

**MASSACHUSETTS' ASSESSMENT OF
EFFORTS RELATING TO THE
INTERSTATE PLACEMENT OF
CHILDREN**

PROCESS ANALYSIS

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submitted to
MASSACHUSETTS SUPREME JUDICIAL COURT

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Chapter 1: INTRODUCTION

Background: What is the Interstate Compact on the Placement of Children?

The Interstate Compact on the Placement of Children (ICPC) is a contract among and between States enacted to ensure that children placed for adoption or in foster care across state lines receive necessary protections and supportive services. Procedures have been developed by participating states which outline the requirements for placement. The ICPC is the only tool states have to ensure that children placed across state lines are offered the same protections they would be entitled to should they remain in their own state. There are a variety of circumstances which make interstate placement of children necessary. Since 1990, all 50 states as well as the District of Columbia and the U.S. Virgin Islands have enacted the ICPC. The Compact is managed in each state by a Compact Administrator.

The overall purpose of the ICPC is for the States involved to cooperate in the interstate placement of children to ensure that:

- the child is placed in an appropriate environment;
- the receiving state has the opportunity to evaluate the proposed placement;
- the sending state is provided enough information to judge the placement; and
- the care of the child is ensured through appropriate jurisdictional provisions.

The Compact outlines a number of steps necessary to place a child out-of-state. For example, the State where the child currently resides (the sending state) asks the State in which the child is to be placed (the receiving state) to conduct a home study to examine a possible placement. When a placement is finally made, steps are in place to ensure that the sending state retains jurisdiction over the child once the child is moved.

The ICPC has jurisdiction over the following types of interstate placements: 1) placement with parents and relatives when a parent or relative is not making the placement; 2) placement into foster care; 3) placement preliminary to an adoption; and 4) placement into a group home, residential treatment program, and child care institutions. The Compact does not have jurisdiction over placements: 1) into schools, medical and mental health facilities made by the child's parent, stepparent, grandparent, adult sibling, adult aunt or uncle; or 2) by a non-agency guardian with any such relative or non-agency guardian.

Provided by the Safe and Timely Interstate Placement of Foster Children Act of 2006, each state is required to conduct an assessment of their ICPC process under the Court Improvement Program. State Courts must assess their role, responsibilities and

effectiveness in the placement of children across state lines. The purpose is to identify strengths and weaknesses in the ICPC process, develop recommendations for improvement and implement strategies by which to refine and expedite the placement of children across state lines.

Chapter 2: METHODOLOGY

Methodology: How Was the Assessment Conducted?

The purpose of the assessment was to examine the current ICPC process in Massachusetts by examining each step of the interstate placement and to identify both strategies that are considered particularly effective and barriers that exist to delay the process. A preliminary phone conference was conducted with selected CIP Steering Committee members to determine specific elements of the proposed study to include information related to the selection criteria for the file review and participants to be identified for focus groups and interviews. It was determined that a multi-method approach would be appropriate. Both quantitative and qualitative data were collected from multiple sources¹:

- Interviews and focus groups conducted with ICPC unit staff, attorneys for children and parents (CPCS), judges, DSS attorneys and social workers
- Case file review
- Analysis of Outgoing Home Study Requests spread sheets provided by ICPC Unit

Interviews and Focus Groups

Table 1 below contains information regarding the number of interviews and focus groups conducted. Also included for the respondents are the ranges for the years of experience in their current position and the approximate number of ICPC cases in which they have been involved. Interview instruments that were used to guide the interviews and focus groups can be found in Appendix A.

Table 1			
MASSACHUSETTS ICPC ASSESSMENT: INTERVIEWS AND FOCUS GROUPS			
<i>Interviews</i>			
	<i># of Participants</i>	<i>Years of Experience</i>	<i>Number of cases</i>
Judges	(4)	7-14	25-100
<i>Focus Groups</i>			
ICPC Agency Staff	(4)	3.5-7.5	
CPCS Attorneys	(6)	12-22	8-100
Assistant Regional Counsel (DSS)	(6)	8-17	20-40
DSS Caseworkers	(2)	12-20	6-20

¹ This study primarily considered cases in which children were part of the child protection system. However, the analysis of the ICPC spreadsheets included all cases process by the ICPC unit, including adoption cases.

Evaluators conducted interviews and focus groups to determine the timeliness and fairness of current policies and procedures when placing children across state lines. Persons selected for the interviews and focus groups were those who indicated experience in the handling of ICPC cases.

Case File Review

A case file review instrument was developed (see Appendix B). Files for MA as both the receiving and sending state were selected based on the following criteria:

- cases filed between July 1, 2006 and December 31, 2006; and
- cases filed between January 1, 2007 and June 30, 2007.

These time parameters were chosen to provide a snapshot of practice just previous to and after the 60 day provision which went into effect January 1, 2007. It also permitted enough of a time lapse to allow the case to close. During this time, Massachusetts handled approximately 1,120 referrals both as the sending and receiving state. Cases were randomly selected by the ICPC unit staff and evaluators chose one child from each file and recorded data solely on that child.

Case file review was utilized to better understand the process of interstate placements, most specifically points of delay. Evaluators recorded data for the following key variables during their review:

- Date child was removed
- Responsible Agency
- Type of Placement
- Legal Status
- Documentation of required paperwork
- Date ICPC unit office received packet from DSS office
- Date ICPC unit sent packet to receiving state
- Date of Completion of Home Study
- Results of Home Study
- Date FBI or other law enforcement checks were completed
- Date ICPC unit received packet back from receiving state
- Recommendation by Receiving state
- Date Notice of action was sent back to DSS
- Date of Commitment Order

Project staff also reviewed ICPC files for qualitative purposes including: reasons for out of state placement, reasons why placement could not be made, noted sources of delay, other state, and DSS or Court location. The information gathered from the files assisted in structuring the interviews and focus groups.

A total of 22 files were reviewed. Seventeen cases were selected where MA was the sending state and 5 cases were selected where MA was the receiving state.

Spread Sheet Review

Spreadsheets provided by the State ICPC unit displaying outgoing and incoming home study requests were examined. Date range was October 2006 to December 2007. As data was limited, evaluators only reviewed the following events: 1) whether home study was completed within 30 days; 2) whether home study was completed between 31-60 days; 3) whether home study was completed between 61 and 75 days; or 4) whether home study was completed in more than 75+ days. When Massachusetts was the sending state, evaluators determined the number of cases that were expedited pursuant to Regulation 7² and when Massachusetts was the receiving state, it was noted when the case was forwarded to the Adoptions Contract Unit. A total of 856 cases were included.

Human Subject Protection and Confidentiality

The evaluators took many precautions to ensure that the data collection activities and the resulting data did not compromise the anonymity of the human subjects of this study and the stakeholders participating in the data collection process. This includes administrative and physical security of identifiable data. Steps taken include:

- Electronic data were maintained on a secure, password-accessed computer.
- No identifying information for human subjects or stakeholders is presented in the results or the Assessment Report.
- All identifying data will be stripped from all electronic data at the conclusion of this project.
- Both electronic and paper files will be destroyed based on federal requirements for retention of records.
- Prior to participation, interview and focus group participants were advised that individual comments would be kept confidential and anonymous.

² Federal Regulation 7 provides a mechanism to expedite cases when certain circumstances are present (see page 9.)

Chapter 3: FLOW OF CASES THROUGH THE ICPC PROCESS

Outline and Summary of Interstate Placement Process in Massachusetts

Massachusetts as the sending state:

A. Person is identified as an out-of-state placement resource.

Most often the issue of placing children across state lines arises in Care and Protection cases when children are removed from their homes by the Department of Social Services. Respondents participating in the focus groups suggested that this identification may take place at any stage of the proceedings including during the initial preliminary or 72-hour hearing, prior to the dispositional stage, or post-adjudication. In some circumstances an out-of-state resource is identified at or post-termination of parental rights (TPR). CPCS attorneys identified their role as one of keeping themselves and their clients aware of “Plan B” which is the consideration that should the parent be unsuccessful in having custody of their child(ren) returned, identifying possible relative resources available for placement is necessary. One judge reported that they felt compelled to inquire early on about out-of-state resources particularly for older children. If a resource is identified, the information is brought to the attention of DSS. DSS then begins the paperwork for the referral. Within this process however, there is the option of expediting the placement process.

I facilitate this upfront so I may come up with different strategies and keep all doors open. ~CPCS attorney

Federal Regulation 7 makes it possible to expedite the usual ICPC placement process in certain cases. The child being considered for interstate placement can qualify for priority placement if one of the two following circumstances exists: 1) The child's proposed placement must be with a relative belonging to a class of persons enumerated in Article VIII(a) of the Compact, specifically, a parent, step-parent, grandparent, adult brother or sister, adult uncle or aunt, or a court appointed legal guardian of the child, who could legally receive a child from another person belonging to the same class without invoking the Compact, and

a. the child is under two years of age; or b. the child is in emergency shelter; or c. the child has spent a substantial amount of time in the home of the proposed placement recipient.

2) The Compact Administrator in the receiving state has had the properly completed standard (non-priority) ICPC request package for over 30 business days, and the Sending Agency has not received a response determining whether the child may or may not be placed.

If the case meets the requirements for Regulation 7, the court will issue the priority request order containing the finding as well as the name, address, telephone and fax

number of the judge and the court. This order must be sent to DSS within two (2) business days. The court shall have the agency send the order and the accompanying paperwork to the ICPC unit within three (3) business days. The Compact Administrator must then forward the information to the receiving state within two (2) business days with a notice that the request for placement is entitled to priority processing. The sending state Compact Administrator is required to send this information by overnight mail. The receiving state Compact Administrator shall make his or her determination as soon as practicable but no later than twenty (20) business days from the date the overnight mailing was received and shall send the completed form by FAX to the receiving state Compact Administrator.

B. DSS makes a referral on Family Net

Once a placement resource is identified, DSS initiates a placement request by filling out forms on the Family Net³ database. Referrals are tied to the child's record.

C. DSS sends full referral packet to the MA ICPC Unit and to the Receiving state ICPC Unit

DSS or the court will initiate interstate placement of the child. The court is the sending agency when custody of a child is placed with a person who intends to obtain custody and resides or intends to reside out-of-state. More often, DSS applies for placement and assumes all financial responsibility of the child. In this instance, DSS becomes the sending agency and is required to provide the compact administrator (sending and receiving states) with all of the necessary paperwork. As identified above, if the case is Regulation 7, within two days of the signing of the order by the judge, the court must transmit the order to the ICPC administrator along with a request for the administrator to transmit within three days. The administrator will then transmit by overnight mail, the order, referral packet, documentation and a notice that the request is entitled to priority processing to the receiving state compact administrator. Referral packets must include the following information:

- **Documentation of Current Legal Custody or Termination of Parental Rights (TPR).** Every referral must include documentation that provides that the child(ren) are in DSS custody. Included in this documentation is a current mittimus, custody or guardianship orders, court orders, consents, relinquishments, acknowledgement and waivers, orders of TPR, orders requesting home study, etc. Documentation of a TPR on both parents is required for requests for an Adoption Home Study. A copy of death certificate(s) may serve as documentation of TPR if parent(s) is deceased.

³ Family Net is a statewide automated child welfare information system that was implemented in February, 1998. This management information system is used for virtually all DSS activities, including intake, investigation, assessment, clinical/case management, adoption, financial, legal and provider services. DSS staff enter information directly into the central Family Net database from their desktop computers. The aggregate and consumer-specific data available from this database via reports, extracts, and direct (on-line) access enables DSS to efficiently manage its resources to meet the needs of its clients.

- **100A Form.** This form is the contract utilized to request a pre-placement assessment of a relative, foster home, adoptive placement or residential treatment program in the receiving state. This form is generated by Family Net.
- **Cover Letter.** The cover letter summarizes the child’s legal status, case plan, reason for placement, financial and medical plan for meeting child’s needs, anticipated additional services, information regarding proposed placement resource, specific issues to be addressed in the home study, and a pre-placement visitation plan.
- **Social History.** The social history includes a current assessment of the child and their situation; a brief history of the child’s physical and mental health; a brief social, educational and placement history; a brief history and assessment of the family and their involvement with DSS; and a description of placement and service plan goals. DSS may attach additional documents including medical records, psychological reports, school records, birth certificate and photo of the child.

ICPC unit staff indicated that caseworkers in MA were getting much more efficient in filling out all of the necessary paperwork and in putting the packet together.

D. Receiving state ICPC Unit forwards referral packet to local Child Welfare Agency

E. Local Child Welfare Agency conducts assessment of potential Resource Placement

The receiving local child welfare agency conducts the assessment according to its state laws. States often conduct these assessments and return the findings at different rates. Participants in the interviews and focus groups noted this particular activity as one of the reasons for substantial delay in the interstate placement process. Several respondents indicated that getting the necessary paperwork back could take 3-4 months while others reported cases taking as long as 6-9 months. These extended timeframes can be particularly troubling for children who are very young and might be bonding with their current placement or those children who have already been in several placements. Several states were identified as being “notoriously slow”.

Sometimes we feel like we are really pulling teeth to get an interstate compact back to us. ~Judge

F. Local Child Welfare Agency forwards assessment and results to the receiving state ICPC Unit

G. Receiving state ICPC Unit forwards packet with results back to MA ICPC Unit

If the referral falls under Regulation 7, the receiving state has twenty days from the receipt of the order and documentation to fax its approval or denial of the placement to the sending state administrator.

H. MA ICPC Agency notifies local DSS office of results

I. Local DSS office notifies court and parties of ICPC results, if applicable

Massachusetts as the receiving state

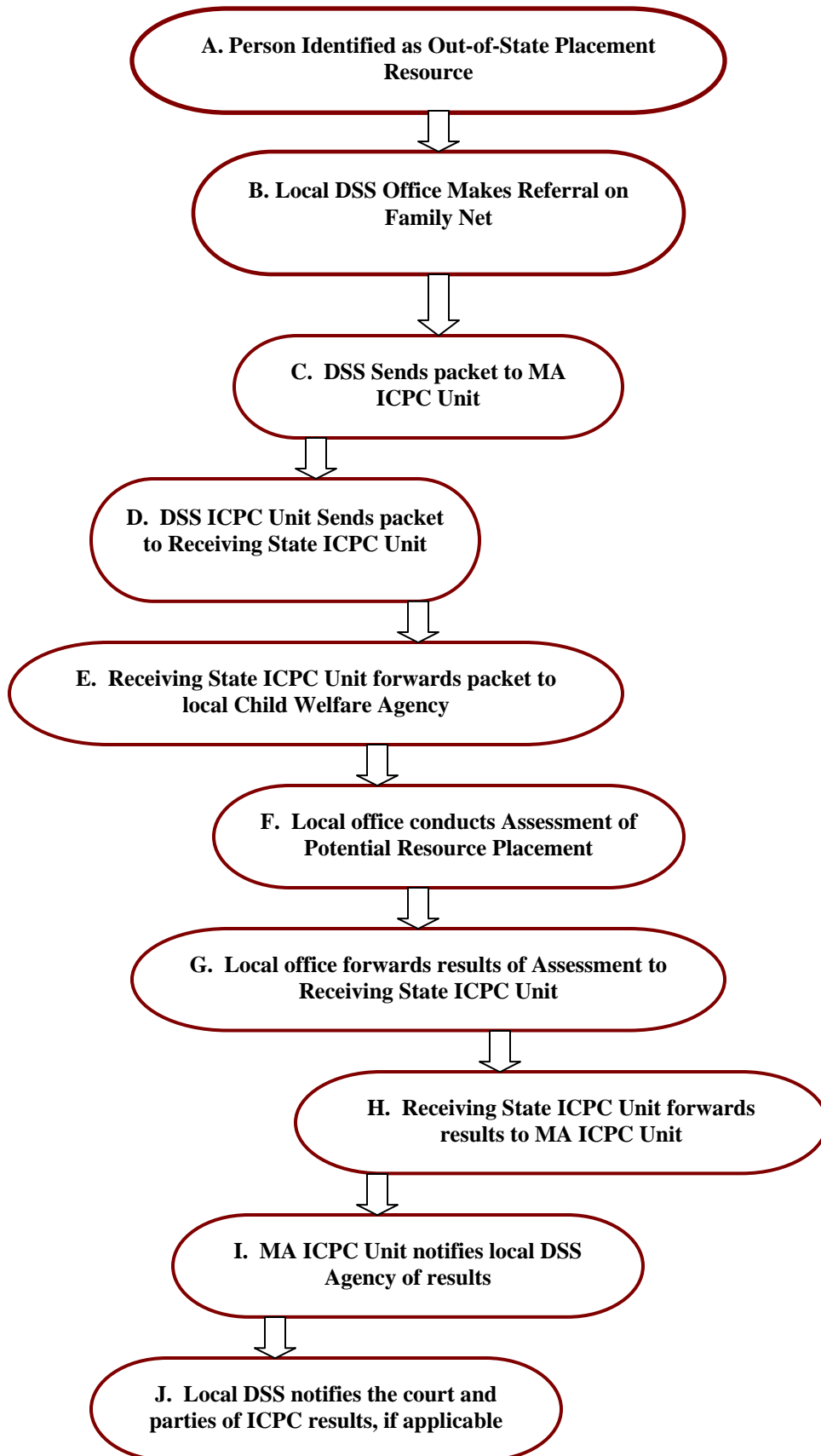
A. MA ICPC Unit receives a placement referral from a sending state.

B. The Unit records the date the referral was received, opens a case and forwards the referral to the local DSS office for handling. Since January 2007, all home study assessments for foster care, relative and adoption placements are forwarded to the Adoptions Contract Unit⁴. All parent assessments remain in house at DSS.

C. At completion of assessment, results and recommendations are forwarded to the MA ICPC Unit.

D. MA ICPC Unit documents the date the packet is received and forwards the results and recommendations to the Sending state ICPC Unit.

⁴ Although called the Adoptions Contract Unit, this is a private agency working under contract with DSS.



Chapter 4: EVALUATION FINDINGS

1) Case File Review

Evaluators reviewed 22 cases, 17 in which Massachusetts was the sending state, and 5 in which they were the receiving state. The cases selected were from various counties in the Commonwealth.

Demographics of Cases Reviewed (sending)

Of the 17 cases reviewed, 11 involved male children and 6 female children (ages ranged from 7 days to 13 ½ years). Twelve of the 17 cases involved white children, representing 71% of the cases. This was noted by the MA ICPC unit as an area of concern. It was suggested that fewer children of color are identified for interstate placement. In 2003, the Child Welfare Outcomes Annual Report indicated that in Massachusetts, 49.6% of the children in foster care were White. The ICPC Agency has been working with DSS offices each year to explore the ICPC process and the issue of disproportionality.

In each of the cases, it was noted that DSS was the responsible agency and had custody or guardianship over the child. The types of placements requested were relative/foster care (11), parent (4), and adoption (2). Every file reviewed contained documentation of the child's status, cover letter and social history.

Time between Case Events (sending)

Evaluators collected and analyzed data on specific events from the case record. Not every case was included for each event.⁵

Event 1: Date Children were removed from their homes and DSS caseworker forwarded packet to MA ICPC Unit for interstate placement

The median number of days between the removal of the child from his or her home and DSS requesting interstate placement was 225 in 2006 and 68 in 2007. This suggests a significant change in practice. In the 2007 data, the process began as early as 11 days, however in 2006, it was 195 days. It is not clear what this change may be attributed to. Given the small number of cases reviewed, these findings cannot be generalized to a broader population, however, it may be the result of the concurrent planning process. It can be very beneficial to identify these possible resource options early in the court process.

⁵ Some cases were missing information in the file including: race/ethnicity, date of removal, date home study was completed, etc.

Event 2: Date ICPC Unit received packet and forwarded the referral to the receiving state ICPC Unit

There did not appear to be substantial differences in the number of days it took for the MA ICPC Unit to forward the referral packet to the receiving state after obtaining it from the DSS caseworker. Twelve of the seventeen cases were sent within 7 days of receiving the paperwork. Four cases took between 2 – 4 weeks and one exceptional case took 72 days. The reason for the delay was not noted in the file.⁶

Event 3: Date MA ICPC Unit sent referral and the date the Home Study was completed

There appears to have been improvement in the amount of time taken to complete the home study once the Receiving state received the referral packet from the MA ICPC Unit. In 2006, the median number of days was 115 (n=5). The range was 81 – 176 days. In 2007, the median number of days was 85 (n=9). The range was 33 – 238 days with six of the cases being completed in 65 days or less.

Event 4: Date MA ICPC Unit sent referral and the date the referral packet with recommendation was received by MA from the Receiving state

The median number of days between MA ICPC sending the referral packet and receiving documentation back improved between 2006 and 2007. In 2006, it was 159 days and in 2007, it was 85. Although it was reported that home studies are often faxed over to the DSS agency, issues arise when signatures are required after the study is completed. The courts are unable to move forward even with an approved home study.

Time between Case Events (receiving)

Event 3: Date Sending state ICPC Unit sent referral and the date the Home Study was completed by Massachusetts

The median number of days between the date Massachusetts received the referral packet from the sending state ICPC Unit and the home study was completed was 90 days (n=5). The range was 48 – 143 days.

Event 4: Date Sending state ICPC Unit sent referral and the date the referral packet with recommendation was returned by Massachusetts

⁶ The ICPC unit is responsible for assuring that all of the information required is included in the package. The absence of a required document could delay the process.

The median number of days between the date the sending state ICPC Unit sent the referral for the placement and that date the MA ICPC Unit returned the packet was 90 days (n=5) with a range of 79 days – 164 days.

2) Spreadsheet Review

Evaluators analyzed data captured in spreadsheets provided by the State ICPC Unit pertaining to incoming and outgoing home study referrals. A total of 88 outgoing cases and 70 incoming cases in 2006 were examined and 429 outgoing cases and 269 incoming cases in 2007.

Table 2 represents the percentages for referrals being sent from the MA ICPC Unit to the receiving state in which home studies were completed within 30 days, 60 days, 75 days, or more than 75 days. Percentages were based on referrals for which the status was known. Information was reported across three distinct time frames: 1) October – December 2006, 2) January – June 2007, and 3) July – December 2007. Further, evaluators noted when case status was unknown and when referrals fell under Regulation 7 requiring an expedited home study.

As indicated in the table, 38% of the referrals sent to the receiving state had completed home studies within 60 days for the last three months of 2006. That percentage improved slightly in 2007 with 46% of the home studies being completed within that same time frame. The number of receiving states taking longer than 75 days improved considerably from 53% in 2006 to 39% in 2007. However, it should be noted that well over a quarter of the referrals could not be included in the analysis as information regarding the status of the case was not available. Finally, of the 21 referrals that fell under Regulation 7, only 53% were completed within the 30 day time frame.

Table 2					
OUTGOING REFERRALS					
	Within 30 Days	30-60 Days	60-75 Days	75 + Days	Unknown Status
Oct-Dec 2006 (n=88)	18%	20%	9%	53%	38%
Jan-June 2007 (n=246)	13.5%	38%	13.5%	35%	25%
July-Dec 2007 (n=183)	15%	24%	16%	45%	29%
Regulation 7 Cases (n=21)	53%	16%	5%	26%	2%

Table 3 represents the percentages for which the MA ICPC Unit receives a referral from the sending state and home studies were completed within 30 days, 60 days, 75 days, or more than 75 days. Percentages were based on referrals for which the status was known. Information was reported across three distinct time frames: 1) October – December 2006,

2) January – June 2007, and 3) July – December 2007. Further, as noted in Table 2, evaluators noted when case status was unknown and when referrals fell under Regulation 7 requiring an expedited home study. In addition, evaluators also recorded when it was identified that the home study was sent to the Adoption Contracts Unit for action.

As indicated in the table, 47% of the referrals sent to MA had completed home studies within 60 days for the last three months of 2006. That percentage improved substantially in 2007 with 67% of the home studies being completed within that same time frame. The number of assessments taking longer than 75 days improved from 44% in 2006 to 20% in 2007. Of the referrals contracted to the Adoptions Contract Unit 20% were completed within 30 days, and 56% between 30-60 days. However, it should be noted that only 18% of the referrals taking longer than 75 days were conducted by the Adoptions Contracts Unit. Overall, it would appear that assessments conducted by DSS were a bit more problematic. Finally, of the 22 referrals that fell under Regulation 7, half of which were completed by the Adoption Contracts Unit, only half were completed within the 30 day time frame.

Table 3					
INCOMING REFERRALS					
	Within 30 Days	30-60 Days	60-75 Days	75 + Days	Unknown Status
Oct-Dec 2006 (n=70)	14%	33%	9%	44%	19%
Jan-June 2007 (n=146)	17%	50%	13%	20%	14%
July-Dec 2007 (n=123)	21%	32%	10%	37%	20%
TOTAL	50	115	31	86	57
Regulation 7 Cases (n=22)	50%	33%	10%	7%	1
DSS (n=166)	16%	23%	16%	45%	65%
Adoption Contracts (n=173)	20%	56%	6%	18%	12%

The completion of home studies within a reasonable amount of time by the receiving state was cited as the greatest source of frustration by respondents. In general, there is a sense of futility without any concrete solutions. It is not entirely clear why this delay is occurring, however it is evident that no single reason exists. Respondents identified many possible scenarios for the delays such as: mistakes in the paperwork or lost paperwork, changes in social workers, poorly conducted assessments, and lack of knowledge about the Compact and home study process. Also, prior to moving from guardianship to adoption, another home study must be completed for the adoption. While it is not as extensive as the first home study, it can only occur after the child has been freed for

adoption. Respondents further suggested that new requirements for finger printing and licensing were going to create further delays and render adhering to the timeframes highly improbable. One respondent noted that now states are requiring mandatory training and the trainings are not always available. In one case, there was a delay because the training only happens twice a year and the state would not approve the home study until the training was completed. This created a six month delay.

Further exacerbating the issue of delays in receiving the home study, according to the MA ICPC unit, there is no system in place to notify the Unit when a home study is past due. Attorneys, social workers and judges are left to their own devices by which to reduce these delays although most felt that the courts' hands were tied in trying to assist. One judge reported scheduling additional dates in court to make sure things are moving along. If an "extraordinary" period of time has passed, the caseworker is asked to call the other state. The parent or child's counsel is also asked to call the home that is waiting to be studied to make sure they are in touch with the worker in the receiving state. Respondent DSS attorneys noted that this practice often results in their needing to attend unnecessary hearings, taking time away from other cases.

*I like to take an active role in getting the family members to affirmatively start calling to get the press on in order to get the interstate back sooner than later.
~Judge*

3) Identified Barriers

In addition to the delays in getting assessments completed, respondents identified financial issues as a significant barrier in the ICPC process. Other barriers noted were the inability of the sending state to appeal negative decisions by the receiving state, situations where DSS has decided against the approved placement, and unfamiliarity with the Compact process.

Title IV-E and other financial barriers

Title IV-E under the Social Security Act which provides for Federal funding of State foster care and adoption, reimburses a portion of monies spent by States for eligible children. Specifically, Title IV-E covers expenses related to children in foster care, costs related to adoption and provisions for children with special needs. Prior to sending a referral out of Massachusetts for an ICPC placement, the DSS worker is required to determine whether or not the child is eligible for Title IV-E.

If the child is eligible, he or she will be able to access a Medicaid card in that state. If the child is not eligible, DSS is instructed to determine an alternative Medical plan. DSS remains financially responsible for the child and the services provided as long as the child remains in their custody.

Respondents identified a number of cases where once it was determined that the child was not eligible, the referral fell through. Health insurance costs are noted to create a tremendous burden on the interstate resource. There are only a few options available. It should be noted that placements with parents

renders the child ineligible for Title IV-E. If the child is being placed in a state that borders MA, the family may travel back to MA for medical care using their Mass Health card. If the placement is with a relative, the relative may apply for Relative Medicaid, however this was noted as being a lengthy and frustrating process. Some states offer reciprocity with Mass Health, but again, this can be a lengthy and challenging process. The family may attempt to add the child to their own insurance plan if they have one. However, not all plans will allow this to occur. Finally, DSS may choose to pay for medical insurance through an independent insurance company or pay for all medical expenses directly. These options are a last resort.

We need to figure out fair financial provisions. For example, our DSS workers are instructed to tell families that one state will not give them money for anything and they will be on their own. ~ ICPC Agency staff

If a child should be found to be ineligible, the receiving state can choose to refuse the child. This was identified as a serious barrier. Many respondents reported a belief that cases are becoming much more complex. Cases are presenting with more serious forms of abuse and neglect. Several respondents felt that a protocol should be developed that would make every child who is part of the ICPC process Title IV-E eligible.

A problem noted by one of the respondent judges is that the sending agency must be financially responsible for the child. If the child is not in DSS custody, the court, as sending agency does not have the ability to bear the financial responsibility. In an open Care and Protection case both where there is a court order placing a child in a relative's care and that relative decides to move to another state or the court wants to move the child to another out-of-state relative placement, it is virtually impossible for the court to invoke the ICPC process.

Denial by receiving state

There was concern by attorneys and judges relative to what happens when a placement resource identified in another state has been denied. Currently there is no legal process in place that allows MA to challenge a delay or a denial. As one respondent noted, "when a placement, which appears to be completely appropriate is denied by the receiving state, we have no opportunity available to appeal that decision." A CPCS attorney discussed a troubling situation where the biological parent was denied as a placement which essentially terminated her parental rights without a way to appeal the decision. The grandparents then came forward but it was too late by that time. The mother was unrepresented in the receiving state.

There ought to be a way for the out-of-state relatives to challenge the agency's decision. ~Judge

It should be noted that while there may be a fair hearing process, respondents reported being generally unfamiliar with the process or felt it was inadequate.

Considering factors beyond the Home Study

Although the receiving state may approve an interstate placement after conducting the assessment, DSS may ultimately recommend against the placement. DSS attorneys noted

that there are often issues that go beyond whether the home is acceptable and that there are circumstances where the Department may find that the placement is not in the best interests of the child even though the placement has been approved by the receiving state. Respondents discussed feeling frustrated by these types of decisions. One judge noted that in one particular case where the resource was identified and studied early on, DSS was still not willing to send the child even after the approval. In this case, the Judge felt compelled to bring the relative placement resource in to give testimony to determine what the issues were and to make a decision but by that time, the home study had expired creating further delay in the case.

Often times, Care and Protection cases are engaged in concurrent planning exploring both in-state and out-of-state options for permanent placement.

Unfamiliarity with Compact Process

While respondents interviewed for this study reported being quite familiar with the ICPC process, the majority perceived that many others working in the system lacked the necessary knowledge to accurately navigate the process. This results in incomplete or late paperwork, lack of follow-up, and possible violations. Overwhelmingly it was reported that many judges, attorneys, and caseworkers were inadequately versed in the rules for filing a referral under Regulation 7. Many further reported being unclear about their role once the child has been placed. For example, can the case worker request that the receiving state check on the child twice a month as opposed to every three months? Another complaint expressed by respondents was that they often did not have a contact person in the receiving state which resulted in numerous phone calls to find out the status of the home study. One social worker stated that she will have the proposed out-of-state family get a local contact name and number – this helps her to access information more quickly.

Respondent judges were asked if it was possible to communicate with judges or to receive testimony from witnesses in other states. While none of them had experienced this in ICPC cases, they all felt that the technology was available and had used the telephone to receive testimony from witnesses in other circumstances.

Chapter 5: RECOMMENDATIONS

During interviews and focus groups with stakeholders, evaluators asked respondents about recommendations for improvement to the ICPC process to include legislative or rule changes, protocols and procedures, and/or training opportunities. A number of recommendations were suggested, however, it should be noted that most of the respondents were unclear about the role MA might assume in addressing delays created by the receiving state. Evaluators reviewed additional materials and sources of information to assist in crafting the recommendations.

The following recommendations include both activities that are in control of the Commonwealth and for Federal consideration.

Recommendations to the Commonwealth

- **DSS, CPCS and the Courts should work together to develop a protocol to help expedite the ICPC process.** Some judges and attorneys reported that the judge will docket cases at particular intervals to follow the case a little more closely and ensure that the process is moving along and assist in problem-solving if any issues are presented. Some go as far as to contact the other state. However, there are judges that do not believe they have the authority to intervene in this process. Establishing a protocol for regular reporting on the status of an ICPC case would ensure that the process is moving according to statutory time frames.
- **Develop a tracking system to identify cases that are approaching delays and to monitor cases already in receiving state.** A coordinated system or effort by which to track cases that have been referred for out-of-state placement does not appear to exist. DSS does have a tickler that identifies when a home study is due and likewise, the ICPC unit collects this information in a spreadsheet, however it is not entirely clear who the responsible party or agency is for monitoring these cases. Staff at the ICPC unit reported that they often need to contact the DSS caseworker to inquire about the status of a case. This is evident in the number of cases that were void of information about the status. DSS attorneys reported that being provided copies of when information was sent and when to expect information back would be very helpful.
- **MA ICPC unit should provide more training opportunities for judges, CPCS attorneys, DSS attorneys and caseworkers.** Most respondents felt they possessed a strong working knowledge of the Compact. However, it should be noted that only those with interstate placement experience were interviewed for this evaluation. While the respondents reported feeling knowledgeable, most did report that this knowledge was specific to their role in the process and that they were uncertain about the rest of the process. Further, many reported experiencing other stakeholders who were not very familiar with the interstate placement process, particularly those new to their position. Some also suggested that more referrals for placement might occur if caseworkers received more training about

the placement process and that mistakes in filling out paperwork might be reduced.

Some suggested topics for training included: diligent searches, working with fathers, new Compact (allows for provisional placements), Title IV-E, Indian Child Welfare Act (ICWA), and issues related to dealing with border states. It was further recommended that these training sessions be more dynamic and focus on the overall process rather than what the consequences and punishments might be should a mistake be made. Planning a summit covering one or several of these topics might be a possible option as well as developing E-Learning opportunities. It might also be helpful to provide information to parents by incorporating relevant information into the parent's handbook.

Recommendations for Federal Rules and Regulations

- **There should be standardized forms and procedures used by all parties associated with each case.** A standardized form to be utilized across states should be created for each referral that identifies the social worker responsible for the case including all contact information, whether the case is Regulation 7, and the associated deadlines and target dates.
- **There should be a uniform standard for conducting a home study.** Several respondents reported that the differences among states in how a home study was conducted were tremendous. So much so, that even if the home study was approved, there was a reluctance to send the child(ren) based on the quality of the study. A uniform standard would eliminate this issue and potentially reduce delays.
- **Allow for provisional placements.** States should be allowed to provide emergency approvals contingent on final approval of the home study. A consequence could be imposed if the sending state did not move to retrieve the child(ren) within a given timeframe should the home study be denied. This could potentially alleviate a portion of the trauma associated with multiple placements and/or long waiting periods for the child.
- **The ICPC financial responsibilities should be reviewed.** It was noted that there are often financial barriers that delay the ICPC process. While Massachusetts does not have the responsibility or ability to amend the federal process, these barriers should be reported to the Children's Bureau as part of this report.
- **There should be a process to appeal denials in the receiving state.** While it is true that most states have an administrative or fair hearing process, it is unclear how this would apply to ICPC cases and most potential out-of-state placements are not represented by attorneys. A recommendation to allow a

process (perhaps the ability for the juvenile court in the receiving state to review the agency's decision) could allow for a judicial review of the denial.

Chapter 6: CONCLUSIONS

It is evident that Massachusetts has taken a number of steps to improve their handling of interstate placement cases. Between 2006 and 2007, data collected suggested improvement both in the processing of outgoing and incoming referrals for home assessments. While a number of recommendations were presented, it should be noted that Massachusetts appears committed to handling these cases in a fair and timely manner. In the last several years, the MA ICPC Unit has increased from a staff of one to a staff of four. The majority of respondents noted the staff in this office and felt that they were responsive to their inquiries and issues.

The ICPC Unit in MA has currently been working with the General Counsel of the Department of Social Services to instruct and educate attorneys when violations occur and they usually incur 8-10 a year. The ICPC Unit Director also travels to approximately 6 or 7 DSS offices a year to explore and discuss the ICPC process. At present, only the supervisors are receiving this information but it is anticipated that this will expand to include caseworkers.

The ICPC Unit has also developed a contract with Puerto Rico to accept referrals from MA. Puerto Rico follows the same standards and guidelines as those states that are formally a part of the Compact. Further, the ICPC Unit has contracted with a private agency, the Adoptions Contract Unit to conduct home assessments in an effort to expedite the cases and relieve the burden on the DSS caseworkers. Even though the Federal Government did not appropriate the \$1,500.00 incentive for each study that was completed within 30 days into the Federal Budget, MA does provide the incentive to the contracting agency and does so without reimbursement. This approach shows promise.

Finally, each of the respondents indicated positive working relationships with one another and a general sense that states are working in the best interests of the children.

Appendix

Interview and Focus Group Instruments

Massachusetts' Assessment of Efforts Relating to the Interstate Placement of Children

ICPC Interviews

Name: _____

What is your position? _____

How many years have you worked in this position? _____

How long have you worked in the ICPC office? _____

Please describe your duties.

1. What is the current caseload for this office? Sent by MA? _____
Received from other states? _____

2. On average, how many cases do you receive a month? _____ Send a month? _____

3. Can you describe the general process of interstate placement? First, as the *sending* state: _____

a. On average, how long does this process take from start to finish? _____

b. Where in this process are you most likely to experience delays and why?

c. Are there particular types of cases or issues that are more problematic than others in creating delays? _____

d. Are there protocols in place to assist in resolving or avoiding delays? ____

e. Are there recommendations you would propose to improve the overall process and/or handling of these cases as the sending state? _____

4. Now describe the general process of interstate placement, as the *receiving* state: _____

a. On average, how long does this process take from start to finish? _____

b. Where in this process are you most likely to experience delays and why?

c. Are there particular types of cases or issues that are more problematic than others in creating delays? _____

d. Are there protocols in place to assist in resolving or avoiding delays? ____

e. Are there recommendations you would propose to improve the overall process and/or handling of these cases as the receiving state? _____

5. Other thoughts or comments: _____

**Massachusetts' Assessment of Efforts Relating to the
Interstate Placement of Children**

DSS Attorney Focus Group

Name: _____

Court location(s) where you practice? _____

1. How long have you been an attorney for DSS? _____
2. Approximately, how many cases have you been involved with in which ICPC was an issue? _____
3. When does the issue of instate placement most typically arise? _____

4. What is your role in these cases? _____

5. What type of delays have you experienced? _____

6. What are some of the causes for delays? _____

7. Do the courts have processes in place to help avoid or assist in handling delays?

8. Are there recommendations you would make to improve the handling of these cases? _____

9. Do you feel you have received adequate training relative to dealing with ICPC issues? _____

10. Are there additional areas or topics of training you would like to receive or you believe others should receive? _____

11. Is there anything else you would like to add? _____

**Massachusetts' Assessment of Efforts Relating to the
Interstate Placement of Children**

DSS Child Welfare Worker Focus Group

Name: _____

Court location(s) where you work? _____

Current position? _____

1. How long have you been a child welfare worker for DSS? _____

2. Approximately, how many cases have you been involved with in which ICPC was an issue? _____

3. When does the issue of instate placement most typically arise? _____

4. What is your role in these cases? _____

5. What type of delays have you experienced? _____

6. What are some of the causes for delays? _____

7. Do the courts have processes in place to help avoid or assist in handling delays? _____

8. Are there recommendations you would make to improve the handling of these cases? _____

9. Do you feel you have received adequate training relative to dealing with ICPC issues? _____

10. Are there additional areas or topics of training you would like to receive or

believe others should receive? _____

11. Is there anything else you would like to add? _____

**Massachusetts' Assessment of Efforts Relating to the
Interstate Placement of Children**

CPCS Focus Group

Name: _____

Court location(s) where you practice? _____

1. How long have you been a CPCS attorney? _____

2. Approximately, how many cases have you been involved with in which ICPC was an issue? _____

3. When does the issue of instate placement most typically arise? _____

4. What is your role in these cases? _____

5. What type of delays have you experienced? _____

6. What are some of the causes for delays? _____

7. Do the courts have processes in place to help avoid or assist in handling delays? _____

8. Are there recommendations you would make to improve the handling of these cases? _____

9. Do you feel you have received adequate training relative to dealing with ICPC issues? _____

10. Are there additional areas or topics of training you would like to receive? _____

11. Is there anything else you would like to add? _____

Massachusetts' Assessment of Efforts Relating to the Interstate Placement of Children

Judge Interviews

Name: _____

Court location(s) where you sit? _____

1. How long have you been a Juvenile Court Judge? _____
2. Approximately, how many cases have you been involved with in which ICPC was an issue? _____
3. When does the issue of interstate placement most typically arise? _____
4. What is your role in these cases? _____
5. What type of delays have you experienced? _____
6. What are some of the causes for delays? _____
7. What steps have you taken to help avoid or assist in handling delays? Do you actively oversee progress on these cases? _____
8. What are some of the barriers you have experienced when making judicial decisions regarding interstate placement? _____
9. Are there times when you order DSS to look into the possibility of out-of-state placement? If so, can you provide an example? _____
10. Are you able to share information with judges from the other state? _____
11. Are the necessary procedures and/or equipment in place to allow testimony from out of state resources? _____
12. What changes in legislation or court rules would you recommend to expedite and enhance the fairness of interstate placements? _____

13. Are there specific training or education topics that you would recommend to improve the handling of these types of cases? _____

14. Is there anything else you would like to add? _____

**Massachusetts' Assessment of
Efforts Related to the
Interstate Placement of Children**

Legal Analysis

June 2008

I. Introduction

Each state must review the current status of law within the state relating to the Interstate Compact for the Placement of Children ('ICPC'), as part of the assessment required by the Safe and Timely Interstate Placement of Foster Children Act of 2006. In addition to providing an overview of the legal history of the ICPC within the state, each state must respond to the following:

What is the current state of Massachusetts law including statutes, regulations, cases, DSS policies, and general principles which might impact the court's ability to obtain information and testimony from other agencies and parties in other states without requiring interstate travel by the agencies and parties, i.e. teleconferencing and video conferencing?

Whether the current state of Massachusetts law permits parents, children and other necessary parties including attorneys to participate in cases that involve interstate placement without requiring those parties to travel interstate, such as by teleconferences or video conferences?

What laws, regulations, policies, statutes, and court rules impact the courts' ability to share information with out-of-state courts to expedite the interstate placement of children?

II. Legal History of ICPC in Massachusetts

Massachusetts adopted the ICPC in 1963. Since that time, only a small number of cases have been heard regarding ICPC issues. *See generally* Custody of Quincy, 29 Mass.App.Ct. 981 (1990) (noting ICPC referral should have occurred when child placed by DSS with an out of state parent); Adoption of Warren, 44 Mass.App.Ct. 620 (1998) (clarifying ICPC applies if DSS has custody and seeks placement in another state); Adoption of Willow, 433 Mass. 636 (2001)

(finding that child in DSS custody cannot go to receiving state until DSS receives notification in writing that placement is not contrary to best interest of child); Adoption of Leland, 65 Mass.App.Ct. 580 (2006) (holding findings of fact of receiving state regarding parent's unfitness not sufficient for finding of unfitness in sending state). In addition to caselaw, DSS also promulgated regulations regarding interstate placement services. *See generally* 110 CMR 7.5-7.523.

III. Questions Presented

A. What is the current state of Massachusetts law including statutes, regulations, cases, DSS policies, and general principles which might impact the court's ability to obtain information and testimony from other agencies and parties in other states without requiring interstate travel by the agencies and parties, i.e. teleconferencing and video conferencing ?

Massachusetts does not currently have any laws, rules, or regulations that specifically address this question. When considering how the court's ability to obtain information and testimony from other agencies and parties in a proceeding involving the ICPC may be affected, a number of factors must be considered, most especially the rules of evidence and issues such as discovery, admissibility of evidence and testimony.

i. Discovery

Rule 9 of the Massachusetts Rules of the Juvenile Court states that DSS or a licensed agency must provide a copy of the case file and "no party receiving material produced pursuant to this rule shall further duplicate or divulge the material to any person not a party to the case unless by order of the court, except that counsel for a party may disclose the material to an expert retained by counsel." *See* Mass.R.Juv.Crt. 9. Further, "other discovery may be heard only by leave of court on such terms as the court prescribes. *Leave of court shall be requested* by motion in accordance with Rule 5." (Emphasis added). *See id.* Other Massachusetts court rules may also be instructive to crafting a discovery request. The rules of discovery differ if one is a party to the case or one is not. *See generally* Mass.R.Civ.P. 30-30A (providing procedures for dispositions, and audiovisual dispositions); Mass.R.Civ.P. 33-36 (providing procedures for interrogatories and production of documents).

Massachusetts General Law c. 223A, § 10 explains the procedure for dispositions occurring outside of the state. The statute requires reasonable notice, a letter of rogatory issued by the court and a person authorized to administer oaths for disposition to occur. In addition, the Massachusetts Child Custody Jurisdiction Act is very helpful when looking at how to obtain and admit information by courts and individuals in different states. This Act was implemented in January 1984 and sets forth guidelines and procedures for when two courts in different jurisdictions (state or country) are involved in making custody decisions. Under the Massachusetts Child Custody Jurisdiction Act, the courts have been granted the authority to request and assist other courts in terms of obtaining evidence, witnesses, and investigations pursuant to G.L. c. 209B, § 10 (requesting assistance of courts of other states) and G.L. c. 209B, § 11 (assisting courts of other states).

_____ **ii. Admissibility of Evidence**

_____ Once evidence is obtained, then the question becomes how is it admissible? When looking at evidence from other states, that evidence must comply with the Massachusetts requirements. *See* G.L. c. 119, § 21; Adoption of Astrid, 45 Mass. App. Ct. at 547.

a. Documents

The Massachusetts Appeals Court has stated that when parties seek to introduce out of state evidence, the rules of authentication and certification must be complied with or else the evidence may be excluded. Adoption of Astrid, *supra*; *citing* G.L. c. 119, § 21, G.L. c. 233, §§ 76, 79, 79A, 79G. In order to authenticate a document, live testimony is generally required in order to show that the document is a true and accurate copy and that the document is what the proponent purports the document to be. Amy Karp, CHILD WELFARE PRACTICE IN MASSACHUSETTS, 8.2(c),Pg.8-18 (2007). Though a number of Massachusetts statutes permit self-authentication of certain documents, many of those statutes relate to documents from agencies and municipalities in the Commonwealth only.

The following statutes, however, do allow the admissibility of certain out of state documents: G.L. c. 233, § 69 (providing properly authenticated court records from other jurisdictions may be admitted); G.L. c. 233, § 70 (providing that judicial notice of the laws of the United States and other states may be taken); G.L. c. 233, § 73 (providing that oaths and

affidavits are permissible if by a notary within the state he/she is commissioned); G.L. c. 233, § 75 (providing DSS rules may be admitted without certification and the policies may be considered rules).

Massachusetts General Law c. 119, § 24 allows court investigator, C.A.S.A. (Court Appointed Special Advocate), G.A.L. (Guardian Ad Litem), and/or social worker reports to be admissible even if those reports contain hearsay as long as the author of the report is available to testify at trial and the source of the material is sufficiently identifiable so that the affected party has an opportunity to rebut any adverse or erroneous material contained therein. *See Gilmore v. Gilmore*, 369 Mass. 598, 604-605 (1976); *Jones v. Jones*, 349 Mass. 259, 264 (1965); *Custody of Michel*, 28 Mass. App. Ct. 260, 265-267 (1990); *Adoption of Georgia*, 433 Mass. 62, 68-69 (2000), *quoting* R.L. Ireland, JUVENILE LAW § 124, at 536 (1993). In order for a court investigator/C.A.S.A./G.A.L./social worker report authored by an individual from another state to be admitted in a Massachusetts proceeding, the individual must be available to testify at trial.

b. Testimony

Another method of providing evidence to the court is by testimony. The question becomes how do you admit testimony of a person in one state when the court hearing the matter is in another state? Testimony provided by a deposition, video conference, or telephone seem to be the most likely alternatives, because there are no rules which prohibit these methods. When looking at alternative methods, it is important to remember that the judge has the discretion to evaluate the credibility of witnesses; a judge is not obliged to believe the testimony of any particular witness, and the court can consider the demeanor of the witness as evidence. *See Care and Protection of Martha*, 407 Mass. 319, 328 (1990); *O'Brien v. O'Brien*, 347 Mass. 765, 766 (1964). These considerations are important to remember when looking at alternatives to live in person testimony; certainly, these issues would arise if trial counsel object to alternative methods of testifying. The Massachusetts Courts would most likely make more of an effort to permit an alternative to live in person testimony if that individual is a party to the case; however, even in that situation, substantial issues may arise.

First, in order to compel a witness to testify a subpoena must be issued. Though Rule 13 of the Massachusetts Rules of the Juvenile Court and Rule 45 of the Massachusetts Rules of

Civil Procedure limit subpoena power to the boundaries of Massachusetts, the Massachusetts Child Custody Jurisdiction Act provides that depositions and other procedural devices are available to a party for taking testimony of out of state witnesses and also provides permissible methods to obtain the individuals. *See* G.L. c. 209B, § 9-11.

Second, issues may arise regarding a witness's competency to testify. If a witness's competency to testify is challenged, then the court must determine if the witness has the "capacity to understand and communicate coupled with a consciousness of the duty to speak the truth." *See Commonwealth v. Rockwood*, 27 Mass. App. Ct. 1137, 1138 (1989), *citing Malchanoff v. Truehart*, 354 Mass. 118, 120-121 (1968). The court must find that "the witness has the general ability or capacity to observe, remember and give expression to that which [he] ha[s] seen, heard, or experienced[.]" *See Commonwealth v. Brusgulis*, 398 Mass. 325, 329-330(1986), *citing Commonwealth v. Tatisos*, 238 Mass. 322, 325 (1921). The court must also determine whether the witness has "understanding sufficient to comprehend the difference between truth and falsehood, the wickedness of the latter and the obligation and duty to tell the truth, and, in a general way, belief that failure to perform the obligation will result in punishment." *Id.* ; *see also* G.L. c. 233, § 20. The ability to evaluate a potential witness's competency could be problematic if the judge is not present with the witness because the demeanor, character, and responses of the individual cannot be assessed.

_____ Third, a party's ability to cross-examine a witness may be an issue if witnesses are from another state. While the parties may not have the constitutional right to cross-examine and confront witnesses as in criminal cases, parents must be able to effectively rebut adverse allegations concerning child rearing. *See Adoption of Mary*, 414 Mass. 705, 710 (1993). Thus, the parents' and children's due process rights may be affected by a deposition, telephone conference, or a video conferences. In many cases, it will be important, if not essential for the judge and or trial counsel to have the ability to view the witness.

Unique issues also arise when dealing with a child witness. Massachusetts General Laws. c. 119, § 21 provides a child may testify "if the court determines that the child is competent and willing, after consultation with counsel, if any, to testify." If another party subpoenas the child, a trial judge may allow a motion to quash a subpoena for the child. *See Adoption of Peggy*, 436

Mass. 690, 703 n. 15 (2002). If the child wants to testify and counsel believes this is appropriate, the court has discretion on whether to allow the child to testify.

When looking at the issues of a parent witness, the traditional rules apply except that the failure to testify can result in the trial judge drawing a negative inference. *See* Custody of Two Minors, 396 Mass. 610, 616-617 (1986); Care and Protection of Quinn, 54 Mass. App. Ct. 117, 121 (2002) (the privilege against self-incrimination not applicable to child welfare proceedings). The Appeals Court has commented that a parent who cannot be present at trial/custody hearing may have video or telephone conferences during the proceeding. *See* Adoption of Edmund, 50 Mass. App. Ct. at 531; Adoption of Whitney, 53 Mass. App. Ct. 832, 836 (2002). A parent who is a party should be able to provide evidence and or testimony by the telephone, video conference, or even an affidavit (if at the conclusion of the evidence). The rights of the other parties, i.e. parents/child, may be affected, but based on Edmund and Whitney it appears that a parent has a right to produce evidence to the Court in alternative ways, such as by an affidavit.

B. *Whether the current state of Massachusetts law permits parents, children, and other necessary parties including attorneys to participate in cases that involve interstate placement without requiring those parties to travel interstate, such as by teleconferences or video conferences?*

Massachusetts laws, cases, statutes, and regulations do not clearly answer the question of whether teleconferencing and videoconferencing are permissible alternatives when interstate factors exist. The potential complications arising from participating in a proceeding differs from the possible problems arising from providing testimony or offering evidence by these alternative methods. This section only focuses on the participation aspect.

Rule 11 of the Massachusetts Rules of the Juvenile Court clearly states that “all parties are required to be present with counsel at the pretrial conference, except that counsel for the child may appear without his/her client.” Each party is required to be served in compliance with Rule 3 of the Massachusetts Rules of the Juvenile Court which requires the parent/guardian to appear in this court. *See also* G.L. c. 119, § 24. Further, children are required to appear before the court to be identified pursuant to G.L. c. 119, § 26.

A parent’s right to be heard in a meaningful manner includes the right to be present at

trial. *See* Adoption of William, 38 Mass. App. Ct. 661, 666-667 (1995). This right is not absolute, because in Adoption of William, the Appeals Court concluded the father's due process rights were not violated by the fact that he was excluded from the courtroom during the social worker's testimony. *Id.* Expanding upon this in 2000, the Massachusetts Appeals Court held that an incarcerated parent who makes it known to the court that they desire to participate does not have an absolute right to be present at such hearing, particularly, if represented by counsel. The Appeals Court further explained that trial judges can exercise flexibility consistent with the facts of each case and should determine among currently available options how best to assure that a parent has a meaningful opportunity to rebut the evidence presented at trial. *See* Adoption of Edmund, 50 Mass. App. Ct. 529-530. Edmund specifically mentions video or telephonic conferencing during proceedings as ways for the parent to have a meaningful opportunity to respond to the evidence presented. The Appeals Court also explained that in child welfare proceedings due process requires the parent to have the ability to respond to the allegations. *See id.* at 531. The Court held due process would not be satisfied if the parent had a video deposition prior to trial, but it would be satisfied, if after all the evidence is presented and reviewed, the parent responded by an affidavit. *Id.* However, if a parent is not present or chooses not to testify, a court may draw an adverse inference against the parent for his/her refusal to testify. *See* Care and Protection of Quinn, 54 Mass. App. Ct. at 121, *citing* Custody of Two Minors, 396 Mass. 610, 617 (1986).

In reviewing a child's right to participate in proceedings, the courts recognize that children have vital interests at stake in these proceedings. *See* Adoption of Manuel, 428 Mass. 527, 535 (1998); Adoption of Christine, 405 Mass. 602, 603 n. 3 (1989). Juvenile Court Rule 11 provides that children are not required to appear in all the court proceedings, but whether they are present will depend upon a number of factors such as the child's age, maturity, preferences, and ability to understand the proceedings. If child's counsel reasonably determines that the child is able to make an adequately considered decision with respect to a matter in connection with the representation, counsel shall represent the child's expressed preferences regarding that matter. *See* Adoption of Flora, 60 Mass. App. Ct. 334, 339 (2004), Care and Protection of Georgette, 439 Mass. 28, 39-41 (2003). However, if counsel believes that the child's expressed preferences

would place him/her at risk of substantial harm, then a guardian ad litem may be requested to assist in that decision. *See* Adoption of Flora, 60 Mass. App. Ct. at 340, *citing* Care and Protection of Georgette, 439 Mass. at 40-41. The determination of a child's participation occurs on a case-by-case basis.

Foster parents have rights pursuant to G.L. c. 119, § 29D which permit them to attend proceedings and to be heard. *See* Adoption of Sherry, 435 Mass. 332, 338 (2001). Further, G.L. c. 119, § 21 states that foster parents may provide testimony. Upon occasion other individuals, such as relatives, seek to be included. These individuals have no right to participate unless the court, pursuant to Rule 24 of the Massachusetts Rules of Civil Procedure, permits them to intervene. *See* Care and Protection of Zelda, 26 Mass. App. Ct. at 971.

Finally, a significant participant in these matters are the attorneys. The issue of attorneys working with their clients in other states and of attorneys in those states working with individuals in Massachusetts proceedings raises the question of where these attorneys may be practicing law and whether that is permissible. Under the court appointed system in Massachusetts, any indigent parent or child who is a party to a child welfare proceeding will be appointed an attorney who is licensed to practice in this Commonwealth. If another relative or foster parent in another state hires counsel on their own, then that attorney would have to comply with the pro hac vice requirements. Those requirements are to provide legal services on a temporary basis, to be associated with a lawyer who is admitted to practice in this jurisdiction, and actively practices this type of law. *See* G.L. c. 221, § 39; G.L. c. 221, § 46A; Sup.Jud.Ct.Rule 3:07, Rule 5.5.

C. *What laws, regulations, policies, statutes, and court rules impact the courts' ability to share information with out-of-state courts to expedite the interstate placement of children?*

Juvenile Court proceedings are closed to the public. Juvenile Court case records and reports are confidential, and sealed or impounded. *See* G.L. c. 119, § 38; Standing Order 1-84 *Juvenile Court Case Records and Reports*; Standing Order 2-04 *Electronic Recording of Court Proceedings*. Though the Juvenile Court has some discretion to release information to other individuals, it is unclear if the information must be requested or if the court may release the information sua sponte. *See* Mass.R.Juv.Crt. 9; Juvenile Court Standing Order 1-84 *Juvenile Court Case Records and Reports*. In addition, G.L. c. 119, § 51E permits the department to

share information with child welfare agencies of other states for the purpose of assisting that welfare agency in determining whether to approve a prospective foster or adoptive parent. The Department of Social Services also has a number of regulations and internal policies regarding record sharing and confidentiality. *See generally* 110 C.M.R. 4.38 Access To The Registry of Alleged Perpetrators; 110 C.M.R. 7.211 Adoption Records; 110 C.M.R. 11.22 Confidentiality of Medical Records and Information; 110 C.M.R. 12.00 Records; 110 C.M.R. 12.02 Confidentiality of Department Records; 110 C.M.R. 12.06-12.10 Release of Information; DSS Policy #86-011 ongoing social worker documentation, and DSS Protocol # PR 95-004 51A screening.

As previously noted, the Massachusetts Child Custody Jurisdiction Act provides guidance on working with courts in other states. *See generally* G.L. c. 209B, §10 (providing some guidelines when Massachusetts needs another state to hold a hearing); G.L. c. 209B, § 11 (explaining how one court may order a person to appear in this Commonwealth and give testimony or produce evidence); G.L. c. 209B, §13 (providing that the court may share with other courts copies of the pleadings, orders, judgments, and any record); G.L. c. 209B, § 14 (providing that courts in Massachusetts shall grant due recognition to other courts).