

ASSESSMENT OF THE
INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

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EXECUTIVE SUMMARY

This is an assessment of the Interstate Compact on the Placement of Children by the Virginia Court Improvement Program. This report is submitted to the Children's Bureau at the Department of Health and Human Services in accordance with the federal program instruction dated June 4, 2007, which requires state Court Improvement Programs to assess their role responsibilities and effectiveness in placing children across state lines in accordance with the Safe and Timely Interstate Placement of Children Act of 2006. The requirements of the assessment are as follows:

- Examine the strengths and challenges of interstate placements through an analysis of current state and federal law, and rules of court.
- Study current court practices in cases involving interstate placements.
- Based on the legal analysis and information obtained during the study of current court practices, determine what state law, state court organization, or state court practice changes are necessary to expedite cases involving interstate placements.

In response to the program instruction, Virginia's Court Improvement Program undertook a series of steps to obtain information that would provide an accurate picture of the laws and court processes currently in place in Virginia. These steps included participation in conference calls and trainings supported by the American Bar Association Resource Center on Children and the Law, as well as inviting Judge Stephen W. Rideout (ret.), consultant to Virginia's Court Improvement Program, to take the lead in developing Virginia's assessment and report.

Virginia's assessment includes an analysis of current Virginia law, rules of court, and available decisions of the appellate courts, as well as federal law impacting the interstate placement of children. The assessment also includes a description of the components CIP developed to collect and provide information about current Virginia court practice: a web-based survey of local stakeholders who have knowledge of and experience with the Interstate Compact on the Placement of Children ("ICPC") and oral interviews with Virginia ICPC Office staff and nine juvenile and domestic relations district court judges.

CIP finds that Virginia, in most instances, has in place the laws, court rules, and means for implementing the federal requirements found in the Safe and Timely Interstate Placement of Children Act of 2006. However, there are issues that need to be addressed in order to fully comply with the Act.

ASSESSMENT OF THE INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

I. INTRODUCTION

The Federal Program Instruction that supports the Safe and Timely Interstate Placement of Foster Children Act of 2006 (P.L. 109-239) directs state supreme courts, through their Court Improvement Programs, to “assess their role, responsibilities, and effectiveness in the interstate placement of children, and... implement improvements to develop the best strategy to use to expedite these placements.” In doing so, the assessment “must examine the current strengths and challenges of interstate placement... by analyzing what is allowed under current State and Federal Law. At a minimum, this assessment should determine whether State laws ... and/or the State court rules permit the forms of interstate information sharing and participation described...” in the Federal Program Instruction. The assessment should also “analyze whether there are any legal barriers that prevent timely and thorough judicial decision-making regarding interstate placement.” Court systems can then determine, based on a legal analysis and facts collected during the assessment, what, if any, changes are needed to state laws, state court organization, or state court practice to expedite interstate placement cases. Development of a strategy for implementation of any improvements is encouraged. A copy of the Federal Program Instruction is included in Appendix A.

Virginia’s Assessment of the Interstate Compact on the Placement of Children (“ICPC”) focuses on the juvenile and domestic relations district courts (“juvenile courts”), because they are the courts in Virginia primarily responsible for hearing cases where children come into state custody. This document contains the following:

- A Summary of federal law relevant to the issue of the interstate movement of children, including the Safe and Timely Interstate Placement of Foster Children Act of 2006.
- A description of the structure of Virginia’s court system as it relates to cases of children who are in foster care and for whom interstate movement may be required.
- An analysis of current Virginia law, including the Uniform Child Custody Jurisdiction Enforcement Act (“UCCJEA”), the ICPC, and a discussion of due process concerns relative to incarcerated parents and out-of-state parents and their participation in ICPC hearings, all of which impact the interstate movement of children and the ability of Virginia courts to become engaged in assisting that process.
- Existing court rules for circuit courts and juvenile and domestic relations district courts and their impact on, among other things, discovery in cases before those courts.
- A review of the relevant portion of Canon Three of Virginia’s Canons of Judicial Ethics and the impact that it may have on the issues presented by the Federal Program Instruction and P.L. 109-239.
- Some best practice suggestions for consideration.
- A description of ICPC training efforts sponsored by the Office of the Executive Secretary of the Supreme Court of Virginia through the Court Improvement Program and the Educational Services Department.
- A description of the components used to study current court practices involving the interstate placement of children and an overview of the findings.

II. FEDERAL LAW GOVERNING THE INTERSTATE MOVEMENT OF CHILDREN

Public Law 109-239, The Safe and Timely Interstate Placement of Foster Children Act of 2006, and its supporting Regulations are making significant changes in how states, and particularly state courts, are engaged in the process of moving children in foster care to permanency. This includes both in-state and out-of-state placements. The assessment process to which this report is addressed directs CIP to assess the courts' role, responsibilities, and effectiveness in placing children across state lines and determine ways in which the courts may help expedite these placements. Consider the following requirements of the Act:

- The Act calls upon state courts to consider in-state and/or interstate placement of a child, where appropriate, at a permanency hearing and that the state show that it made “reasonable efforts” to make and finalize the in-state or out-of-state placement. States need to consider how the courts should assist child welfare agencies in this effort and whether such assistance would come through changes in statutes, court rules, court forms, bench books or manuals, through supplementing judicial and attorney trainings, or through some combination of these mechanisms.
- Under federal law Receiving States must complete and file home study reports with the Sending State ICPC Office within 60 days after receiving the request that a home study to assess the safety and suitability of a proposed placement be completed. State courts need to determine how they will be involved in making sure this timeframe is followed, so that the time limitations do not result in denials of interstate movement because the process was not completed in a timely manner.
- Criminal background and Central Registry checks have been found to seriously delay interstate placements. However, these checks must be completed to help ensure the safety of the potential placement. State courts need to determine what their role is to ensure that this process is carried out in a timely fashion.

Prior to the passage of Public Law 109-239, the federal government was, in most instances, allowing states to manage the interstate movement of children through the ICPC. Over the years more and more complaints were heard about the slowness and inefficiencies of the process.

The Safe and Timely Interstate Movement of Foster Children Act of 2006, coupled with the passage of the Adam Walsh Act (Public Law 109-248) and the September 2006 Final Report of the Children's Bureau regarding the Interjurisdictional Placement of Children in the Child Welfare System: Improving the Process, brought the federal government into this issue more than ever before.¹

Virginia law now requires that there be a search of the child abuse and neglect registry maintained by Virginia and the child abuse and neglect registry maintained by any other state pursuant to the Adam Walsh Child Protection and Safety Act of 2006. Appendix B includes *Virginia Code* § 63.2-901.1.

¹ *Interjurisdictional Placement of Children in the Child Welfare System: Improving the Process*, Prepared for the Children's Bureau, Administration for Children and Families, U.S. Department of Health and Human Services, (September 2006) is available at http://216.38.216.37/adoptusa/documents/IJReportFINAL_Sept2006.pdf

Under the Safe and Timely Interstate Movement of Foster Children Act of 2006, Virginia, as a Receiving State, must comply with the 60-day home study requirements mentioned above.

III. OVERVIEW OF VIRGINIA’S INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN PROCESS

The Interstate Compact on the Placement of Children (ICPC) is codified in Virginia law at § 63.2-1000 et seq. *Code of Virginia*. As part of this assessment, the Virginia Department of Social Services, Office of the Interstate Compact on the Placement of Children, and the Court Improvement Program collaborated to develop a flow chart describing the ICPC process in Virginia as it relates to foster care placements. This flow chart is included in Appendix C.

IV. STRUCTURE OF VIRGINIA’S COURT SYSTEM AS IT RELATES TO CASES INVOLVING CHILDREN IN FOSTER CARE AND FOR WHOM INTERSTATE MOVEMENT MAY BE REQUIRED

Virginia’s judicial system consists of four levels of courts: the Supreme Court of Virginia, the Court of Appeals, the circuit courts, and the district courts. The circuit courts and district courts are organized into 31 judicial circuits and 32 similar judicial districts. District courts consist of general district courts and juvenile and domestic relations district courts. This assessment will focus on the circuit courts and juvenile courts. General district courts do not have jurisdiction over any of the matters related to this assessment and, therefore, will not be discussed.

The circuit court is the only trial court of general jurisdiction in Virginia. Circuit courts hear and decide civil actions, criminal cases, and appeals from the district courts and administrative agencies. Appeals from district courts are heard *de novo*.²

Juvenile and domestic relations district courts have jurisdiction over all proceedings involving the custody, visitation, support, control or disposition of a child who is abused, neglected, at-risk of abuse or neglect, in need of services, abandoned, truant, a runaway, a delinquent, violates traffic laws, requires commitment for mental illness or consent to medical treatment. These courts also have jurisdiction over the parents, guardians and legal custodians of such children and over other adults involved in foster care proceedings, paternity determinations, domestic violence, offenses against family or household members, and spousal support matters. *Virginia Code* § 16.1-241 is included in Appendix D, which details the full jurisdiction of the juvenile and domestic relations district courts.

V. VIRGINIA LAW IMPACTING THE INTERSTATE MOVEMENT OF CHILDREN AND THE ABILITY OF VIRGINIA COURTS TO BE ENGAGED IN ASSISTING IN THAT PROCESS

The Federal Program Instruction provides a number of examples to show how state courts may share information to expedite the interstate placement of children. Among them are:

- The ability for judges in different states to converse with one another on logistical issues or to discuss legal issues that arise during the ICPC process.

² *De Novo* appeals are “appeals of right” made to the circuit courts. These appeals provide the parties involved in a matter before the district courts with new trials in civil and criminal cases.

- The ability for judges to hold interstate hearings by phone or video conference to allow the parties involved in an ICPC case to testify and present evidence without being at the hearing.
- The ability of out-of-state lawyers to participate in hearings without having to travel to another state.

A. Authority of Juvenile Court to Hear Cases Involving the Welfare of the Child and Family; Authority Allowing Placements of Children with Out-of-State Parties

Because this assessment focuses on the juvenile courts, it begins with the authority of the court to hear cases involving the welfare of the child and the family, as well as the statutory authority allowing placements of children with out-of-state parties.

Juvenile and domestic relations district courts are governed by Sections 16.1-226 et seq., *Code of Virginia*. The purpose and intent of the law is set out in § 16.1-227, which provides, “It is the intention of this law that in all proceedings the welfare of the child and the family, safety of the community and the protection of the rights of victims are the paramount concerns of the Commonwealth...” The Code section further provides that the law be interpreted and construed so as to effectuate certain purposes. These purposes include, but are not limited to, providing judicial procedures for the execution and enforcement of the law’s provisions, as well as to separate a child from his/her parents, guardian, legal custodian, or other person standing in loco parentis if the welfare of the child is in danger or it is in the interest of public safety. Appendix E includes a copy of *Virginia Code* § 16.1-227.

With regard to parties who are out-of-state, who have an interest in a child, and where the interstate movement of that child is a possibility, the juvenile court has jurisdiction over such parties in accordance with § 16.1-241 through its broad definition of “a party with a legitimate interest.” This statute allows the juvenile court to adjudicate matters involving custody, support, control or disposition of a child by expanding the parties who may petition the court for such remedies beyond the child’s parents or legal guardian. Such persons include, but are not limited to grandparents, stepparents, former stepparents, blood relatives and family members. The statute also describes parties who should not be considered parties with a legitimate interest.

B. Participation of Out-of-State Parties in Court Hearings; Swearing of Out-of-State Witnesses; Participation of Parents who are Incarcerated In-State or Out-of-State

Virginia has statutory authority that permits out-of-state parties to participate in court hearings. *Virginia Code* § 16.1-276.3 permits the use of telephonic communication systems or electronic video and audio communication systems to conduct hearings. The statute states, in part,

Notwithstanding any other provision of law, in any civil proceeding under this chapter in which a party or witness is incarcerated or when otherwise authorized by the court, the court may, in its discretion, conduct any hearing using a telephonic communication system or an electronic audio and video communication system....

This language suggests that judges have the discretion to make a determination about the necessity of using a telephonic communication system or an electronic audio and video

communication system in any civil proceeding for parties who are incarcerated or not, as well as parties who are in-state or out-of-state.

Standards for the personal appearance of a party to a case by two-way electronic video and audio communication are established by § 19.2-3.1. This statute provides that where the appearance of a party is by two-way electronic video or audio communication, the judge has the powers conferred upon him by law, and the proceedings are to be conducted in the same manner as if the party's appearance were in person. The statute further allows for documents between the judge and person appearing by electronic means to be electronically transferred by facsimile. *Virginia Code* § 16.1-276.3 and § 19.2-3.1 are included in Appendix F.

Another related issue involves the swearing of witnesses who are out-of-state. *Virginia Code* § 8.01-405 states, "Any person before whom a witness is to be examined may administer an oath to such witness. In addition, a clerk or deputy clerk may administer an oath to a witness in the presence and at the direction of a judge before whom the witness is to be examined."

It should be noted that while persons with a legitimate interest may live out-of-state, parents who are directly impacted by court decisions regarding their children might be incarcerated within Virginia or in another state. *Virginia Code* § 8.01-410 addresses the issue of inmates as witnesses in civil actions. Under this Code section circuit courts can issue an order directing the delivery of an inmate witness to the court, but it is not required.

Under § 16.1-276.2, if a prisoner in a state, local, or regional correctional institution "is essential to the just adjudication and disposition" of a child welfare matter, the juvenile court judge "may issue an order to the Director of the Department of Corrections or the administrator of the state, local, or regional correctional institution to deliver such witness." Unless it is the court or the Commonwealth seeking the participation of the incarcerated person, the party seeking the testimony of such prisoner must advance monies to defray the expenses and compensation of the officers for the transportation, which the court is to assess as costs. Local departments of social services are considered agents of the Commonwealth for the purposes of this statute.

Virginia Code §§ 8.01-405, 8.01-410, and 16.1-276.2 are included in Appendix G.

Ensuring that incarcerated parents, either in-state or out-of-state, and whether incarcerated in federal prisons or state, regional, or local jails in other states have their rights "recognized and enforced" is a matter for consideration as part of this assessment.

The Supreme Court of Virginia in *Tracy Haugen v. Shenandoah Valley Department of Social Services* 274 Va. 27; 645 S.E.2d 261; 2007 Va. LEXIS 71 (2007) touched on the issue of parents' participation in a court hearing by phone. This case involved two parents who were incarcerated in separate federal prisons outside of the Commonwealth of Virginia who participated by phone in the trial of the cases that terminated their parental rights.

C. *Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)*

The UCCJEA is codified in Virginia law beginning at § 20-146.1 of the *Code of Virginia*. This statute is applicable to child custody proceedings, which are defined to include, among others, abuse, neglect, dependency, and termination of parental rights cases.

While the UCCJEA applies to cases relevant to this assessment, ethical concerns have been raised by some Virginia judges about using this law as a mechanism to hold hearings, make phone calls to judges in other states, or respond to phone calls from judges in other states about matters involving the ICPC. The reasoning is that there often is only one case or proceeding pending and that is in the state attempting to place a child. Some judges suggest that the UCCJEA process is intended solely for the purpose of determining which court should have jurisdiction to decide a case when petitions concerning the same child are pending in both states.

It could be argued that the language of the current UCCJEA is inconsistent with this position. On the one hand, § 20-146.9, Communication between courts, states, in part, “Before finding and exercising jurisdiction, a court of this Commonwealth shall communicate with the court appearing to have jurisdiction in any other state concerning a proceeding arising under this act.”

However, § 20-146.10, Taking testimony in another state, states, in part,

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 Commonwealth for testimony taken in another state. The court on its own motion may order that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony is taken.

B. A court of this Commonwealth 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. A court of this Commonwealth 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 Commonwealth by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission.

Since § 20-146.10 does not use limiting language to indicate that the taking of testimony should only be for the purposes of determining the court’s jurisdiction, it could be construed more broadly. A broader construction is also supported by § 20-146.11, which calls for cooperation between Virginia courts and courts located in other states. In furthering this cooperation, the statute authorizes a Virginia court to request from a court in another state that it hold an evidentiary hearing, or enter orders that may direct a person to produce or give evidence or direct that a custody evaluation be completed on a child involved in a pending proceeding. Upon the request of another state court, the statute authorizes a Virginia court to do the same. Appendix H includes *Virginia Code* §§ 20-146.1, 20-146.9, 20-146.10, and 20-146.11.

D. *Interstate Compact on the Placement of Children (ICPC)*

As previously indicated, the Interstate Compact on the Placement of Children is codified in Virginia law at § 63.2-1000 et seq. Regulation 7 of the Compact allows for priority placements in certain cases, and in doing so also allows for judge-to-judge contact. Specifically, Section 5(a) of Regulation 7 states,

If the receiving state Compact Administrator fails to complete action as the receiving state prescribed..., the receiving state shall be deemed to be out of compliance with the ICPC. If there appears to be a lack of compliance, the court, which made the priority order, may so inform an appropriate court in the receiving state; provide that court with copies of relevant documentation in the case, and request assistance....

As indicated above, however, this provision applies to only those cases that are defined as priority placements under Section 6 of Regulation 7. It does not apply to non-priority placements. It is unclear if the UCCJEA would apply to non-Regulation 7 cases.

VI. RELEVANT COURT RULES FOR CIRCUIT COURTS AND JUVENILE COURTS

Virginia has a two-tiered trial court system. As part of that system, circuit courts and juvenile courts each have separate Rules of Court that address procedural, evidentiary, case management, and discovery issues in pending cases. The Rules for Circuit Court are found in Part Four of the Rules of the Supreme Court of Virginia. The Rules for Juvenile Courts are found in Part Eight.

A. Use of Discovery in Circuit Courts and Juvenile Courts

The conduct of hearings involving out-of-state parties may be impacted by Rules of the Supreme Court of Virginia governing the taking of depositions. As previously stated, depositions are permitted in circuit court but not in juvenile court. Thus, statutory direction for depositions that benefit out-of-state parties and witnesses may not be applicable to cases before the juvenile courts.

In the Rules for Circuit Court, all types of discovery are allowed, including interrogatories, depositions, and audio-visual depositions, at various stages of a case - before filing a case, while a case is pending, and pending appeal of a case.

- Rules 4:2 (6), 4:3, and 4:7A establish the requirements for taking depositions.
- Rule 4:2, for example, provides that a deposition taken to perpetuate testimony may be used in a court in Virginia in any action involving the same subject matter, whether taken under the Rule or taken so as to be admissible in the courts of the state in which it was taken.
- Rule 4:3 establishes the persons before whom depositions may be taken, including when depositions are taken outside of the Commonwealth of Virginia and in foreign countries.
- Rule 4:7A establishes how and under what circumstances audio-visual depositions may be taken.

Rules 4:2 (6), 4:3, and 4:7A are included in Appendix I.

However, Rule 8:15 (c), the Rules of Court for Juvenile Courts, allows discovery and inspection of evidence but prohibits the taking of depositions for juvenile court proceedings. And, while § 8.01-4 allows both district and circuit courts to establish local rules of court, no rule is to be inconsistent with this statute or the Rules of the Supreme Court. Thus, there may be a conflict

between the Rules of Court and the provisions of the UCCJEA. *Virginia Code* § 8.01-4, as well as Rule 8:15 of the Rules of the Supreme Court, are included in Appendix J.

B. Participation by Out-of-State Attorneys in Virginia Court Hearings

This assessment has considered how lawyers from other states may participate in a hearing in Virginia, if they are located in another state and are not authorized to practice law in Virginia. Rule 1A:4 of the Rules of the Supreme Court provides that an out-of-state attorney can appear before a court in Virginia *Pro Hac Vice*, so long as there is local Virginia counsel. Appendix K includes Rule 1A:4 of the Rules of the Supreme Court.

Some out-of-state litigants will have the financial wherewithal to hire a Virginia attorney as local counsel; some will not. If the out-of-state party needs time to find and locate local counsel in Virginia, this potentially will cause a delay in the hearing of these cases and in the possible permanency for the child who is the subject of the case.

VII. VIRGINIA’S CANONS OF JUDICIAL ETHICS - CANON THREE

Virginia’s Canons of Judicial Conduct govern the conduct of judges. Canon Three provides that “a judge shall perform the duties of judicial office impartially and diligently.” In performing these duties, certain standards apply, including certain adjudicative responsibilities. Canon Three, Subsection 7, specifies that judges have a duty to ensure that every person with a legitimate legal interest in a proceeding be heard according to law and that the judge communicate in the presence of the parties involved in a proceeding.

There are, however, exceptions to this rule. For example, if circumstances require it, a judge is authorized to hold *ex parte* communications for scheduling, administrative purposes, or emergencies not involving substantive matters or issues on the merits. This is provided, of course, that no one party gains a procedural or tactical advantage and that the judge promptly notifies all other parties of the substance of the *ex parte* communication and provides such party with an opportunity to respond.

Additionally, judges are authorized to obtain advice from disinterested experts on applicable law, if the parties are given notice as to the person consulted and the advice provided, and the parties are offered reasonable opportunity to respond.

Finally, judges are also provided the authority to consult with other judges, and when expressly authorized by law, may initiate or consider *ex parte* communications.

Under the circumstances of the federal law and the specific need for judge-to-judge communication to be more effective in placing children across state lines, the duties provided for in Canon 3, Subsection 7 appear to allow judges to act within appropriate ethical bounds. However, interpretations by individual judges as to their rights and responsibilities under the Canons of Judicial Conduct may influence whether they would undertake some of the actions called for by the Safe and Timely Interstate Placement of Foster Children Act of 2006. Canon Three of the Canons of Judicial Conduct for the Commonwealth of Virginia is included in Appendix L.

VIII. VIRGINIA CASE LAW REGARDING THE INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN.

Research was undertaken to identify Virginia case law regarding the ICPC. However, no cases were found in the decisions of the Supreme Court of Virginia or the Court of Appeals of Virginia.

IX. TRAINING EFFORTS RELATED TO THE INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN (ICPC)

The Office of the Executive Secretary, Supreme Court of Virginia, through the Court Improvement Program and the Educational Services Department, has sponsored a number of training programs with sessions specifically addressing the ICPC. These trainings are offered through programs developed by CIP or in conjunction with local juvenile and domestic relations district courts as part of their best practice court programs. These local programs provide interdisciplinary training and dialogue with professionals in the community who handle child dependency cases. While each of the following trainings stress similar information about the ICPC, the audiences differ in their knowledge of and exposure to the process which can substantially change the level of discussion occurring at any one particular event.

A. Annual Training Efforts

Juvenile and domestic relations district court judges have oversight of ICPC cases in Virginia. Thus, all new juvenile court judges receive training on the ICPC as part of the annual Pre-Bench Orientation Program, a mandatory three-week program for all new district court and circuit court judges in Virginia. The program is spread out over a three-month period (April, May and June) and is designed to introduce new judges to their roles and responsibilities on the bench.

For judges entering the juvenile and domestic relations district court, the June portion of Pre-Bench is designed to familiarize them with state and federal laws related to matters coming before the juvenile court. At least one half-day of the June Pre-Bench program discusses applicable state and federal laws related to custody and visitation cases. This includes a presentation about the ICPC. Lelia Hopper, Director of Virginia's Court Improvement Program, and the Hon. Stephen Rideout, Judge (ret.), Alexandria Juvenile and Domestic Relations District Court and CIP Judicial Consultant, address the new judges, providing them with such information as the list of national ICPC points of contact and contact information for representatives in Virginia's ICPC Office. Judge Rideout presents a brief history about the ICPC and discusses the ICPC process.

B. Semi-Annual Training Efforts

Attorneys interested in becoming qualified as guardians ad litem for children (GAL) to receive appointments in the courts of the Commonwealth for child dependency cases, must attend the program, "Representation of Children as a Guardian Ad Litem." *Virginia CLE*, the educational arm of the Virginia State Bar, sponsors this program along with the Office of the Executive Secretary, Supreme Court of Virginia. The Court Improvement Program works with *Virginia CLE* to organize and present this seminar. This course is presented live once every 2 years and is offered quarterly as a video replay between live offerings.

As part of this course, attending attorneys receive a brief overview of the ICPC. Course materials include a copy of Chapter 4, Section II - Abuse, Neglect, Relief of Custody, Entrustment, Foster Care and Termination of Parental Rights, of the “Virginia Juvenile and Domestic Relations District Court Manual.” This Chapter includes references to §§ 63.2-1100 through 63.2-1103 of the *Code of Virginia*, Virginia’s statute enacting the ICPC.

C. 2001 Training Efforts

Attorneys qualified as a GALs are required to take six hours of continuing education every two years. To assist GALs with meeting this requirement, Virginia CLE sponsors an advanced guardian ad litem seminar each year, which is supported by CIP. These programs are offered live once and then as a video replay at various times throughout the year.

The “3rd Annual Advanced Guardian Ad Litem Seminar” offered in the Fall 2001 included two (2) one-hour sessions regarding the ICPC. The first session, “Understanding and Implementing the Interstate Compact on the Placement of Children,” was presented by Dennis Eshman, Manager, Interstate Compact on the Placement of Children at the American Public Human Services Association (APHSA). The objective of the session was to increase the participants’ knowledge and understanding of ICPC requirements to better represent children and parents in ICPC matters. Statutory and regulatory provisions of the ICPC were covered and the applicability of the ICPC was clarified using examples and scenarios.

The second session, “A Practitioner’s Perspective on the ICPC and the Use of Adoption Subsidies to Secure Permanent Placements for Dependent Children,” was presented by Peter J. Wiernicki, Esq. Discussion focused on strategies to prevent or manage delays in the ICPC process, including identifying illegal practices, decreasing the length of time for ICPC approval using best practices, and dealing with situations arising from a foster parent moving to another state or a youth who has run away from his/her out-of-state placement.

D. 2002 Training Efforts

On April 22, 2002, juvenile and domestic relations district court judges attending the Voluntary District Court Judges Conference had the opportunity to hear Dennis Eshman of the APHSA, and Pete Wiernicki, Attorney with the law firm Joseph McDermott & Reiner, P.C., presented a 1 hour and 30 minute session titled “Interstate Compact Act on Placement of Children.” Participants of this session received a copy of *The Interstate Compact on the Placement of Children: A Manual and Instructional Guide for Juvenile and Family Court Judges*, a notebook published by the APHSA and the National Council of Juvenile and Family Court Judges (NCJFCJ) in 2001. The presentation followed the contents of the notebook, outlining ICPC procedures, challenges, solutions, and best practices, and providing an instructional guide for teaching the ICPC to juvenile and family court judges and collaborative teams.

E. 2003 Training Efforts

As noted above, attorneys qualified as a GALs are required to take six hours of continuing education every two years. As part of the advanced guardian ad litem seminar sponsored in the

fall 2003, CIP distributed to participating lawyers the 2002 edition of the *Guide to the Interstate Compact on the Placement of Children*.

F. 2004 Training Efforts

On November 15, 2004, CIP sponsored the 3rd Annual Best Practice Courts Meeting in Richmond. Attendees included 24 best practice court teams made up of juvenile and domestic relations district court judges and clerk's office representatives, representatives from the local department of social services, attorneys representing local departments of social services, and guardians ad litem. The session titled "Alphabet Soup: Cutting Edge Issues for Best Practice Court Teams" included a presentation by Judge Rideout on ICPC basics, as well as the then newly created Memorandum of Understanding (MOU) adopted by judges in the Washington, D.C., Metropolitan Area. Participants received a copy of Resolution 19, adopted at the Conference of Chief Judges/Conference of State Court Administrators in July 2004, which encouraged implementation of similar MOUs to improve collaboration between states on child welfare cases, as well as the MOU and the ICPC Points of Contact List.

G. 2006 Training Efforts

Two local best practice court trainings held in 2006 featured presentations by Judge Rideout regarding the ICPC. The first such program, *Children, Families and the Courts in Southwest Virginia: Meeting the Needs of Our Own*, was developed by the Tazewell and Wise Juvenile and Domestic Relations District Courts and was held on April 11, 2006. Judge Rideout presented the session titled "When Placement Across the Street or With Aunt Sue is in Another State: Understanding the Interstate Compact on the Placement of Children." The discussion included information on the ICPC process, its problems and some potential solutions. Materials included a copy of the ICPC and a summary sheet of revisions developed by the American Public Human Services Association, a copy of the MOU adopted by judges in the Washington, D.C. Metropolitan Area, Resolution 19 (described above) and the ICPC Points of Contact List.

A similar presentation was given on May 26, 2006 as part of an event sponsored by the Williamsburg/James City and Newport News Juvenile and Domestic Relations District Courts. The program, *Sharing Local Initiatives to Achieve Permanency for Our Communities' Children* included a session titled "The Compact You Love to Hate: Solutions for Judges, Lawyers and Line Workers."

H. 2007 Training Efforts

Training regarding the ICPC was offered as part of a statewide training sponsored by CIP for attorneys representing local departments of social services. The program, *Building Connections for Children: DSS Counsel and the Courts*, was offered on September 11, 2007, and included a breakout session titled "Placement of Children Across State Lines: Complying with the Interstate Compact on the Placement of Children." This session was presented by Judge Rideout and Denise Dickerson, Deputy Compact Administrator for the Virginia Office of the Interstate Compact on the Placement of Children. Prior to an in-depth discussion about the ICPC, Judge Rideout discussed, generally, interstate compacts, noting relevant references in the Articles of Confederation and U.S. Constitution. He also discussed the ICPC process, its problems and some possible solutions, as well as the Safe and Timely Interstate Placement of Foster Children Act of 2006 (P.L. 109-239). Ms. Dickerson then provided a brief overview of the Virginia ICPC

Office, noting that cases are currently handled by one of five Interstate Program Consultants assigned to a case based on the first letter of the child's last name.

On November 1, 2007, the Loudoun Juvenile and Domestic Relations District Court presented its program, *Child Dependency Cases: A Primer for Professionals*, which included a session titled "Everything You Ever Wanted to Know About the Interstate Compact on the Placement of Children." Judge Rideout presented this session, providing participants with general information about the ICPC process. In addition to Judge Rideout's presentation, participants received a number of articles addressing interstate placements, as well as a question/answer document from the American Public Human Services Association (APHSA) containing clarifications from the Children's Bureau about the Safe and Timely Interstate Placement of Foster Children Act.

Appendix M to this report includes a table of the above-referenced training events that notes the date, sponsor, program title, location, participants and ICPC session title. The agenda for each program, as well as a list of the materials provided for the ICPC sessions are also included.

X. RESEARCH METHODS TO SUPPORT THE ASSESSMENT

The Safe and Timely Interstate Placement of Foster Children Act of 2006 requires state Court Improvement Programs to assess their roles, responsibilities, and effectiveness in placing children across state lines. Virginia's CIP developed two components to collect and provide information regarding these issues. The first was a survey of local stakeholders who have knowledge of and experience with the Interstate Compact on the Placement of Children (ICPC). The second were oral interviews with juvenile and domestic relations district court judges and Virginia ICPC Office staff. The following is a description of the responses received during the administration of these assessment components.

A. COMPONENT #1: Surveys of Juvenile Court Judges, Counsel for Local Departments of Social Services, Attorneys Representing Parents and Children, and Directors of Local Departments of Social Services

CIP created two survey instruments, 1 to be distributed to and answered by juvenile and domestic relations district court judges, attorneys representing local departments of social services, attorneys for children, attorneys for parents, and guardians ad litem for children (GAL), and 1 to be distributed to and answered by directors of local departments of social services. The surveys were a means by which local stakeholders with experience in ICPC matters could provide information about how the courts of Virginia have become involved in the ICPC process so as to expedite the movement of children across state lines. Appendix N includes a copy of the survey instrument completed by judges and attorneys. Appendix O includes a copy of the survey instrument completed by local DSS Directors or their designated office staff member.

1. Survey Development

The Honorable Stephen W. Rideout, Judge (ret.), Alexandria Juvenile and Domestic Relations District Court and CIP Judicial Consultant, and CIP staff participated in the development of this survey. Judge Rideout drafted a survey to assist the Virginia, Maryland, and District of Columbia Court Improvement Programs with their assessments of the ICPC. In addition to having been involved in ICPC issues as a juvenile and

domestic relations district court judge, Judge Rideout has written several articles and has provided training to a number of professionals regarding the placement of children across state lines. He has an expansive knowledge and understanding of issues currently affecting the ICPC process.

With initial development in place, CIP staff, to include the Director, Staff Attorney, and Program Specialist, reviewed and commented on the survey instrument. Based on these reviews and comments, CIP chose to create two survey instruments for this assessment, 1 to be administered to judges and attorneys and 1 to be administered to Directors of local departments of social services. While the substance of the questions in the two surveys would be the same, CIP felt separate survey instruments were necessary to appropriately address the respondent. For example, the survey to judges and attorneys asked them to respond to the questions based on their specific actions and/or observations. The survey to local DSS Directors asked them to respond on behalf of their agency based on their own personal knowledge, the review of any documents they deemed relevant, and any discussions they have had with other social workers/caseworkers from their agency.

CIP staff then developed a strategy to collect survey responses and to identify survey respondents. In collecting responses, CIP wanted a method that could be easily distributed, collected, and analyzed. A web-based survey offered all of the above, and CIP entered both survey instruments into the web-based survey collector, Survey Monkey (www.surveymonkey.com). CIP distributed the survey link via electronic mail. Survey Monkey kept track of responses and analyzed the results.

With regard to survey respondents, CIP had already identified groups (i.e. judges, attorneys, and local directors of departments of social services) to receive the survey. However, a more specific strategy was needed to determine who from these groups would receive the surveys. Because juvenile and domestic relations district court judges in Virginia have oversight of ICPC cases in their courts, all of them were identified as respondents for the judges/attorneys survey. There are 117 juvenile and domestic relations district court judges in Virginia. The Office of the Executive Secretary of the Supreme Court of Virginia maintains a list of the judges' e-mail addresses.

In addition to juvenile court judges, CIP identified attorneys representing local departments of social services, parents and children to receive the judges/attorneys survey. CIP drew upon contact lists already available to identify over 435 attorneys who may have had knowledge of or experience handling court cases where the ICPC was an issue. For example, on September 11, 2007, CIP sponsored training for attorneys representing local departments of social services. The participant list from this training was used to determine the list of respondents for this group.

Additionally, CIP maintains a database of attorneys from across the state who have qualified as GALs in Virginia. It is CIP's experience that GALs also practice as attorneys for parents and attorneys for children. Contact information, including e-mail addresses, for these attorneys is updated upon their submission of a Certification of Attendance form at a continuing education course carrying GAL credit or upon request by the attorney. In identifying parent's attorneys, child's attorneys and GALs to receive this survey, CIP ran a search of its GAL database for attorneys with a qualification date between January 1, 2007 and December 31, 2007. This date parameter was chosen in an

attempt to narrow the number of respondents. Currently, there are more than 1000 attorneys qualified as GALs in Virginia. Knowing the survey would be distributed via electronic mail, attorneys identified in this search without e-mail addresses were removed from the list of respondents.

Finally, in November 2006, Virginia's 26 Best Practice Court teams, made up of juvenile and domestic relations district court judges and clerk's office representatives, representatives from the local department of social services, attorneys representing local departments of social services, and guardians ad litem, attended the 4th *Statewide Best Practice Courts Conference*. Attorneys and guardians ad litem from each of these teams were included in the list of respondents. These names were compared with the list of names compiled from the GAL database and duplicate names were removed.

As was the case with juvenile and domestic relations district court judges, CIP identified all 121 directors of local departments of social services in Virginia to receive the survey because local agencies are responsible for processing interstate placements. CIP requested and received from the state ICPC office, an updated list of all local directors and their contact information, including e-mail addresses. Because CIP did not know which person on each agency's staff (i.e. Director, Deputy Director, Chief of Services, Child Welfare Supervisor, etc.) had the most knowledge about the agency's involvement with the ICPC, the agency director was asked to make that determination and to have that person respond to the survey based on his/her own personal knowledge, review of any documents they deemed relevant, and any discussions they may have had with other social workers/caseworkers from the agency.

When all of the respondents were identified, CIP had a list of more than 600 individuals to receive these surveys.

2. Survey Description

As noted previously, CIP created two survey instruments for this assessment, one to be administered to judges and attorneys and one to be administered to Directors of local departments of social services. The survey administered to judges and attorneys consisted of 21 questions. However, attorneys were asked to skip questions 19 and 20 because they were intended for judges only. Question 19 asked judges to rate the level of cooperation received from ICPC offices or judicial officers in other states when they have called, written, or e-mailed them about ICPC matters. Question 20 was used to help CIP identify judges with extensive knowledge in ICPC matters and to ask them if they would be willing to speak with CIP about their experiences. Judges who identified themselves were included in the oral interview component of Virginia's ICPC assessment process.

The survey administered to Directors of local departments of social services consisted of 19 questions. Directors were not asked to provide information about the number of cases in which the ICPC was an issue in their previous position because CIP was asking for responses on behalf of the agency. Directors were also not asked to volunteer identifying information for a follow-up interview by CIP. (Numbers 5 and 20, respectively, on the judges/attorneys survey.)

With the exception of the differences noted above, the surveys asked respondents to provide substantially the same information. For example, the first three questions asked respondents to provide their professional identity, length of service, and experience in ICPC matters based on the number of cases in which they had been involved. Respondents who answered question #3 “0-5” (the total number of cases in which they or their local department of social service had been involved in) were automatically sent to the end of the survey. CIP determined that a threshold level of six ICPC cases was necessary for the respondent to complete the entire survey. The fact that respondents had participated in five cases or less is helpful information for the assessment.

Respondents continuing the survey beyond question #3 were then asked to identify from a list provided, five reasons they had observed for delay in the ICPC process, and to rank those reasons from most to least common. The remaining questions asked a series of questions about how ICPC cases were brought before the court, how the attorneys/GALs handled ICPC cases before the court, and how ICPC cases were handled and acted upon by the court, all in an attempt to help CIP assess the courts’ role in the ICPC process.

3. Survey Administration

CIP’s web-based survey was administered to more than 600 judges, attorneys, and directors of local departments of social services. Survey data collection began on Tuesday, February 5, 2008, and ended Friday, February 22, 2008. Each survey respondent identified by CIP received an e-mail notifying them of the survey’s purpose, providing directions on how to connect to the survey instrument, and general information about completing the survey. During the survey administration period, CIP responded to approximately 15 phone calls and e-mails from respondents with questions about the survey. Responses from 122 judges and attorneys and 73 directors of local departments of social services are included in this report.

4. Survey Results

By building the surveys into a web-based survey collector, CIP was able to view survey results in real-time. The following is a summary and analysis of the information collected from each of the surveys. A complete report of the results from the survey completed by judges and attorneys is included in Appendix P. Appendix Q includes a report of the results from the survey completed by local DSS Directors or their designated staff member.

i. *Survey of Juvenile and Domestic Relations District Court Judges, Attorneys Representing Local Departments of Social Services, and Attorneys Representing Parents and Children*

A total of 122 judges and attorneys responded to this survey – 43 judges, 33 attorneys representing local departments of social services, and 38 attorneys representing both parents and children. The remaining eight respondents chose “other” to clarify their current positions and experience in handling cases in the juvenile court system. The total number of respondents are those who started the survey by answering at least one question and clicking the “Next” button at the

end of that question, and who indicated their completion of the required questions by clicking the “Done” button at the end of the survey.

All regions of the Commonwealth were represented by these 122 survey respondents. The Piedmont Region and Eastern Region were each represented by 25% of the respondents. The Northern Region, Central Region, and Western Region were represented by 21%, 18%, and 11%, respectively, of the respondents.

Of the 122 respondents who completed the survey, 74 met the threshold level of six ICPC cases necessary to continue the survey beyond question #3. Therefore, the responses discussed from this point forward will be based on those provided by these 74 respondents.

The first significant question related to the ICPC process asked respondents whether, during the past five years, they had seen improvement in the processing of ICPC cases. An overwhelming majority of respondents (66%) indicated that they have seen no improvement.

Respondents were then asked to identify from a list of 16, five reasons they have observed for delay in the ICPC process. Respondents were to rank each reason they identified from one to five, one being the most common to five being the least common. In accordance with the number of responses received for a particular delay, CIP has identified the following five reasons for delay in the ICPC process as the most commonly observed among judges and attorneys in Virginia.

TABLE 1

No.	Survey Response Count	Reason Observed for Delay
1	68	Delay in the Home Study being done by the local agency in the Receiving State
2	66	Delay by the Receiving State ICPC Office processing the case and sending it to the local agency in the Receiving State for the Home Study to be done
3	43	Delay in the Sending State ICPC Office reviewing and approving the package and sending it to the Receiving State ICPC Office
4	33	The need by the Receiving State ICPC Office to return the ICPC package to the Sending State ICPC Office for some reason, such as it was incomplete
	33	Delay by the agency preparing the ICPC package in sending the package to the Sending State ICPC Office
5	31	The need by the Sending State ICPC Office to return the ICPC package to the local agency for some reason, such as it was incomplete

The most to least common rankings provided by respondents choosing the reasons for delay identified above are as follows:

TABLE 2

Reason Observed for Delay*	Survey Response Count	Ranking Provided by Respondents				
		1	2	3	4	5
1	68	66% (45)	12% (8)	12% (8)	7% (5)	3% (2)
2	66	20% (13)	38% (25)	20% (13)	12% (8)	11% (7)
3	43	7% (3)	23% (10)	30% (13)	23% (10)	16% (7)
4	33	12% (4)	15% (5)	30% (10)	15% (5)	27% (9)
	33	6% (2)	12% (4)	15% (5)	33% (11)	33% (11)
5	31	0% (0)	19% (6)	26% (8)	32% (10)	23% (7)

* Number provided under Reason Observed for Delay corresponds with the number provided in Table 1 above.

With regard to the identification of a placement requiring ICPC approval being brought to the attention of the judge, 69 of the 74 respondents (93%) indicated that the fact had been brought to the attention of the judge at least 75% of the time. The attorney for the child welfare agency was identified as the person most typically bringing the issue to the judge’s attention. Respondents also identified the social worker/caseworker, the child’s attorney/GAL, the parent’s attorney and the child welfare supervisor. The probation officer in the court services unit and the judge were also identified.

In cases where the court was made aware of the need for an ICPC application, 35% of respondents indicated that the matter was brought to the attention of the judge between 1-week and 30 days of the agency’s discovery of such a need. Another 20% indicated the matter was brought to the judge’s attention within five working days of the agency’s discovery of the need for an ICPC application. Several respondents who answered “Other” to this question noted that the matter was brought to the judge’s attention at the next scheduled hearing. Responses also included “immediately” and “at the next foster care review hearing.”

When a judge became aware that the ICPC was required, 44 respondents (59%) indicated that the judge always follows ICPC requirements. A judge making a placement in another state without following ICPC requirements has been observed by 27 respondents. However, 21 of them have observed this less than 25% of the time.

With regard to the continuation of ICPC cases in which a judge became aware that an ICPC was required, 69 respondents indicated that the judge continued the case for further information when the process was not yet completed. Of those, 55% indicated that a hearing was scheduled within 30-60 days to update the judicial officer and parties as to the progress. Another 33% indicated that the case was continued to the next regularly scheduled hearing, no matter how far away that was.

In looking at how often the parties ask for an early court review date regarding any ICPC matter, the data shows that such requests are not being made. A majority of respondents indicated that the attorney for the local department of social services, the child's attorney/GAL, and the parent's attorney ask for an early court review date less than 25% of time.

Actions by a judge learning of a second delay in the ICPC process were wide ranging. Of the 74 respondents, 23 (31%) indicated that the judge scheduled a hearing within 30-60 days for an update on the progress, 15 (20%) indicated that the judge scheduled a hearing within 30 days or less for an update on progress, and 16 (22%) indicated that the judge ordered a report on progress be given at the next regularly scheduled hearing. "Other" responses regarding a judge's actions to a second delay in the ICPC process include:

- the judge directing certain parties to follow-up and report their findings to the court (i.e. the agency, counsel for the agency, GAL, etc.)
- the judge resent the request and set a 90-day review
- the judge set the case for a short review
- the judge took direct action
- the judge summonsed witnesses from the Receiving State ICPC agency

Measures taken by a judge to ensure "Due Process" requirements were met in ICPC cases following some action that he/she took were in many instances unknown. However, 16% of respondents indicated that the judge allowed counsel to be present during any phone call to obtain information on ICPC progress. Those responding "Other" (26%) reported that:

- the judge required the attorneys to sort out issues
- the judge directed the social worker to make contacts through proper channels
- the judge directed the agency to make contact and report to all parties
- the judge requested the agency call the ICPC Office in the Receiving State to report on results
- the judge required counsel or the Clerk to follow-up
- the judge advised the parties of the content of the call/the judge advised the attorneys at a hearing
- the judge entered an Order to expedite the ICPC
- the judge conducted a hearing with all parties present and/or represented by counsel
- the judge contacted counsel and report to parties at next hearing which was usually within a short period of time
- the judge never takes action without counsel/never takes *ex parte* actions

Responses collected from Virginia judges who took some action by calling, writing, or e-mailing the Sending State or Receiving State ICPC office or a judicial officer in another state shows a varying level of cooperation. Of the 14 judges who indicated they had contacted people in the Sending State ICPC Office, nine received consistent cooperation and five received inconsistent cooperation.

Of the 14 judges who indicated they had contacted people in the Receiving State ICPC Office, two received consistent cooperation and seven received inconsistent cooperation. Finally, of the eight judges who indicated they had contacted a judicial officer in another state, five received consistent cooperation, two received inconsistent cooperation, and one received no cooperation.

Following the February 22, 2008, web-based survey response deadline, CIP received by fax one additional survey response from a judge presiding in the Western Region of the state. A summary of the judge's response is included in Appendix R.

ii. Survey of Local DSS Directors

A total of 73 representatives of local departments of social services responded to this survey – 12 Agency Directors, 7 Agency Chiefs of Services, and 43 Child Welfare Supervisors. The remaining 11 representatives chose “other” and clarified their title as being one of the following: Assistant Director II, Foster Care Program Manager, Foster Care Social Worker, Senior Social Work Supervisor for Child Welfare Services, Social Worker--Home Studies, Foster Care, and Adoption, Agency Assistant Director, Foster Care and Adoption Program Manager, and Senior Social Worker. The total number of respondents are those who started the survey by answering at least one question and clicking the “Next” button at the end of that question, and who indicated their completion of the required questions by clicking the “Done” button at the end of the survey.

Each Region of the state was represented by these 73 respondents. The Western Region was represented by 26% of the respondents and the Piedmont Region was represented by 21% of the respondents. The Northern Region, Central Region, and Eastern Region were represented by 19%, 16%, and 18%, respectively, of the respondents.

Of the 73 respondents completing the survey on behalf of a local department of social services, 54 met the threshold level of 6 ICPC cases necessary to continue the survey beyond question #3. The responses discussed from this point forward will be based on those provided by these 54 respondents.

As with the survey to judges and attorneys, the first significant question related to the ICPC process asked respondents whether, during the past five years, they had seen improvement in the processing of ICPC cases. A majority of respondents (65%) indicated that they have seen improvement.

Respondents were then asked to identify from a list of 16, five reasons agency social workers/caseworkers have observed for delay in the ICPC process. Respondents were to rank each reason identified from one to five, one being the most common to five being the least common. In accordance with the number of responses received for a particular delay, CIP has identified the following five reasons for delay in the ICPC process as the most commonly observed among local departments of social services in Virginia.

TABLE 3

No.	Survey Response Count	Reason Observed for Delay
1.	43	Delay in Home Study being done by the local agency in the Receiving State
2.	39	Delay by the Receiving State ICPC Office processing the case and sending it to the local agency in the Receiving State for the Home Study to be done
3.	28	Delay in the Sending State ICPC Office reviewing and approving the package and sending it to the Receiving State ICPC Office
4.	26	The need by the Sending State ICPC Office to return the ICPC package to the local agency for some reason, such as it was incomplete
5.	25	Delay by the agency preparing the ICPC package to send the package to the Sending State ICPC Office
	25	Negotiations between the two ICPC offices regarding issues of concern found by the Home Study

The most to least common rankings provided by respondents choosing the reasons for delay identified above are as follows:

TABLE 4

Reason Observed for Delay*	Survey Response Count	Ranking Provided by Respondents				
		1	2	3	4	5
1	43	44% (19)	19% (8)	23% (10)	2% (1)	12% (5)
2	39	26% (10)	38% (15)	18% (7)	13% (5)	5% (2)
3	28	21% (6)	11% (3)	18% (5)	29% (8)	21% (6)
4	26	8% (2)	15% (4)	23% (6)	38% (10)	15% (4)
5	25	16% (4)	0% (0)	28% (7)	28% (7)	28% (7)
	25	4% (1)	28% (7)	12% (3)	32% (8)	24% (6)

* The number provided under Reason Observed for Delay corresponds with the number provided in Table 3 above.

With regard to the identification of a placement requiring ICPC approval being brought to the attention of the judge, 47 of the 54 respondents (87%) indicated that the fact had been brought to the attention of the judge by agency staff 90%-100% of the time. The social worker/caseworker was identified as the person most typically bringing the issue to the judge's attention, followed closely by the attorney for the child welfare agency. Respondents also identified the child's attorney/GAL, the parent's attorney and the child welfare supervisor. Persons not included in the response choices but identified as bringing this issue to the judge's attention was the Court Appointed Special Advocate (CASA) volunteer assigned

to the case. Respondents also noted that the issue was sometimes included in the foster care service plan.

In cases where the court was made aware of the need for an ICPC application, 41% of respondents indicated that the matter was brought to the attention of the judge between 1-week and 30 days of the agency's discovery of such a need. Another 13% indicated the matter was brought to the judge's attention within five working days of the agency's discovery of the need for an ICPC application. The 17 respondents (31%) who answered "Other" to this question noted the following about when judges were made aware of the need for an ICPC application:

- at the first hearing the need was discovered
- at the next scheduled court proceeding
- if it met Regulation 7, right away. If not, during foster care court proceedings
- once the petition was filed and court hearing scheduled
- when the service plan was turned in or sooner, if expedited ICPC order was needed/would be indicated on the service plan or service plan review
- immediately
- at the time DSS was awarded custody
- we have only addressed the court at the initial custody hearing. Most other times it is not addressed with the court until time of review.
- depends on where it is in the case. New cases and resources identified in another state are acted on either at the 5-day hearing or at the 30-day hearing. Older cases where resources are identified later in the ICPC process are usually started after 90 days.

When a judge became aware that the ICPC application was required, 25 respondents (46%) indicated that the judge always follows ICPC requirements. A judge making a placement in another state without following ICPC requirements has been observed by 26 respondents. However, 22 of them have observed this less than 25% of the time.

With regard to the continuation of ICPC cases in which a judge became aware that an ICPC application was required, 49 respondents indicated that the judge continued the case for further information when the process was not yet completed. Of those, 36 indicated that the judge continued cases 90%-100% of the time. Additionally, a majority of the 49 respondents observing such a continuance (53%) indicated that a hearing was scheduled within 30-60 days to update the judicial officer and parties as to the progress. This was followed by 29% who indicated that the case was continued to the next regularly scheduled hearing, no matter how far away.

The data collected from local departments of social services, like that collected from judges and attorneys, shows that requests for an early court review date regarding any ICPC matter are not being made. A majority of respondents indicated that the attorney for the local department of social services, the child's

attorney/GAL, and the parent's attorney ask for an early court review date less than 25% of time.

Actions by a judge learning of a second delay in the ICPC process were wide ranging. Of the 54 respondents providing answers, 25 (46%) indicated that the judge scheduled a hearing within 30-60 days for an update on the progress; 9 (17%) indicated that the judge scheduled a hearing within 30 days or less for an update on progress; and 7 (13%) indicated that the judge ordered a report on progress be given at the next regularly scheduled hearing. "Other" responses regarding a judge's actions to a second delay in the ICPC process included that there has never been a second delay, there is usually no delay, or that custody was transferred without concurrence.

A majority of respondents (57%) indicated "I don't know" or "Nothing" regarding measures taken by a judge to ensure everyone knew what was happening in ICPC cases following some action that he/she took. However, several respondents answering "Other" indicated that:

- the judge asked the city attorney or social services to follow-up and report back
- the judge gives verbal information
- the judge asked the clerk to contact the parties
- the judge set another hearing for DSS to update the parties
- agency sent out information to the court and all parties
- the judge has all parties involved sign a statement indicating that they will return on the next scheduled court date
- custody transfer would only happen at a scheduled court hearing
- the judge takes no action outside of the courtroom

Similar to those collected from Virginia judges, responses collected from local departments of social services regarding staff who have taken some action by calling, writing, or e-mailing the Sending State or Receiving State ICPC office or a judicial officer in another state shows a varying level of cooperation. Of the 51 respondents who indicated they had contacted people in the Sending State ICPC Office, 22 received consistent cooperation, 28 received inconsistent cooperation, and 1 received no cooperation. Of the 48 respondents who indicated they had contacted people in the Receiving State ICPC Office, 7 received consistent cooperation, and 41 received inconsistent cooperation. Finally, of the 11 respondents who indicated they had contacted a judicial officer in another state, 3 received consistent cooperation and 8 received inconsistent cooperation.

Following the February 22nd web-based survey response deadline, CIP received survey responses from three local departments of social services agencies by fax. A summary of these responses are included in Appendix S.

As indicated above, responses received from judges, attorneys and local departments of social services show disagreement among respondents as to whether the manner in which ICPC cases are processed has improved. The

majority of judges and attorneys (66%) indicated they have seen no improvement, while the majority of local departments of social services (65%) indicated they have seen improvement.

It is also worth noting that three of the five reasons CIP identified for delay in the ICPC process as the most commonly observed by judges and attorneys, and local departments of social services were identical. The Number 1, Number 2, and Number 3 reasons for delay occur, respectively, in the Home Study being done by the local agency in the Receiving State, in the processing and sending of the case by the Receiving State ICPC Office to the local agency in the Receiving State for the Home Study to be done, and in the Sending State ICPC Office reviewing and approving the package and sending it to the Receiving State ICPC Office. The Number 4 and Number 5 reasons observed for delay were similar but differed in their level of observed commonality.

Finally, as indicated above, the response data referenced is based on completed survey responses. However, available survey information indicates that 143 judges and attorneys and 76 representatives of local departments of social services started the survey by answering at least one question and clicking the “Next” button at the end of that question. This means that 21 judges and attorneys and 3 representatives of local departments of social services exited the survey at some point prior to clicking the “Done” button. The survey information also suggests that approximately 17 judges and attorneys exited the survey at question #6 which asked respondents to identify from a list provided, five reasons they have observed for delay in the ICPC process and to rank those reasons from one (most common) to five (least common). The high number of respondents exiting the survey upon reaching this question leads CIP to believe that there was a lack of understanding among participants as to what the question was asking and/or a dislike in the way CIP set up the question to require respondents to rank their answers. This would be in line with comments received from one attorney and three respondents for local departments of social services who addressed concerns about this question (#6 for judges/attorneys and #5 for local departments of social services) with CIP.

5. *Survey Strengths and Limitations*

These surveys were developed as one component of Virginia’s assessment of how the courts of Virginia have become involved in the ICPC process and how they have served to expedite the movement of children across state lines. Thus, it was important for CIP to reach a large number of local stakeholders with experience in ICPC matters. By using the web-based survey collector, CIP was able to send the surveys via electronic mail to identified respondents. This distribution method kept costs to a minimum, and it was less time consuming than mailing hard copies of the surveys to respondents.

Additionally, CIP was able to limit misunderstanding among respondents with survey directions and to prevent survey respondents from answering the complete survey unnecessarily. For example, CIP determined that a threshold level of 6 ICPC cases was necessary for the respondent to complete the entire survey. Rather than relying

on the respondent to stop answering the survey if he had been involved in 0-5 cases in which the ICPC was an issue, skip logic was built into the survey, and these respondents were automatically sent to the last question of the survey. Knowing the number and location of respondents involved in only a few ICPC cases was helpful information for the assessment.

CIP was also able to limit one survey response per computer, and by doing so, significantly reduce the potential for one person to answer the survey more than once. Respondents were also prevented from moving backward through the survey to eliminate the possibility of answers being changed once they moved away from a particular question.

Just as creating web-based surveys and sending them electronically was a strength, there was some limitation in our ability to control who received and answered the survey. For example, because the surveys were sent electronically, there was the potential for respondents receiving the survey from CIP to forward it to other attorneys who they knew practiced as GALs, attorneys for parents, attorneys for children, and attorneys for local departments of social services.

B. COMPONENT #2: Oral Interviews with Virginia ICPC Office Staff and Juvenile and Domestic Relations District Court Judges Regarding the ICPC

The second component of Virginia's assessment of the ICPC was oral interviews with juvenile and domestic relations district court judges and Virginia ICPC Office staff. These interviews provided CIP with an opportunity to discuss with those routinely involved in ICPC matters, their observations of how the process is working in Virginia and how the courts of Virginia are involved in the process. Appendix T includes the list of interview questions asked of juvenile and domestic relations district court judges. Appendix U includes the list of interview questions asked of Virginia ICPC office staff.

1. Interview Development

CIP determined it would conduct interviews with juvenile and domestic relations district court judges routinely involved in ICPC matters and staff of the Virginia ICPC Office. The Virginia ICPC Office is designated as the central clearing point for all interstate placements. Those participating in the interview of Virginia ICPC Office staff included the Deputy Compact Administrator and five Interstate Program Consultants. CIP worked closely with the Deputy Compact Administrator to schedule this interview at a time and location convenient for her and her staff.

CIP interviewed by telephone or in-person nine juvenile and domestic relations district court judges with experience in overseeing ICPC cases before their courts. A majority of the judges interviewed indicated a willingness to speak with CIP about their experiences with the ICPC process through the web-based survey administered in February 2008. However, CIP did ask three additional judges to participate because of their locations and frequent handling of ICPC cases. The judges interviewed have a combined total of more than 75 years of experience on the juvenile court bench and, based on the number of ICPC cases each judge indicated

he/she has been involved in, CIP estimates that among them they have heard more than 135 ICPC cases.

Judge Rideout drafted interview questions for each group of interviewees for this assessment component. The questions were reviewed by CIP staff, including the Director and Program Specialist, and revisions were made based on the comments received.

The Deputy Compact Administrator was also provided an opportunity to review and comment on the questions to be asked of Virginia ICPC Office staff. Although she had no changes to the questions, the Deputy Compact Administrator did recommend that she and her staff be interviewed in a group setting. In doing so, she noted that while discussing the interview questions with staff members, some good discussion had evolved. Thus, she and staff felt the interview would more informative if held in this format. CIP originally planned to conduct individual interviews with each staff member but agreed that a group interview would be instructive.

2. Interview Description

As noted above, CIP agreed to conduct a group interview with ICPC Office staff. In an effort to devote more time to the substantive questions about the ICPC process, general background information about each staff member, such as their name, position, years of experience, caseload, and amount of contact with various persons involved in the process, was collected in advance of the group interview. To do so, CIP developed an interview form. This form was sent to the Deputy Compact Administrator with a request that it be distributed and completed by Virginia ICPC Office staff to provide CIP with the opportunity to review responses prior to the group interview. In addition to the complete list of interview questions asked of Virginia ICPC Office staff, Appendix U includes a copy of the above-referenced interview form.

The group interview questions asked ICPC Office staff to describe, in their dual roles as a sending state and receiving state in the ICPC process, three to five common roadblocks they have observed in effectively moving ICPC cases and any strategies they have implemented to respond to those roadblocks. They were also asked to provide recommendations on how the ICPC process might be improved and whether more court involvement would help the process.

With regard to juvenile and domestic relations district court judges, questions were based partly on responses provided in the web-based survey. For example, in the web-based survey judges were asked to identify five common delays they had observed in the ICPC process. The follow-up interview asked judges to identify the causes of the delays they had observed. They were also asked to identify barriers they have experienced when making judicial decisions regarding interstate placements. Judges were asked to identify steps they have taken to help reduce delays in the ICPC process, how many times they have intervened in a sending state or receiving state ICPC matter and the manner in which they intervened (i.e. phone call, e-mail, etc.), and whether their intervention resulted in any useful information being obtained to help remedy the situation for which they became involved.

3. Interview Administration

The group interview with Virginia ICPC Office staff and all interviews with juvenile and domestic relations district court judges took place in March and April 2008. CIP conducted a group interview with state ICPC office staff on March 12th at the Virginia Department of Social Services in Richmond, Virginia. The interview convened at 10:00AM and concluded at 12:30PM. CIP began the interview by explaining the purpose and requirements of the ICPC assessment as directed by the Children's Bureau at the Department of Health and Human Services.

CIP conducted a phone interview or in-person interview with juvenile and domestic relations district court judges on March 19th, March 20th, March 21st, March 25th, March 26th, March 31st, April 3rd, and April 18th. The list of interview questions was provided to each judge for review prior to their scheduled interview date. Judges also received an outline of the responses they provided to several of the web-based survey questions, because the interview questions asked judges to elaborate on these responses.

4. Interview Results

The following is a summary of the responses received from Virginia ICPC Office staff and juvenile and domestic relations district court judges regarding their experience with the ICPC process.

i. Interviews with Virginia ICPC Office Staff

All five Virginia ICPC Office staff members and the Deputy Compact Administrator participated in this interview. Of the five staff members, two are classified as full-time employees. The remaining three are classified as part-time employees working approximately 1500 hours per year. Additionally, the experience level of staff working in the Virginia ICPC Office ranges from 10 months to 15 years. Based on the number of cases each staff person indicated they are responsible for, CIP estimates that the combined sending state and receiving state ICPC caseload average per staff member is 672 cases.

The interview began with CIP noting the purpose and requirements of the ICPC assessment as directed by the Children's Bureau. Specifically, discussed was the connection of this assessment with the Safe and Timely Interstate Placement of Foster Children Act in 2006, which placed obligations on the court to make interstate placements move more effectively and efficiently. Such obligations included creating ways for judges in Virginia and other states to have contact about interstate placements, creating a means by which relatives living outside of Virginia may provide testimony without traveling to Virginia, and creating a mechanism by which lawyers of out-of-state relatives can participate in Virginia court proceedings even though they are not licensed to practice in Virginia.

CIP concluded its opening remarks with mention of its aim to focus on how the courts intersect with the ICPC and to determine ways in which that intersection could be improved. CIP also commented on answers to questions provided in

advance of the interview, noting that in some respects the answers shortened the issues because it was observed that there is little communication occurring among Virginia judges, clerks of court, and attorneys/GALs, and judges and attorneys/GALs from other states, with the Virginia ICPC office. In fact, of the list of potential contacts provided above, only one staff member noted contact with a Virginia judge within the past 12 months. Additionally, while all five staff members noted contact with Virginia attorneys or attorneys from other states, the contacts most commonly come from attorneys handling private adoption cases rather than from those checking on the status of an ICPC case.

Despite the lack of contact, staff did provide CIP with several issues related to the ICPC process that they believe the courts of Virginia could address through training and/or court process. The following is an outline of these issues.

- a. **Better understanding of when the ICPC applies.** As previously described, Virginia has provided a number of training opportunities to Virginia judges, attorneys, and GALs regarding the ICPC process. However, the Deputy Compact Administrator of the Virginia ICPC Office noted that she has received calls from judges seeking clarification on when an ICPC request is required. Thus, there may be a need for some additional training in this area for judges, as well as for attorneys handling these cases before the courts.
- b. **Better understanding of the financial resources of a potential placement.** Virginia ICPC Office staff noted that in many instances, placements disrupt, and in many instances fail, because little attention is being paid to whether a family can appropriately handle the financial needs of a particular child. For example, if the child has special needs, can the family afford the child's medical, educational, and/or day-to-day care requirements? Similarly, for a non-special needs child, can the family afford daycare if the child requires such; either all-day for infants to age 5, or part of the day for those who attend school in the morning and need a place to go in the afternoons?

While staff recognized that local department of social services personnel need to better understand these financial aspects, they felt that training judges, attorneys, and GALs in this area would also be beneficial. If an agency were to go before the court indicating that a receiving state had accepted a placement and the local agency was recommending the child be sent to that placement, the court, attorneys, and/or GAL would be able step back and question, based on the needs of the child and the financial situation of the potential placement, whether the financial requirements of the child could be met. This would aid the court in assessing whether a placement is appropriate and whether it should be approved.

- c. **Court involvement in ICPC case follow-up efforts.** As noted above, CIP estimates that the combined sending state and receiving state caseload per Virginia ICPC Office staff member is 672 cases. While staff members are able to efficiently process cases coming in, they acknowledge that it is

difficult to stay on top of cases already in the field. Because the Virginia ICPC office has no computer system that can flag a need to follow-up, staff relies on phone calls from local departments of social services as a reminder to be in touch with another state about the status of a case. Thus, staff felt that having the court involved in follow-up efforts would be helpful in moving the process forward. It was recommended, for instance, that the court require the local department of social services to report on the status of a case at least one week prior to the next court hearing. To do so, the local agency would need to bring the case to the attention of Virginia ICPC Office staff. Staff would then provide an update and/or make inquiry to the other state about progress.

- d. **Immediate establishment of paternity.** Virginia ICPC Office staff noted that states have different requirements for beginning the ICPC process. For example, at least one state is requiring proof of paternity if the potential placement is with a paternal relative. When required information is not available, the ICPC process is delayed because the package sits in the state office awaiting the required information, or it is returned by the receiving state as incomplete. In this particular instance, Virginia courts could help the process by immediately establishing paternity.

While not court specific, Virginia ICPC Office staff noted a number of other issues that provide insight into the processing of ICPC cases in Virginia. For example, state staff indicated that a *significant delay* in the process comes in obtaining fingerprint checks from the state police; the average turnaround time for this process being 60-90 days. Interestingly, only 13 of the judges, attorneys, and local departments of social services responding to the web-based survey identified this issue as being a reason they had observed for delay in the process. Moreover, none of them ranked it the most common reason observed for delay.

Additionally, 14 judges responding to the web-based survey indicated that they had contacted the sending state ICPC Office. This is in contrast to information received from Virginia ICPC Office staff and Deputy Compact Administrator showing contact from less than a handful of judges within the past 12 months. However, judges were not asked to consider the level of contact occurring within the past 12 months. Therefore, it is possible that judges were considering contact that has occurred throughout the course of their judgeships. If this is the case, the numbers may be more in line than they might first appear.

Discussions with state staff provided CIP with a starting point for reviewing how the courts of Virginia may be more involved in the ICPC process. However, the review must go beyond the courts to the state child welfare agency, the Virginia Department of Social Services. Virginia ICPC Office staff identified a number of issues and challenges with the ICPC process at the state and local levels that must be addressed if systemic change is to occur in Virginia. At the state level, adequate funding is needed to adequately staff the ICPC Office to process and review the number of ICPC cases passing through Virginia, both as a sending state and as receiving state. While staff is able to ensure that some of the process works well, they are unable to properly oversee and manage all of the cases on

their caseload because of the volume of work, an inadequate number of staff, and the lack of an effective computerized management information system.

At the local level, it is essential that agency personnel understand the ICPC process and how to conduct a proper home study. Virginia ICPC Office staff indicated that they spend a great deal of time explaining the ICPC process to local agency personnel, particularly those in rural parts of the state that do not handle many ICPC cases. They also noted that many local agency personnel, admittedly, have never done a home study and that this is reflected in the product they submit for review and approval by state staff. Further, despite a checklist of information being provided to each locality indicating the information to include in each ICPC package, too many are submitted incomplete.

CIP recognizes that training on the ICPC is available to local department of social services personnel. However, this training is voluntary and many workers are not taking advantage of these opportunities. Mandatory training on the ICPC process and its requirements, to include information on how to conduct an appropriate home study, should be considered.

ii. *Interviews with Juvenile and Domestic Relations District Court Judges*

CIP conducted interviews with 8 juvenile court judges over a 3-week period. A majority of the judges participating in this interview process indicated in their responses to the web-based survey document administered in February 2008 that they were willing to do so. In an effort to have judges from each region of the state contribute to this interview process, CIP asked two additional judges with known experience in handling ICPC cases to participate. Each interview lasted between 30 and 45 minutes.

As with the interview conducted with Virginia ICPC Office staff, CIP began each judge interview with a brief comment about the purpose and requirements of the ICPC assessment as directed by the Children's Bureau. This included mention of the connection of this assessment to the Safe and Timely Interstate Placement of Foster Children Act of 2006 and obligations placed on state court systems to help interstate placements of foster children move more effectively and efficiently. Each interview participant was then offered the opportunity to make opening remarks or to ask any preliminary questions.

Virginia has held a number of local and state trainings on the ICPC, several of which specifically addressed how the courts can become more involved in helping the process work better. Based on the interviews conducted, as well as the February survey results, however, it is reasonably clear that juvenile court judges in Virginia only become involved in the ICPC process on a case-by-case basis when it comes to their attention that the process has been delayed in some way. Judges interviewed estimated that 50%-90% (or a "vast majority") of the ICPC cases they have been involved in were delayed in some way.

Further, they indicated that they typically rely on counsel for the local department of social services or the social worker involved in the case to advise them of the

causes for delay. For a majority of the judges interviewed, this advisement usually occurs at the next regularly scheduled court hearing, which, in some instances, may be months away. One judge noted that he schedules hearings for a 30-day review, sometimes less, for status updates.

The information regarding status updates is in line with the February survey responses received from judges and attorneys and local departments of social services. When asked if the judge continued cases in order for the ICPC process to be completed, 33% of judges and attorneys and 29% of local agencies indicated that cases were continued “To the next regularly scheduled hearing, no matter how far away that was.” Another 55% of judges and attorneys and 53% of local agencies noted that “A hearing was scheduled within 30-60 days for an update on progress to the judicial officer and the parties.” Similarly, when asked what action judges took if a second delay occurred in the ICPC process, 22% of judges and attorneys and 13% of local agencies indicated that the judge “ordered a report on progress be given at the next regularly scheduled hearing.” Another 31% of judges and attorneys and 46% of local agencies indicated that the judge “scheduled a hearing within 30-60 days for an update on progress to the judge and the parties.” And, if a second delay occurred, not more than 5% of each respondent group indicated that a judge took direct action by calling an ICPC office or a judicial officer in another state.

It can also be reasoned that very few, if any, juvenile court judges in Virginia have established court procedures for responding to the delays occurring in the ICPC process. None of the judges interviewed have a formalized court process that they use with every ICPC case to help ensure efficiency in the process. They indicated that they would welcome such a process. However, there was divergence on whether such a process should be by rule of court, legislation, or the establishment of a “best practice” model through training.

When delays have occurred, a few of the judges interviewed noted that they have contacted the Virginia ICPC Office for assistance, which they found to be responsive to their needs. A few others indicated contact with the Receiving State ICPC Office, noting varying degrees of success in the assistance received. None of the judges interviewed have had contact with a judicial officer in another (receiving) state, although one judge did indicate an attempt at such contact but noted his efforts were unsuccessful in that he did not receive a return call.

Each of the judges interviewed also stated that they have never had an ICPC case where they, or a judge from another state, requested assistance to take testimony, take depositions, swear witnesses, or forward documents to help expedite the matter. Several of the judges have used the UCCJEA to take interstate testimony but, again, the matters were not ICPC related. In discussing the potential application of the UCCJEA to ICPC matters, one judge indicated his reticence to employ the UCCJEA in ICPC cases because it does not specifically state that ICPC matters are within the scope of the statute. Another judge noted his concern with taking testimony, particularly if being given by phone rather than by videoconference; his preference being that he wants to be able to observe the person who was testifying, not just hear them.

In addition to the above, a couple of the judges interviewed expressed concern with children who are in Virginia, either legally or in violation of the ICPC process, who need to be returned to the state that placed them in Virginia. Judges noted that in many instances, this process can be difficult because the Sending State does not want to take the child back. These judges see no effective process currently in place to facilitate the movement of these children in such situations.

It is evident from the interviews with juvenile court judges that they feel removed from the ICPC process and, in many circumstances, are unclear about what role they can have in the process without being in violation of their ethical boundaries and duties as a judge. They had no ideas for legislative changes or court rules that they proposed. Judges did, however, recommend more training for judges, social workers, attorneys for local departments of social services, and attorneys/GALs representing children. Suggested training topics for judges included a general overview of the ICPC and its regulations, a review of when the ICPC applies, and a presentation on the steps and/or options available to judges to resolve ICPC related problems/delays.

Training topics for social workers, attorneys for local departments of social services, and attorneys/GALs representing children included general information about the ICPC and its regulations, and the requirements for completing the ICPC package for forwarding to the Virginia ICPC Office. A couple of judges, in recommending training for social workers, noted that their local agencies had undergone quite a bit of turnover in recent months. CIP notified judges that Virginia DSS has online training regarding the ICPC which, while not mandatory, is available to all local departments of social services staff and suggested that they might want to suggest such, if the opportunity arose, to their local agency representatives.

However, the most popular recommendation by the judges interviewed was the establishment of a court process for managing ICPC related cases. For judges living on or near the borders with other states where much of the interstate movement of children is occurring, they believe that an agreement between Virginia and the border state would improve administrative issues involving the movement of children across state lines where the ICPC is required.

During the course of the interviews, CIP asked judges whether they were familiar with Family Group Conferencing and if they believe the concept would be useful for moving ICPC cases in their areas. It was noted that Family Group Conferencing might help social services identify the family member(s) most capable and able to accept the child's placement. The interstate home study could then be completed up front, thereby requiring fewer home studies. The family could then come to an agreement at the start of the process about who might be better prepared to accept the child. Required information could then be obtained early in the process. All of the judges indicated that having such a process would be helpful in ICPC cases. One judge noted that the local child welfare agency in his area is using Family Group Conferencing in some cases.

It was also suggested that hearings in ICPC cases be held every 30 days, rather than continuing the cases until the next review hearing, which could be months away. Prior to next hearing dates one of the lawyers could get an update from the Virginia ICPC office on the status of the case. The judges also believed that this would be helpful in expediting the process.

XI. CONCLUSION

CIP finds that Virginia, in most instances, has in place the laws, court rules, and means for implementing the federal requirements found in the Safe and Timely Interstate Placement of Children Act of 2006. Recognizing, however, that issues will need to be addressed in order to fully comply with the Act, several outstanding questions related to possible legislative changes, Rules of Court changes, and best practices were discussed during a breakout session on this ICPC assessment at the June 5, 2008, meeting of the CIP Advisory Committee. In addition to CIP staff, included in this group were five juvenile court judges, a representative from the Virginia Department of Social Services, a representative from a local department of social services representative, and an attorney for a local department of social services. The discussion was facilitated by Richard Balnave, a Professor at the University of Virginia School of Law with extensive experience in child welfare issues. A list of breakout session attendees, as well as a list of discussion questions, is included in Appendix V.

Based on the discussion of the breakout group, CIP plans no further action on the following issues:

- *State and federal court interpretations regarding the validity of ICPC Regulations.* This issue has rarely been raised in Virginia and no Virginia appellate case law exists.
- *Participation of out-of-state lawyers in court hearings in Virginia.* There was consensus among the breakout group members that Virginia's existing Pro Hac Vice process is sufficient to address this issue.
- *Including in the definition of a "party with a legitimate interest," those persons being considered by the local department of social services as an interstate placement through the ICPC process.* There was consensus among the breakout group members that Virginia's existing definition included these persons.

The following is an outline of issues requiring further study and discussion in Virginia before final determinations can be made about their resolution.

A. Issues for Further Study and Discussion

1. Applicability of the Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA) to Cases Involving the ICPC

CIP recommends the formation of a committee to determine what, if any, changes are necessary to address this issue. Of particular concern among judges who participated in the Advisory Committee breakout session is the lack of authority within the ICPC, other than Regulation 7, for a judge to participate in ex parte communication, whether

it be with a judge in another state, the sending state ICPC Office, the receiving state ICPC Office, or the receiving state local social services agency. The judges do not believe that they are authorized under the UCCJEA to make contact with judges in other states on ICPC issues. They believe the UCCJEA is intended solely for determining which state, among two or more states, has jurisdiction over a child's case when petitions regarding that child are pending in each of the states. As in most ICPC cases, there is only one case pending, and there are usually no jurisdictional issues.

2. Appearance of Conflict between the UCCJEA and Rules of Court Regarding Depositions

CIP recommends that the committee formed to address the above-referenced issue also consider what, if any, changes are necessary to address the apparent conflict between the UCCJEA and Virginia's Rules of Court regarding depositions.

3. Best Practice Considerations

CIP plans to consider the ideas below and determine how best to approach improving practice such as through training, docket management, and use of judicial checklists.

- More timely court review of ICPC progress – at least every 30 days
- Timely completion of ICPC paperwork – forms available at court for parties
- Use of mediation and family group conferencing to reduce the number of home studies
- Concurrent planning – move forward on ICPC while working for reunification at the same time
- Judicial checklist – See Appendix W

B. Issues for Review and Consideration by the Children's Bureau

CIP believes issues related to the participation of parents who are incarcerated in federal, or state, local or regional jails, as well as the participation of witnesses in other states, are beyond the scope and authority of individual states to address. Thus, it is recommended that the Children's Bureau review and consider the following:

1. The need for uniform laws requiring federal prisons, and state, local, or regional jails in other states, to cooperate with a state court's request to allow a prisoner in such a facility to participate in ICPC and other related child welfare proceedings by telephone or video conference. With regard to the state court and state prison issue, the National Conference of Commissioners on Uniform State Laws might be encouraged to consider a uniform state law on this issue.

2. The need for uniform laws addressing acceptable minimum audio-visual requirements for use by the courts in ICPC and other related child welfare proceedings.

Following the June 5th Advisory Committee meeting, as well as incorporation of the comments received during the ICPC breakout discussion into this assessment report, CIP shared this report with Virginia's Deputy Compact Administrator. After reviewing the report, the Deputy Compact Administrator commented that the report appeared appropriate.