

**Interstate Compact for the Placement of Foster
Children**

Maryland Assessment

**Maryland Foster Care Court Improvement Project
Administrative Office of the Courts
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A. Introduction

In 2006 the Federal Safe and Timely Interstate Placement of Foster Children Act was enacted. This law amends Title IV-B and IV-E of the Social Security Act, and “encourages States to improve protections for children and holds them accountable for the safe and timely placement of children across State lines.” This effort follows several other steps being taken by the federal government in response to the Pew Commission on Children in Foster Care.

While this law outlines many requirements for the State child welfare agency, it also places new requirements on the Court. State courts that receive the basic court improvement grant must also assess their effectiveness in carrying out State laws around interstate placements that:

- require courts in different States to cooperate in sharing information.
- authorize courts to obtain information and testimony from agencies and parties without requiring interstate travel by the agencies and parties, and
- permit the participation of parents, children, other necessary parties, and attorneys in interstate placement cases without requiring their interstate travel.

State courts must also take into consideration any efforts towards permanency through an interstate placement, when making reasonable efforts findings. Such efforts should be apart of the Court’s finding. Similar considerations should also be given for reasonable efforts findings regarding concurrent planning and permanency hearings held after a finding of aggravated circumstances. In both of these instances, consideration shall be given to both in and out of state placements.

Other provisions of this statute have a more direct impact on the responsibilities of the Agency, and require a procedure for the orderly and timely interstate placement of children consistent with an Interstate Compact. Additionally, provisions related to timely home studies, use of cross jurisdictional resources, reasonable efforts, increased case worker visits, and case plan and review system amendments are included in this new federal statute.

As a condition of continued receipt of Court Improvement Program (CIP) grant funds, Maryland embarked upon assessing the Court’s role, responsibility, and effectiveness in the interstate placement of foster children, and where possible, implement proposed improvements to expedite interstate placements.

The Maryland Foster Care Court Improvement Project (FCCIP) staff (Director, Assistant Director, Permanency Court Coordinator) along with the oversight of the Implementation Committee led this effort to complete the assessment. The assessment consisted of surveys to juvenile court judges and masters, caseworkers, attorneys, and CASAs; interviews of State ICPC Director and other ICPC staff, a review of state laws, court rules, and state policy; as well as an overview of the ICPC process for both sending and receiving children.

Generally, judicial officers did not see the ICPC process as one in which the Court played the primary or “key” role in ensuring timely processing of these cases. Several recommendations for

improvement to the process have been determined and will be outlined more specifically later in the report.

B. State laws, Court Rules, and Policy Directives

In Maryland's preparation to amend its current child in need of assistance statute, the FCCIP Legislative Subcommittee conducted a detailed review of Maryland laws and regulations to determine whether the state of Maryland has in effect policies and administrative and judicial procedures to comply with the Safe and Timely Interstate Placement of Foster Children Act of 2006.

Assessment of judicial proceedings in interstate placements and current state law

The Legislative Subcommittee determined that the state of Maryland has in effect policies and administrative and judicial procedures that support the legality of certain methods of cooperation to facilitate information sharing among parties and their attorneys. Additionally, Maryland has laws that adequately address the use of teleconferences or video conferences and the restrictions regarding interstate practice. Finally, the Subcommittee could not identify any legal barriers to timely and thorough judicial decisions regarding interstate placements.

References: Family Law Title 9.5 Maryland Uniform Child Custody Jurisdiction and Enforcement Act; - Family Law Articles ' ' 9.5-101 (Definitions); 9.5-109 Communication between courts; 9.5-110 (Obtaining testimony of witnesses in another state); 9.5-111 (Requests to another state); Maryland Rules 2-413 (Deposition - Place); 2-414 (Deposition - Officer before whom taken); 2-419 (Deposition - Use) 5-902 (Self-authentication); Maryland Rules Governing Admission to the Bar of Maryland Rule 14.

REASONABLE EFFORTS- CONSIDERING APPROPRIATENESS OF INTERSTATE PLACEMENTS

Social Security Act section 471(a)(15)(C), 42 U.S.C. §671(a)(15)(C)

Federal law provides that if the permanency plan is not reunification, the court must consider whether an out-of-state placement should be part of the permanency plan. After the court decides reasonable efforts to prevent placement and reasonable efforts to achieve reunification are not required, the court must consider the appropriateness of out-of-state placement at the 30-day permanency hearing. (Social Security Act section 471(a)(15)(D), 42 U.S.C. §671(a)(15)(D)) Concurrent reasonable efforts findings to achieve the permanency plan of adoption or legal guardianship also must consider appropriateness of out-of-state placements. (Social Security Act section 471(a)(15)(F), 42 U.S.C. §671(a)(15)(F))

Effective October 1, 2008, Maryland Law will provide for a reasonable efforts finding regarding the specific consideration of the appropriateness of Interstate placements.

Proposed Amendment to C&J §5-525(d)(4) and C&J §5-525(d)(4).

Permanency Hearings – Considering Appropriateness of Interstate Placements
Social Security Act section 475(5)(C)(i), 42 U.S.C. §675(5)(C)(i)

In cases where reunification is not the plan, the court must consider in-state and out-of-state permanent placement options in the Permanency Planning hearings.

Effective October 1, 2008, Maryland Law will provide for consideration of the appropriateness of Interstate placements in permanency hearings.

Proposed Amendment to C&J §5-525(e)(1).

Maryland Uniform Child Custody Jurisdiction and Enforcement Act

The Maryland Uniform Child Custody Jurisdiction and Enforcement Act established general procedures for child custody proceedings under the Act, including specifying the basis for jurisdiction over child custody matters and for the enforcement of child custody determinations made under the Act. The law governs the determination of which state has jurisdiction over custody cases involving more than one state, deters against interstate parental kidnapping, and make custody orders easier to enforce across state lines. In addition to domestic matters, the Act governs “child custody proceeding” arising from neglect, abuse, dependency, guardianship, paternity, and termination of parental rights.

The Act also governs communications between courts, Family Law §9.5-109, allowing State courts to communicate with another state regarding proceedings arising under the Act. Family Law § 9.5 -110 allows that any party to a proceeding under the Act may offer testimony of witnesses who are located in another state. This includes allowing deposition or testimony by telephone, audiovisual means or other electronic means before a designated court in that state. Family § 9.5-111 addresses requests to another state and from another state, including request to hold an evidentiary hearing, ordering a person to produce or give evidence; ordering evaluations in respect to the custody of child involved, and the ordering of a party to a child custody proceeding or any person having physical custody to appear.

Maryland Court Rules

Maryland’s rules regarding discovery, Maryland Rule §2-413, Deposition Place, §2-414, Deposition-Officer before whom taken; §2-419 Deposition-Use, and §5-902, Self-authentication, allow a range of option in obtaining evidence and the deposition of parties both in and out of state. Additionally, provisions are made for videotape and audiotape depositions. Maryland Rule 14 allow for Special Admissions of out of state attorneys to practice in the state.

Department of Human Resources Policy

The Code of Maryland (COMAR 07.02.11.25) Out-of-State Placement policy provides that all placement of children for out-of-home placement or as a preliminary to possible adoption in Maryland from another state shall comply with the requirements of the Interstate Compact for the Placement of Children (Compact), Family Law Article, Title 5, Subtitle 6, Annotate Code of Maryland. This policy also provides that to place a child out of state, the Compact require that before the two states involved sign a contract or an agreement, the plan shall be approved by the: (a) Other state based on its interstate placement requirements, and (b) Maryland Social Services Administration.

This policy also outlines the provisions for a foster child being placed in a foster home or adoptive home outside of Maryland, whereby the placement is in a bordering state, can meet the special needs of the child, and when the child is placed with a non custodial parent, relative, or guardian.

Summary of Interstate Placement Process

The FCCIP staff was able to get an understanding as to the ICPC process through interviewing ICPC staff at the State Department of Human Resources (DHR).

Placing Children Out of State (Maryland as sending State)

- a. Child's placement determined to be potential out-of-state placement by caseworker.
- b. The case worker submits the initial ICPC packet to the state office at DHR. *(ICPC staff indicate that once the packets leave the local departments, it usually take 2 – 6 days to actually reach the ICPC office, due to such large volumes of mail at the DHR).*
- c. The ICPC office reviews the packets against an ICPC checklist and provided that all necessary documentation is included sends the packet to the receiving state within five days. *(During the review it is indicated that delays often occur, if there are inexperienced caseworkers who forward incomplete packets.)*
- d. Receiving state ICPC office reviews packet for completeness. *(DHR staff indicate that Maryland does not have a financial/medical plan form, which is required by other states. This requires Maryland to explain the process, also causing delay).*
- e. Receiving state begins its assessment process. This outcome varies depending on the State and whether or not Maryland has worked with the state before. *(ICPC staff indicate the process up to this point averages 20 – 23 days, then the Home Study process begins, which usually takes 60 days).*

- f. Maryland is notified of the receiving state's decision.

Receiving Children from Out of State (Maryland as receiving State)

- a. DHR ICPC office receives placement request from sending states.
- b. Once request received, information is processed within 1 – 3 days. *(Delays also noted on this end of the process due to mail process in and out of DHR, other sources of delay indicated is often related to the small number of ICPC staff that process all cases).*
- c. Information forwarded to local departments. Home assessments completed within 30 days, and home studies usually completed sometimes afterwards. *(State does not have access to Live Scan, this often causes delays with criminal background checks).*
- d. The local departments advise the ICPC office of its results, and then ICPC office notifies sending state of its decision.

ICPC Interviews

The FCCIP staff conducted a session of seven interviews of the State's ICPC staff at the Department of Human Resources (DHR). The background and experience of those assigned to this office varies. The office is made up of the Director of Office Child Welfare Policy and Practice, who serves as the State manager for ICPC, two policy analysts, a special assistant to the director, and three support staff.

Although an extremely small office to handle the state's entire caseload (approximately 9,000), it is made up of a group of very dedicated individuals. The interviews yielded the following strengths as it related to the current ICPC process:

Strengths:

- Staff extremely dedicated. Often work overtime and weekends to keep up with demands of the caseload.
- ICPC Director, and one of the policy analyst have several years in this area, and are extremely knowledgeable of the process.
- Have well-established relationships with other ICPC staff throughout the country, which helps when trying to get cases processed.
- Often serve as the unofficial trainers of the ICPC process for caseworkers.

- Mediate well between states.
- ICPC process in smaller jurisdictions proceed rather quickly, with few delays.
- Prince George's county has an ICPC liaison that works directly with these cases.
- Able to move quickly on priority cases (Reg. 7).

Challenges

- Too few staff, too large a caseload.
- Don't have adequate space for files.
- Don't have dedicated fax machine, copier, or printer. Share equipment with members from other departments. Sometimes ICPC information is taken mistakenly from community fax, printer, which also causes delay.
- Inexperienced caseworkers contribute to delays.
- Transporting of mail to and from the DHR mailroom contributes to delay significantly.
- Lack of training of caseworkers. Need an ICPC trainer.
- Large numbers of referrals received monthly.
- New state case management system (CHESSIE) doesn't support ICPC needs.
- Does not have access to Live Scan use.
- Criminal Justice Background checks are significantly delayed.
- ICPC is an unfunded mandate, with no baseline for conformity.

When posed questions specifically related to the court's role in processing ICPC cases, the following was reported:

Direct contact with a Maryland Judge/Master regarding a case was reported to be infrequent. Discussion with judges from other states was reported to be more frequent. In those cases, judicial officers are usually inquiring as to the status of a case. ICPC staff report that courts generally become involved in interstate placement decisions at the time of the Permanency Planning hearings. Staff expressed concern that the courts don't fully understand the ICPC process, and often times attempt to go "around" the process. In some cases courts make decisions about children's placements before the ICPC process has been completed or the placement approved. It is felt that judges need to be trained on the process and encouraged to assist by contacting judges in other states when possible. Most importantly the court should be encouraged to work more directly with the ICPC office. It is believed that this will assist in keeping the process in compliance.

Interview Tool (Appendix A)

ICPC Surveys

Judicial Surveys

In October 2007, ICPC surveys were distributed to juvenile court judges and masters to specifically inquire about the ICPC process for the State of Maryland. Approximately 49.1% of

the responses came from juvenile court judges and 50.9% came from juvenile court masters. Responses were received from all eight of Maryland's judicial circuits.

Ninety-two (92%) percent of those surveyed indicated that less than 10% of the CINA cases they hear involve interstate placements. Forty-nine (49%) percent of those surveyed indicated that they actively oversee progress on ICPC issues. Judicial officers indicate that the issue of interstate placement most typically arises post-adjudication, and when a relative from out of state has been identified as a potential resource. About forty (40%) percent acknowledge that they rarely order the local Department to explore possible out-of-state placements, citing the lengthy process, or the Department's own initiative to start the process. Once the Court is made aware that the ICPC process has been initiated, over fifty (50%) percent require that the status be reported to the Court and attorneys. Others indicate that there is no requirement, but the agencies report on their own.

Members of the bench identified several contributing factors to the delay in the ICPC process, some of them include but are not limited to:

- Caseworker training needed.
- Non-cooperative states.
- Courts not clear about the process.
- Process needs to be streamlined and expedited.
- ICPC staff needs to be identified for the Court.
- Difficulty in getting timely responses from other states.

Judicial Survey (Appendix B)

Stakeholder Surveys

In October 2007, ICPC Surveys were also distributed to children's attorneys, parent's attorneys, agency attorneys, caseworkers, CASAs and other court personnel to get their thoughts on the ICPC process. All twenty-four of Maryland's jurisdictions were represented in the response, with Baltimore City respondents over forty (40%) percent.

Interestingly, over fifty (50%) percent of those who responded see the court as having a prominent role in either ordering the Department to initiate ICPC process, expedite the process, or inquiring of status.

When asked whether the court's process increased or decreased delays, over half the responses indicated that the court's process had no real impact on the ICPC process. Many indicated that the court's process does not affect delays, but rather delays are directly related to DSS. Some indicated that even when the court orders an expedited process, the outcome appears to be out of the Court's hands. A few indicated specific examples as to when a particular judge made a concerted effort to obtain the status of a case.

Stakeholder Survey (Appendix C)

ICPC Recommendations

- Offer a more extensive, comprehensive training of the ICPC process for judges, masters, attorneys and caseworkers.
- Increase staffing resources at State ICPC office.
- Increase active court monitoring of ICPC cases, through development of an ICPC hearing checklist, or add as apart of the absent parent litany.
- Explore border agreements between ICPC offices in Maryland, Virginia, Washington D.C., Pennsylvania, Delaware and West Virginia.
- Streamline ICPC process by considering using ICPC software and electronic filing.
- Consider instituting dual approval process when completing home studies for both adoptions and foster care.
- Develop a uniform process to identify out of state resources early in the process.
- Encourage more frequent court reviews, until ICPC issues are resolved.
- Court should note delays in its written findings in court orders.
- Identify the state ICPC staff for stakeholders.
- U.S. Department of Health and Human Services should consider providing funding to States to improve the ICPC process.

Conclusion

Through this process, it's been determined that it typically takes three to six months to resolve an ICPC case. The cause of delays seem to range from insufficient staffing, poor training of caseworkers, judges, attorneys and other stakeholders as to the ICPC process, delays from the receiving state, and variances in the ICPC process from state to state. While the ICPC process is intended to provide another vehicle to increase safe options for permanency for children in care, it appears that the process often causes delay, frustration, and disenfranchisement to the parties involved. While it appears that the Court may be able to play a more active role in inquiring about the status of cases, it is unclear as to whether frequent inquiry will have an effect on understaffed offices, delayed home studies due to funding limitations, and delayed criminal background checks.

Appendices