

Questionnaire – Vulnerable Persons Protocol – United States of America

Identification

For follow-up purposes

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Uploading of the Responses onto the HCCH Website

The Permanent Bureau envisages uploading the responses to this Questionnaire onto the HCCH website, as this may assist other States / Organisation in preparing their own responses or their position before the November 2009 Special Commission. Does your State / Organisation agree to making its response available for uploading onto the HCCH website?

YES – Our response to the Questionnaire may be uploaded onto the HCCH website

NO – No detail of our response may be uploaded onto the HCCH website

In the absence of an answer to this question your response to the Questionnaire will be uploaded onto the HCCH website.

Questions

Preliminary Comments

In the United States, family law, including maintenance obligations, is a matter that has traditionally been governed by the laws of the individual U.S. states. The federal government has had substantial involvement in interstate and international child support issues in recent years due to the fact that the federal government has granted large amounts of federal funds to state child support systems on condition that the states comply with various federal requirements. This federal involvement made it easier for the federal government to agree to bilateral child support agreements that bound all U.S. states to the same rules and to commit to seeking ratification of the 2007 Convention. There is no similar federal involvement with respect to maintenance obligations other than child support. States laws on maintenance obligations other than child support vary widely. Our answers to the following questions provide a general overview of state laws, but are not intended to be a detailed, comprehensive description of the laws of every U.S. state. If we answer "yes" to a question about whether our laws provide for a certain obligation, that should be understood to mean that some, but not necessarily all, U.S. states recognize such an obligation. Moreover, our responses are limited to statutory law. It is possible that a state might recognize an obligation in a particular case as a matter of common law or might enforce an obligation established under the law of another country as a matter of comity. We believe that virtually any maintenance obligation with respect to vulnerable persons that would be recognized by a U.S. state is either within the mandatory scope of the 2007 Convention or could be brought within the scope by a declaration under Article 2(3) of the Convention.

(A) Maintenance obligations in respect of vulnerable persons which come within the compulsory scope of the Convention

1) Does the law of your State / Organisation provide specifically for maintenance obligations arising from a parent-child relationship towards a vulnerable person under the age of 21 years (or 18 years)?

YES
 NO

Comment: All U.S. states provide specifically for maintenance obligations arising from a parent-child relationship with respect to a child under the age of 21 years (or in some states 18 years), and such obligations include those towards vulnerable persons.

2) Does the law of your State / Organisation provide specifically for maintenance obligations for a spouse towards a vulnerable spouse?

YES
 NO

Comment: The law on spousal support varies from state to state, but states generally do provide for such an obligation.

3) Can you please identify any special rules which may need to be added to the 2007 Child Support Convention, by way of a protocol, with regard to maintenance obligations: a) arising from a parent-child relationship towards a vulnerable person under the age of 21 years (or 18 years); or, b) for a spouse towards a vulnerable spouse:

a) We are not aware of any.

b) We are not aware of any.

(B) Maintenance obligations in respect of vulnerable persons which may be brought within the scope of the Convention by Contracting States

4) Does the law of your State / Organisation provide specifically, in respect of vulnerable persons, for maintenance obligations arising from:

- a family relationship	<input type="checkbox"/> YES / <input checked="" type="checkbox"/> NO
- parentage	<input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO
- marriage	<input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO
- affinity	<input type="checkbox"/> YES / <input checked="" type="checkbox"/> NO

Comment: Our answers to previous questions address child and spousal support. The statutory duty of an adult child to provide support for his or her elderly or infirm parents currently exists in about 28 U.S. states. It is also possible that other states might in a particular case enforce such an obligation as a matter of common law. However, notwithstanding the fact that a majority of states have imposed a theoretical responsibility for adult children to support parents who are unable to support themselves, in fact those laws are virtually never enforced. Our research has not disclosed any state statute that imposes a duty of support of vulnerable persons based on affinity or other relationships, such as grandparent/grandchild, adult sibling/minor sibling, uncle/aunt-niece/nephew, etc.

5) Does your State / Organisation intend to extend the application of the whole or any part of the Convention to maintenance obligations arising from a family relationship, parentage, marriage or affinity which would include vulnerable persons?

YES

- NO
- Not yet determined

6) If you replied YES to Question 5), please indicate the relationship(s), which would include vulnerable persons, to which you would extend the Convention:

- family
 parentage
 marriage
 affinity

7) If you replied YES to Question 5), please indicate the parts of the Convention to which you would extend the relationship(s) identified in Question 6):

- the whole Convention
 the whole Convention, with the exception of Chapters II and III
 other, please specify: _____

8) Please identify any special rules which may need to be added to the 2007 Child Support Convention, by way of a protocol, with regard to those maintenance obligations in respect of vulnerable persons which are capable of being brought within the scope of the Convention:

Comment: Article 2(3) states that a Contracting State may declare that it will extend the application of "the whole or any part" of the Convention to other maintenance obligations. Given this flexibility, we do not believe that any additional special rules are needed.

(C) Maintenance obligations in respect of vulnerable persons which cannot be brought within the scope of the Convention

9) Does the law of your State / Organisation provide specifically for maintenance obligations which **do not** arise from a family relationship, parentage, marriage or affinity in respect of vulnerable persons?

- YES
 NO

10) Please identify any categories within your State / Organisation of maintenance obligations towards vulnerable persons which at the moment cannot be brought within the scope of the Convention:

We are not aware of any.

11) Please identify any special rules which may need to be added to the 2007 Child Support Convention, by way of a protocol, with regard to those maintenance obligations in respect of vulnerable persons which at the moment cannot be brought within the scope of the Convention:

Comment: No special rules are necessary.

General questions

12) Does your State / Organisation have bilateral, regional or international agreements in place that deal specifically with maintenance obligations in respect of vulnerable persons?

- YES
 NO

13) If you replied YES to Question 12), please identify the categories of maintenance obligations towards vulnerable persons which fall within the scope of the bilateral, regional or international agreements referred to therein:

14) Do you see the need for the development of a protocol to deal with the international recovery of maintenance in respect of vulnerable persons?

- YES
- NO

15) Any other remarks:

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Thank you!