing.¹⁹ Even though the incident occurred in public, the police and prosecutor had no qualms about treating the matter as child sexual abuse. Both children were removed from the home and placed in foster care; the family court approved of the action by Child Protective Services, concluding that the parents were unfit parents. After the mother took the children to see their father in violation of the court order,

their parental rights were terminated, a decision later affirmed on appeal. In the subsequent criminal case, an expert witness, an anthropologist who specialized in Albanian culture, testified about the innocuous nature of the touching in Albanian culture. On the basis of her testimony, the jury acquitted the father of all criminal charges. His exoneration had no effect on the termination decision.

Other cases involve the use of folk medicine or religious objections to medical treatment. For instance, children whose families come from Southeast Asia may ask their parents for a folk remedy known as coining, or *cao gio*, when they have the flu, a cold, or some other physical ailment. This technique leaves temporary bruises on the torso that can give cause for alarm. School authorities who observed the bruises have sometimes called

the police, resulting in the arrest of parents for child abuse and placing the children in protective custody. Coining may appear to fit the legal definition of child abuse, i.e., the intentional infliction of physical harm, but, in fact, the parents are using an innocuous remedy that they believe cures their children of a malady. If, as some might argue, there is no intent to do harm, a felony child abuse charge is excessive.²⁰

In contrast to immigrant parents who use innocuous folk medicine, parents whose children die for lack of medical treatment often face no prosecution because of the existence of statutory exemptions from child neglect laws for faith healing. Christian Scientists, for example, have avoided incarceration because of religious exemptions that are still found in most states.²¹

The main challenge for those attempting to raise a cultural defense is that the ordinary definition of a crime includes only the intent and the act; motive is technically not germane to the question of guilt. It is precisely the question of

cultural motivation that parents wish to introduce at the trial to show less culpability, but the strictures of American criminal jurisprudence prevent this from occurring. To ensure the consideration of cultural motives, we must return to the traditional understanding of *mens rea*, which includes both moral guilt (motive) and legal guilt (intent).²² Jurists would then have to construe the rules of evidence to permit the presentation of cultural evidence relevant to motives.²³

Exemptions

There are certain customs that continually bring ethnic minorities into conflict with the standards of the dominant legal system. Members of groups whose traditions clash with the law may anticipate these conflicts and preemptively seek a legislative exemption from a general statute.

Traditions that spark controversy have often concerned food.²⁴ Sometimes when inspectors have questioned the safety of a particular ethnic cuisine, legislators were lobbied to obtain exemptions for the culinary item. For example, one campaign won an exemption for Peking duck from public health law after inspectors targeted this dish. As no one had ever been known to have become ill from consuming this delicacy, the exemption was appropriate. Likewise, when Korean rice cakes became the center of controversy, the California legislature again authorized an exemption from health code provisions. The success of these efforts may reflect the fact that the items were consumed largely by the cultural community and were not perceived as posing any real threat to the larger community.

Although some minority groups have succeeded in obtaining legislative exemptions, others have not. For instance, a campaign to exempt Sikh *kirpans* (short ceremonial daggers) from knife policies

ultimately failed. This effort followed litigation involving Sikh children who were kept out of public school because wearing their religious symbol violated the “no weapons” policy of the school board; they were given the choice of either removing the *kirpan* or not attending public school. They filed suit and lost in federal district court.²⁵ After being kept out of school for nearly a year while their appeal was pending, the Court of Appeals for the Ninth Circuit ruled in an unpublished decision that they had to be allowed to return to school, but the *kirpan* had to be rendered safe either by gluing it into the sheath or sewing it securely so it could not be removed. This compromise serves as a model of what might be sought in other culture conflicts. Following this litigation, then California Senator Bill Lockyer sponsored a bill to exempt the *kirpan* from relevant laws. Although the bill passed both houses, the governor ultimately vetoed it.

By contrast, other countries allow Sikhs to wear *kirpans*. For instance, the Parliament in the United Kingdom successfully enacted a statutory exemption from relevant laws for carrying a *kirpan*.²⁶ Elsewhere, the judiciary has ruled in favor of the Sikhs, such as when the Canadian Supreme Court handed down the *Multani* decision,²⁷ vindicating the right of Sikh students to wear *kirpans*. Despite the fact that there is worldwide understanding that the *kirpan* is a religious symbol that does not pose any danger despite its resemblance to a knife, the California legislators failed to protect the religious liberty of Sikhs. Thus, it may inevitably fall to judges to entertain religious defenses when Sikhs are prosecuted for wearing required religious symbols. Other branches of government cannot always be counted on to enact the necessary exemptions to ensure that minorities can follow traditions central to their way of life.

Although seeking exception through the legislature seems like a prudent strategy, there is no guarantee that legislators will see fit to authorize statutory exemptions for ethnic minority groups. To the extent that the customs seem bizarre or controversial, legislatures may

Attorneys must present adequate information so that the cultural context of a defendant's action is understood.

decide to ban rather than permit them. Furthermore, individuals seeking exemptions are often members of discrete and insular minorities, which means they are by definition those who lack access to the political process. They are unlikely to have the political clout necessary to win legislative exemptions.

Inevitably, therefore, culture conflicts will find their way into court. In some instances, they will involve religious claims, as when the Amish effectively requested a judicial exemption from Wisconsin's compulsory education law on the grounds that having their teenage children exposed to the worldly values prevalent in public high schools would undermine their way of life.²⁸

Even if legislative exemptions are in theory preferable, it is inevitable that courts will have to grapple with the question of whether minorities should be granted exemptions from general statutes. In many instances, the cross-cultural matter will come to court because the legislature failed to resolve the conflict so as to protect the cultural rights of minorities.

Civil Litigation

Although commentators focus mostly on the use of cultural evidence in criminal proceedings, it is important to consider the role of culture in civil litigation as well.²⁹ Cultural differences figure into a wide array of cases: family law matters, civil rights lawsuits, employment discrimination cases, and tort actions in which cultural issues are implicated. A few examples should demonstrate the significance of culture in civil litigation.

Customary law was important in a civil rights lawsuit centering on the effects of an illegal police search.³⁰ In Spokane, Washington, police suspected that a Gypsy household was in possession of stolen property. The officers mistakenly executed the search earlier than was authorized by the search warrant. They entered the home looking for silverware, jewelry, and cash, and in the process also conducted a body search of several young Roma women. According to Gypsy folk law, the search rendered the women *marime*, or polluted. In response,

the Gypsies filed a civil rights lawsuit for \$40 million. As this was technically an illegal search, the only issue at trial was what the amount of the damages should be. Expert witnesses testified as to whether the women were indeed unmarriageable. The case settled out of court.³¹

Cultural factors are also influential in tort cases. Some plaintiffs allege that, because of their cultural or religious background, the negligent act caused them more trauma than the ordinary person would experience.³² For instance, in 2006, the relatives of a young man (originally from Egypt) killed in a plane crash filed a lawsuit against EgyptAir. The plaintiffs argued that because the deceased was the eldest son, in Egyptian culture there was a strong expectation that he would support his parents in their old age.³³ The judge agreed and awarded the family \$3.6 million in damages.³⁴

In another case, a Hindu man who ordered a bean burrito from Taco Bell was mistakenly given a beef burrito, part of which he consumed. This violated a serious food taboo, and he experienced psychological trauma and felt compelled to travel to India to purify himself in the Ganges. He filed suit seeking damages for the trauma he experienced.³⁵ The case settled out of court before trial for an undisclosed sum. Public opinion, at least as reflected in published letters to the editor, did not indicate much sympathy for the plaintiff's plight. Some thought he should have unrolled the burrito to check the contents if so much was at stake.

A surprising number of lawsuits dealing with the negligent preparation of the dead are brought against mortuaries

and medical examiners. According to the world view of some cultural communities, the dead go to the afterlife in the condition they are at time of death. Hence, if they have been mutilated, they will remain in this state for eternity. As Anglo American law treats the dead as quasi-property who are therefore unable to sue in their own right, the relatives must sue on their behalf for the indignity of an unauthorized autopsy.³⁶

Arguments For and Against Considering Culture

One of the main arguments against the cultural defense is that the introduction of this type of information results in oversimplifying or "essentializing" the culture. If a court admits evidence showing bruises were the result of coining, for example, this may give the false impression that all Southeast Asians rely on this folk remedy.

Although there is a risk that the use of the cultural defense may reinforce stereotypes, this can easily be addressed. Courts and journalists must be careful to emphasize that it is only one person advancing a cultural claim in one particular case; if the presentation of the case is handled with sensitivity, then

Culture conflicts will find their way into court. The Amish sought exemption from Wisconsin's compulsory education on grounds that exposure to public high school would undermine their way of life.

others will be less inclined to generalize from one specific incident. It also may turn out to be the case that the custom is widely practiced (as with coining), so that it would not be a misrepresentation to claim that the technique is commonly found among some groups. The existence of a pattern of behavior is not the same

thing as a stereotype, and one must note that there are always individuals within a cultural community who deviate from the pattern.

Another related argument is that individuals may masquerade as members of groups in order to carry a knife, use a drug, marry multiple women, and so on. Although it is conceivable that someone might pretend to belong to a religious or cultural group, courts can determine whether or not individuals are truly Sikhs, Rastafarians, Mormons, or members of other distinct cultural groups. There is also the argument that individuals may manufacture false claims. Someone might say that he belongs to a church that requires the use of machine guns. Again, while this is theoretically possible, courts should be able to ascertain whether such a religion with these tenets actually exists.

To help courts evaluate cultural claims, I have proposed the use of a cultural defense test:³⁷

1. Is the litigant a member of the ethnic group?
2. Does the group have such a tradition?
3. Was the litigant influenced by the tradition when he or she acted?

If courts use the test, they should be able to identify false claims in criminal and civil cases. The failure to meet any one part is sufficient to call the claim into question.

Assuming we can overcome the practical difficulties with evaluating particular cultural claims once evidence to support them is admitted, one must still ask when the claim should prevail. What if there is evidence that a culture allows honor killings when girls ostensibly behave in ways that families consider unacceptable? If a specific cultural tradition endangers women, children, or members of other vulnerable groups, should it be permitted? I take the position that customs causing irreparable harm should not be allowed. Therefore, while I would always allow the presentation of cultural evidence, the cultural arguments ought to be rejected in cases in which the traditions result in

irreparable harm.

Some may fear that adopting a cultural defense as an official policy would undermine the integrity of the legal system. However, individualized justice requires that the punishment should fit the crime. The cultural argument is designed to tailor the punishment so it is appropriate for the magnitude of the offense committed. A parent who tries to heal a child is less culpable than one who disciplines a child in anger. Insofar as the law permits the consideration of personal attributes, such as whether a person is sane or insane, or an adult or a juvenile, adding cultural identity is merely adding another characteristic for consideration; it is not a radical departure from existing policy to insist upon proportional justice. The introduction of cultural evidence helps judges tailor the sentence appropriately so that the punishment is not disproportionately harsh.

It is worth emphasizing that the mere possibility of invoking a cultural defense in no way commits a judge or jury to accepting the evidence. As when defendants raise an insanity defense, the defense may be rejected. The fact that some may attempt to misuse a defense is not grounds for disallowing it in cases where its use would be legitimate.

There have been arguments in federal cases that the federal sentencing guidelines may preclude the consideration of ethnicity or national origin. As this sentencing policy was designed to prevent racism and xenophobia from influencing sentencing, it would be improper to use it to block all consideration of cultural evidence. Here, the cultural factors are being introduced in order to benefit defendants, so it would make no sense to rely on the policy to exclude the evidence.

Several constitutional grounds for taking cultural evidence into account have been suggested. In addition to the equal protection, due process, and right to effective counsel arguments, there are others based on the First Amendment and international human rights obligations. Cultural evidence may be necessary to guarantee religious freedom, as in the case of the Sikh children kept out of school because of a misperception that the *kirpan*

is a weapon and not a religious symbol. The right to culture is a fundamental right found in Article 27 of the International Covenant on Civil and Political Rights, a treaty ratified by virtually all countries, including the United States. Signatories have an affirmative duty to enforce the right to culture, an obligation that may be interpreted to guarantee litigants the opportunity to explain their cultural motivations in a court of law.³⁸

At the same time, the right to culture must be weighed against other important human rights, such as women's rights, children's rights, and the rights of persons with disabilities. When a custom involves irreparable harm, then cultural evidence should not mitigate a criminal offense, individuals should not win an exemption, and damage awards should not be adjusted. However, when a tradition involves no serious threat of harm, I believe that individuals should have the right to follow their own life plans without interference from the government.

Practical Steps to Manage Cultural Evidence Effectively

The admission of evidence about different cultures and the evaluation of it in the context of specific legal disputes may seem daunting for judges.³⁹ But there are numerous strategies available for coping with the apparent challenges, so the cultural diversity increasingly found in our courtrooms need not be viewed as a problem.

Judges can demonstrate concern for individuals from other cultures in many ways. In the administration of oaths, courts can accommodate witnesses by permitting them to use symbols that are meaningful in their belief systems, such as their holy books, e.g., the Gita (Hindu), the Sunder Gutka (Sikh), and the Koran (Muslim). This practice of substitution, which has been allowed in the United Kingdom for quite some time,⁴⁰ has multiple benefits: It shows respect for cultural differences and it makes it much more likely that the person will feel obligated to tell the truth. Some small accommodations also may be necessary, as for members of religious minorities who may need to wash before taking an oath, or for those

obligated to wear religious headgear; this may entail relaxing the traditional rule that forbids hats in the courtroom.

The use and proper pronunciation of nomenclature also can be beneficial, not to mention the availability of qualified interpreters and listings of expert witnesses on cultural matters.⁴¹ Academics who have devoted their careers to studying the folkways of specific groups are well positioned to advise judges about the validity of cultural claims. Courts might consider appointing their own experts to evaluate the competing claims of experts hired by both sides or in lieu of them.⁴²

The United Kingdom has long relied on the *Judicial Handbook on Ethnic Minority Traditions*, which has chapters outlining different ways of administering oaths, different systems of naming, body language and cross-cultural communication, religions, and family patterns; it also provides a reading list. The American Bar Association (ABA), the American Judicature Society, and other organizations could collaborate to compile a similar manual for judges in the United States.

Diversity on the bench and in the jury box also would be immensely helpful. If the jury in a case involving a cultural tradition included someone from that cultural community, this would probably help ensure understanding and fairness; certainly the use of peremptory challenges to exclude jurors from the same cultural background would be detrimental to the process. In addition, the creation of patterned jury instructions dealing with the evaluation of customs would benefit all involved in litigation.

Judges whose jurisdictions include substantial numbers of ethnic minorities could learn their languages, read about their folklore, and interact with the ethnic community centers that exist in their communities. Expanding this type of community outreach effort would increase public trust in the judiciary.

Judicial education programs could familiarize judges with customs that are likely to be misinterpreted. This type of curriculum could be incorporated in orientation programs for new judges as well as in continuing judicial studies programs.

For example, research attorney Kathleen Sikora and Judge Robert Timlin established an annual course, "Jurisprudence and Culture," for the California Center for Judicial Education and Research. More recently, Judge Delissa Ridgway, a champion of cross-cultural justice, has organized panels on cross-cultural justice for the ABA, the National Association of Women Judges, and other professional groups. Increasingly, legal and judicial organizations ranging from the ABA to the North American South Asian Bar Association (NASABA) have been raising awareness about this subject. In addition to domestic courses on culture, funding also might be allocated to permit judges to take immersion trips to other countries so they can experience diverse cultures directly and enjoy the folklore of other societies. Initiatives such as these would afford greater cross-cultural insight, and the judiciary would reap many benefits.

Conclusion

Cultural issues have come to the courts, in both urban and rural areas, and judges everywhere are faced with startling questions. It is evident that to guarantee the right to a fair trial, equal justice for all, adequate protection of the free exercise of religion for members of all faiths, and key international human rights, courts should develop appropriate ways to take cultural differences into account. I have suggested that cultural evidence to explain cognition and conduct always be treated as admissible and then evaluated according to the cultural defense test I proposed. Unless the conduct in question involves irreparable harm to others, it should be entitled to appropriate weight in the disposition of the case.

Judges have many conflicting responsibilities, and one of these is to protect the rights of minorities. When litigants from minority groups ask that they be permitted to present cultural evidence, courts may grant this request, as there is no rule preventing its consideration. Furthermore, by showing that the legal system is sufficiently flexible to take into account varying explanations as to what

constitutes "reasonable" conduct, courts render cultural acts comprehensible and ensure that the interests of justice are served. ■

Endnotes

1. *Gonzales v. O Centro Espirita Beneficente Uniao Do Vegetal et al.*, 546 U.S. 418 (2006). Of great interest is the Court's conclusion that exceptions do not necessarily undermine the efficacy of a general law. The decision, even if limited in scope, is significant because it acknowledges that it is legitimate to grant exceptions to protect rituals important for the maintenance of group identity, when appropriately evaluated on a case-by-case basis.

2. *Friedman v. State*, 282 N.Y.S.2d 858 (1967); ALISON DUNDES RENTELN, *THE CULTURAL DEFENSE* 119–20 (2004).

3. *State v. Kargar*, 679 A.2d 81 (Me. 1996). For more background, see RENTELN, *supra* note 2, at 58–61; Alison Dundes Renteln, *Raising Cultural Defense*, in *CULTURAL ISSUES IN CRIMINAL DEFENSE* (L. F. Ramirez ed., 3rd ed. 2010), at 453–55. See also *State v. Ramirez*, 2005 WL 367032 (Me. Super. 2005).

4. See RENTELN, *supra* note 2.

5. Alison Dundes Renteln, *The Cultural Defense: Challenging the Monocultural Paradigm*, in *CULTURAL DIVERSITY AND THE LAW: STATE APPROACHES FROM AROUND THE WORLD* (Marie-Claire Foblets, Alison Dundes Renteln & Jean-Francois Gaudreault-Desbiens eds., 2010).

6. Ruth Benedict, *The Science of Custom*, *THE CENTURY MAG.* 117, 641–49 (1929). This is important in the United States, where we tend to assume that what we see with our own eyes must be true. See Alan Dundes, *Seeing Is Believing*, in ALAN DUNDES, *INTERPRETING FOLKLORE* (1980) [hereinafter *INTERPRETING FOLKLORE*].

7. Alison Dundes Renteln, *When Westerners Run Afoul of the Law in Other Countries*, 92 *JUDICATURE* 238–42 (Mar.–Apr. 2009).

8. For a challenge to an Illinois regulation prohibiting the slaughter of horses for exporting the meat to Belgium, France, and Japan based on the Commerce Clause, see *Cavel International, Inc. v. Madigan*, 500 F.3d 551 (7th Cir. 2007). The court held the statute violated neither the interstate nor foreign commerce clauses.

9. Renteln, *supra* note 5, 104–06.

10. For discussion of distinctive aspects of American culture, see the analytic essays by Alan Dundes: *The Number Three in American Culture and Thinking Ahead: A Folkloristic Reflection of the Future Orientation in American Worldview*, both in *INTERPRETING FOLKLORE*, *supra* note 6; see also Alan Dundes, *A Straightforward Study of Lineal Worldview in American Folk Speech*, in *WHAT GOES AROUND COMES AROUND: THE CIRCULATION OF PROVERBS IN CONTEMPORARY LIFE* (Kimberly J. Lau, Peter Tokofsky & Stephen D. Winick eds., 2004), at 171–87.

11. There is growing recognition that cul-

tural issues are important to the judiciary. Amir Efrati, *Cultural Background Gains Traction as a Legal Defense*, WALL ST. J., July 2, 2009, at 1. See the special issue of *Judicature*, edited by Judge Delissa A. Ridgway: *Cross-cultural Justice*, 92:5 JUDICATURE (Mar.–Apr. 2009). Even the way furniture is arranged in courtrooms varies from one society to the next. See John N. Hazard, *Furniture Arrangement as a Symbol of Judicial Roles*, in FOLK LAW: ESSAYS IN THE THEORY AND PRACTICE OF LEX NON SCRIPTA (Alison Dundes Renteln & Alan Dundes eds., 1995).

12. Renteln, *supra* note 5, at 74–76. See also U.S. v. Caseer, 399 F.3d 828 (6th Cir. 2005); U.S. v. Hassan, 542 F.3d 968 (2d Cir. 2008); Sam Howe Verhovek, (Aug. 22, 2006). DEA's Khat Sting Stirs Up Somali "Cultural Clash," L.A. TIMES, Aug. 22, 2006, at A9.

13. Another example is the case of Helen Wu. Here a mother tragically killed her son as part of an attempted parent-child suicide. Although the court of appeal reversed her conviction for murder and ordered on remand that the trial court allow the consideration of cultural evidence, the California Supreme Court, in a terse opinion, reversed again and unfortunately depublished the courageous decision. The use of depublication, a power not statutorily authorized, removed what might have proved to be a helpful precedent. See Renteln, *supra* note 5, at 27.

14. *People v. Aphaylath*, 499 N.Y.S.2d 823 (N.Y. App. Div.), *rev'd*, 502 N.E.2d 998 (N.Y. 1986).

15. 1992 U.S. Dist. LEXIS 6199 (N.D. Cal. 1992).

16. Sometimes courts have rejected specific provocation arguments that relied on cultural evidence but left the door open to future uses of cultural arguments. See *Nguyen v. State*, 505 S.E. 846, 847–48 (Ga. App. 1998), *rev'd*, 505 S.E.2d 907 (Ga. 1999); *Nguyen v. State*, 520 S.E.2d 907 (Ga. 1999).

17. If it were up to me, I would abolish the provocation defense because it mitigates punishment when there has been loss of life, clearly an irreparable harm. If the defense exists, however, it is unfair to limit its use to members of the dominant culture.

18. *Kwai Fan Mak v. Blodgett*, 754 F. Supp. 1490 (W.D. Wash. 1991), 970 F.2d 614 (9th Cir. 1992), *cert. denied*, 507 U.S. 951 (1993); *People v. Siripongs*, 754 P.2d 1306 (1988), *cert. denied*, 488 U.S. 1019 (1993).

19. See the discussion of the *Krasniqi* case in Renteln, *supra* note 5, at 59, 244.

20. See, e.g., Joseph Morton, (May 14, 2002).

Second Coining Case Is Dropped; Asian Dad Hopes Case Helps Others, OMAHA WORLD HERALD, May 14, 2002, at 1B.

21. CHILD, or Children's Health is a Legal Duty, documents the existence of religious exemptions and their impact. See <http://www.childrenshealthcare.org/>.

22. Alison Dundes Renteln, *A Justification of the Cultural Defense as Partial Excuse*, 2 S. CAL. REV. L. & WOMEN'S STUD. 437 (1993).

23. Despite protestation to the contrary, there is no question that cultural information is relevant to the cases at hand.

24. Renteln, *supra* note 5, ch. 6, *Animals*. For the Peking duck example, see *id.* at 105–06. For more detail about the Korean rice cakes, see Alison Dundes Renteln & Rene Valladares, *The Importance of Culture for the Justice System*, 92:4 JUDICATURE 198–99 (Mar.–Apr. 2009). See also Ching-Ching Ni, *Food Fight Waged Over Asian Noodles*, L.A. TIMES, Oct. 2, 2009, at A3.

25. Cheema v. Thompson, No. 94-16097, 1994 U.S. App. LEXIS 24160 (9th Cir. Sept. 2, 1994) (unpublished decision), 67 F.3d 883 (9th Cir. 1995); Alison Dundes Renteln (2004). *Visual Religious Symbols and the Law*, 47 AM. BEHAV. SCIENTIST 1573.

26. One commentator remarks: "England's experiences prove that a country concerned with public safety and the use of dangerous weapons can make a narrowly tailored exception to accommodate those who wear kirpans. Indeed, England is more safety-conscious than the United States, yet has been able to carve out an exception, without fretting over

non-sensical concerns such as whether someone dressed up as a Sikh really is a Sikh." Amarjeet S. Bhachu, *A Shield for Swords*, 34 AM. CRIM. L. REV. 197, 218 (1996).

27. *Multani v. Commission Scolaire Marguerite-Bourgeoys*, [2006] 1 S.C.R. 256.

28. *Wisconsin v. Yoder*, 406 U.S. 205 (1972). Some attribute the Amish success in this case to their romanticized public image.

29. See Alison Dundes Renteln, *The Influence of Culture on the Determination of Damages: How Cultural Relativism Affects the Analysis of Trauma*, in LEGAL PRACTICE AND CULTURAL DIVERSITY (Ralph Grillo et al. eds., 2009), at 199–218.

30. Renteln, *supra* note 5, at 119–21. The thought-provoking film *American Gypsy* provides an overview, background, and narrative account of the case. Marks v. Clarke, 103 F.3d 1012 (9th Cir. 1996); B. Morlin, *Expert Says Raids Were 'Catastrophic' to Gypsy Families*, SPOKESMAN-REVIEW, Sept. 17, 1992, at 2.

31. In another case, an English court awarded damages to an Iranian girl whose fingers were bitten off by a chimpanzee because this would affect her marriage prospects. *Bakhtiari v. The Zoological Society of London*, 141 NEW L.J. 55 (1991); see also S. POULTER, *ETHNICITY, LAW, AND HUMAN RIGHTS: THE ENGLISH EXPERIENCE* 64 (1998). Poulter notes the sexist nature of the decision; the disability would affect her marriage prospects. For an analysis of cultural relativity as it relates to disability, see Alison Dundes Renteln, *Cross-Cultural Perceptions of Disability: Policy Implications of Divergent Views*, in DIFFERENT BUT EQUAL: THE RIGHTS OF PEOPLE WITH INTELLECTUAL DISABILITIES (S. Herr, L. Gostin & H. Koh eds., 2003).

32. There are other cases in which cultural factors were introduced. See, e.g., *In re Air Crash Disaster Near New Orleans*, 789 F.2d 1092 (5th Cir. 1986); *Saavedra v. Korean Air Lines*, 93 F.3d 547 (9th Cir. 1996). In Canada, judges have considered filial piety in assessing damage awards in lawsuits concerning the death of a son or daughter in families of Chinese and Vietnamese ancestry. See, e.g., *To v. Toronto (City) Bd. of Educ.*, [2001], 55 O.R. (3d) 641 (C.A.); *Lian v. Money*, [1994] 8 W.W.R. 463 (B.C.S.C.), *rev'd*, [1996] 4 W.W.R. 263 (B.C.C.A.); *Lai v. Gill*, [1980] 1 S.C.R. 431, [1868] B.C.J. No. 1988, [1978] B.C.J. No. 300. I am indebted to Professor Jennifer A. Chandler, Law Faculty, University of Ottawa, for bringing these cases to my attention.

33. *In re Air Crash near Nantucket Island, Massachusetts v. EgyptAir*, 462 F. Supp. 2d 350 (E.D.N.Y. 2006). As EgyptAir did not contest liability, the only issue was the amount of the damages. *Id.* at 362.

34. John Marzulli, (2006, December 8). *Air Crash Victim's Kin Win \$3.6M Award*, N.Y. DAILY NEWS, Dec. 8, 2006, <http://www.nydailynews.com>. The attorney commented on the influence of the cultural argument: "The judge very sensitively appreciated the role of the firstborn son in an Egyptian family."

35. Renteln, *supra* note 5, at 107.

36. *Id.* ch. 9, *The Dead*. See also Alison Dundes Renteln, *The Rights of the Dead: Autopsies and Corpse Mismanagement in Multicultural Societies*, 100:4 S. ATL. Q. 1005–27 (2001).

37. Renteln, *supra* note 5, at 207. See also Alison Dundes Renteln, *The Use and Abuse of the Cultural Defense*, 20:1 CAN. J. L. & SOC'Y 47–67 (2005), reprinted in MULTICULTURAL JURISPRUDENCE: COMPARATIVE PERSPECTIVES ON THE CULTURAL DEFENSE (Marie Claire Foblets & Alison Dundes Renteln eds., 2009).

38. Renteln, *supra* note 5. See also Alison Dundes Renteln, *Cultural Rights*, in INTERNATIONAL ENCYCLOPEDIA OF SOCIAL AND BEHAVIORAL SCIENCES (Paul Baltes & Neil Smelser eds., 2002); Alison Dundes Renteln, *In Defense of Culture in the Courtroom*, in ENGAGING CULTURAL DIFFERENCES: THE MULTICULTURAL CHALLENGE IN LIBERAL DEMOCRACIES (Richard Shweder, Martha Minow & Hazel Rose-Markus

When litigants from minority groups ask to present cultural evidence, courts may grant this request.

eds., 2002), at 194–215.

39. Those who have studied anthropology, folklore, comparative religion, political culture, and related fields are likely to feel more comfortable analyzing cultural traditions central to other ways of life.

40. The Judicial Studies Board produced the *HANDBOOK ON ETHNIC MINORITY ISSUES* (1994) that delineates in chapter 2 various types of oaths and how courts can accommodate special requests for them. “Whilst the Act prescribes the procedure for a Christian or a Jew, it merely states that the oath shall be administered ‘in any lawful manner’ for a person who is neither a Christian nor a Jew.” *Id.* at 2.4. For more current information, see JUDICIAL STUDIES BOARD, *EQUAL TREATMENT BENCH BOOK* (2004), at ch. 3, <http://www.jsboard.co.uk/etac/etbb/index.htm>. California law also permits this.

41. The ABA could establish a website listing expert witnesses on various ethnic groups and specific customs. Information for the database could be obtained by consulting various professional associations.

42. Some fear that expert witnesses who are “hired guns” may be pressured to misrepresent aspects of the cultural groups whose members are on trial. While that is certainly possible, codes of professional ethics guide experts when providing forensic testimony in these circumstances.

TAB 33

**Managing Domestic Violence Cases –
Effects of DV on Court Professionals
and Family Members Affected by
Violence: What Research Does and
Doesn't Tell Us**

Dr. Kathleen West

**Managing Domestic Violence Cases-
Effects of DV on Court Professionals &
Family Members Affected by Violence:
What Research Does & Doesn't Tell Us**

18th Annual AB1058 Child Support Training Conference
Center for Families, Children & the Courts
Operations and Programs Division
Judicial Council of California

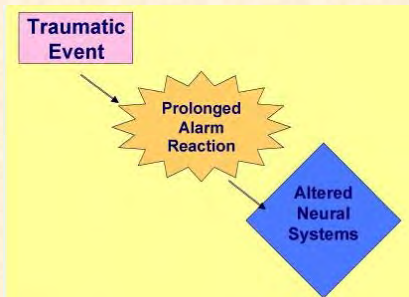
October 3, 2014
Los Angeles, CA

*Kathleen West, DrPH
UCLA Dept of Social Welfare
USC Dept of Preventive Medicine*

Session Objectives

1. Understand how direct and indirect traumatic exposures affect us psycho-biologically
2. Identify our own responses to violence-affected families that our work exposes us to
-- Consider emotional, physical, and behavioral responses
3. Understand how these responses affect you, your work with clients, colleagues/work environment, your own relationships, your community, and your worldview
4. Become aware of and begin to use some tools and strategies to minimize adverse impact of exposure

Trauma can be induced by an experience that leads to abnormally intense, prolonged stress response



Trauma can be experienced directly/primary or secondarily – hearing about it or bearing witness to its effects -

Understanding Dysregulation

Dr Daniel Siegel and Hand Model of the Brain

<http://www.youtube.com/watch?v=DD-lfP1FBfk>

Traumatic Stressor Definition

A traumatic stressor is an event that is:

- Experienced, Witnessed, or Exposed to that involves:
- Actual or threatened death, serious injury, or threat to physical integrity of self, or to others

And is "emotionally overwhelming"

A traumatic stressor is more than just stress;

A traumatic stressor elicits intense feelings (located in the brain and accompanied by brain changes that may be transient or may become more permanent)

In children, this may be expressed as agitation or disorganized behavior

Trauma-Related Definitions

- **Acute Trauma:** Single, time-limited traumatic event exposure (rape, car accident, etc.)
- **Chronic Trauma:** Multiple, possibly varied traumatic event exposure (war exposure, ongoing physical abuse, etc.)
- **Complex Trauma:** Term is used to discuss both exposure to chronic trauma & impact of trauma
- **Resiliency:** A pattern of positive adaptation in the context of past or present adversity; *it is a fallacy that children are inherently resilient and that infants and young children cannot experience traumatic events*

CWC/NCTSN, 2008

Three Levels of the CNS Involved in Extreme Stress and Trauma

1 Autonomic Nervous System (in the medulla oblongata - brainstem) coordinates functioning of organs of the body

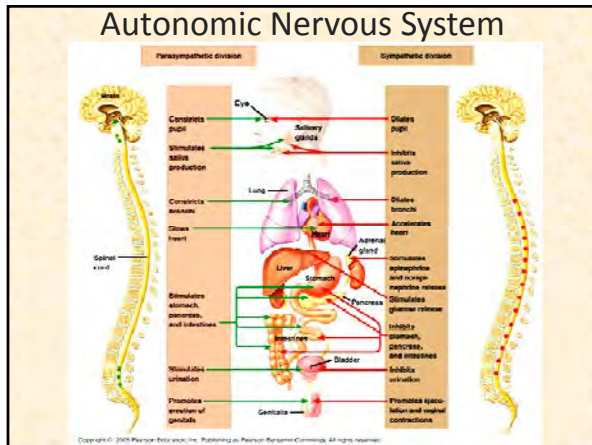
- Sympathetic side: "fight or flight"
- Parasympathetic side: "feed or breed"

2 Amygdala

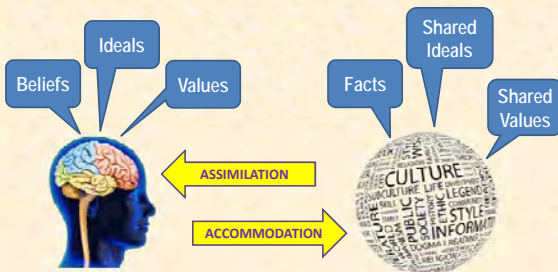
- Threat memory system
- Threat alarm system

3 Hippocampus and prefrontal cortex (PFC)

- Self-control system
- Declarative memory storage and recall

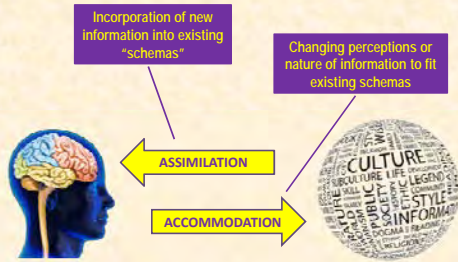


Usually (under "normal conditions"), we Learn from our Experience of the World



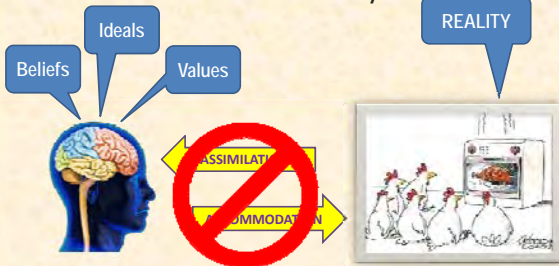
Capt (ret) William Nash, MD

Assimilation and Accommodation: Two Ways to Resolve Differences



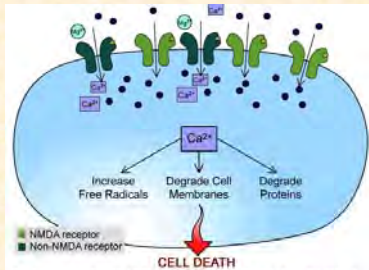
Both ASSIMILATION and ACCOMMODATION occur very slowly, over weeks, months or years
Capt (ret) William Nash, MD

What Happens when neither accommodation or assimilation can occur? When the Chasm Is Too Great Between Beliefs and Reality?



Capt (ret) William Nash, MD

Glutamate Neurons in Hippocampus and Prefrontal Cortex Can Die From Stress



As glutamate continually binds to non-NDA receptors and allows the entry of positive ions, the cell's voltage rises. Ultimately, the voltage reaches a certain value that causes the Mg^{2+} ion to be removed from the opening of the NMDA receptor. Ca^{2+} flows through the open NMDA receptor and causes various activities to occur that lead to cell death.

Capt (ret) William Nash, MD

Trauma is toxic to our brains

- Brain Grey Matter contains most of the brain's neuronal cell bodies. The grey matter includes regions of the brain involved in muscle control, and sensory perception such as seeing and hearing, memory, emotions, speech, decision making, and self-control. While 20% of all oxygen taken in by the body goes to the brain, 95% of that goes specifically into the grey matter.
- Trauma exposure in and of itself appears to be sufficient to cause structural brain changes – for example to grey matter -regardless of PTSD development (Ahmed, F., Spottiswoode, B, Carey, P., Stein, D. Neuropsychobiology 2012;66:174-184)



Brains Can be Damaged

from primary & 2ndary exposure to traumatic stressors
—extending to those who hear about traumatic experiences

The structure and functioning of our CNS has limits to insults – these limit capacities for coping & all other behavior

Mental disorders are the result of losses of integrity in the CNS, rather than maladaptive coping CHOICES

- PTSD
- Major Depressive Disorder
- Generalized Anxiety Disorder
- Psychotic Disorders

Capt (ret) William Nash, MD
Additional citations at close

DSM-V PTSD Revision Summary

- Overall, the symptoms of PTSD are mostly the same in DSM-5 as compared to DSM-IV. A few key alterations include:
- The 3 clusters of DSM-IV symptoms are divided into 4 clusters in DSM-5: intrusion, avoidance, negative alterations in cognitions and mood, and alterations in arousal and reactivity. DSM-IV Criterion C, avoidance and numbing, was separated into two criteria: Criteria C (avoidance) and Criteria D (negative alterations in cognitions and mood). The rationale for this change was based upon factor analytic studies, and **now requires at least one avoidance symptom for PTSD diagnosis.**
- **Three new symptoms were added:**
 - Criteria D (negative alterations in cognitions and mood): **1) persistent and distorted blame of self or others; and 2) persistent negative emotional state**
 - Criteria E (alterations in arousal and reactivity): **3) reckless or destructive behavior**

CONTINUED...

DSM-V PTSD Revision Summary

- Other symptoms were revised to clarify symptom expression.
- **Criterion A2 (requiring fear, helplessness or horror happen right after the trauma) was REMOVED in DSM-5. Research suggests that Criterion A2 did not improve diagnostic accuracy (2).**
- A clinical subtype "with dissociative symptoms" was added. The [dissociative subtype](#) is applicable to individuals who meet the criteria for PTSD and experience additional depersonalization and derealization symptoms (3).
- Separate diagnostic criteria are included for [children ages 6 years or younger](#) (preschool subtype) (4).

NOT PTSD, but Related Terms

- **Compassion fatigue** - depletion & deterioration of ability to empathically respond
- **Secondary traumatic stress** - parallel symptoms to PTSD
- **Vicarious trauma** - changes in one's worldview, cognitive scheme, and view of oneself (1990)
- **Burnout** – sense of being overburdened, powerless, and ultimately unable to continue job – not limited to vicarious trauma issues; high prevalence in social services jobs

Overarching theme: These terms relate to traumatic stress reactions, psychological, and sometimes physical distress **from exposure to other people's traumatic experiences; generally exposure through hearing about the primary trauma**

List of some Trauma Exposure Responses

- Helpless, hopeless, uncreative
- Angry and cynical
- Inability to empathize or sympathize
- Sense of threat, fear, persecution; can develop into belief that world is unsafe
- Dissociation
- Hyper-vigilance
- Inability to deal with complexity, & minimizing
- Chronic fatigue, pain, ill-health

Trauma-informed approach to practice in any organization/system

Involves 3 elements:

- 1) *Realizing* the prevalence of trauma
- 2) *Recognizing* how trauma affects all individuals involved with the program, organization, or system, including its own workforce
- 3) *Responding* by putting this knowledge into practice

– post-traumatic GROWTH is also a reality –

Other Forms of Trauma

- Traumatic Grief
- Traumatic Loss

The Social Ecology of Trauma

"Social Bonds and Posttraumatic Stress Disorder" by Charuvastra & Cloitre, 2008

- Human-caused events create greater risk for PTSD than naturally occurring events
- Social support perceptions *Before* and *After* traumatic event(s) are important factor in risk of developing PTSD & other anxiety/depressive disorders
- Social support & trust is a very effective emotion regulator – especially with regard to fear and safety
- Both risk* of experiencing debilitating trauma *and recovery/interpretation* of such events are dependent on social networks (families and institutions including courts, schools, faith-based settings, etc)

Understanding the Role of Traumatic Exposure

- In individuals (*primary, secondary & tertiary effects*)
- In families (intergenerationally)
- In groups
- In our workplaces
- In societies (*tertiary*)

- Implications for how we interact with clients, patients, and how we manage program settings to maximize the sense of safety and minimize trauma reminders
- Our clients are directly affected by their trauma, influencing their ability to cope
- Court employees are also affected... but how?

Variability in Experience of Trauma

- Traumatic experience is filtered through cognitive and emotional processes before it can be appraised as an extreme threat
- Individual differences (in many domains: genetics, experience, social context), means that different people have **different thresholds for what is experienced as traumatic**
- Risk and Protective Factors lead to vulnerabilities and protection to developing clinical symptoms after exposure to extremely stressful situations
- Events such as rape, torture, genocide, and severe **war zone stress** are experienced as and recognized as traumatic events *nearly* universally

National Center on PTSD

Factors in Post-Traumatic Stress Symptom and Disorder Development & Recovery

- Ability to Bounce Back (resiliency)
- Pre-quel – Pre-existing Life Experiences
- Cumulative issues: intensity, frequency, duration (chronicity/acuity, respite, etc)
- Coping skills: acquired, learned, modeled, internalized
- Ability, access, and willingness to seek mental/behavioral health help (ignorance, stigma, fear, shame)

EVIDENCE-BASED

Cognitive-Behavioral INTERVENTIONS to reduce anxiety, increase coping, & build resilience

- **Psychoeducation:** for individuals & family/support system
- **Cognitive processing** skills; eg: problem solving
- **Personal empowerment** training (eg: goal setting)
- **Emotional Regulation Skills** (eg: use of “feeling thermometer”)
- **Communication** (assertive “I” based)
- Trauma **narrative** and/or Family Timeline (meaning development)
- **Trauma and Loss Reminder** Management

Unfortunately, research does NOT tell us what strategies are effective for reducing vicarious trauma

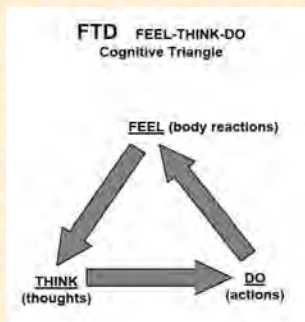
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|---|---|
| <p><i>Some findings:</i></p> <ul style="list-style-type: none"> - Child welfare workers- 46.7% - Consistently higher scores among those working in areas of IPV/DV, sexual violence/rape, child abuse, & torture - Not necessarily higher scores among those with own histories of UNLESS they were in therapy (unresolved) - Older/more experienced personnel had more maladaptive beliefs and disrupted worldview | <p><i>Some more findings:</i></p> <ul style="list-style-type: none"> - Most supervisors believed supervision as an effective support; direct service (DS) staff who agreed, used supervision more often - No difference in trauma scores between managers, supervisors & other DS staff - Across all roles, most believed leisure was useful, but no association between time allotted for leisure & trauma symptoms |
|---|---|

Bober, T. Regehr, C. , Brief Treatment & Crisis Intervention, 12/30/05

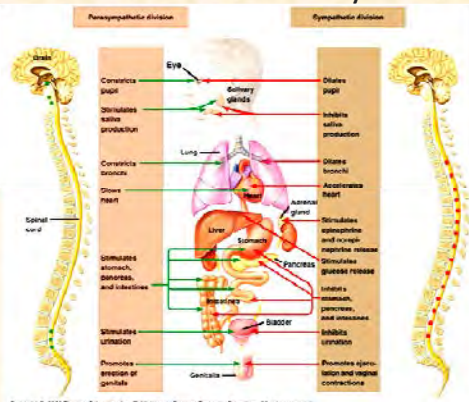
Reflective Supervision

- Reflective consultation and supervision provides opportunities to integrate knowledge, experiences, and feelings to support clear workplace goals
 - Structured as part of professional development, it allows direct service and supervisors to consider broader and deeper ranges of approach and strategies for implementing practice
 - Encourages review of case/client risk factors and evidence-based supports for management
 - Provides opportunities for ongoing professional development in work setting
 - Provides support needed by practitioners exposed to intense emotional content and life experiences of their clients
 - Structured debriefing uses case review to encourage learning and help prevent burnout
 - Essential behaviors of successful Reflective Supervision are under study
- Gatti, Watson, & Cox. Reflective Consultation as an Ongoing Embedded Professional Development Model

So... turning to body health & healing
Integrated?... Or dis-integrated?



Autonomic Nervous System



**Feelings/Physical Reactions in body
originate in brain (ANS)**

- | | |
|--|--|
| Parasympathetic: | Sympathetic: |
| -saliva production | -inhibits saliva |
| -constricts bronchi | -dilates bronchi |
| -slowed heart | - accelerates heart |
| -stimulates stomach,
pancreas, intestines | -stimulates stomach,
pancreas, intestines |
| - stimulates urination | |

Heart racing, sweaty palms, dry mouth, heart stopping, faint or dizzy, shortness of breath, knot in stomach, acrid taste in mouth, eyes tearing, ears burning, throat choking, body trembling, face flushing

**10 things to do each day to help develop resilience
and ability to work with care, energy, and compassion**

1. Get enough sleep
2. Get enough good food to eat
3. Do some light exercise
4. Vary the work that you do
5. Do something pleasurable
6. Focus on what you did well
7. Learn from a mistake
8. Share a joke
9. Relax, pray, or meditate
10. Support a colleague

www.proqol.org

SWITCHING ON & OFF

Empathy helps you do this work. It is essential to take good care of your feelings and thoughts by monitoring how you use them.

Turning off feelings when you go on duty, and on again when you go off duty can be an effective coping strategy. Protection is offered by switching off and support can be received when resting and switched on.

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SWITCHING ON & OFF

1. Switching is a conscious process. Talk to yourself as you switch.
2. Use images that make you feel safe and protected (switch off) and connected and cared for (switch on) to help you switch.
3. Find rituals that help you switch as you start and stop work.
4. Breathe slowly and deeply to calm yourself when starting a difficult, tough job.

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SWITCHING ON & OFF

- After you switch back "on",
- breathe deeply and attend to yourself,
 - focus on what you did well,
 - support a colleague,
 - relax, meditate, pray
 - do something pleasurable
 - notice any upsetting thoughts and stay current by processing them with a supervisor

Resources

- <http://www.joyfulheartfoundation.org/about-us/welcome>
- www.proqol.org
- *Resilience after 9/11: Multimodal neuroimaging evidence for stress-related change in the healthy adult brain.* *NeuroImage*. Vol 40, Issue 2, April 2008, pp 788-795.
- **Preventing vicarious traumatization of mental health therapists: Identifying protective practices.* *Psychotherapy: Theory, Research, Practice, Training*, Vol 46(2), June 2009, pp 203-219.

Questions?

kathleenmwest3@gmail.com

*may have limited applicability in other than therapist-client relationships

CARING FOR YOURSELF IN THE FACE OF DIFFICULT WORK

Our work can be overwhelming. Our challenge is to maintain our resilience so that we can keep doing the work with care, energy, and compassion.

10 things to do for each day

1. Get enough sleep.
2. Get enough to eat.
3. Do some light exercise.
4. Vary the work that you do.
5. Do something pleasurable.
6. Focus on what you did well.
7. Learn from your mistakes.
8. Share a private joke.
9. Pray, meditate or relax.
10. Support a colleague.

For more information see your supervisor and visit www.psychosocial.org or www.proqol.org

Beth Hudnall Stamm, Ph.D., *ProQOL.org* and *Idaho State University*
Craig Higson-Smith, M.A., *South African Institute of Traumatic Stress*
Amy C. Hudnall, M.A., *ProQOL.org* and *Appalachian State University*
Henry E. Stamm, Ph.D., *ProQOL.org*

SWITCHING ON AND OFF

It is your empathy for others helps you do this work. It is vital to take good care of your thoughts and feelings by monitoring how you use them. Resilient workers know how to turn their feelings off when they go on duty, but on again when they go off duty. This is not denial; it is a coping strategy. It is a way they get maximum protection while working (switched off) and maximum support while resting (switched on).

How to become better at switching on and off

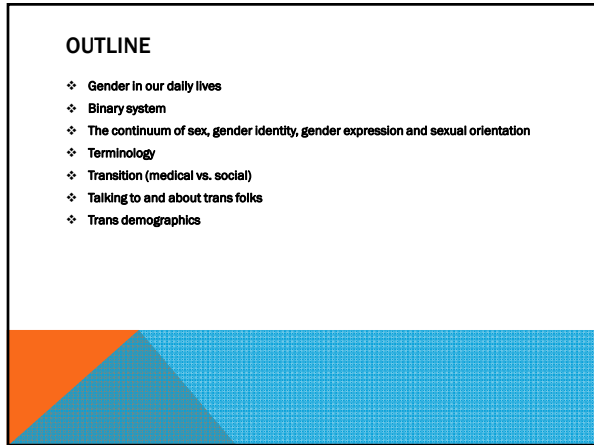
1. Switching is a conscious process. Talk to yourself as you switch.
2. Use images that make you feel safe and protected (switch off) or connected and cared for (switch on) to help you switch.
3. Find rituals that help you switch as you start and stop work.
4. Breathe slowly and deeply to calm yourself when starting a tough job.

TAB 34

Transgender, Gender Identity, and Gender Roles: Overview for Family Court Programs/Services

*Prof. Todd Brower, Ms. Amira
Hasenbush, Dr. Jody Herman &
Ms. Susan Landon*

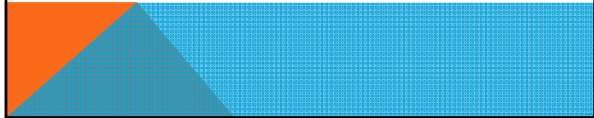




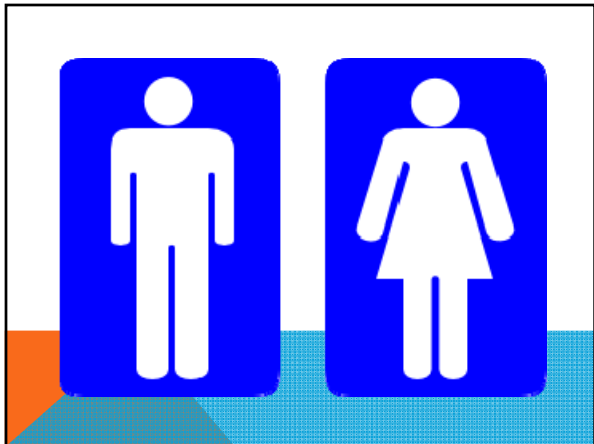


GENDER IS PERVASIVE

Most people don't really think about gender







BINARY SYSTEM

This binary system provides a structure for our society

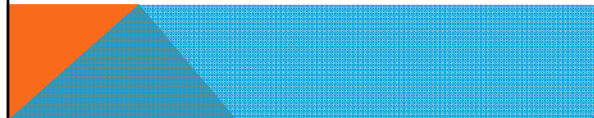
Penis = Boy

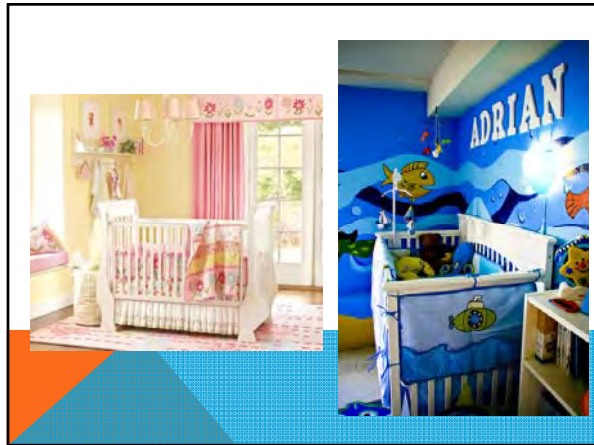
Vagina = Girl

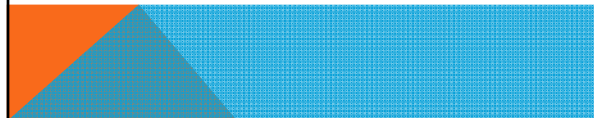
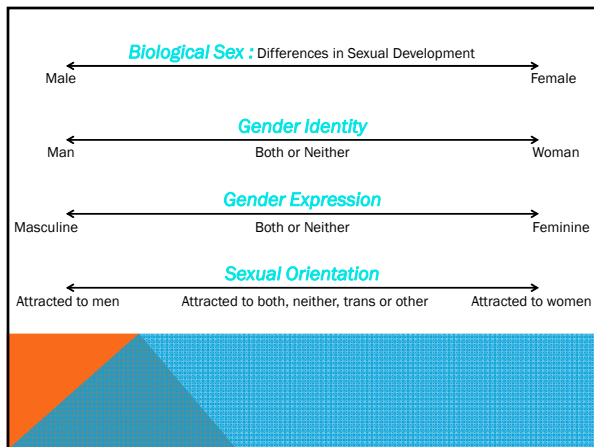
Assigned at Birth

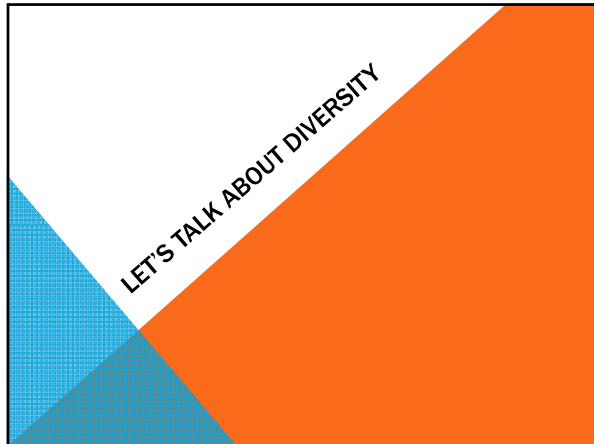
Sometimes this definition begins before the child is born

Most parents want to know, there are showers to celebrate, names are chosen

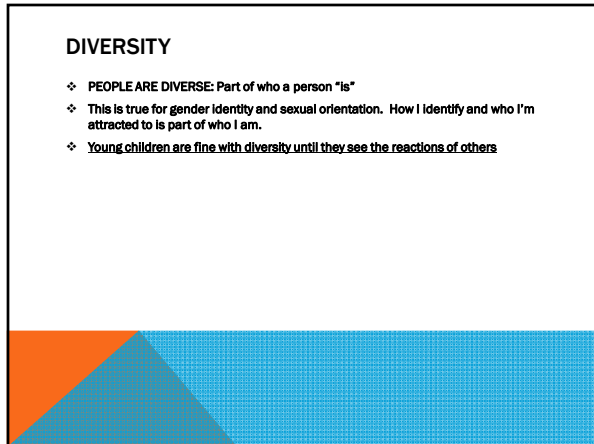


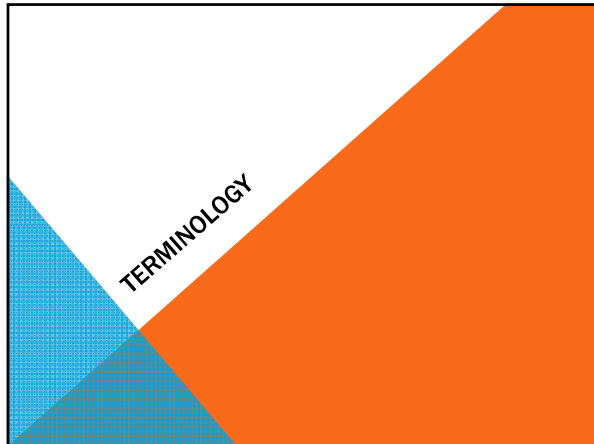


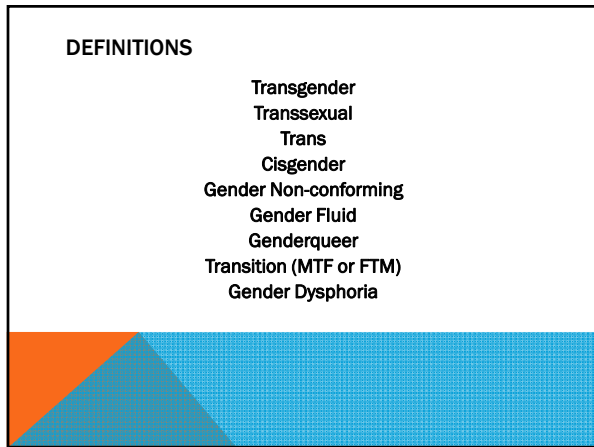


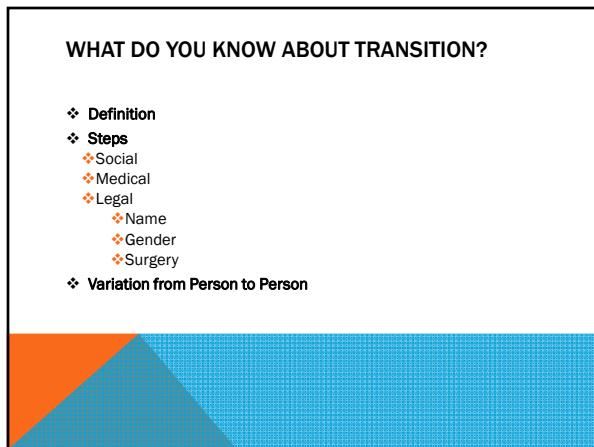














CIS PRIVILEGES/QUESTION EQUIVALENTS

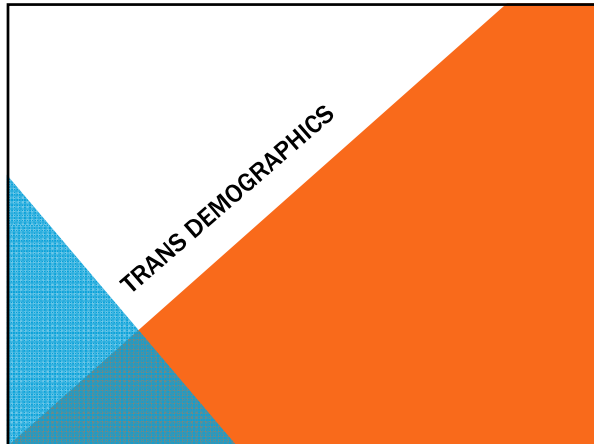
- ❖ **Names and Pronouns**
 - ❖ Respect how people identify
 - ❖ If you are having a hard time switching to the correct names/pronouns, don't make a huge deal about it if you make a mistake - just move on and keep working on it.

Trans	Cis/Non-trans
No, what's your REAL name? I mean, the one you were born with?	Asking an adoptive parent, where are your child's REAL parents?

CIS PRIVILEGES/QUESTION EQUIVALENTS

- ❖ **Disclosure of trans status**
 - ❖ It is an individual's choice whether or not to disclose their trans status or history
 - ❖ Trans people who present as or are perceived as the gender identity with which they identify are simply existing as their authentic selves. They are not trying to hide their "true self." If trans people are perceived by others as the gender they identify with, do not call this "passing" because that implies they are hiding something.
- ❖ **Medical transition**
 - ❖ People's medical history or status is private.

Trans	Cis/Non-trans
Have you had "the surgery"?	Can you describe your genitals for me?



HOW MANY TRANS PEOPLE ARE THERE?

0.3% of the adult U.S. Population
697,529

How Many People are Lesbian, Gay, Bisexual, and Transgender?
- Gary Gates

Injustice at Every Turn:
A Report of the National Transgender Discrimination Survey



What are their gender identities?
Where do trans people live?

GENDER DIVERSITY IN THE NTDS



GEOGRAPHIC DISTRIBUTION OF NTDS SAMPLE AND U.S. POPULATION

Trans People in the NCTE/Task Force Sample



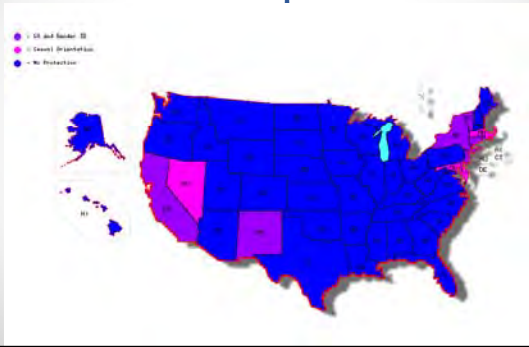
Population Density in the United States



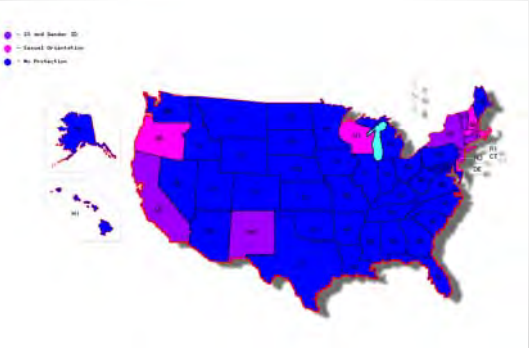
Legal Implications for Transgender Parents and Children

Amira Hasenbush
Jim Kepner Law and Policy Fellow
The Williams Institute

Non-Discrimination Laws in Adoption



Non-Discrimination Laws in Foster Care



Basics

- Certain Issues May Come up When Working with Trans Clients
 - Name change
 - Gender change
 - Need to be aware of these for background checks, filling out paperwork accurately, etc.

Working with Transgender Parents

...

Transgender People Can Become Parents in a Variety of Ways

- Pre transition:
 - Biologically
 - Through adoption
 - Through ART
- Post transition:
 - Through Adoption
 - Through ART using their own gametes
 - Through ART using donor gametes
 - In rare cases, biologically
- Note: Not all transgender people medically transition. However, this will be the focus here for the sake of simplicity

Establishing the Parent Child Relationship

- The parent and child relationship...may be established by proof of having given birth to the child, or...by proof of adoption (Cal.Fam.Code § 7610)
- Once a parent child relationship has been established, it can only be severed through termination procedures

Presumptive Parents

- ...the child of a wife cohabiting with her **husband**, who is not impotent or sterile, is conclusively presumed to be a child of the marriage. (Cal.Fam.Code § 7540)
- ...the child of a woman and a man executing a declaration of paternity...is conclusively presumed to be the man's child. (Cal.Fam.Code § 7576)
- A person is presumed to be the natural parent of a child if...
 - The presumed parent and the child's natural mother are **married** to each other and the child is born during the marriage, or within 300 days after the marriage is terminated...
 - **Before** the child's birth, the presumed parent and the child's natural mother have **attempted to marry** each other...in apparent compliance with law, although the attempted marriage is or could be declared invalid...
 - **After** the child's birth, the presumed parent and the child's natural mother have **married, or attempted to marry**, and either of the following is true:
 - With his or her consent, the presumed parent is named as the child's parent on the child's birth certificate.
 - The presumed parent is obligated to support the child under a written voluntary promise or by court order.
 - The presumed parent receives the child into his or her home and openly holds out the child as his or her natural child. (Cal.Fam.Code § 7611)
- If, under the supervision of a licensed physician and surgeon and with the consent of her **spouse**, a woman conceives through assisted reproduction with semen donated by a man not her husband, the spouse is treated in law as if he or she were the natural parent of a child thereby conceived... (Cal.Fam.Code § 7613)

Trans Marriage Importance

- Many trans parents may rely on marital presumptions to establish their parental rights
- CA recognizes both same sex and different sex marriages
 - However, other states do not – this should be considered if there may be jurisdiction in another state (custody across state lines or potential to move to another state in the future). Non-recognition of a marriage could lead to a threat to parental rights.

Recognition of Trans Marriage

- Remember, in CA, ALL trans marriages should be valid – recognition may only be an issue in states that do not recognize same-sex marriages
- Recognition of marriage depends on several factors
 - Was the union entered into pre- or post-transition?
 - Has the trans spouse legally changed their gender?
 - Has the trans spouse undergone sex reassignment surgery?
 - Does the state recognize the gender/sex change?
 - Do they recognize the gender change for the purpose of marriage?

Did the trans partner transition before or after the marriage?	Was the couple considered same-sex before or after the transition?	Legal Outcome
After	After	No courts have invalidated these marriages in the U.S.
After	Before	No cases have addressed
Before	Before	At least Florida, Ohio and Kansas courts all have refused to recognize these marriages. Arizona recently recognized one of these marriages.
Before	After	No cases have addressed, but this was legally executed in Texas before they changed their law.

A Birth Certificate is Not Always Enough

- Nor is a legal presumption – what if you move out of state?
- Best bet = a judgment of parentage or a judgment of adoption
 - Full Faith and Credit Clause applies most strongly to judicial decisions, not administrative/ministerial acts like providing a birth certificate or a marriage license
- Some adoption procedures are only available to married people – this may put the transgender parent’s parental rights at risk if the underlying marriage is later challenged

Consequences of Non-Recognition as a Legal Parent

- Custody
- Visitation
- Decision-making rights
- Health insurance
- Survivor benefits
- Inheritance

Options to Protect a Transgender Parent's Parental Rights

- Written authorization from legal parent to make decisions regarding child's health and/or education
- Making the trans parent the legal guardian of the child in the event of the second parent's death/incapacity
- Will that makes child legatee, regardless of parental status
- Prenup or postnup that spouse will not challenge validity of marriage or validity of parental rights
- Formal co-parenting agreements that require mediation (particularly in states and circumstances that do not allow adoption or parenting orders)

Custody

- Upon initial determination of custody (if two legal parents) = best interest of child standard
- Custody modification = material and substantial change in circumstances AND a modification is necessary to serve the child's best interests

The Impact of a Parent's Transition on Custody

- Like sex, race or sexual orientation, a parent's gender identity does not determine their fitness as parent
- Often hard to disentangle negative effects of parental conflict from any effects of the transition by itself
 - Generally, where there is support around a parent's transition, the effects on children are minimal - may depend on the age of the child and other environmental factors

What's Happening in the Courts?

- Christian v. Randall – Colorado Court of Appeals (1973)
 - Ex-husband petitioned for custody after ex-wife transitioned to male and married a woman. Trial court granted the custody change.
 - Court of appeals held that trial court abused its discretion. The kids and home life were happy and well-adjusted - no reason to change custody.
- In re Custody of T.J. – Court of Appeals of Minnesota (1988)
 - Appellate court upheld trial court's grant of sole custody to dad with GID (who had chosen not to transition) - said it had not had a negative impact on their child, and mom had been unable to maintain stable housing or career objectives since the divorce. "Respondent's condition does not automatically disqualify him from having a relationship with his child."

What's Happening in the Courts?

- Daly v. Daly – Supreme Court of Nevada (1986)
 - Terminated trans parent's parental rights, even though she offered to forgo visitation.
- In re Marriage of Sterling Simmons – Appellate Court of Illinois (2005)
 - Court would not allow trans parent to assert parental rights b/c they did not recognize his transition, and therefore held that the underlying marriage was an invalid same sex marriage.
 - The trans father had medically transitioned 25 years earlier (at age 21) through hormones, but not surgery
 - The trans parent's name and signature were in the ART contract and on the birth certificate, but the court would not honor any of it as binding.

What's Happening in the Courts?

- **Magnuson v. Magnuson – Court of Appeals of Washington (2007)**
 - Guardian ad litem found that the trans parent was the more nurturing of the two parents
 - Trial court awarded custody to cismom because of unknown impact of gender confirming surgery
 - Dissent says surgery has no definite impact on children – should not be enough to be the determining factor
- **Tipsword v. Tipsword – Court of Appeals of Arizona (2013)**
 - Trial court gave custody to the cismom and ordered supervised visitation for the trans parent
 - Appellate court affirms custody for cismom because she is the better/primary parent AND because transmom's transition may have an effect on the kids. Court overturns the lower court's order for supervised visitation and remands for unsupervised visitation.

Working with Transgender Children

...

Primary Standard: Best Interests of Child

- Medical and psychological experts with experience in gender identity can help determine whether a child has gender dysphoria
- Trans children can be happy and well adjusted
 - Rejection of their self-identity can be traumatic
- When dealing with feuding parents, the stress of parental conflict may be a more important factor impacting the child than their gender identity
- It is important for parents to consult experts in deciding how to help their child

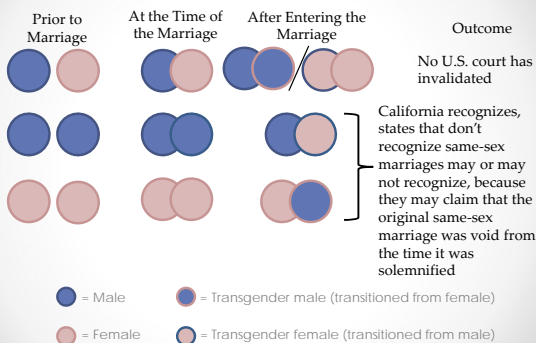
What's Happening in the Courts?

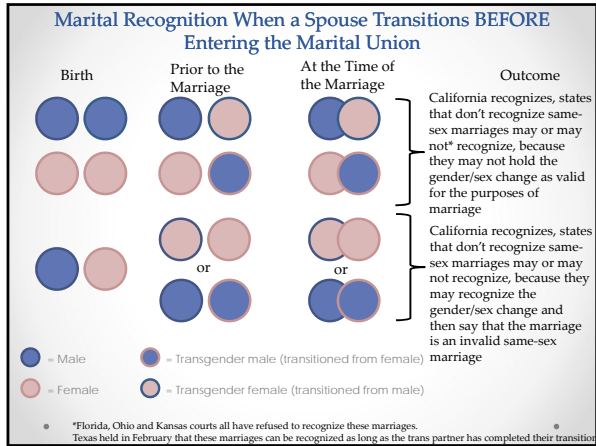
- VERY few cases (3)
- Parent who supports transition has always lost custody
- For a parent to support transition and maintain custody, transition would have to be completed slowly, carefully and with substantial documentation of parent following the recommendations of experts
- Best to get both parents on board – otherwise, likely to lose custody, even if the child does have GID
 - Courts often said that it was quite possible that the child may end up having GID when they are older, but they just don't know right now

What's Happening in the Courts?

- Shrader v. Spain – Court of Appeals of Texas (1998)
 - Nicholas, the parties' son, was diagnosed with gender identity disorder, a serious mental condition. The recommended treatment was for Nicholas to spend more time with his father, and to lessen his dependence on his mother. Dr. Doyle, Nicholas's psychologist, testified that he had not made as much progress in therapy as she had hoped, and that Nicholas's home environment would be important to his therapy. Dr. Otis, a psychologist who evaluated Husband, Wife, and both children, testified that Wife was unable to admit that Nicholas had a problem, and that Nicholas needed to separate his identity from his mother's. The trial court was within its discretion in deciding that, given Nicholas's gender identity disorder, it was in the children's best interest to live with their father.
- Smith v. Smith – Court of Appeals of Ohio (2007)
 - Mom thought child was trans, dad disagreed & petitioned for change in custody when Mom moved to a new town to enroll the child in a new school under the different name and gender. Mom never got an official diagnosis, but rather came to conclusions based on online research and communication with support groups. Court found that the experts disagreed on whether or not the child had GID. The trial court changed custody to the father, because on balance, they thought it was not GID. Affirmed on appeal.
- Williams v. Frymire – Court of Appeals of Kentucky (2012)
 - Mom thought child was trans, dad disagreed and petitioned for change in custody. Mom received diagnoses from therapists, but it appeared that she was dressing the child as a boy and giving the child a boy haircut before the diagnoses. Mom had a history of reporting concerns about the child's hearing, vision, speech and a suspicion of Asperger's. The court expert did not think there was GID and the trial court granted residential custody to Dad. Court of Appeals affirmed.

Marital Recognition When a Spouse Transitions AFTER Entering the Marital Union





Transgender Discrimination and Public Policy

Injustice at Every Turn: A Report of the National Transgender Discrimination Survey



**What are trans people's
experiences in the U.S.?**

NTDS METHODOLOGY

n=6,456

Sept. 2008-Feb. 2009

Internet and Paper

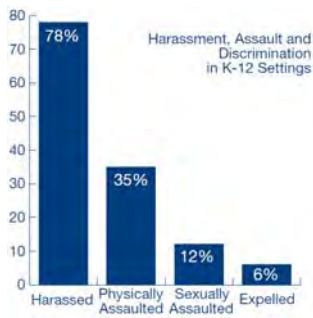
All 50 states and U.S. Territories

NTDS FINDINGS

Discrimination was pervasive across all areas of life and all demographics

- Education
- Employment
- Housing
- Public Accommodations
- ID Documents
- Police/Incarceration
- Health
- Family

EDUCATION



EMPLOYMENT

- 90% reported harassment, mistreatment, and discrimination in employment, or hid who they are to avoid those things
- 26% reported being fired due to anti-transgender bias

PUBLIC ACCOMMODATION

- 53% verbally harassed or disrespected in public place
- Discrimination and disrespect across all types of public accommodations (retail stores, hotels, restaurants, etc.)

INTERACTIONS WITH COURTS & AGENCIES

- Judges and Court Officials
 - 12% denied equal treatment
 - 12% verbally harassed
- Government Agency /Official
 - 22% denied equal treatment
 - 22% verbally harassed

ID DOCUMENTS

Of those who have transitioned...

- 59% had updated their driver's license
- 50% had updated Social Security record
- 26% had updated Passport
- 24% had updated birth certificate

POLICE AND INCARCERATION

POLICE

- 22% reported harassment by police
- 6% reported physical assault
- 2% reported sexual assault
- 46% were uncomfortable seeking police assistance

INCARCERATION

- 7% were arrested/held due to police bias
- 16% were incarcerated for “any reason”
- Of those who were incarcerated,
 - 16% were physically assaulted in jail/prison
 - 15% were sexually assaulted in jail/prison

SUICIDE

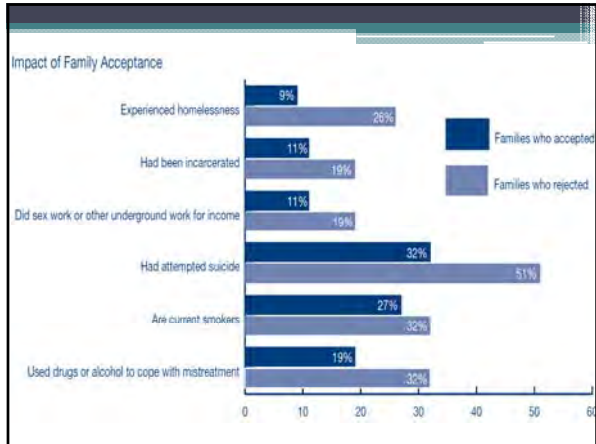
41% reported they had ever attempted suicide

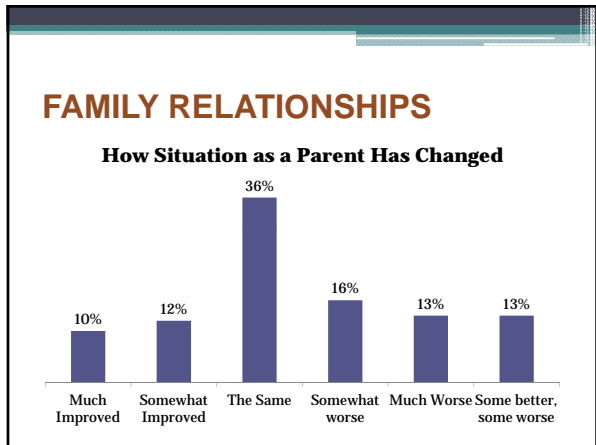
This vastly exceeds U.S. and U.S. LGB rates:

- 4.6% of the overall U.S. population report a lifetime suicide attempt (Kessler, Borges and Walters, 1999; Nock & Kessler, 2006)
- 10-20% of lesbian, gay and bisexual adults report ever attempting suicide (Paul et al., 2002).

FAMILY ACCEPTANCE

- 57% experienced significant family rejection
- Family acceptance had a protective effect for negative outcomes





FAMILY RELATIONSHIPS

- 45% reported their relationship with spouse or partner ended because of transgender status
- 38% reported being parents and 18% reported having at least one dependent child
 - 29% of those with children whose relationship ended reported their ex had limited or stopped their relationship with their children because they are transgender
 - 13% said a court/judge had limited or stopped their relationship with their children because they are transgender

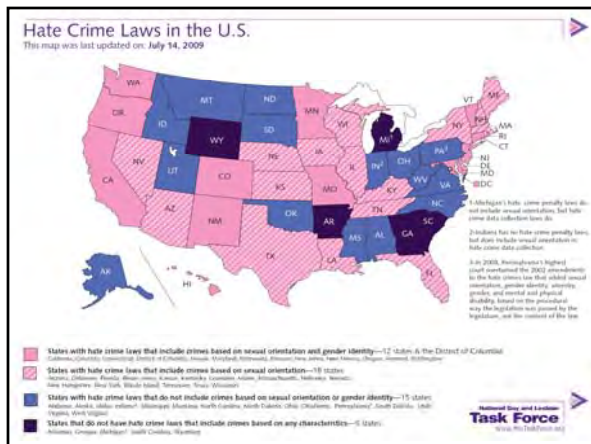
BARRIERS TO ADOPTION

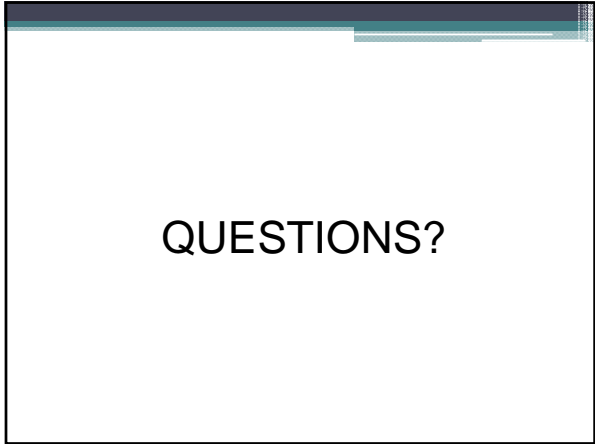
“My partner and I are in the process of adopting a child whom we’ve been fostering for the past two years. We’ve been engaged in a legal battle since November of 2007, when a social worker decided (primarily, we’ve been told by a number of sources, because of my transgender status) to try to remove her from our home.”

PUBLIC POLICY

What is the current public policy situation for trans people?

- Hate crimes protections
- Anti-discrimination protections
- Employer-level policies for transition
- Access to health insurance for transition
- Marriage and parenting
- Policies to change ID docs
- Other areas





Findings of the

NATIONAL TRANSGENDER DISCRIMINATION SURVEY

by the National Center for Transgender Equality and the National Gay and Lesbian Task Force

California Results

There were 906 respondents from California



Workplace Discrimination

Rates of discrimination were alarming in California, indicating widespread discrimination based on gender identity/expression:

- 78% reported experiencing harassment or mistreatment on the job
- 28% lost a job
- 25% were denied a promotion
- 50% were not hired

Harassment and Discrimination at School

Those who expressed a transgender identity or gender non-conformity while in grades K-12 reported alarming rates of harassment (75%), physical assault (31%) and sexual violence (13%)

Harassment was so severe that it led 19% to leave a school in K-12 settings or leave higher education

Economic Insecurity

Likely due to employment discrimination and discrimination in school, survey respondents experienced poverty and unemployment at higher rates than the general population:

- 19% of respondents had a household income of \$10,000 or less, compared to 4% of the general population,¹ which is almost 5 times the rate of poverty
- 19% were unemployed compared to 7% in the nation at the time of the survey²

Housing Discrimination and Instability

Survey respondents experienced blatant housing discrimination, as well as housing instability, much of which appears to stem from the challenges they face in employment.

- 15% were evicted
- 20% were denied a home/apartment
- 27% had become homeless because of their gender identity/expression
- 57% had to find temporary space to stay/sleep
- 28% had to move back in with family or friends
- 22% reported owning their home compared to 67% of the general U.S. population³

¹ U.S. Census Bureau, "Current Population Survey," Annual Social and Economic Supplement (Washington, DC: GPO, 2008).

² Seven percent (7%) is the rounded weighted average unemployment rate for the general population during the six months the survey was in the field, based on which month questionnaires were completed. For monthly rates, see National Conference of State Legislatures. See U.S. Dept. of Labor, Bureau of Labor Statistics, "National Unemployment Summary: Unemployment Increases to 9.8% for November," (Washington, DC: GPO, 2010): <http://www.ncsl.org/?tabid=13307>.

Harassment and Discrimination in Accommodations and Services

56% were verbally harassed or disrespected in a place of public accommodation or service, including hotels, restaurants, buses, airports and government agencies.

21% were denied equal treatment by a government agency or official

22% were denied equal treatment or harassed by judges or court officials.

34% of those who have interacted with police reported harassment by officers

47% reported being uncomfortable seeking police assistance

Health Care Discrimination and Health Outcomes

15% were refused medical care due to their gender identity/expression

7.6% were HIV positive, compared to the general population rate of 0.6%⁴

28% postponed needed medical care, when they were sick or injured, due to discrimination

Only 36% of the respondents had employer-based health insurance, compared to 59% of the general U.S. population at the time of the survey.⁵

39% reported attempting suicide at some point in their life, 24 times the rate of the general population of 1.6%⁶

Note: In the full report of the National Transgender Discrimination Survey, we found that discrimination was pervasive throughout the entire sample, yet the combination of anti-transgender bias and persistent, structural racism was especially devastating. One of our most important findings was that people of color in general fared worse than white participants across the board, with African American transgender respondents faring far worse than all others in nearly every area examined. Due to the sample size of respondents from this state, we were unable to break these state results down by race/ethnicity without creating small sample size problems. However, we expect that people of color in this state would exhibit the same national pattern.

“Injustice at Every Turn: A Report of the National Transgender Discrimination Survey,” which provides the national results, is available at www.thetaskforce.org, www.transequality.org, and www.endtransdiscrimination.org.



³ U.S. Department of Housing and Urban Development, “U.S. Housing Market Conditions, 2nd Quarter, 2009” (Washington, DC: GPO, 2009): http://www.huduser.org/portal/periodicals/ushmc/summer09/nat_data.pdf.

⁴ United Nations Programme on HIV/AIDS (UNAIDS) and World Health Organization (WHO), “2007 AIDS Epidemic Update” (2007): http://data.unaids.org/pub/EPISlides/2007/2007_epiupdate_en.pdf.

⁵ DeNavas-Walt, Carmen, Bernadette D. Proctor, and Jessica C. Smith, U.S. Census Bureau, Current Population Reports, P60-236, *Income, Poverty, and Health Insurance Coverage in the United States: 2008*, U.S. Government Printing Office, Washington, DC (2009): <http://www.census.gov/prod/2009pubs/p60-236.pdf>.

⁶ “U.S.A. Suicide: 2002 Official Final Data,” prepared for the American Association of Suicidology by John L. McIntosh, Ph.D. Official data source: Kochanek, K.D., Murphy, S.L., Anderson, R.N., & Scott, C. (2004). Deaths: Final data for 2002. National Vital Statistics Reports, 53 (5). Hyattsville, MD: National Center for Health Statistics DHHS Publication No. (PHS) 2005-1120. Population figures source: table I, p.108. of the National Center for Health Statistics (Kochanek et al., 2004), see http://www.sprc.org/library/event_kit/2002datagv1.pdf

TAB 35

**Modern Families: Implications of
Multiple Parentage for Custody, Child
Support, Benefits**

*Ms. Diane Goodman &
Mr. Michael L. Wright*

Modern Families: Implications of Multiple Parentage for Custody, Child Support and Benefits

Diane M. Goodman
Law & Mediation Office of Diane M. Goodman, APC

Michael Wright
Center for Families, Children & the Courts

Family Code 7611(d) Parents

- Must hold out and receive the child into one's home
- In re Nicholas H. (2002) 28 C4th 56
- Presumption applies to mothers
- Competing presumed parents In re Jesusa V. (2004) 32 C4th 588



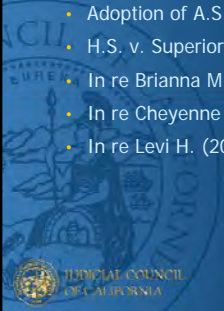
Different Purposes/Different Courts

- Dependency Court
- Child Support Court
- Family Law Court
- Voluntary Declaration of Parentage



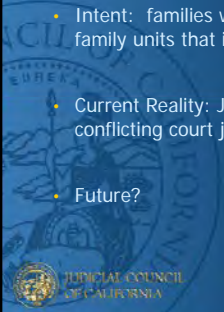
Conflicting Rulings

- Adoption of A.S. (2012) 212 CA4th 188
- H.S. v. Superior Court (2010) 183 CA4th 1502
- In re Brianna M. (2013) 220 CA4th 1025
- In re Cheyenne B. (2013) 203 CA4th 1361
- In re Levi H. (2011) 187 CA4th 1279



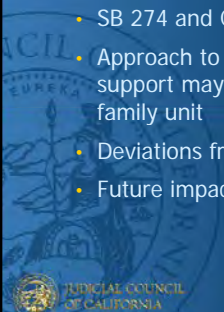
How reality vs. Intent of Multiple Parentage Law Interacts

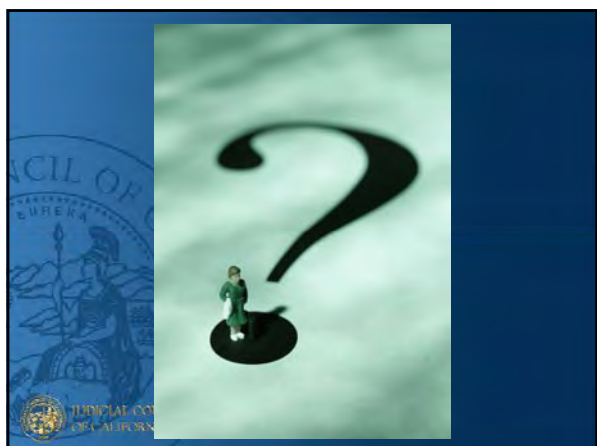
- Intent: families who intentionally use ART to create family units that include more than two parents
- Current Reality: Judges being confronted with conflicting court judgments/findings
- Future?



Child Support and Benefits in Multiple Parent Case

- SB 274 and Child Support
- Approach to calculating guideline child support may vary depending on type of family unit
- Deviations from guideline support
- Future impact on benefits?





Date of Hearing: June 18, 2013

ASSEMBLY COMMITTEE ON JUDICIARY
Bob Wieckowski, Chair
SB 274 (Leno) – As Amended: May 14, 2013

SENATE VOTE: 28-11

SUBJECT: FAMILY LAW: PARENTAGE

KEY ISSUE: SHOULD A COURT BE PERMITTED TO FIND THAT A CHILD HAS MORE THAN TWO LEGAL PARENTS IN THE VERY LIMITED INSTANCE WHERE MORE THAN TWO INDIVIDUALS MEET THE EXISTING STANDARD TO BE THE CHILD'S LEGAL PARENTS AND NOT DOING SO WOULD BE DETRIMENTAL TO THE CHILD?

FISCAL EFFECT: As currently in print this bill is keyed fiscal.

SYNOPSIS

Legal parenthood can be established in a number of different ways, and as a result, in limited situations it is possible for more than two people to claim legal parentage of a child. The Family Code provides that where two or more presumptions of paternity arise that are in conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls. A recent Court of Appeal court held that when more than two people meet the legal definition of a parent, a court may recognize only two of them as legal parents. (In re M.C. (2011) 195 Cal.App.4th 197.) This bill, sponsored by Children's Advocacy Institute and National Center for Lesbian Rights, instead provides that where there are more than two people who have established claims or presumptions of parentage under existing California law, the court may recognize more than two parents if the court finds that recognizing only two parents would be detrimental to the child. This bill is very similar to, though more narrowly tailored than, last year's SB 1476 (Leno), which passed the Legislature, but was vetoed by the Governor because of concern of possible unintended consequences. The governor requested additional time to consider all the implications of the bill.

This bill is supported by the California Judges Association, LGBT organizations, children's advocacy groups and some family law practitioners, who write that the bill "protects children from harm by preserving the bonds between children and their parents, rather than preventing courts from recognizing that children may sometimes have more than two parents where severing one of these bonds would be detrimental to the child. Recognition of legal parenthood also gives the child the right to support from all her parents, as well as access to health insurance, benefits, and inheritance rights." Other family law practitioners, while supportive of the bill's intentions, oppose it, arguing that it could harm children who may be pawns in their parents' feuds: "It does not take much to understand how much worse such conflict would be for the child with three adults, let alone four or more. Our focus is the child. It appears the bill's focus is really the adults who feel they should be able to acquire the label/title of "parent." . . . SB 274 proposes what is arguable a virtual 'sea change' in our culture as to the role of a parent and the resulting expectations." However, this bill, by its very terms, focuses specifically on the interests of the child, by allowing for recognition of more than two parents only if a court finds that recognizing only two parents would be detrimental to the child.

SUMMARY: Permits a court, in appropriate cases, to find that a child has more than two legal parents. Specifically, this bill:

- 1) Provides that nothing in the Uniform Parentage Act (UPA) should be construed to preclude a finding that a child has a parent-child relationship with more than two parents. Provides that every reference to parent in statutes, regulations, rules, policies and case law shall be interpreted to apply to every parent of a child who is found to have more than two parents.
- 2) Unless a court orders otherwise, provides that a presumption of paternity is rebutted by a judgment establishing paternity by another person.
- 3) Provides that, in an appropriate action, a court may find that more than two persons with a claim for parentage are parents if the court finds that recognizing only two parents would be detrimental to the child. In determining detriment, requires the court to consider all relevant factors, including the harm of removing the child from a stable placement with a parent who has fulfilled the child's physical and psychological needs for a substantial period of time. Provides that a finding of detriment to the child does not require a finding of unfitness of any person.
- 4) Provides that in any case where a child has more than two legal parents, the court shall allocate custody and visitation among the parents based on the best interest of the child, including, but not limited to addressing the child's need for continuity and stability by preserving established patterns of care and emotional bonds. States that the court may order that not all parents share legal or physical custody of the child, if the court finds that would not be in the child's best interest, as provided.
- 5) Provides that the statewide, uniform child support guideline applies in any case in which a child has more than two legal parents, and the court shall apply the guideline by dividing the child support obligations among the parents based on income and the amount of time each parent spends with the child, as provided. Permits the presumption that the guideline is correct to be rebutted if the court finds that application of the guideline would be unjust or inappropriate due to special circumstances, as provided. In that case, requires the court to divide the child support obligations among the parents in a manner that is just and appropriate based on income and time spent with the child.
- 6) Provides that # 5), above, shall not be construed to require reprogramming of the California Child Support Automation System, a change in the child support guideline, or a revision in any Department of Child Support Services' regulations, policies, procedures, forms or training materials.
- 7) Permits the termination of parental duties and responsibilities for existing parents of a child to be adopted to be waived by agreement of the existing parents and the prospective adoptive parents.
- 8) Makes the following legislative findings:
 - a) Most children have two parents, but in rare cases children may have more than two people who are that child's parent in every way. Separating a child from a parent has a

devastating psychological and emotional impact on the child and courts must protect children from this harm.

- b) The purposes of the bill is to abrogate the holding in *In re M.C.* (2011) 195 Cal.App.4th 197, insofar as that case held that when more than two people claim parentage under the UPA, courts are prohibited from recognizing more than two of these people as parents.
- c) This bill does not change the requirements for establishing parentage under the UPA.
- d) It is the intent of the Legislature that this bill only apply in rare cases where a child truly has more than two parents.

EXISTING LAW:

- 1) Establishes the California UPA. Defines a parent and child relationship as the legal relationship existing between a child and the child's natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties and obligations. The term includes the mother and child relationship and the father and child relationship. (Family Code Section 7600 *et seq.* Unless stated otherwise, all further statutory references are to that code.)
- 2) Provides that the child of a wife who is living with her husband, who is not sterile, is conclusively presumed to be a child of the marriage, except as provided. (Sections 7540-41.)
- 3) Defines a man as a presumed father if, among other things: (a) He was married to the child's mother and the child was born within 300 days of the marriage; (b) he attempted to marry the child's mother; or (c) he holds the child out as his own. Requires that these presumptions be applied gender neutrally. (Section 7611; *Elisa B. V. Superior Court* (2005) 37 Cal.4th 108.)
- 4) If two or more paternity presumptions conflict with one another, the presumption that is founded on the weightier considerations of policy and logic controls. Provides that a presumption of parentage under Section 7611 is rebutted by a judgment establishing paternity of the child by another person. (Section 7612.)
- 5) Provides that paternity may be established by voluntary declaration for unmarried parents, or through a civil action brought by any interested party, as specified. (Sections 7630, 7570 *et seq.*)
- 6) Provides that domestic partners have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations and duties under law as are granted to and imposed on spouses. (Section 297.5.)
- 7) Provides that a parent and child relationship between the child and the mother may be established by proof of her having given birth to the child. Provides that a parent and child relationship between the child and an adopted parent may be established by proof of adoption. (Section 7610.)
- 8) Outlines factors the court shall consider in determining the best interest of the child, including, among others, the health, safety, and welfare of the child; any history of abuse by one parent or any other person seeking custody against another child, the other parent, a spouse or significant other; the nature and amount of contact the child has with both parents; and any other factors the court finds relevant. (Section 3011.)

- 9) Provides that custody of a child should be granted in the following order of preference: to parents jointly; to either parent taking into consideration which parent is more likely to allow the child frequent and continuing contact with the noncustodial parent; to the person in whose home the child has been living in a wholesome and stable environment. Allows the court and the family the widest discretion to choose a parenting plan that is in the best interest of the child. (Section 3040.)
- 10) Provides a formula for calculating child support, and provides a rebuttable presumption that the formula results in a correct amount. This presumption can be rebutted by, among other factors, the fact that application of the formula would be unjust or inappropriate due to special circumstances. (Section 4053 *et seq.*)

COMMENTS: Legal parenthood can be established in a number of different ways. A man is conclusively presumed to be the father of a child if he was married to, or in a registered domestic partnership with, and cohabitating with the child's mother, except as specified. A man who receives a child into his home and holds the child out as his own is also presumed a father of the child. A man who signs a voluntary declaration of paternity is presumed to be the legal father of a child. While the statutory scheme uses the word "father," the presumptions must be applied gender neutrally, so they apply to mothers as well, *see, e.g., Elisa B. V. Superior Court* (2005) 37 Cal.4th 108, and the Committee's AB 1403 (Judiciary), now with the Senate Judiciary Committee, does just that.

Because of the presumptions of paternity available under law, it is possible, in very limited situations, for more than two people to claim parentage of a child. The Family Code provides that where two or more presumptions arise that are in conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls. In 2011 a Court of Appeal held that when two or more people meet the legal definition of a parent, a court may recognize only two of them as legal parents. (*In re M.C.* (2011) 195 Cal.App.4th 197.)

This bill instead provides that where there are more than two people who have established claims or presumptions of parentage under existing California law, the court may recognize more than two parents, but only if it would be detrimental to the child not to do so. In support of this bill, the author writes:

SB 274 protects children from harm by preserving the bonds between children and their parents, rather than preventing courts from recognizing that children may sometimes have more than two parents where severing one of these bonds would be detrimental to the child. Recognition of legal parenthood also gives the child the right to support from all her parents, as well as access to health insurance, benefits, and inheritance rights. Recognizing these families can also reduce the state's financial responsibility for the child because all parents have the obligation to support the child. In dependency actions, if a child has more than two parents, legal acknowledgment of more than two of those parents may keep the child out of foster care by giving the court more options for placement. . . .

Preventing courts from ever recognizing that a child has more than two parents can have disastrous emotional, psychological, and financial consequences for a child, who may be

separated from one or both of the parents he or she has always known. . . .

SB 274 . . . gives courts the flexibility they need to protect the interests of children who truly have more than two parents. It only applies if there are more than two people who have claims to legal parentage under existing law *and* the court finds that not recognizing more than two parents would be detrimental to the child. The bill would not apply to a boyfriend or girlfriend of a parent who has been in the child's life for a short time, or to a relative caregiver who provides periodic care. Rather, it only provides that where there are more than two people who have an otherwise valid legal claim to parentage under *existing* California parentage law, the court can, but is not required to, recognize more than two people as legal parents of the child if it would otherwise be detrimental to the child.

Establishing Parentage Under the Uniform Parentage Act: The UPA was passed in 1975 to extend the parent and child relationship equally to every child and to every parent, regardless of the marital status of the parents. The UPA defines "parent and child relationship" as "the legal relationship existing between a child and the child's natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations." The term includes both mother and child, and father and child relationships. Insofar as practical, the UPA is to be interpreted to apply to both father-child and mother-child relationships.

In 2005, the California Supreme Court found a parent-child relationship in a trio of cases involving same-sex parents, one with a genetic link to the child and two without. In one case, a woman provided the ova to the other woman who gave birth to twins who were to be raised in the women's joint home. (*K.M. v. E.G.* (2005) 37 Cal.4th 130.) In another case, the court established parentage for a woman who had neither genetic link nor given birth to twins, but who received the children into her home and held them out as her own. (*Elisa B. v. Superior Court* (2005) 37 Cal.4th 108.) In the third case, a couple had secured a judgment that they were the only legal parents of a child who was born to and had a genetic link to one of the women. The court estopped that woman from disavowing the validity of the judgment to which she had stipulated, thus recognizing the parentage of the other woman who had neither given birth to, nor had a genetic link to, the child. (*Kristine H. v. Lisa R.* (2005) 37 Cal.4th 156.) None of these cases involved the possibility of more than two parents.

A Court of Appeals Refused to Recognize More Than Two Parents, but Invited the Legislature to Do So. The need for greater flexibility in the number of legal parents was clarified in *In re M.C.* (2011) 195 Cal.App.4th 197. In that case, a juvenile court found that three parents were a child's presumed parents – the biological mother, the child's presumed mother, by virtue of her marriage to the biological mother, and the biological father, who conceived the child with the biological mother during a premarital relationship. The child was in foster care as a result of the biological mother's involvement in the stabbing of the child's presumed mother. The juvenile court recognized all three parents, hoping to place the child with the father, but the court of appeals reversed, potentially depriving the child of a loving father, writing that such recognition lies, more appropriately, with the Legislature:

M.C. and the amicus curiae invite us to employ this case as a vehicle to highlight the inadequacies of the antiquated UPA to accommodate rapidly changing familial structures and the need to recognize and accommodate novel parenting relationships. We agree these issues are critical, and California's existing statutory framework is ill

equipped to resolve them. But even if the extremely unusual factual circumstances of this unfortunate case made it an appropriate action in which to take on such complex practical, political and social matters, we would not be free to do so. Such important policy determinations, which will profoundly impact families, children and society, are best left to the Legislature. (*Id.* at 214.)

Other States, and Even California, Have Recognized More Than Two Parents in Specific Situations: Currently, several states have recognized that there are situations where a child can have more than two people in his or her life with the rights and responsibilities of parents. In 2007 a Pennsylvania court upheld an award of partial custody to a biological mother's same-sex partner, with partial custody to the biological mother and sperm donor, who had been involved as a parent since infancy. The court held that all three had an obligation to support the child. (*Jacob v. Shultz-Jacob* 923 A.2d 473 (Pa. Super. 2007).) A Maine court found that a child may have a non-biological, de facto parent with parental rights and responsibilities in addition to two biological parents. (*C.E.W. v. D.E.W.* (Me. 2004) 845 A.2d 1146, 1149-51.) A Delaware statute recognizes three types of legal parents: a natural parent, an adoptive parent, and a de facto parent. Under Delaware code, a de facto parent is a person who, with the support and consent of the child's parent or parents, fostered a parent-like relationship with the child, exercised parental responsibility for the child, and acted in a parental role for a length of time sufficient to have established a bonded and dependent relationship with the child that is parental in nature. (Del. Title 13, Sec. 8-201.) Similarly, the District of Columbia recognizes that a de facto parent has the same rights and responsibilities of parents. (DC ST Sec. 16-831.01.) Finally, Louisiana specifically recognizes situations of dual paternity, thus giving parental responsibilities to three parents, the mother, the presumed father based on marriage and the biological father. (*See Smith v. Cole* (1989 La.) 553 So.2d 847.) Under the Full Faith and Credit Clause, California is required to honor the acts and judicial proceedings of the courts of these other states. As a result, California courts will eventually have to recognize court orders with more than two parents.

Additionally, California law now recognizes tribal customary adoption, which can permit a child to have four parents. In an aim to protect both Native American children and their interests in having tribal membership and legal connections to the tribal community, tribal customary adoption provides that parents' rights need not be terminated upon adoption of the child. Accordingly, a Native American child may have up to four legal parents — two natural parents and two adoptive ones.

While cases involving more than two parents are, almost by definition, complicated and will require courts to balance many competing interests, courts must already do so today. This bill simply expands this, in very narrow situations when necessary to prevent detriment to the child.

The opposition raises concern about the lack of an upper limit on the number of parents permitted under the bill, but the number of cases affected by this bill – and the number of parents that may be recognized in any particular case – is extremely limited by the provisions of the bill itself. The Association of Family Conciliation Courts, one of the bill's opponents, is concerned that, while the bill has been revised to "narrow and limit the number [of parents that a child may have] to some degree[,] there is nothing in the statute which would prohibit the courts from allowing more than three 'parents' for a child, whether at the same time or at separate periods in the child's life." This bill, however, does not change existing law as to who may be a presumed parent. To be found a parent under the bill, a person must qualify as a presumed parent under existing law. Most stepparents and boyfriends or girlfriends will not meet the requirement that

they not only take the child into their home, but also hold the child out as their own. That second part requires telling friends, family and officials that the child is their own – not their step-child, not their girlfriend’s child, but their own child.

Additionally, existing law anticipates the situation where two or more presumptions of paternity conflict under the Family Code, and provides the following guidance: the presumption which on the facts is founded on the weightier considerations of policy and logic controls. Courts therefore, under current law, apply a critical analysis to situations where more than two presumptions exist. This bill does not limit that analysis. It simply allows courts the flexibility to find that more than one presumed parent can be a parent.

The bill is even more limiting. It is not enough to qualify as a presumed parent. Last year's SB 1476 would have authorized a court to find more than two parents if “required to serve the best interests of the child.” Stakeholders, however, raised the concern that it may not be clear to courts whether to apply a standard “best interests” analysis or the heightened, “as required to serve the best interests” analysis. This bill now requires that when more than two people have a claim to parentage the court may only grant parentage to more than two parents if the court finds that recognizing only two parents would be detrimental to the child. In determining detriment, the court is required to consider all relevant factors, including the harm of removing the child from a stable placement with a parent who has fulfilled the child's physical and psychological needs for a substantial period of time. No other parentage determination considers the child’s needs. The other determinations are all based on the presumed parent’s actions. This bill puts the interest of the child above all else.

Lastly, the bill states the clear legislative intent that it be applied only in rare cases where a child truly has more than two parents. This clear statement of legislative intent will provide guidance to courts regarding the limited reach of the bill and the very small number of cases that will meet the legal requirements for more than two parents.

Bill Addresses Family Law Concerns: While more than two parents may be highly desirable in a dependency case, where more loving parents may help keep a child out of a group home or other foster care placement, multiple parents in a family law proceeding, where warring parents are fighting for custody, could be more troublesome. This bill addresses that concern in two ways. First, as discussed above, it allows a court to recognize more than two parents only when it would be detrimental to the child not to do so. The bill provides courts with guidance on finding such detriment, by requiring the court to consider all relevant factors, including the harm of removing the child from a stable placement with a parent who has fulfilled the child's physical and psychological needs for a substantial period of time.

Second, this bill recognizes that concern and provides that the child’s best interest, including the need for stability for the child, must guide custody determinations. Moreover, the bill specifically states that not all parents may share legal or physical custody of the child. While this is true in all custody cases, this statement should provide guidance to family courts to ensure that the child has stability and that if legal or physical custody is shared with too many parents, such stability may be lacking.

Clarification regarding termination of parental rights: This bill also codifies the holding in *Sharron S. v. Superior Court* (2003) 31 Cal.4th 417 that allowed second parent adoptions. A second parent adoption is a procedure where a second parent adopts the child without

terminating the rights of the existing parent, similar to a stepparent adoption. *Sharon S.* held that when a birth mother's partner sought to become a second parent through adoption, the parties may waive the termination of the existing parent's rights under Family Code Section 8617. This bill simply codifies that holding and applies it to situations where the child may have more than two parents.

Child Support Guideline Calculation: It is anticipated that cases with more than two parents will be extremely rare and very fact specific, and thus can be calculated outside of the statewide guideline. This bill provides for that flexibility by specifically permitting a departure from the child support guideline in these cases. However, this bill still requires that a guideline calculation be completed prior to departing from the guideline, as required by federal law. To do so, the guideline can be run in a multi-step process that involves first calculating all parents' net income, then running the guideline program with the high earner as one parent and the income and time share of remaining parents combined as the other parent in the program. The process is then repeated for the remaining parents (with the highest earner excluded), with the highest earner of that smaller group listed as the high earner and the parents remaining as the other parent (with time shares adjusted appropriately). While this may be cumbersome, it, notwithstanding opponent's arguments to the contrary, produces a child support award using the guideline and ensures that California is in compliance with federal requirements.

Similar Bill Vetoed Last Year: Last year a similar bill, SB 1476 (Leno) passed the Legislature, but was vetoed by the Governor, who wrote: "I am sympathetic to the author's interest in protecting children. But I am troubled by the fact that some family law specialists believe the bill's ambiguities may have unintended consequences. I would like to take more time to consider all of the implications of this change." The author and the sponsors have worked with family law attorneys over the last year to tighten the bill and limit any ambiguities of the bill. Significantly, this bill now provides that all of the rights and responsibilities of parentage arising under state law, administrative regulations, court rules, government policies, common law, and any other provision or source of existing law apply equally to every legal parent where a child is found to have more than two parents. Thus, this bill clarifies that any source of existing law that is worded to apply to only two parents must be applied equally to more than two parents.

Additionally, the bill tightens provisions and provides guidance to courts in finding whether a child has more than two parents, and in awarding custody, visitation, and support in the event that the court has made that finding.

ARGUMENTS IN SUPPORT: Supporters include the California Judges Association, American Academy of Matrimonial Lawyers, Northern California Chapter, Children's Advocacy Institute, the National Center for Lesbian Rights, Equality California, and Legal Services for Children. In support of the bill, supporters write:

While most children have at most two parents in their lives, some children have more than two people who act as parents in every way. Courts face a diversity of family circumstances, but state law has not adapted to the reality of those circumstances. For example, state law has been interpreted to prevent courts from ever recognizing more than two people as a child's parents. This inflexibility can have disastrous emotional, psychological, and financial consequences for a child who is separated from a loved one he or she has always known as a parent. Courts need more tools to protect the best interests of children.

SB 274 protects children by recognizing the bonds they share with their parents and the legal and emotional security those bonds provide. Recognizing legal parenthood gives a child the right to support from his or her parents, reduces the state's financial responsibility for the child, and keeps children out of foster care by giving courts more options for placement. Likewise, if a family is in distress, otherwise legally valid parental relationships should not be artificially severed and the already-at-risk child should not be placed in foster care when there is a legally satisfying alternative: another parent available to care for the child.

SB 274 is particularly important to the LGBT community because of how LGBT people become parents and build families, which can involve any combination of blending families, adoption, fostering and assisted reproduction. On occasion, this can be present situations where recognizing more than two legal parents is the best way to protect the best interest of the children involved and their relationships with the people they have always known as their parents.

SB 274 does not change the definition of parenthood, or allow temporary caretakers to be considered parents. It merely provides that when evidence shows that more than two people meet the existing legal definition of a child's parent, the court may recognize those individuals and their legal obligations if recognizing only two parents would be detrimental to the child.

Adds the Children's Advocacy Institute: "Children need parents, period. If what we as a society care about when adjudicating parentage is honoring the bonds that bind children and their parents, ensuring the child stays out of foster care, and – most of all – conforming our laws and legal processes to what is 'required to serve the best interest of children,' then our laws should not arbitrarily prevent judges from being able to use their judgment."

ARGUMENTS IN OPPOSITION: The Capitol Resource Institute writes in opposition: "Children thrive in consistent settings and in homes with their biological mother and father, or with adoptive parents, being male and female role models. This bill only serves to appease the adults and would cause chaos in the life of the child."

The Association of Family Conciliation Courts – California (AFCC) begins their opposition by noting the author's and sponsors' efforts to address AFCC's concerns from the previous year and agrees that "the language in the bill is much improved over that of last year's bill." That being said, AFCC is still strongly opposed to the bill. The organization writes:

We know how much a child can be, and often is, impacted by the conflict among the adults. We know how bad that conflict can be with only two parents

It does not take much to understand how much worse such conflict would be for the child with three adults, let alone four or more. Our focus is the child. It appears the bill's focus is really the adults who feel they should be able to acquire the label/title of "parent." . . . SB 274 proposes what is arguable a virtual "sea change" in our culture as to the role of a parent and the resulting expectations. . . .

We are convinced that this bill will be used primarily by heterosexual adults, mainly stepparents and grandparents. This bill is not just about handling current consensual situations, but represents a change in the legal landscape of "parenthood" and people's expectations and legal opportunities. . . .

Children do not need the conflict that often results when two parents separate and disagree. They certainly do not need the conflict exponentially enhanced/increased as adults vie for a portion of their time and attention. Children are entitled to spend a good portion of their time with friends, at school and should not have to worry about having their time shared with multiple (as in three or more) adults who cannot agree on who the child should be with, what the child should be doing, where the child goes to school, what sports, what religion, etc.

The author responds that far from being a "sea change" in family law, this bill "provides a limited approach to allow courts to recognize children who have more than two parents only when needed to protect a child from harm." In addition he notes that, this bill is not focused on protecting the rights of the adults, but "to the contrary, it is focused on the needs of children and may only be applied when necessary to protect a child from detriment."

REGISTERED SUPPORT / OPPOSITION:

Support

Children's Advocacy Institute (co-sponsor)
National Center for Lesbian Rights (co-sponsor)
American Academy of Matrimonial Lawyers, Northern California Chapter
Equality California
California Judges Association
Juvenile Court Judges of California
Legal Services for Children
Our Family Coalition
Public Counsel
Some individuals

Opposition

Association of Family and Conciliation Courts -- California
Capitol Resource Institute

Analysis Prepared by: Leora Gershenzon / JUD. / (916) 319-2334



SB-274 Family law: parentage: child custody and support. (2013-2014)

Senate Bill No. 274

CHAPTER 564

An act to amend Sections 3040, 4057, 7601, 7612, and 8617 of, and to add Section 4052.5 to, the Family Code, relating to family law.

[Approved by Governor October 04, 2013. Filed with Secretary of State
October 04, 2013.]

LEGISLATIVE COUNSEL'S DIGEST

SB 274, Leno. Family law: parentage: child custody and support.

(1) Under existing law, a man is conclusively presumed to be the father of a child if he was married to and cohabiting with the child's mother, except as specified. Existing law also provides that if a man signs a voluntary declaration of paternity, it has the force and effect of a judgment of paternity, subject to certain exceptions. Existing law further provides that a man is rebuttably presumed to be the father if he was married to, or attempted to marry, the mother before or after the birth of the child, or he receives the child as his own and openly holds the child out as his own. Under existing law, the latter presumptions are rebutted by a judgment establishing paternity by another man.

This bill would authorize a court to find that more than 2 persons with a claim to parentage, as specified, are parents if the court finds that recognizing only 2 parents would be detrimental to the child. The bill would direct the court, in making this determination, to consider all relevant factors, including, but not limited to, the harm of removing the child from a stable placement with a parent who has fulfilled the child's physical needs and the child's psychological needs for care and affection, and who has assumed that role for a substantial period of time.

(2) The Uniform Parentage Act defines the parent and child relationship as the legal relationship existing between a child and the child's parents, including the mother and child relationship and the father and child relationship, and governs proceedings to establish that relationship.

This bill would provide that a child may have a parent and child relationship with more than 2 parents. The bill would require any reference to 2 parents to be interpreted to apply to all of a child's parents where a child is found to have more than 2 parents, as specified.

(3) Existing law requires a family court to determine the best interest of the child for purposes of deciding child custody in proceedings for dissolution of marriage, nullity of marriage, legal separation of the parties, petitions for exclusive custody of a child, and proceedings under the Domestic Violence Prevention Act. In making that determination, existing law requires the court to consider specified factors, including the health, safety, and welfare of the child. Existing law establishes an order of preference for allocating child custody and directs the court to choose a parenting plan that is in the child's best interest.

This bill would, in the case of a child with more than 2 parents, require the court to allocate custody and visitation among the parents based on the best interest of the child, as specified.

(4) Under existing law, the parents of a minor child are responsible for supporting the child. Existing law establishes the statewide uniform guideline for calculating court-ordered child support, which is rebuttably

presumed to be the correct amount of child support. Existing law provides that the presumption may be rebutted by admissible evidence showing that application of the uniform guideline would be unjust or inappropriate because of one or more factors found to be applicable and the court provides certain information in writing, as specified.

This bill would direct the court to apply the statewide uniform guideline in a case where a child has more than 2 parents by dividing the child support obligations among the parents based on the income of each of the parents and the amount of time spent with the child by each parent. The bill would require the court to divide child support obligations among the parents in a just and appropriate manner, as specified, if the court finds that applying the statewide uniform guideline to a child with more than 2 parents would be unjust and inappropriate, as specified.

(5) Under existing law, the birth parents of an adopted child are, from the time of the adoption, relieved of all parental duties towards, and all responsibility for, the adopted child, and have no right over the child.

This bill would provide that the termination of the parental duties and responsibility of the parent or parents may be waived if both the parent or parents and the prospective adoptive parent or parents sign a waiver at any time prior to the finalization of the adoption.

(6) This bill would incorporate additional changes in Sections 7601 and 7612 of the Family Code, proposed by AB 1403, to be operative only if AB 1403 and this bill are both chaptered and become effective January 1, 2014, and this bill is chaptered last.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) Most children have two parents, but in rare cases, children have more than two people who are that child's parent in every way. Separating a child from a parent has a devastating psychological and emotional impact on the child, and courts must have the power to protect children from this harm.

(b) The purpose of this bill is to abrogate *In re M.C.* (2011) 195 Cal.App.4th 197 insofar as it held that where there are more than two people who have a claim to parentage under the Uniform Parentage Act, courts are prohibited from recognizing more than two of these people as the parents of a child, regardless of the circumstances.

(c) This bill does not change any of the requirements for establishing a claim to parentage under the Uniform Parentage Act. It only clarifies that where more than two people have claims to parentage, the court may, if it would otherwise be detrimental to the child, recognize that the child has more than two parents.

(d) It is the intent of the Legislature that this bill will only apply in the rare case where a child truly has more than two parents, and a finding that a child has more than two parents is necessary to protect the child from the detriment of being separated from one of his or her parents.

SEC. 2. Section 3040 of the Family Code is amended to read:

3040. (a) Custody should be granted in the following order of preference according to the best interest of the child as provided in Sections 3011 and 3020:

(1) To both parents jointly pursuant to Chapter 4 (commencing with Section 3080) or to either parent. In making an order granting custody to either parent, the court shall consider, among other factors, which parent is more likely to allow the child frequent and continuing contact with the noncustodial parent, consistent with Sections 3011 and 3020, and shall not prefer a parent as custodian because of that parent's sex. The court, in its discretion, may require the parents to submit to the court a plan for the implementation of the custody order.

(2) If to neither parent, to the person or persons in whose home the child has been living in a wholesome and stable environment.

(3) To any other person or persons deemed by the court to be suitable and able to provide adequate and proper care and guidance for the child.

(b) The immigration status of a parent, legal guardian, or relative shall not disqualify the parent, legal guardian, or relative from receiving custody under subdivision (a).

(c) This section establishes neither a preference nor a presumption for or against joint legal custody, joint physical custody, or sole custody, but allows the court and the family the widest discretion to choose a parenting plan that is in the best interest of the child.

(d) In cases where a child has more than two parents, the court shall allocate custody and visitation among the parents based on the best interest of the child, including, but not limited to, addressing the child's need for continuity and stability by preserving established patterns of care and emotional bonds. The court may order that not all parents share legal or physical custody of the child if the court finds that it would not be in the best interest of the child as provided in Sections 3011 and 3020.

SEC. 3. Section 4052.5 is added to the Family Code, to read:

4052.5. (a) The statewide uniform guideline, as required by federal regulations, shall apply in any case in which a child has more than two parents. The court shall apply the guideline by dividing child support obligations among the parents based on income and amount of time spent with the child by each parent, pursuant to Section 4053.

(b) Consistent with federal regulations, after calculating the amount of support owed by each parent under the guideline, the presumption that the guideline amount of support is correct may be rebutted if the court finds that the application of the guideline in that case would be unjust or inappropriate due to special circumstances, pursuant to Section 4057. If the court makes that finding, the court shall divide child support obligations among the parents in a manner that is just and appropriate based on income and amount of time spent with the child by each parent, applying the principles set forth in Section 4053 and this article.

(c) Nothing in this section shall be construed to require reprogramming of the California Child Support Automation System, established pursuant to Chapter 4 (commencing with Section 10080) of Part 1 of Division 9 of the Welfare and Institutions Code, a change to the statewide uniform guideline for determining child support set forth in Section 4055, or a revision by the Department of Child Support Services of its regulations, policies, procedures, forms, or training materials.

SEC. 4. Section 4057 of the Family Code is amended to read:

4057. (a) The amount of child support established by the formula provided in subdivision (a) of Section 4055 is presumed to be the correct amount of child support to be ordered.

(b) The presumption of subdivision (a) is a rebuttable presumption affecting the burden of proof and may be rebutted by admissible evidence showing that application of the formula would be unjust or inappropriate in the particular case, consistent with the principles set forth in Section 4053, because one or more of the following factors is found to be applicable by a preponderance of the evidence, and the court states in writing or on the record the information required in subdivision (a) of Section 4056:

(1) The parties have stipulated to a different amount of child support under subdivision (a) of Section 4065.

(2) The sale of the family residence is deferred pursuant to Chapter 8 (commencing with Section 3800) of Part 1 and the rental value of the family residence where the children reside exceeds the mortgage payments, homeowner's insurance, and property taxes. The amount of any adjustment pursuant to this paragraph shall not be greater than the excess amount.

(3) The parent being ordered to pay child support has an extraordinarily high income and the amount determined under the formula would exceed the needs of the children.

(4) A party is not contributing to the needs of the children at a level commensurate with that party's custodial time.

(5) Application of the formula would be unjust or inappropriate due to special circumstances in the particular case. These special circumstances include, but are not limited to, the following:

(A) Cases in which the parents have different time-sharing arrangements for different children.

(B) Cases in which both parents have substantially equal time-sharing of the children and one parent has a much lower or higher percentage of income used for housing than the other parent.

(C) Cases in which the children have special medical or other needs that could require child support that would be greater than the formula amount.

(D) Cases in which a child is found to have more than two parents.

SEC. 5. Section 7601 of the Family Code is amended to read:

7601. (a) "Parent and child relationship" as used in this part means the legal relationship existing between a child and the child's natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations. The term includes the mother and child relationship and the father and child relationship.

(b) This part does not preclude a finding that a child has a parent and child relationship with more than two parents.

(c) For purposes of state law, administrative regulations, court rules, government policies, common law, and any other provision or source of law governing the rights, protections, benefits, responsibilities, obligations, and duties of parents, any reference to two parents shall be interpreted to apply to every parent of a child where that child has been found to have more than two parents under this part.

SEC. 5.5. Section 7601 of the Family Code is amended to read:

7601. (a) "Natural parent" as used in this code means a nonadoptive parent established under this part, whether biologically related to the child or not.

(b) "Parent and child relationship" as used in this part means the legal relationship existing between a child and the child's natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations. The term includes the mother and child relationship and the father and child relationship.

(c) This part does not preclude a finding that a child has a parent and child relationship with more than two parents.

(d) For purposes of state law, administrative regulations, court rules, government policies, common law, and any other provision or source of law governing the rights, protections, benefits, responsibilities, obligations, and duties of parents, any reference to two parents shall be interpreted to apply to every parent of a child where that child has been found to have more than two parents under this part.

SEC. 6. Section 7612 of the Family Code is amended to read:

7612. (a) Except as provided in Chapter 1 (commencing with Section 7540) and Chapter 3 (commencing with Section 7570) of Part 2 or in Section 20102, a presumption under Section 7611 is a rebuttable presumption affecting the burden of proof and may be rebutted in an appropriate action only by clear and convincing evidence.

(b) If two or more presumptions arise under Section 7610 or 7611 that conflict with each other, or if a presumption under Section 7611 conflicts with a claim pursuant to Section 7610, the presumption which on the facts is founded on the weightier considerations of policy and logic controls.

(c) In an appropriate action, a court may find that more than two persons with a claim to parentage under this division are parents if the court finds that recognizing only two parents would be detrimental to the child. In determining detriment to the child, the court shall consider all relevant factors, including, but not limited to, the harm of removing the child from a stable placement with a parent who has fulfilled the child's physical needs and the child's psychological needs for care and affection, and who has assumed that role for a substantial period of time. A finding of detriment to the child does not require a finding of unfitness of any of the parents or persons with a claim to parentage.

(d) Unless a court orders otherwise after making the determination specified in subdivision (c), a presumption under Section 7611 is rebutted by a judgment establishing paternity of the child by another man.

(e) Within two years of the execution of a voluntary declaration of paternity, a person who is presumed to be a parent under Section 7611 may file a petition pursuant to Section 7630 to set aside a voluntary declaration of paternity. The court's ruling on the petition to set aside the voluntary declaration of paternity shall be made taking into account the validity of the voluntary declaration of paternity, and the best interests of the child based upon the court's consideration of the factors set forth in subdivision (b) of Section 7575, as well as the

best interests of the child based upon the nature, duration, and quality of the petitioning party's relationship with the child and the benefit or detriment to the child of continuing that relationship. In the event of any conflict between the presumption under Section 7611 and the voluntary declaration of paternity, the weightier considerations of policy and logic shall control.

(f) A voluntary declaration of paternity is invalid if, at the time the declaration was signed, any of the following conditions exist:

- (1) The child already had a presumed parent under Section 7540.
- (2) The child already had a presumed parent under subdivision (a), (b), or (c) of Section 7611.
- (3) The man signing the declaration is a sperm donor, consistent with subdivision (b) of Section 7613.

SEC. 6.5. Section 7612 of the Family Code is amended to read:

7612. (a) Except as provided in Chapter 1 (commencing with Section 7540) and Chapter 3 (commencing with Section 7570) of Part 2 or in Section 20102, a presumption under Section 7611 is a rebuttable presumption affecting the burden of proof and may be rebutted in an appropriate action only by clear and convincing evidence.

(b) If two or more presumptions arise under Section 7610 or 7611 that conflict with each other, or if a presumption under Section 7611 conflicts with a claim pursuant to Section 7610, the presumption which on the facts is founded on the weightier considerations of policy and logic controls.

(c) In an appropriate action, a court may find that more than two persons with a claim to parentage under this division are parents if the court finds that recognizing only two parents would be detrimental to the child. In determining detriment to the child, the court shall consider all relevant factors, including, but not limited to, the harm of removing the child from a stable placement with a parent who has fulfilled the child's physical needs and the child's psychological needs for care and affection, and who has assumed that role for a substantial period of time. A finding of detriment to the child does not require a finding of unfitness of any of the parents or persons with a claim to parentage.

(d) Unless a court orders otherwise after making the determination specified in subdivision (c), a presumption under Section 7611 is rebutted by a judgment establishing parentage of the child by another person.

(e) Within two years of the execution of a voluntary declaration of paternity, a person who is presumed to be a parent under Section 7611 may file a petition pursuant to Section 7630 to set aside a voluntary declaration of paternity. The court's ruling on the petition to set aside the voluntary declaration of paternity shall be made taking into account the validity of the voluntary declaration of paternity, and the best interests of the child based upon the court's consideration of the factors set forth in subdivision (b) of Section 7575, as well as the best interests of the child based upon the nature, duration, and quality of the petitioning party's relationship with the child and the benefit or detriment to the child of continuing that relationship. In the event of any conflict between the presumption under Section 7611 and the voluntary declaration of paternity, the weightier considerations of policy and logic shall control.

(f) A voluntary declaration of paternity is invalid if, at the time the declaration was signed, any of the following conditions exist:

- (1) The child already had a presumed parent under Section 7540.
- (2) The child already had a presumed parent under subdivision (a), (b), or (c) of Section 7611.
- (3) The man signing the declaration is a sperm donor, consistent with subdivision (b) of Section 7613.

SEC. 7. Section 8617 of the Family Code is amended to read:

8617. (a) Except as provided in subdivision (b), the existing parent or parents of an adopted child are, from the time of the adoption, relieved of all parental duties towards, and all responsibility for, the adopted child, and have no right over the child.

(b) The termination of the parental duties and responsibilities of the existing parent or parents under subdivision (a) may be waived if both the existing parent or parents and the prospective adoptive parent or parents sign a waiver at any time prior to the finalization of the adoption. The waiver shall be filed with the court.

SEC. 8. (a) Section 5.5 of this bill incorporates amendments to Section 7601 of the Family Code proposed by both this bill and Assembly Bill 1403. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2014, (2) each bill amends Section 7601 of the Family Code, and (3) this bill is enacted after Assembly Bill 1403, in which case Section 5 of this bill shall not become operative.

(b) Section 6.5 of this bill incorporates amendments to Section 7612 of the Family Code proposed by both this bill and Assembly Bill 1403. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2014, (2) each bill amends Section 7612 of the Family Code, and (3) this bill is enacted after Assembly Bill 1403, in which case Section 6 of this bill shall not become operative.