

Interstate Placement of Foster Children
Assessment for Oklahoma

Submitted by the
Administrative Office of the Courts
Oklahoma Supreme Court

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Overview of Laws

Federal Law Mandating the Assessment

The Safe and Timely Interstate Placement of Foster Children Act of 2006 (P.L. 109-239) (the Act) requires this assessment for state courts that receive the basic federal Court Improvement Program (CIP) grant. Each state court is to assess its role, responsibilities, and effectiveness in the interstate placement of children. After assessing their current roles, the courts must then develop the best strategy to expedite these placements and implement improvements.

The purposes of the Act are to improve protections for children and to hold states accountable for the safe and timely placement of children across state lines. Paragraph 4 of § 2 of P.L. 109-239 provides: “Federal policy should encourage the safe and expedited placement of children into safe, permanent homes across State lines.”

The Act provides specific deadlines for interstate home study requests. Paragraph (26) of 42 U.S.C. § 671 provides, in pertinent part:

(A)(i) within 60 days after the State receives from another State a request to conduct a study of a home environment for purposes of assessing the safety and suitability of placing a child in the home, the State shall, directly or by contract--

(I) conduct and complete the study; and

(II) return to the other State a report on the results of the study, which shall address the extent to which placement in the home would meet the needs of the child....

Public Law 109-239 also requires state courts to assess the effectiveness of their laws and strategies for sharing information with out-of-state courts. They should also develop methods to obtain information and testimony from agencies and parties in other states without requiring interstate travel by the agencies and parties.

This assessment documents and evaluates the ICPC process in the State of Oklahoma. The information was obtained: (a) through interviews with the ICPC Administrator, several judges from different parts of the state, and the ICPC coordinator in the largest county of the state; (b) through a survey of all Oklahoma judges with juvenile court dockets; and (c) by reviewing state statutes and the ICPC policies and procedures of the Oklahoma Department of Human Services (OKDHS).

State Law Governing Interstate Placement

Oklahoma adopted the ICPC in 1974.¹ The ICPC is an agreement, adopted by and in force in all 50 states that controls the interstate placement of children. Oklahoma's ICPC states: "It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children...." 10 O.S. § 571.

The ICPC outlines the conditions for placement of a child being sent or brought into another party state for purposes of foster care or pre-adoption placement. Before any child is sent or brought into a receiving state for placement, the sending state must provide appropriate notice and documentation of the intention to send, bring, or place into the receiving state.

¹ See, 10 O.S. §§ 571 to 576. As of this writing (April, 2008), the Oklahoma House of Representatives had passed the new revised ICPC, but the Oklahoma Senate had not yet acted on the House amendments.

The documentation must include demographic information including name, date, addresses of parents and guardians, the name of sending person or agency, the name and address of proposed placement provider, the reason for the request, and any other supporting information requested by the receiving agency or public officer.

The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

Article III, ¶ (d) of 10 O.S. § 571

If the court determines that testimony is needed from parties in an interstate placement, Oklahoma law allows the taking of testimony without having the parties travel to the state. Under the Oklahoma Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA),² in a child custody proceeding, testimony may be taken from a party in another state. Section 551-111 of Title 43 of the Oklahoma Statutes provides:

- A. In addition to other procedures available to a party, a party to a child custody proceeding may offer testimony of witnesses who are located in another state, including testimony of the parties and the child, by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a person taken in another state and may prescribe the manner in which and the terms upon which the testimony is to be taken.
- B. A court of this state may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual, or other electronic means before a designated court or at another location in that state. A court of this state shall cooperate with courts of other states in designating an appropriate location for the deposition or testimony.
- C. Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of the transmission.

Oklahoma Department of Human Services ICPC Policies and Procedures

The purpose of the ICPC is to ensure protection of and provision of services to children who are placed across state lines. It establishes orderly procedures for the interstate placement of children and fixes responsibility for those involved in placing the child. The ICPC also ensures the return of a child to the original county of jurisdiction if the placement is determined to be contrary to the interests of the child or if the need for out-of-state services ceases.

The sending or requesting agency must be:

- (1) a party state, officer, or employee thereof
- (2) a subdivision of a party state, or officer or employee thereof
- (3) a court of a party state;
- (4) a person, corporation, association or charitable agency; or
- (5) an entity that sends, brings or causes to be sent or brought any child to another party state.

Article II, ¶ (b) of 10 O.S. § 571

The ICPC applies when Oklahoma children are placed out of state and when children are placed in Oklahoma from another state. The ICPC applies to placement of a child:

- (a) preliminary to adoption;
- (b) in foster care, including foster homes, group homes, residential treatment facilities, and child caring institutions for treatment of chronic or long-term conditions;
- (c) with the parent(s), stepparent, grandparent, adult brother or sister, or adult aunt or uncle when any such relative is not making the placement; and
- (d) when child is adjudicated delinquent and placed in institutions in other states.

Article III, ¶ (b) of 10 O.S. § 571

² 43 O.S. §§ 551-101 to 551-402

Home Study

The Safe and Timely Interstate Placement of Children Act of 2006 requires that home studies requested by other states to assess the safety and suitability of placement are to be conducted, and a report which addresses the extent to which the proposed placement meets the needs of the child completed, and provided to the requesting state within 60 calendar days after receipt of the request. If the home study is not completed and provided to the requesting state within 60 calendar days, the specific reasons it is not completed must be documented in an email to the Oklahoma ICPC Compact Administrator. When the home study is received, the requesting state must accept the receiving state's home study as meeting the requirements of the receiving state unless, within 14 days of receiving the study, the requesting state determines that making a decision in reliance on the study would be contrary to the welfare of the child. A completed home study does not require the requesting state to place the child.

The Placement Request

The following procedures apply when the Oklahoma Department of Human Services (OKDHS) wishes to make a placement request in a receiving state:

- (A) The child welfare worker identifies an appropriate relative out of state and initiates the placement request by using form 100A. This form has to be accompanied by a court order showing that the child is in OKDHS custody. The child welfare worker has to ensure the form provides all the correct information, including the child's correct legal name, the parent's name, and the names and contact information for the relatives or foster family. All supporting documents must accompany the form before it is turned into the State Office for processing.
- (B) The child welfare worker sends the packet to the ICPC Administrator's Office.
- (C) The ICPC Administrator reviews the packet of information and opens a pending folder, or contacts the worker for more information. (The most common

mistake the child welfare worker makes is not including enough disclosure information.)

- (D) When the ICPC Administrator is satisfied that she has all the information, she forwards the packet to the Administrator in the receiving state. This should occur within two days of receipt of the completed packet of information.
- (E) The Administrator distributes the information to the local office in the receiving state. The worker completes the home study and returns the findings to the Administration. The Safe and Timely Placement Act of 2006 requires that the home study must be completed within 60 calendar days. The Administrator will then notify his or her counterpart in the sending state of the findings.
- (F) The final decision regarding the use of an ICPC placement is determined by the child welfare worker, the child welfare worker's supervisor, and the court.
- (G) Permission to place is valid for six months. If placement is not made within six months, the child welfare worker must submit a new request.

Foster Care and Relative Placement

Foster care payment is made only to resources that meet the receiving state's requirements as a foster home. OKDHS pays the foster parent at the receiving state's foster care rate. The foster parent must maintain compliance with the receiving state's foster care requirements for payment to continue. The foster parent is reimbursed for clothing purchases for the child. The child receives medical coverage. [OAC 340:75-6-115.1]

When the relative has chosen not to accept a foster care reimbursement, a relative home study is conducted. The relative must agree to attend pre-service training. The training must be completed within 90 days from the date of the child's placement. The placement provider who is approved as a relative placement is not eligible for foster care payment. If the placement provider's income is not sufficient to meet the needs of the child, the home study is denied.

If the relative wants foster care reimbursement, a foster home study is conducted. The worker completes a full home study as required for foster care resources. The home study

addresses the extent to which the home would meet the needs of the child and is completed within 45 calendar days from receipt of request.

Priority Placement Request (Regulation 7)

A Regulation 7³ is a priority placement request via court order to expedite the ICPC process. The worker has the responsibility to initiate a Regulation 7 request when it is determined that one would be justified. In order to request the court order, there must be an express finding that certain criteria are met. The criteria are:

- (A) The proposed placement provider is a relative i.e. a parent, stepparent, grandparent, adult sister or brother, adult aunt or uncle, or the child's agency guardian, and the child is under two years of age, is in an emergency shelter or the court finds that the child has spent a substantial amount of time in the home of the proposed placement provider, or
- (B) The receiving state ICPC has a properly completed form and documentation for over thirty working days, but the sending agency has not received a notice determining whether the child may be placed.

The specific time frames must be met with a Regulation 7 priority placement request. After receiving the priority request, the receiving state has 20 working days to complete the home study and make the recommendation. If the local worker in the receiving state is not able to meet the timeline, (s)he is to notify the Administrator. The Administrator notifies the sending state Administrator and, in turn, the sending child welfare worker receives notice. The worker will notify the court of jurisdiction the reason for the delays. Time periods may be modified by agreement between the court, the sending agency, and the receiving state.

³ See, ICPC Regulations, Regulation No. 7: Priority Placement (Association of Administrators of the Interstate Compact on the Placement of Children) (last amended July 2, 2001) (available at <http://icpc.aphsa.org/Home/regulations.asp>) (last visited April 29, 2008)

The court of jurisdiction may request assistance from the court in the receiving state when the designated time frames are not followed.

Visitation

A visit is a stay of 30 days or less with a definite beginning and ending date. Visits may be longer only if the visit begins and ends within the period of a child's vacation from school. The visits are arranged by the child's worker and do not go through ICPC.

When an ICPC home study is in progress, any visit must be approved by the receiving state. The visit must have a beginning and ending date. The worker must receive permission for the visits by submitting a written request to the ICPC Administrator. The child is not supervised and does not receive services from the agency during the visit.

Indian Child Welfare Act and Interstate Placement

If placement is sought in another state for an Indian child, the Administrator has a duty to ensure that the tribe receives notice and to ensure compliance with the federal Indian Child Welfare Act⁴ (ICWA). Because Oklahoma is home to 39 sovereign tribes, this is a large issue in Oklahoma. The Oklahoma Indian Child Welfare Act⁵ applies to all voluntary and involuntary state child custody court proceedings involving Indian children, whether or not the children involved are in the physical or legal custody of an Indian parent or Indian custodian at the time state proceedings are initiated. *See* 10 O.S. 2001 § 40.3(B). By recognizing that the tribe's interest must be protected in interstate placement proceedings involving Indian children, the Oklahoma ICWA is consistent with the federal ICWA. In all Indian child custody

⁴ 25 U.S.C. §§ 1901 *et seq.*

⁵ 10 O.S. §§ 40 to 40.9

proceedings, including voluntary court proceedings and review hearings, the court must ensure that the district attorney or other person initiating the proceeding sends notice to the parents or the Indian custodians, if any, and to the tribe that is or may be the tribe of the Indian child, and to the appropriate Bureau of Indian Affairs area office. 10 O.S. 2001 § 40.4

Summary of Interstate Process in Oklahoma

The following provides an overview of current ICPC practices. As mentioned earlier, this information was obtained by interviewing the ICPC Administrator and a select group of judges and by surveying all Oklahoma judges with juvenile dockets.

Oklahoma as the Sending State

When placing a child out of state, the Oklahoma interstate placement process is as follows:

- (A) The OKDHS child welfare worker initiates the process by completing an Out of State Placement Request Form. The completed form has to be accompanied by a court order and other documents verifying identification of the child.
- (B) The child welfare worker sends the packet to the Oklahoma ICPC Administrator.
- (C) The ICPC Administrator reviews the packet of information and opens a pending folder or contacts the child welfare worker for more information. The process is sometimes delayed at this point when the child welfare worker fails to submit all the required information. In such cases, the Administrator returns the information to the local office for completion.
- (D) When the Administrator is satisfied that the information has been fully submitted, she forwards it to the receiving state within two days of receiving the completed packet.

- (E) After receiving the request, the worker has 60 days⁶ to complete the home study and return it to the Administrator.
- (F) After the home study is completed, the state office in the receiving state will approve or deny the placement, and will contact the Oklahoma ICPC Administrator with the results.
- (G) The Oklahoma ICPC Administrator in Oklahoma notifies the child welfare worker of the result and grants permission to place, if appropriate.
- (H) It is the responsibility of the worker to make arrangements to have the child transported to the placement in the receiving state.

Oklahoma as the Receiving State

The process for receiving requests for placement from other states is basically reversed when Oklahoma is the sending state:

- (A) The ICPC Administrator receives the request from the requesting state. The request is date stamped and logged into the system, and a pending file is opened. The local county is notified by email.
- (B) OKDHS is divided into regional areas I-VI. Each area office has Resource Specialists who are responsible for ensuring that home study requests are handled in a timely manner. Resource Specialists may conduct the home study themselves, assign it to a worker, or, in a couple of counties, contract the service out to an approved service provider.
- (C) Depending on the type of request, the worker will conduct a parent home study, a relative home study, or a foster home study.
- (E) All requests are to be returned to the ICPC Administrator 45 calendar days from receipt of request.
- (F) The home study report is provided by the Oklahoma ICPC Administrator to the requesting state within 60 calendar days of the initial request.

At the time of this review in 2007, there were 156 “in-coming open cases” in Oklahoma through the ICPC, and 223 “out-going” open OKDHS cases through the ICPC.

⁶ P.L. 109-239

Findings

The courts do not have an active role in the ICPC process in Oklahoma. The child welfare worker is responsible for notifying the court when (s)he becomes aware of a potential placement in another state. The worker will request a court order showing that the child is in OKDHS custody in order to submit it along with other documentation to make the Interstate Placement Request. Placement updates are given at each review hearing by the child welfare worker. If there appears to be a delay in the approval of this placement, the judge may order OKDHS to look into the matter further, identify the source of the delay, and report back to the court.

The Oklahoma judges who responded to the survey and those who were interviewed did not believe the courts had an active role in ICPC decisions. The process in Oklahoma appears to be more of an “agency” function. The court does not order the ICPC. Judges usually do not make decisions regarding interstate placements. OKDHS locates the family, requests the home study, receives decision on placement, and makes arrangements to place the child. During this process, the OKDHS worker is obligated to keep the court informed.

There are often delays in the placement process. When talking with the different judges, we learned that they were not sure of the causes of the delays. Some attributed it to the other state’s delay in conducting the actual home study, while some thought maybe there was a delay in the worker completing the paper work in a timely manner. While there was no consensus concerning the sources of delay, there was a consensus that there was a definite problem with the process.

Those judges whose jurisdictions were close to the borders of Oklahoma thought a border agreement would be an excellent idea. One judge commented that she lives six miles from the next state, and it seems to take the longest to get approval for placement in that neighboring state. If there were a process in place to allow the worker to conduct the home study and request the background information, the delays should be greatly reduced.

It is interesting to note that, while the laws and policy set forth specific timelines, the courts do not seem to believe that those timelines are practiced. One of the judges interviewed remarked that rarely is a home study completed within 60 days. The only recourse the courts feel they have when a home study is delayed is to ask the worker to look into the matter and report the findings back to the court. None of the judges could recall being asked to intervene in order to expedite the process.

Several judges admitted to using “extended visitation” as a way to expedite the out-of-state placement process. This has occurred when the out-of-state relative appeared in the Oklahoma courtroom, and the judge believed that the placement was in the child’s best interest. On several occasions, the paperwork had been submitted for the home study but the approval process was delayed. Judges have, in such situations, sometimes exercised discretion to send the child on a visit so (s)he could begin the process of settling into the new environment before a change in life event (*e.g.*, school or summer vacation). In many instances, this action prolonged the approval process even longer, because once the receiving state finds that the child is already there, the receiving state no longer feels the need to expedite the approval decision.

Case Reviews

Several cases were reviewed for this purpose of this assessment. This assessment will focus on four cases which provide a good representation of the statewide problems with the ICPC process. Three of the cases have Oklahoma as the sending state and one as the receiving state.

- (a) Two young children were in regular foster care in Oklahoma. It looked as if they would become permanent custody children, because their mother was incarcerated for drug charges and the father was being held on illegal immigrant status. Approximately three months into the case, an aunt and uncle, with whom the children had a prior relationship, came forward when they found out about the children's fate. The relatives lived 25 miles away in a different state. An ICPC request was submitted (without a Regulation 7 priority request), and there appeared to be one delay after another. Finally, the home was approved, but the receiving state would not allow placement until the relatives completed the required foster care classes. This would have taken at least two more months. After several inquiries, the Administrator advised the local worker to resubmit the request as a relative placement request. Once that was done, the home was approved and placement made. The process took much longer than it should have. After placement was made, the worker changed the request once again to foster care, so the aunt and uncle could eventually receive payments for the children.
- (b) The second case involved four siblings who were sent to a relative's home in another state in October, 2006, but who still did not have an approved placement at the time of this review in October, 2007. Upon further review, it was revealed that the children were sent to the relative's home on an "extended visit." One month later, the worker prepared the paperwork requesting an ICPC home study. Nine months later, the receiving state had completed the home study and it was approved and received in the Oklahoma office on October 29, 2007. During this year, the children and family received no services, since the receiving state had not approved the placement. The oldest child was returned to Oklahoma by the relative, because (s)he could not handle all the challenges and believed (s)he could not meet the child's emotional needs without help.

This is a good example of why an extended visit is not appropriate for a proposed ICPC placement. The children were in need of counseling, educational services, and other therapeutic services. However, because the placement had not been approved, there was a lapse in services which resulted in a split among the sibling group.

- (c) Two children were placed with their birth father in another state last year. The children were placed before the home study was complete. However, the home study was later completed and approved. The children were on trial reunification status with their

father. A year after the children were placed, there still had been no change of custody by the courts. The receiving state closed its ICPC supervision, stating that Oklahoma had plenty of time to make a custody determination. The receiving state further said that it would not reopen an ICPC because the children should have been reunified by now. At the time of this assessment, there was a review hearing scheduled and a summons issued for the father to appear in court with his children.

- (d) A 14-year-old child was placed with relatives in a home in Oklahoma. At the time of the home study and placement, full disclosure concerning the needs of this child was not given by the sending state. After the child was placed in this state, and the mental health needs were identified, it was determined that Oklahoma did not have the proper facilities or services to address her needs. When Oklahoma as the receiving state started to make inquiries about how to return her to the home state, the home state refused to allow her to come back stating they did not have an appropriate placement for her. Even after the judge made a judicial order to return the child to her home state, the sending state remained uncooperative. At the time of this review the case was ongoing. The child still remained in the home of the relatives in Oklahoma.

This is just a representative sample of the type of cases involved in the ICPC process.

There is a consensus among the judiciary that something needs to be done to make the process more efficient and less bureaucratic. The courts should have more of a role in this process.

Recommendations

1. The process should be streamlined.

There are too many steps before the initial home study can begin. In large counties, there is a coordinator who receives the request. It is then the coordinator's duty to gather the information and put together a packet to submit to the state office. When the ICPC Administrator gets the packet, she looks it over and sends it back to the original worker for more information or to the receiving state's Administrator. After it's logged into the system and a file is opened, the request is forwarded to the local office. The person working in the capacity to receive the original request will then forward the request to the worker or

contractor, who will start the actual home study. They have 60 days from the time of receiving the request to complete it. It could actually be 30- 90 days after the initial request is made before the receiving worker will begin the home study.

2. Make allowances for emergency interstate placements with relatives.

Even with the provisions of Regulation 7, children are often left in less favorable placements for an extended amount of time, because of the time it takes to receive approval for interstate placement. There should be a provision that allow judges to order temporary placement with an approved out-of-state relative pending the outcome of the home study if it's determined to be in the child's best interest.

3. The ICPC should allow border agreements.

In order to expedite interstate placements for children residing in counties close to the state line, there should be agreements between bordering states that would allow the case worker, or designee, to cross state lines, conduct the home study, and gather information for background checks. The agreement should give the judges authority to contact each other to obtain verbal permission to enter the state for such purpose.

4. Decentralize the process.

All requests for interstate placement have to go through the state office in order to be reviewed, logged in, and forwarded to the receiving state. This midline process seems to be a source of some delay in the process. If the local office in the sending state could send the

request to the appropriate local office in the receiving state, the process could be somewhat expedited.

5. Include courts early in the ICPC process.

Currently, the OKDHS worker is made aware of the possible placement in another state. The worker is then responsible for making the request, sending the documentation, and placing the child upon approval. The court is notified at the court hearing of the possible placement. The court is not involved in any other way. The worker will keep the court informed of the progress during the review hearings. If the review hearings continue for some time and the placement has not been approved, the judge may address it with the worker and supervisor. It is very rare that a judge is asked to intervene on any placement decisions.

If the court is to become more involved there has to be a better way to track the timeline for the request. The judge will need to know:

- (a) when contact was originally held between the worker and the possible placement provider;
- (b) the date the request actually left the worker's desk in the sending state; and
- (c) when it was assigned to the worker in the receiving state.

Without those facts, it would be impossible for the judge to adequately address the delays in the interstate placement process.

6. Full disclosure of the child's needs should be required before granting approval by receiving state.

Many times, a child is sent to an out-of-state placement without the receiving state receiving full disclosure of the needs of the child. Once the child is placed and the full scope of needs is determined, the receiving state often does not have the proper services to meet the needs. This could result in what's termed a "blown placement." The placement provider then has to go through the process of trying to return the child, which contributes to further disruption in the child's life.

Before a request is sent, the child welfare worker should be required to give sworn testimony in the presence of a judge and have a full disclosure agreement in place. When the receiving state receives the information with the full disclosure, they are better able to make informed decisions regarding whether the placement could meet the child's needs and is in the child's best interests.

Conclusion

By reviewing this assessment it becomes apparent that some changes need to occur in this process to ensure the needs of children are met in a more safe and timely manner.

In order for the courts to have a more active role;

1. There has to be more open communication between the agency and the court.
2. The courts will need to get involved early in the process rather than after the delay has become an issue for the agency.
3. There should be more information regarding the court. What jurisdiction the child would be in if the interstate placement is approved? Who is the Judge that would

preside over the jurisdiction? If that information is known prior to sending the request, the courts would have an idea who to contact should the need for contact become an issue.

The workers in child welfare have an almost impossible responsibility. Just to gather the information needed to prepare a packet for the ICPC takes a great amount of time. Although the interstate placement should be a priority for the worker, due to the large amount of work required before a request can be made, gathering the information to initiate the process often gets pushed aside. If the courts are going to be more responsible for overseeing the timely placement, they will need to have a better way of determining where in the process the request is in order to address the delays properly.

The courts and the agency together make life changing decisions for the children and families. Open communication and timely actions will result in more positive outcomes for all concerned.