

Maine Assessment:

**Interstate Compact on the
Placement of Children**



STATE OF MAINE

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I. Legal Assessment

The Maine Judicial Branch has reviewed the effectiveness of Maine state laws and court rules that affect the processing of protective custody and juvenile proceedings¹ involving children placed out of state pursuant to the Interstate Compact for the Placement of Children. Specifically, we have, as requested, focused on (1) information-sharing between courts in different states; (2) procedures for obtaining information and testimony from agencies and parties in other states without requiring interstate travel to appear in Maine courts; and (3) permitting parents, children, and other parties and attorneys to participate in child custody proceedings without requiring them to be physically present in Maine. These topics are addressed below. In addition, we have set forth suggested changes that could be made to state statutes and court rules, which would facilitate interstate court communication, testimony, and participation in ICPC cases.

a. Current State Laws and Court Rules

i. Interstate Compact on the Placement of Children

Maine's current version of the Interstate Compact on the Placement of Children is codified at 22 M.R.S.A. §§ 4191 to 4247. It defines the categories of interstate placements governed by the Compact—including child protection placements, placements for adoption, and placements in an out-of-state institution by a juvenile court—as well as providing that a sending agency may not transfer a child to a placement in another state without first following the procedures set forth in the Compact. Further, it indicates that the sending state must retain jurisdiction over the child “sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state.” § 4195. Thus, Maine courts retain jurisdiction over child protection and juvenile proceedings when children are placed out of state under the ICPC.

The Maine Legislature recently enacted a new version of the Interstate Compact on the Placement of Children, designed to “Promote Compliance with the Federal Safe and Timely Interstate Placement of Foster Children Act of 2006.” See P.L. 2007 ch. 255 (123rd Legis.) (to be effective upon the legislative enactment of the new Compact by at least 35 states). Although not yet effective, this version of the ICPC is currently codified at 22 M.R.S.A. §§ 4251 to 4269.

¹ Unlike many state court systems, the Maine Judicial Branch does not enjoy jurisdiction over adoption proceedings. Rather, exclusive jurisdiction over *all* adoption proceedings—regardless of the reason for adoption—is statutorily vested in county probate courts. 18-A M.R.S.A. § 9-103(a)(1). Given this jurisdictional limitation, the enclosed assessment focuses solely on pre-adoptive child protective proceedings and juvenile matters.

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There are no specific provisions of the current or the new ICPC that directly address information sharing between courts; procedures for obtaining information and testimony from out-of-state parties and witnesses; or participation of parents, children and other parties and their attorneys, who are located in other states, in Maine court hearings.

ii. Child and Family Services and Child Protection Act

Maine's Child and Family Services and Child Protection Act, 22 M.R.S.A. §§ 4001 to 4099-C, governs proceedings involving the placement of children in the custody of the Department of Health and Human Services ("DHHS") when a child is found to be in "jeopardy", periodic review of these arrangements, and termination of parental rights hearings. Pursuant to § 4007, child custody proceedings must be conducted in accordance with the Maine Rules of Civil Procedure, the Maine Rules of Evidence, and the Interstate Compact for the Placement of Children. As described below, the Maine Rules of Civil Procedure contemplate the taking of testimony by telephonic or other "contemporaneous" communication as well as the admission, in certain instances, of out-of-state depositions. In addition to these applicable civil procedure rules, the Child and Family Services and Child Protection Act contains the following provisions:

Information sharing between courts in different states. There are no provisions within the Child and Family Services and Child Protection Act directly addressing information sharing between courts of different states.

Obtaining information & testimony from out-of-state agencies and parties. In addition to the Rules of Civil Procedures, there are a number of provisions within the Act that facilitate information sharing from agencies and parties in other states, without requiring interstate travel:

- *Guardian ad litem reports:* In every child protection proceeding, the court must appoint a guardian *ad litem* ["GAL"] to act in the best interests of the child. § 4005(1)(A). The GAL is required to conduct an investigation to ascertain the facts relevant to the case, including reviewing medical, mental health and school records; interviewing the child; and interviewing the parents, foster parents, teachers, caseworkers and other persons involved in the care and treatment of the child. § 4005(1)(B). The GAL must also have face-to-face contact with the child in his or her placement at least every three months and shall "report to the court and all parties in writing at 6-month intervals" regarding the GAL's investigation and recommendations for the child. *Id.* Critically, pursuant to § 4005(1)(D), "[t]he court may admit the written report into evidence." Maine's highest court of appeal, the Law Court, has held that admission of the GAL report, including any hearsay statements contained therein, does not violate the Rules of Evidence or the parents' constitutional due process rights. *In re Chelsea C.*, 2005 ME 105, ¶¶ 7-16, 884 A.2d 97, 100-02. Thus, the GAL may act as a vehicle for interviewing the child, out-of-

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state caseworkers, the foster parents or relative caregivers, and presenting information from those individuals in court without requiring interstate travel (except for the GAL's travel or telephone interview costs, of course).

- *Information from the child:* Pursuant to § 4007(2), in every child protection proceeding, the judge has the discretion to interview a child witness in chambers or to “admit and consider oral or written evidence of out-of-court statements made by a child, and may rely on that evidence to the extent of its probative value.” This provision grants the court discretion to exempt the child from traveling to Maine court proceedings, even in situations where, by statute, the judge either may or must consider the child's wishes when making specific decisions regarding the child. *See, e.g.*, § 4038-B(5) (must consider child's wishes in creating a permanency plan); § 4055(3) (must consider wishes of a child 12 years or older in a termination proceeding); § 4068(3) (child's right to request sibling visitation). In addition, pursuant to § 4005(1)(E), the child's GAL “shall make the wishes of the child known to the court if the child has expressed his wishes.” Read together, §§ 4007(2) and 4005(1)(E) permit the court to rely on the GAL's expression of the child's wishes without requiring the child to travel interstate.
- *Mental Health Reports:* Pursuant to § 4007(3-A), “the written report of a licensed mental health professional who has treated or evaluated the child shall be admitted as evidence” if the party offering the report has given the other parties sufficient advance notice. Although the other parties to the proceeding have a right to object to the report's admission without the testimony of the mental health professional, in cases where no objection is lodged this provision relieves the professional from traveling to the Maine proceeding. Even where testimony is required, M.R. Civ. P. 43(a) gives the court discretion to permit this testimony by phone or other contemporaneous transmission. *See infra*.
- *Emergency Removal Hearings:* In Maine, when a child is removed from the parents' home pursuant to an *ex parte* order, the court conducts a “summary preliminary hearing” to test the validity of that removal within 14 days. § 4034(4). Although it is unlikely that the child will have been placed out of state—given the timeframe for approving an ICPC placement—the statutory procedures for a summary preliminary hearing permit the court “to admit evidence, including reports and records, that would otherwise be inadmissible as hearsay evidence.” *Id.* Although this provision limits the requisite interstate travel for summary preliminary hearings, the hearsay evidence admitted in this manner is not admissible at subsequent hearings in the case. § 4034-A(1), (2).
- *Hearings challenging preliminary Rehabilitation and Reunification Plans:* At the summary preliminary hearing (discussed above), or within 10 days of filing the child protection petition if no summary hearing is held, DHHS must submit a preliminary reunification plan to the court. § 4041(1)(C). The court may

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hold a summary hearing to review the preliminary plan and, although the timeframe for approving ICPC placements makes it unlikely that a child will be placed out of state at this early stage in the case, the statutory procedures for this hearing permit the court to “admit evidence, including reports and records, that would otherwise be inadmissible as hearsay evidence.” *Id.* In rare cases, this may alleviate the need for interstate travel.

- *Dispositional hearings:* Although hearsay evidence is not admissible during the adjudicatory phase of child protection proceedings (original and review hearings), during the dispositional phase of an initial jeopardy proceeding or a review hearing, “the court shall hear any relevant evidence regarding proposed dispositions, including written or oral reports, recommendations or case plans.” § 4035(3) (initial jeopardy hearings); *see also* § 4038(5) (applying § 4035 to review hearings); § 4038-A (same for review hearings in cases transferred from Probate Court to state court). In theory, these provisions allow admission of reports from caseworkers in the receiving state, where such caseworkers have agreed to provide ongoing supervision of the ICPC placement, on the questions whether the ICPC placement remains appropriate and the effect of change in custody upon the child.

However, § 4007(4) of the Act, which applies the ICPC to child protection proceedings, further provides that “[a]ny report submitted pursuant to the compact is admissible in evidence for purposes of indicating compliance with the compact and the court may rely on evidence to the extent of its probative value.” The Law Court, Maine’s highest court of appeals, has interpreted this provision to restrict the use of ICPC reports, “solely to show compliance with the ICPC” unless accompanied by testimony from the party preparing the report. *In re Natasha S.*, 2008 ME 54, ¶ 15, 943 A.2d 602, 606 (emphasis added). If *all* reports from out-of-state caseworkers in ICPC cases are considered “report[s] submitted pursuant to the compact,” then this decision prevents the court from utilizing the other information in these reports that would otherwise be admissible in dispositional hearings. It may be that § 4007(4) will be amended in the future.

- *Hearings on Department Decisions to Cease Reunification Efforts:* If DHHS decides to discontinue efforts to return the child to the parent(s), it must notify the parent of this decision and file a motion with the court. § 4041(2)(B-1). The parent has a right to request a court hearing on this decision, or the court may set the matter for hearing on its own motion. If a hearing is held, it is a “summary hearing” utilizing the procedures set forth for a summary preliminary hearing, *id.*, including authorizing the court to “admit evidence, including reports and records, that would otherwise be inadmissible as hearsay evidence.” § 4034(4). Section 4041(2)(B-1) thus gives the court discretion to use oral and written reports—including those submitted from out-of-state caseworkers and therapists—as evidence rather than requiring these individuals to travel to the hearing. However, the language of § 4007(4),

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limiting the use of ICPC reports, may pose an impediment to the use of reports from out-of-state caseworkers in these hearings.

Access to proceedings for out-of-state children, parents & parties. Maine’s Child and Family Services and Child Protection Act provides that “foster parents, preadoptive parents and relatives providing care” for a child “must be provided notice of and the right to be heard in any proceeding to be held with respect to the child.” § 4005-D(5). The Act further clarifies that these individuals “may attend a proceeding in its entirety under this subsection unless specifically excluded by decision of the presiding judge.” *Id.* As our review of DHHS and court procedures has revealed, however, (see below) courts are often not involved in the decision-making process leading to placement of a child in another state under the ICPC. Perhaps in recognition of this potential lack of information, other provisions of the Act make clear that the notice given to foster parents, preadoptive parents, and relatives providing care to the child must be supplied by DHHS, not the court.² *See, e.g.,* § 4033(5) (“all proceedings”); § 4038(3) (review hearings); § 4053 (termination hearings). Foster parents, preadoptive parents, and relatives providing care for the child may also petition the court for status as “intervenor,” “participants,” or “interested parties.” If the court grants this status, it (not DHHS) is responsible for providing the requisite notice. § 4005-D.

Although numerous provisions of the act (outlined above) either permit or require the court to consider the wishes of the child in child protection hearings, it is not clear that the child has an absolute right to access and to participate in the hearing. *See* § 4005(1)(B) (“The court *may* provide an opportunity for the child to address the court personally if the child requests to do so or if the guardian *ad litem* believes it is in the child’s best interests.” (emphasis added)).

The Act does not directly address the manner in which the child, foster parents, preadoptive parents, or relatives providing care for the child may access or participate in the proceeding. While M.R. Civ. P. 43(a) (discussed below) gives the court discretion to “permit presentation of testimony in open court by contemporaneous transmission”—*i.e.*, telephonic or videoconference technology—there is no statutory or rule-based authority for the court either allowing or prohibiting these individuals from “attending” the entire court proceeding via telephone or videoconference. Anecdotally, in at least one Maine child protection proceeding a pregnant mother who could not travel to the court proceeding has been permitted to “attend” that proceeding via telephone—both for testimonial purposes and for the purposes of listening to the entire hearing via phone. Her attorney was present in the courtroom and, on occasion, requested (and was granted) permission to suspend the proceedings so that he could

² The Judicial Branch is currently in the process of revising its court forms to ensure that the presiding judge requires DHHS to present proof that the requisite notice has been provided to foster parents, preadoptive parents, or relatives providing care for the child, including those who do not reside in Maine.

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communicate with his witness outside the presence of the court to ensure that his representation met with her approval.

Access to proceedings for out-of-state children, parents, & parties. There are no specific provisions within the Act either permitting or preventing parties, children, parents, or others to “attend” Maine court proceedings remotely.

iii. Uniform Child Custody Jurisdiction and Enforcement

Maine has enacted, with amendments, the Uniform Child Custody Jurisdiction and Enforcement Act (“UCCJEA”), which is codified at 19-A M.R.S.A. §§ 1731 to 1783. It contains a number of provisions facilitating information sharing between courts and facilitating court access to information and testimony from out-of-state agencies and parties. Yet, under current Maine law, the provisions of the UCCJEA do not apply to child protection proceedings. 22 M.R.S.A. § 4031(3§) (“The requirements and provisions of [the UCCJEA] do *not* apply to child protection proceedings. . . . The court shall make an order on the child protection petition in accordance with this chapter [*i.e.*, the Child and Family Services and Child Protection Act].”).

The relevant (but currently inapplicable to ICPC cases) provisions of the UCCJEA include:

Information sharing between courts in different states. The UCCJEA explicitly permits Maine courts to communicate with courts in other states concerning child custody proceedings. 19-A M.R.S.A. § 1740(1). If the communication concerns “schedules, calendars, court records and similar matters,” the communication may occur *ex parte*, but where other issues are discussed (for example, whether one court should cede jurisdiction to another court), the parties must be informed promptly of the communication and given access to the record. § 1740(3), (4). In addition, the UCCJEA requires Maine courts to preserve “the pleadings, orders, decrees, records of hearings, evaluations and other pertinent records with respect to a child custody proceeding” until the child is 18 years old. § 1742(4). This provision facilitates inter-court communication because, “[u]pon appropriate request by a court . . . of another state, the court shall forward a certified copy of those records.” *Id.*

Obtaining information & testimony from out-of-state agencies and parties. In addition to the authority for telephonic and out-of-state deposition testimony given by the Maine Rules of Civil Procedure (see below), the UCCJEA explicitly provides that parties “may offer testimony of witnesses who are located in another state, including testimony of the parties and the child, by deposition or other means.” § 1741(1). In addition, “[a] court of this State may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means or other electronic means before a designated court or at another location in that state.” § 1741(2). Section 1741(2) further instructs Maine Courts to

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comply with analogous requests from out-of-state courts for taking testimony of witnesses, parties, or children located in Maine.

Maine Courts may also request that courts in other states hold evidentiary hearings, order individuals to produce evidence, order evaluations “with respect to the custody of a child involved in a pending proceeding,” and send to the requesting Maine court certified copies of the transcript or record of the hearing and the evidence or evaluation obtained through the request. § 1742(1). Maine courts are obliged to honor analogous requests from out-of-state courts. § 1742(2). Documentary evidence transmitted from other states to a Maine court is admissible, provided that the means of transmission is reliable and creates an “original” document. *See* § 1741(3).

Access to proceedings for out-of-state children, parents &, parties. There are no specific provisions within the UCCJEA either permitting or preventing parties, children, parents, or others to “attend” Maine court proceedings remotely.

iv. Maine Juvenile Code

When a juvenile has been found to have committed a juvenile crime, the juvenile court, after providing notice and an opportunity to be heard to the parents and to DHHS, may commit the juvenile to the custody of DHHS. 15 M.R.S.A. § 3314(1)(C-1). If the child is committed to DHHS custody, the juvenile court will cause a “protective custody” case file to be opened in the appropriate district court. All subsequent reviews, permanency planning hearings, and termination of parental rights hearings are then conducted in accordance with the Child and Family Services and Child Protection Act, discussed above. *See* §§ 3315(1), 3315-A.

If the juvenile is instead committed to the Department of Corrections (“DOC”), DOC has “complete discretion” to determine the juvenile facility to which the juvenile will be transported. § 3319. Reviews of these placements must be performed annually by “a representative of [DOC]” and a report must then be prepared and submitted in writing to the juvenile’s parents, guardian or legal custodian. § 3315(1). Thus, the juvenile court is not generally involved in reviews of out-of-state commitments, either to determine compliance with the ICPC or to conduct review hearings implicating the issues raised in this ICPC assessment.

Finally, Maine’s Juvenile Code provides the trial judge with several options for post-adjudication disposition. § 3314(1). Aside from possible fines, restitution, work programs, incarceration and other dispositions, the judge has an additional custodial option: custody to another relative. 15 MRSA § 3314(1)(C-2). Custody orders as part of a disposition under section 3114(1)(C-2) do not trigger the “reunification” requirements that attach under section 3314(1)(C-1), but may require annual review under section 3315.

v. Maine Rules of Civil Procedure.

As stated above, the Maine Rules of Civil Procedure apply to child protective proceedings. These rules permit the following procedures in these cases:

Information sharing between courts in different states. The Rules of Civil Procedure do not address information sharing between Maine and out-of-state courts, other than to provide that judges “may accept correspondence or other communications which are transmitted by fax for informational purposes.” M.R. Civ. P. 5(j)(3). Rule 5(j) further provides that “documentary evidence or orders from another court or tribunal may be received from another state by facsimile” in proceedings under the Uniform Interstate Family Support Act. M.R. Civ. P. 5(j)(2). No similar explicit authorization for receipt of facsimile documents in child protection or UCCJEA proceedings exists in the rules, although 19-A M.R.S.A. § 1741(3) may permit facsimile documents in UCCJEA cases (this issue has not yet been addressed by the Law Court).

Obtaining Information & testimony from out-of-state agencies and parties.

- *Testimony by telephone or videoconference:* Maine Rule of Civil Procedure 43(a) states:

In every trial, the testimony of witnesses shall be taken in open court, unless a statute, these rules or the Rules of Evidence provide otherwise. The court may, on its own motion or for good cause shown upon appropriate safeguards, permit presentation of testimony in open court by contemporaneous transmission from a different location. ...

Telephonic or videoconferencing technology is therefore an acceptable means of obtaining testimony from out-of-state witnesses or parties, provided that “appropriate safeguards” are implemented. The Advisory Notes to the 2004 amendment of Rule 43(a) suggest that appropriate safeguards

would include assurances that the testimony is properly sworn; the identity of the individual testifying is confirmed; the witness is subject to the authority of counsel and the court; and the presence of others at the remote location and other environmental factors which could affect the testimony are recognized and, if necessary, controlled.

- *Depositions of Out-of-State Witnesses:* Pursuant to Rule 32(a)(2), depositions of “a witness, whether or not a party, may be used by any party for any purpose” during a proceeding if the court first finds, *inter alia*, that: the witness is unavailable to attend due to his or her location “at a greater distance than 100 miles from the place of hearing”; the witness is not subject to the subpoena power of the court; or “circumstances exist as to make it desirable, in

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the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.” The Law Court has noted, with approval, the admission of depositions of out-of-state witnesses in at least one ICPC proceeding. *See In re Ashley L.*, 2001 ME 119, ¶ 4, 775 A.2d 375, 377.³

- *Subpoenas*: The Maine Rules do not authorize service of subpoenas outside the state of Maine. M.R. Civ. P. 45(b)(2). While this limits the power of Maine courts to compel testimony of out-of-state witnesses—either at a deposition or at a hearing through telephonic or other contemporaneous communication under Rule 43(a)—it does not limit the court’s ability to accept the testimony of willing witnesses. However, there is nothing by rule or statute that would prohibit the service of a subpoena in another state in accordance with the receiving state’s rules and laws. In practice, an out-of-state subpoena is used to compel witness testimony at an location in the state where the potential witness is present.

Access to proceedings for out-of-state children, parents, & parties. The Maine Rules of Civil Procedure neither permit nor prohibit the remote access (*i.e.*, through telephonic or video technology) of out-of-state parties, children, and agencies to Maine court proceedings.

vi. Maine Rules of Evidence

Although the Maine Rules of Evidence apply in Title 22 proceedings to the extent that they are not in conflict with other provisions of law, they do not provide helpful guidance for the purposes of this assessment.

vii. Law Governing Practice of Attorneys Licensed in Other States

In child protection proceedings, parents may request court-appointed counsel and, if the parent is found to be indigent, the court will pay the reasonable costs and expenses of their legal counsel. 22 M.R.S.A. § 4005(2). Nothing in this provision restricts the rights of an out-of-state parent to Maine counsel.

Other interested parties, including out-of-state foster parents, preadoptive parents, or relatives providing care, may also wish to appear in court with a licensed attorney. Maine law authorizes “[a]ttorneys who are practicing law in

³ The rules also permit depositions to be taken outside of the State of Maine, provided that the person before whom the deposition is taken has the legal authority—by statute in the state where the deposition is taken, by federal statute, or by order of the Maine court—to administer oaths. Rule 28(b). While it may be difficult, and perhaps even inadvisable in some ICPC cases, for the parties to travel to the state where the witness resides, the parties and their attorneys need not be physically present during the deposition if the parties adhere to Rule 31, which governs depositions upon written questions.

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other states, territories or foreign countries [to be] admitted *on motion* to try cases in any of the courts of this state.” 4 M.R.S.A. § 802 (emphasis added). Rule 89 of the Maine Rules of Civil Procedure confirms that courts have discretion to permit an attorney licensed in another state or jurisdiction to practice in a particular action provided that the non-Maine attorney actively associates with a member of the Maine bar.

II. Review of Current Practice

a. DHHS Procedures for ICPC Cases⁴

1. District/Probate court order received.
2. Local DHHS Office processes court order
3. Assigned to local caseworker
4. Caseworker determines ICPC placement appropriate/necessary
5. Caseworker completes packet for ICPC Administrator
 - Packet Contents:**
 - a. Completed ICPC 100A—indicates status and actions requested
 - b. Includes all related/required paperwork
 - c. Request letter from caseworker to out-of-state ICPC office
 - d. VI-E eligibility
 - e. Child’s case plan (permanency) and narratives
 - f. Legal status with court orders
 - g. Child/family health history
 - h. Financial/medical plan for ICPC
 - i. Prior home/adoptive studies
 - j. Copy of child’s birth certificate
 - k. Regulation No. 7 form 101, with court order
 - l. AAG-adoption clearance when required
6. Local caseworker reviews packet with supervisor and forwards to Maine ICPC Administrator for processing
7. ICPC Administrator’s office logs case into State databases, reviews ICPC 100A and all paperwork
8. ICPC Administrator reviews ICPC packet and issues decision to proceed with signature on 100A.
9. Case transmitted to local DHHS office and receiving state

⁴ This information was obtained from Maine’s ICPC Compact Administrator.

b. Case Reviews:

The ICPC assessment team reviewed seven (7) cases representing multiple court regions in which Maine was the sending state, including the DHHS file as well as the corresponding court file. It was necessary to collaborate with the DHHS to identify these cases, because most (200 out of 218) DHHS cases involving out-of-state placements do not involve active District Court participation in the ICPC orders. This is, in part, due to the separate statutory jurisdiction over juvenile/child welfare matters and adoption proceedings. While the District Court has jurisdiction over both juvenile and child welfare cases, the Probate Court has jurisdiction over all adoptions, regardless of the genesis of the adoption proceeding. Since the Probate Courts are county-based in Maine, the District Court has no oversight or information-sharing mechanisms. Therefore, this assessment will not address ICPC cases before the Probate Court.

As our case reviews revealed, the primary shortcoming with regard to active court involvement in the ICPC process—lack of clear documentation—was readily apparent in all seven cases.

i. Review of DHHS Files:

Upon review of the DHHS files, it was readily apparent the District Court is involved in the ICPC process very rarely. Only 18 of the 218 interstate placements between January 2007 and June 2008 involved direct District Court action with regard to the ICPC home study or interstate placement. In fact, unless there are delays in the process, it is difficult to ascertain by review of the file if and when the court was even notified of the interstate placement. A review of the DHHS ICPC files for one family involving five children with five separate fathers (requiring five individual cases) suggested that the initial ICPC request had been discontinued. A subsequent review of the court file revealed that all five children had, by DHHS oral report, actually been placed with a relative in Arizona. Another DHHS file documented an interstate placement of a young male. However, upon subsequent review of the corresponding court file, it was not clear that the boy had been placed out of the state of Maine.

DHHS may wish to consider involving the court more in the ICPC process. At a minimum, the Judicial Branch should meet with DHHS to explore the potential notification of the parties and the court of any ICPC home study request or interstate placement.

ii. Review of Court Files:

Upon review of the District court files it was clear that the ICPC process is not adequately documented or readily identifiable. A review of the ICPC files for one family involving five children with five separate fathers (requiring five individual cases) revealed that all five children had, by DHHS oral report, actually been

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placed with a relative in Arizona. However, there was no clear documentation of the ICPC nature of the case. The ICPC assessment team member had to read through multiple court orders before finally unearthing the interstate placement language incorporated within a Judicial Review Order. Nearly all of the files reviewed revealed excessive delays in obtaining the home studies and other relevant information from the receiving state.

c. Survey Results

A survey designed to gather information about current ICPC practices was conducted over two days in August 2008. Six judges, fifteen legal professionals—including Assistant Attorneys General, parents' attorneys, and guardians *ad litem*— took part in the survey, as well as four caseworkers.

i. Judicial Surveys:

All of the judges surveyed have conducted review hearings without requiring parties, attorneys, and caseworkers to travel interstate. To avoid travel issues, judges have employed telephone and videoconferences, but they differ on whether it is appropriate to permit sworn testimony via telephone (2/6 say not). One judge permits written testimony in lieu of phone testimony, admissions by agreement, or evidence through GAL visits/reports.

Three judges reported that they do not accept information directly from other states. Rather, information and evidence must go through the Maine DHHS office. One judge would accept any evidence properly admitted, while another judge would accept only information agreed upon by the parties.

Nearly all of the judges reported excessive delays in the home study process as a primary impediment in ICPC cases. These delays are probably exacerbated due to DHHS not involving the court unless or until delays occur. Half of the judges surveyed had taken direct action (calling ICPC office or judge in other state) to speed ICPC process. One judge has sent a GAL to investigate and to speed up the home study process. Another noted problem was the statutory limitation on admission of ICPC home studies (see legal analysis).

Most judges believe that approved form requests and orders for ICPC home studies and out-of-state placements would be helpful. Another requested form was the Regulation Seven priority placement court order (with the text of Regulation 7 attached). As noted above, it is not always clear to Judges when there is a need for ICPC approval or even when DHHS has made an out-of-state placement. Hopefully, the forms would increase judicial access to this information.

ii. Attorney Surveys

Parents' attorneys, Assistant Attorneys General, and Guardians *ad litem* all reported delays, although none reported delays caused by the court or by DHHS. There was a general consensus that although parents cause some delays, most delays are attributed to the turnaround time before home studies are completed and reported by the receiving states.

None of the attorneys surveyed were aware of forms or other prescribed methods for bringing ICPC issues to the attention of the court. Only Assistant Attorneys General reported raising ICPC issues with the court in response to delays in obtaining information. All attorneys and Guardians *ad litem* reported that the courts, in the absence of relevant information, usually either (1) require DHHS to provide an update at the next scheduled hearing or (2) schedule an additional hearing within 30 or 60 days and require that the home study or other relevant information be updated at that time.

Travel is rarely required for attorneys. Any out of state travel is often done by the caseworker or the Guardian *ad litem*. One attorney reported having a witness testify via telephone and notary in the receiving state swore that witness.

iii. DHHS Caseworker Surveys

Similar to the others surveyed, caseworkers reported excessive delays in the exchange of information from receiving states. Some caseworkers reported a sense of frustration at the perceived lack of enforcement resources and mechanisms. Communication is often poor between states. States also have varying policies regarding the appropriate channels of communication. For example, some states require that all communications be relayed between ICPC Administrators only, while others permit direct communication between the caseworkers in each state. With delays on the part of receiving states, some caseworkers feel especially pressured by the lack of financial resources for travel. While caseworkers still travel out of state, there are limited resources to do so and caseworkers must rely on other states for information and child contact visits.

d. Summary: How is the ICPC Process working?

The general impression was that ICPC cases suffered from a lack of timeliness chiefly attributable to poor interstate communications. Generally speaking, ICPC caseloads are relatively light compared to other child protective caseloads.

Information collection:

Perhaps related to the limited admissibility of ICPC home studies in *child protective cases*, caseworkers and Guardians *ad litem* reported an increased need to

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travel to the receiving state to conduct, in effect, their own home studies for use in court proceedings. Financial considerations preclude GALs from traveling in most cases. Instead, GALs report utilizing phone calls and e-mails to garner information that will go into their reports. Telephone conferencing has become more widely utilized for court proceedings as well.

Information exchange delays and their impact:

DHHS acts as the primary conduit for inbound and outbound information exchanged between states. Delays seem to be commonplace due to slow information flow. By all accounts, when information is not available during a review, judges ask for an update at the next scheduled hearing or schedule an expedited review hearing for the purpose of obtaining an update.

While none of the reported delays seem to flow from the court's involvement, delays caused by parties are not uncommon. The District Court, by virtue of its authority over the parties, is able to address party-based delays promptly. Moreover, the interstate transfer of information was universally identified as the primary cause of delays in the ICPC process—as opposed to Maine's laws or its courts—and most felt that there was little that the courts could do to change this.

Nonetheless, one judge, when faced with a delay in availability of a home study, ordered the State of Maine to refuse reimbursement for the study if it was delayed much longer; the home study was completed shortly thereafter. Similarly, it was reported that judges issue expedited ICPC orders in situations where a case is being stymied in some way.

Processes in pursuit of solutions:

While none of the legal professionals surveyed were aware of, or utilized, a particular form, most agreed that court approved ICPC forms and orders would be helpful. Many of the current court forms could be modified to accommodate ICPC requests and orders.

Similarly, most individuals surveyed concluded that ICPC training would be worthwhile. Another ICPC consideration that was consistently raised among all categories of individuals surveyed, from judges to caseworkers, was the lack of clarity as to when a case becomes an ICPC case. The court notification of a potentiality of an interstate placement is haphazard, at best. If everything flows smoothly, DHHS notifies the court (usually orally) at the next hearing after the placement is effectuated. There is no consistent practice or policy as to when the court is notified that there is a potential ICPC placement that is not going smoothly. Delays need to be reported to the court timely and consistently in order to avoid further delay.

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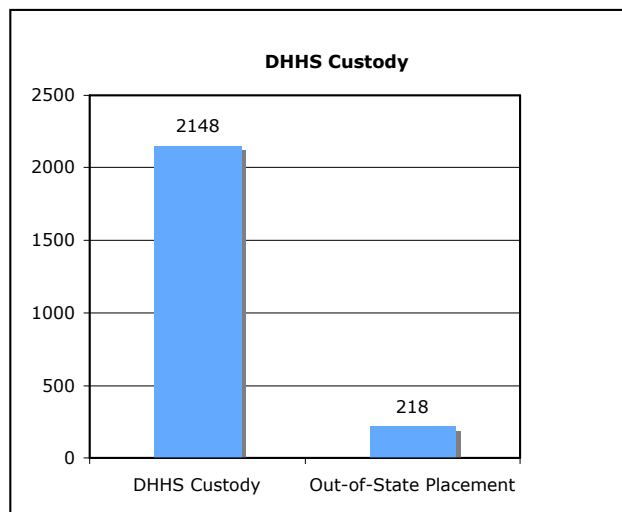
One potential bright spot on the horizon is a Federal effort to establish a national database of ICPC directors for each of the states. Presumably, stakeholders with access to this database would be able to reach out directly to the appropriate person in a given state to address delays in information sharing with that state.

e. Data

Maine's ICPC data illustrates that very few interstate placements involve District Court notification, involvement, or action. A plausible theory is that only cases with excessive delays are brought to the court's attention. This would explain why most judges report excessive delays with regard to the exchange of information in ICPC cases. As noted below, approximately 58% (or 113 out of 195) of the home studies returned to the State of Maine are not completed within a 60-day time frame. In fact, nearly 40% of all studies are not completed within 90 days.

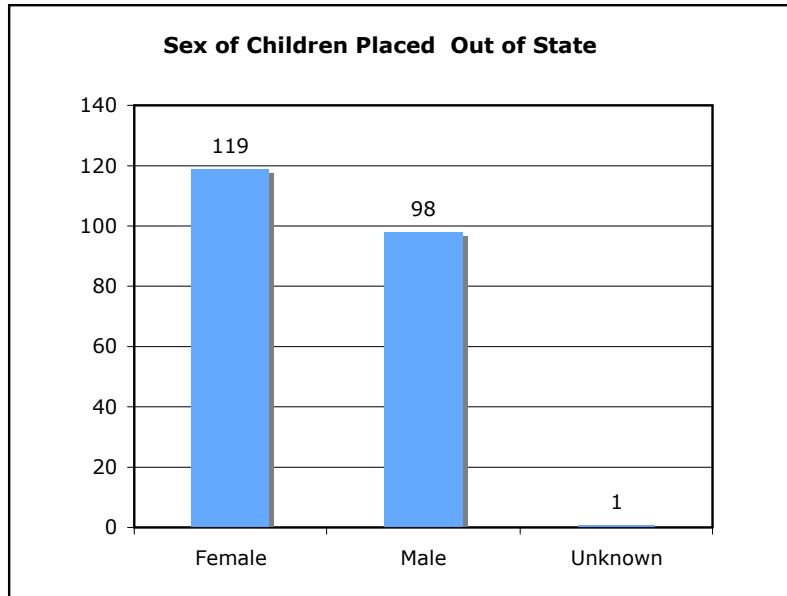
Out of State Placements January 2007 – June 2008

Total DHHS Placements: 2148

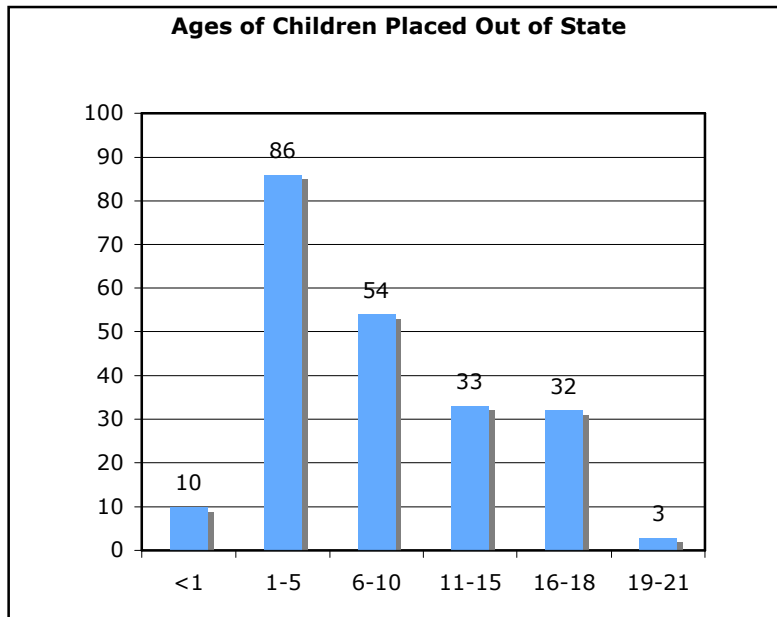


Out of State Placements January 2007 – June 2008

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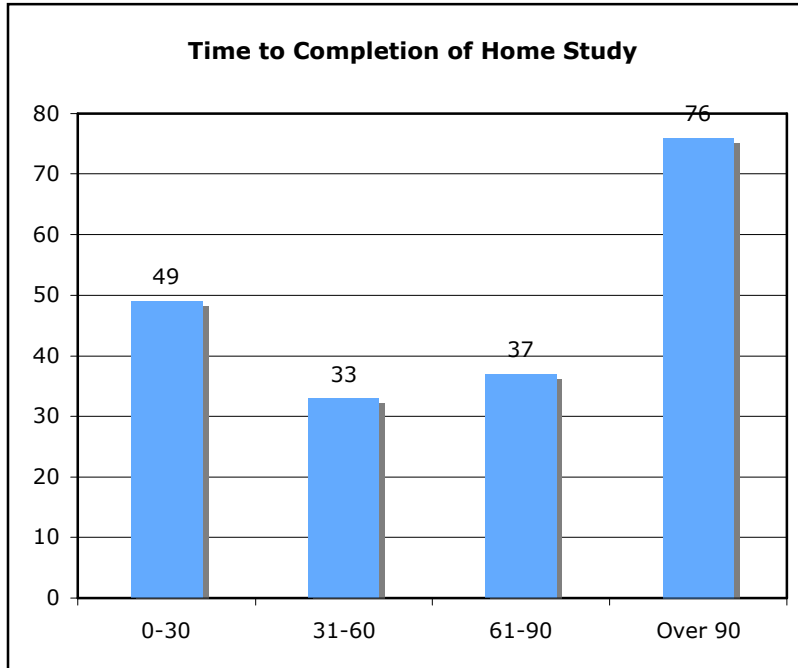


Out of State Placements January 2007 – June 2008



Out of State Placements January 2007 – June 2008

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III. Recommendations

a. Statute and Rule Changes

As noted in the “Legal Analysis” portion of this Assessment, there are a few areas where Maine statutes or court rules could be reviewed to improve interstate court communication, such as: obtaining information and taking testimony from out-of-state witnesses; compelling testimony from out-of-state witnesses; and allowing out-of-state parties, children, and agencies to more readily access Maine court proceedings.

- ***DHHS Reports Relating to ICPC Cases:***

Under Maine caselaw, 22 M.R.S.A. § 4007(4) currently limits the admissibility of “[a]ny report submitted pursuant to the compact” solely to issues regarding compliance with the ICPC, *unless the appropriate witnesses are made available for testimony*. This could provide a learning opportunity for all stakeholders to more thoroughly explore the current available options for the introduction of reports “submitted pursuant to the compact” either to demonstrate compliance with the ICPC or for any purpose for which written or oral reports or case plans are otherwise admissible under the Child and Family Services and Child Protection Act.

- ***Court Authority to order ICPC Home Studies:***

As outlined above, state courts are not the initiating source for ordering ICPC home studies to evaluate the potential for placement of children with out-of-state relatives or family friends. Perhaps this reticence is due to the lack of explicit statutory authority, within the Child and Family Services and Child Protection Act, for courts to order these studies. In the course of the proposed bi-annual meetings discussed below, the Judicial Branch, in concert with DHHS's Interstate Compact Coordinator, will consider whether this trend has a negative impact on ICPC cases.

- ***Applying Select UCCJEA Provisions to Child Protective Proceedings:***

The Judicial Branch will, in the coming year, examine whether—consistent with parental rights to due process—it is appropriate under the law to apply the Maine UCCJEA's provisions regarding interstate court communication, 19-A M.R.S.A. §§ 1740, 1742, and taking the testimony of witnesses in another state, § 1741, to child protection proceedings.

- ***Remote Attendance at Court Proceedings:***

The Judicial Branch will also examine, over the next year, whether it is necessary or advisable to amend either the Rules of Civil Procedure to provide more explicitly that courts may, in their discretion and with the use of appropriate safeguards, permit parties, children, foster parents, pre-adoptive parents, and relatives provide care for the children to access Maine court hearings either through telephonic or video technology. (Safeguards may be required to ensure confidentiality, for example).

b. Other Recommendations

- ***Enhanced Data Tracking:***

Internal

The Judicial Branch currently lacks the tools to effectively identify and track ICPC cases and interstate placements. The Judicial Branch should implement form changes to effectuate an ICPC tracking system. This could entail creating an ICPC checkbox identifier on Judicial Review, Pretrial, and Case Management Forms. The Judicial Branch should also explore creating an ICPC Form Request, an ICPC Form Order, a Regulation 7 Form Priority ICPC Placement Order, and a Notice of ICPC Non-Compliance and Request for Assistance that could be sent to receiving state courts when there are delays on the receiving state end of the ICPC process.

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Cooperative/Collaborative Data Tracking

The Judicial Branch should continue to meet with DHHS discuss DHHS' ability to track ICPC cases in which there is an ongoing District Court case. DHHS may eventually want to consider filing a form *Notice of Interstate Placement* when DHHS intends to pursue the interstate placement of a child in Maine's child welfare legal system.

- **Create a formal process to notify the court regarding ICPC process:**

Maine should consider implementing a more routine process that would require court notification regarding ICPC process initiation and results. Should DHHS choose to implement such a process, the Family Division Manager should be available to consult on court procedures and forms.

- **Semi-annual meetings between the Family Division and DHHS ICPC Administrator:**

The Family division Manager and the Maine ICPC Administrator should meet twice annually to discuss the ICPC process as it relates to the District Court. The Family Division Manager, in consultation with the ICPC Administrator, will regularly assess the status of Maine ICPC cases, court procedures, and court forms.