



**Vermont's**

**Interstate Compact on the Placement of  
Children:  
An Assessment of the Court's Role  
In Expediting the Interstate Placement of  
Children**

**June 30, 2008**

This report was prepared by the Vermont Court Improvement Program as required by the federal 2006 Safe and Timely Interstate Placement of Foster Children Act.

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## **A. Introduction**

### **1. Reason for Assessment**

The Interstate Compact on the Placement of Children (ICPC) is an agreement among states that establishes a uniform process when an out-of-state placement is being considered for a child in foster care. It ensures that children placed across state lines for foster care or adoption are placed with caregivers who are safe, suitable, and able to properly care for the child.

The *2006 Safe and Timely Interstate Placement of Foster Children Act*<sup>1</sup> encourages states to improve protections for children and holds states accountable for the safe and timely placement of children across state lines. To this end, the Act requires state Court Improvement Programs to assess their state courts' effectiveness in expediting the safe and timely interstate placement of children, particularly with respect to cooperating in the sharing of information across state lines.

The purpose of this report is to assess the effectiveness of Vermont's state laws, policies, and local court strategies for:

- cooperating with out-of-state courts to share information;
- obtaining information and testimony from agencies and parties without requiring interstate travel, and
- permitting the participation of parents, children, other necessary parties, and attorneys in interstate placement cases without requiring their interstate travel.<sup>2</sup>

The report summarizes current laws, policies, and practice. It examines the effectiveness of Vermont laws and the family courts in effectuating timely and safe interstate placements and identifies practical barriers to timely interstate placements. This report also offers recommendations for improving how Vermont courts handle interstate placements.

### **2. Methodology**

The Vermont Court Improvement Program led the assessment project by coordinating with professionals from the Department for Children and Families' interstate compact (ICPC) office and with an Advisory Group convened specifically for this project.<sup>3</sup> The assessment included one survey tailored to judges, attorneys, and GALs, and one tailored to Department for Children and Families (DCF) social workers and supervisors; a review

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<sup>1</sup> Public Law (P.L.) 109-239 was signed into law in July 2006.

<sup>2</sup> 42 U.S.C. 629h (a)(1)(E).

<sup>3</sup> The ICPC Advisory Group consisted of: Margo Bryce (ICPC State Compact Deputy Administrator), Hon. James Crucitti, Jody Racht (Assistant Attorney General), Kate Piper (juvenile defender), Susan Hardin (Chittenden County prosecutor), and Lynda Schoenbeck (formerly Family Services District Director and the Division's Quality Assurance Coordinator).

of administrative data, state laws, court rules, and policy directives; an overview of the ICPC process and common practices; an interview with the ICPC Deputy Compact Administrator, and a focus group discussion in the county that typically has one-quarter of the ICPC cases. The report was vetted through the Deputy Commissioner, Family Services Division (also Vermont’s Compact Administrator) and the Vermont Court Administrator.

**Surveys:** DCF records from one year’s worth of ICPC cases (from 10/1/06 through 9/30/07) were used to identify attorneys, social workers, and GALs who had ICPC cases. The survey was sent to those identified attorneys, social workers, and GALs, and to all judges. Responses were anonymous.

	# receiving survey	# responses	response rate
Judges	30	13	43%
Guardians ad Litem (GALs)	37	15	41%
Agency Attorneys	8	5	63%
Prosecutors	5	3	60%
Attorneys (parents & children)	36	12	33%
Family Services	58	16	28%
Other		2	
<b>Total:</b>	174	66	38%

**Focus Group:** researchers held one focus group in Chittenden County, which has the highest number of ICPC referrals. Typically one-quarter of all Vermont ICPC referrals originate in that county. Nineteen people who had ICPC cases in the sample time period attended.<sup>4</sup> Of the participants, the vast majority had filled out the survey.

**Interview of ICPC Administrator:** An in-depth interview of the Deputy Compact Administrator was conducted in March 2008.

**Case file review:** Reviews of ICPC case files were not conducted. Researchers decided that the time it would take to develop instruments and conduct a random sampling of three to five case files might not yield valuable information because of the sample size.

## B. Overview of Interstate Placement Process

### 1. History of the ICPC

The Interstate Compact on the Placement of Children (ICPC) is an agreement among states for a uniform process when a child in foster care might be placed out-of-state. It ensures that children placed across state lines for foster care or adoption are placed with

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<sup>4</sup> The Focus Group participants were comprised of: 4 attorneys, 2 agency attorneys, 3 judges, 1 court clerk, 2 GALs, 6 people from DCF, and 1 ICPC Compact Administrator.

caregivers who are safe, suitable, and able to properly care for the child. States participate in this agreement by passing the ICPC as law in their own state. Vermont enacted the Interstate Compact on the Placement of Children as state law in 1972.<sup>5</sup> Vermont's ICPC statute replicates the model interstate compact law enacted by all 50 states, the District of Columbia, and the Virgin Islands.

The ICPC regulates activities concerning the placement of children across state lines (e.g., seeking permission from the receiving state for placement in that state), and the acceptance of children from other states (e.g., conducting home studies to determine the suitability of a placement). The law establishes administrative procedures and financial responsibilities for the states involved in the interstate placement.

The Association of Administrators of the Interstate Compact on the Placement of Children (AAICPC) administers the existing compact's provisions and rules.<sup>6</sup> The ICPC was written in 1960, and is in need of updating.<sup>7</sup>

The rewritten compact, the Interstate Compact *for* the Placement of Children, was introduced in the Vermont legislature in 2007, but was not passed.<sup>8</sup> However, the APHSA is currently revising the Interstate Compact *for* the Placement of Children to address concerns voiced by the American Academy of Adoption Attorneys and others. Once those revisions are finalized, the revised Compact would need to be passed in at least 35 states before the new provisions are followed. This is likely to take years. At this time, Vermont DCF is in agreement with the revised ICPC. However, some child advocacy organizations do not endorse the revisions.<sup>9</sup>

The new ICPC cleans up some obsolete language and makes the regulations part of the law. It removes the requirement for placement by parents in private residential facilities and the requirement that *approval* be obtained by the receiving state when children are being placed in a residential facility in that state. (The new Compact would require only

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<sup>5</sup> 33 V.S.A. §§5901-5927.

<sup>6</sup> The AAICPC is affiliated with the American Public Human Services Association (APHSA). The AAICPC has authority under ICPC to promulgate rules and regulations to carry out more effectively the terms and provisions of the Compact. For more information, see <http://icpc.aphsa.org/Home/about.asp>

<sup>7</sup> For a more complete discussion regarding administration of the ICPC and efforts to revise it, see the American Public Human Services Association's (APHSA) two page "[History of the ICPC](#)" (Appendix 1).

<sup>8</sup> [S.99](#) - Senate Judiciary, February 2007.

<sup>9</sup> The National Association of Counsel for Children (NACC) and other state child advocacy organizations oppose the rewritten compact on the grounds that it lacks specific time frames for completing home studies, enforcement mechanisms when states ignore provisions of the Compact, and due process rights for families. Vivek S. Sanikaran, *Navigating the Interstate Compact on the Placement of Children: Advocacy Tips for Child Welfare Attorneys Child Law Practice*, Child Law Practice Vol. 27 No. 3, 40 (May 2008).

a notification, but not prior approval.) The new ICPC provides for provisional placement approvals with the goal of increasing timeliness of placements with kin. The workload of ICPC offices would be reduced because there would no longer be a requirement for parents who are placing a child directly into a residential facility to comply with the ICPC.

The ICPC applies to children in foster care. It does not apply to:

- Placement of children between parents & specified relatives<sup>10</sup>
- Placement into a receiving state pursuant to other interstate compacts<sup>11</sup>
- Placement of a child with a non-custodial parent after which the Vermont court would no longer retain jurisdiction over the case<sup>12</sup>

## 2. Statistics

On December 31, 2007, Vermont had 1,137 children in “out-of-home care,” defined as children not living in their own parent’s home.<sup>13</sup> Approximately 4% of Vermont’s foster care cases involve interstate placements.<sup>14</sup> Nationwide, this figure is approximately 5.5%.<sup>15</sup>

**Vermont as “Receiving” State:** In CY2007, the Vermont ICPC office received 61 requests from other states for home studies:

- Two of those requests were withdrawn by the sending state.
- Vermont completed the other 59 requests in an average of 46 days.
- Vermont completed 77% of the home studies within 60 days.<sup>16</sup>

As shown below in Table 1, the number of home study requests to Vermont had been fairly steady until CY2007. Despite the increase in the volume of requests in CY07, Vermont averaged less than 60 days to complete its home study requests that year. The increase in time to completion in CY 2006 was due to delays by the district office social worker staff in completing the home studies. To remedy this, the ICPC Administrator assigned this work to the Special Investigations Unit beginning in 2007. Average days to completion of home study improved dramatically in CY2007.

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<sup>10</sup> 33 V.S.A. §5908 (1); Article VIII

<sup>11</sup> 33 V.S.A. §5908 (2); Article VIII

<sup>12</sup> ICPC Regulation No. 3 §6 (b) at <http://icpc.aphsa.org/Home/regulations.asp>

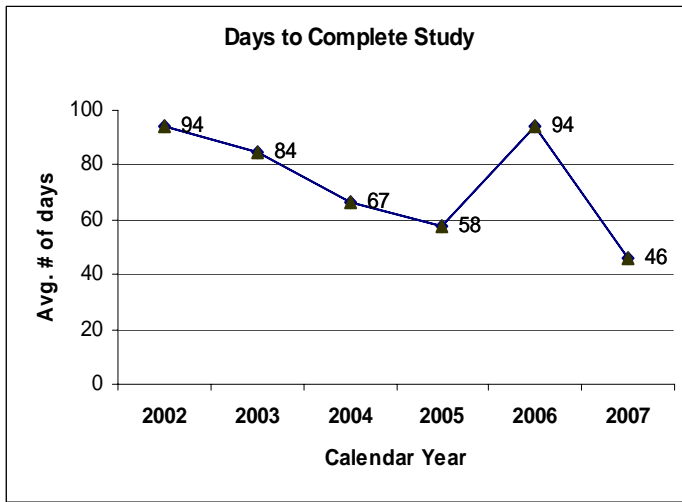
<sup>13</sup> This is point in time data, provided by DCF Family Services Division.

<sup>14</sup> Source: Margo Bryce, Vermont ICPC Deputy Compact Administrator, 4/14/08.

<sup>15</sup> Maza, Penelope. *The Role of Interstate Placements in States’ Meeting the CFSR Standards*. Presented at Association of Administrators of the Interstate Compact on the Placement of Children (AAICPC) Annual Conference, May 2003 and cited at APHSA website at <http://www.aphsa.org/Policy/ICPC-REWRITE/Resource%20Materials/NATIONAL%20INTERSTATE%20DATA.pdf> )

<sup>16</sup> By contrast, other states completed 27% of their home studies within 60 days.

**Table 1: Home Study Requests to Vermont  
Vermont as Receiving State – Average Time to Completion**



CY	# of Requests
2002	47
2003	44
2004	43
2005	45
2006	48
2007	61

**Table 2: Home Study Requests to Vermont  
(Vermont as Receiving State - CY 2002-2007)  
Percent of Home Studies Completed in 30, 60, 90, >90 days**

CY	# Requests	Avg. Time (days)	Percent of Home Studies Completed in 30, 60, 90, >90 days							
			0 - 30 days		31 - 60 days		61 - 90 days		Over 90 days	
2002	47	94	5	11%	12	26%	11	23%	19	40%
2003	44	84	7	16%	11	25%	11	25%	15	34%
2004	43	67	8	19%	13	30%	13	30%	9	21%
2005	45	58	12	27%	15	33%	9	20%	9	20%
2006	48	94	10	21%	16	33%	10	21%	12	25%
2007	61	46	21	34%	26	43%	9	15%	5	8%

In CY2007, 8% of Vermont’s home studies took longer than 90 days to complete.<sup>17</sup> By contrast, 55% of the home studies performed by other states exceeded 90 days.

**Vermont as “Sending” State:** Our “sample data” is from 10/1/06 through 9/30/07. During that period, the Vermont ICPC office sent 81 requests for home studies to other states:<sup>18</sup>

<sup>17</sup> These delays were mostly due to applicants going to the locations for the fingerprinting and then the delay for Public Safety to run the prints through their system. Source: Margo Bryce, Vermont ICPC Deputy Compact Administrator.

<sup>18</sup> The highest number of referrals originated in the Burlington District Office (n=21), followed by nine in Springfield, eight in Brattleboro, eight from St. Johnsbury, and seven from Bennington. (This sample is for parent, relative, or foster care requests, not residential placement requests.)

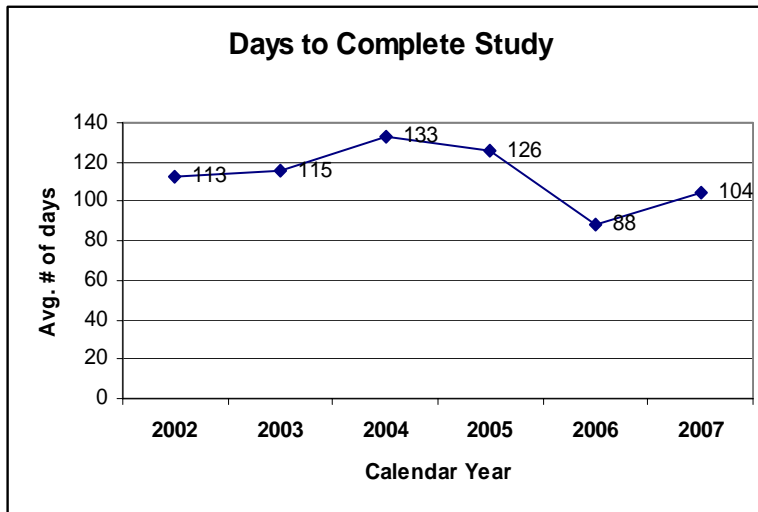
Of those 81 requests:

- Twelve were later withdrawn
- Two were still pending as of 1/31/08
- The remaining 67 requests were completed in an average of 96 days.
- Vermont sent its home study requests to the following states (bold indicates states with highest frequency):

AL: 1	IL: 1	<b>NH: 22 (27%)</b>
CA: 1	IN: 1	<b>NY: 12 (15%)</b>
CT: 3 (4%)	KY: 2	OH: 3 (4%)
DE: 1	MA: 4 (5%)	PA: 6 (7%)
FL: 4 (5%)	MN: 1	TN: 3 (4%)
HI: 2	MS: 1	TX: 1
IL: 1	NC: 6 (7%)	

Tables 3 and 4 show the results of home study requests that Vermont submitted to other states. With the exception of 2006, the average time to complete those home studies exceeded 90 days.

**Table 3: Home Study Requests to Other States  
(Vermont as Sending State - CY 2002-2007)**



<b>CY</b>	<b># of Requests</b>
2002	31
2003	35
2004	36
2005	54
2006	59
2007	76

**Table 4: Vermont Home Study Requests to Other States  
(Vermont as Sending State - CY 2002-2007)  
Percent of Home Studies Completed in 30, 60, 90, >90 days**

<u>Year</u>	<u># Requests</u>	<u>Avg. Time (days)</u>	<u>0 - 30 days</u>		<u>31 - 60 days</u>		<u>61 - 90 days</u>		<u>Over 90 days</u>	
2002	31	113	6	19%	7	23%	4	13%	14	45%
2003	35	115	3	9%	7	20%	7	20%	18	51%
2004	36	133	3	8%	5	14%	8	22%	20	56%
2005	54	126	6	11%	9	17%	8	15%	31	57%
2006	59	88	9	15%	12	20%	16	27%	22	37%
2007	76	104	7	9%	14	18%	13	17%	42	55%

### **3. Step-by-Step Description of the ICPC Process**

Approval by the ICPC Administrator is required before a child in foster care can be placed in another state in any setting, including with a parent or relative or into a foster or pre-adoptive placement or residential care. The exception is when the court transfers the child to a non-custodial parent about whom the court has no concerns, and then does not retain jurisdiction over the child once the court transfers the child.<sup>19</sup>

Once a child is placed out-of-state, the “sending state” continues to have legal and financial responsibility for the child. In Vermont this means responsibility for conducting six month administrative reviews and Permanency Hearings. Responsibility for the child’s support includes education, treatment, and medical expenses.<sup>20</sup> The receiving state provides ongoing casework services to the child once the child is placed out-of-state and makes periodic reports to the sending state.

The flowchart on the following page illustrates the many steps in the ICPC process.

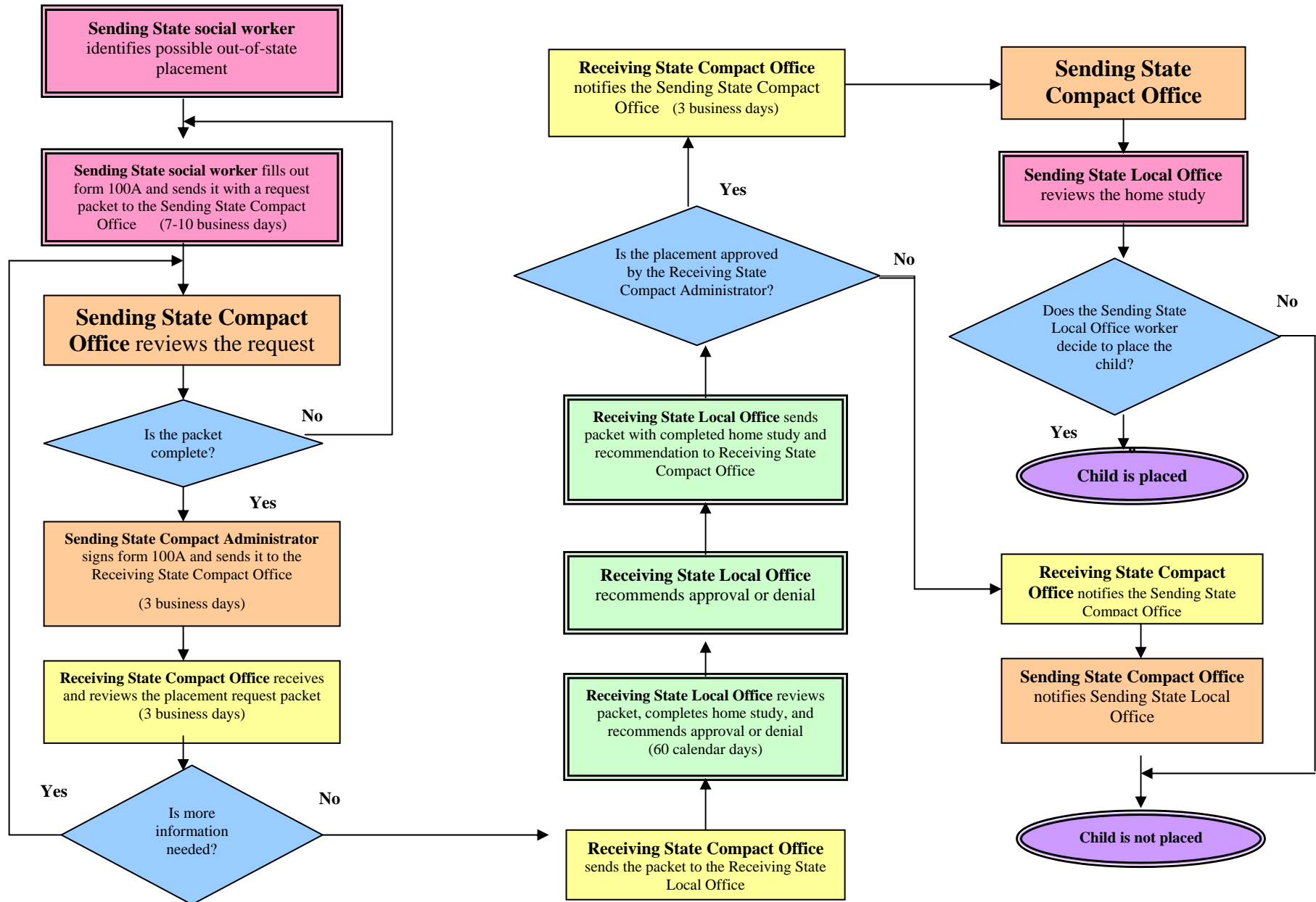
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<sup>19</sup> ICPC Regulation 3 §6 (b). There is no corresponding Vermont statutory provision for this and the ICPC regulations are not incorporated by reference in Vermont statutes. The ICPC Administrator is bound by the regulations issued by the AAICPC and DCF is committed to following those regulations. However, individual judges could find the regulations to be nonbinding. The new ICPC would make the regulations part of state law through rulemaking.

<sup>20</sup> Family Services Policy Manual, Policy #181, Vermont Department for Children and Families, 9/98.

# Flowchart: Interstate Compact on the Placement of Children Process (Foster Care Placement)

(Adapted from the 2008 flowchart jointly developed by Virginia's DSS, ICPC Office, and CIP)



The following is a description of how the ICPC process works in a typical case:

**a. Vermont as receiving state (Referrals for home studies to be completed by Vermont)**

**Agency role**

The 2006 Safe and Timely Interstate Placement of Children Act (P.L. 109-239) requires that home studies requested by another state be completed within 60 days.<sup>21</sup> Vermont is generally meeting time frames for completing home studies requested by other states. In CY 2007, Vermont completed 77% of its home studies within 60 days.

The steps are:

- a. ICPC Compact Administrator (ICPC office) receives a request from a sending state and reviews that request within two business days.
- b. After reviewing the referral for completeness, the ICPC office sends the referral to the Residential Licensing Unit (RLU) if the proposed placement is a relative or foster care placement. The ICPC office sends the referral to the Special Investigations Unit (SIU) if placement with a parent is sought.<sup>22</sup>
- c. These units immediately send a letter to the placement resource instructing them to complete the 621 form (Application for Care of a Child in Custody) and to return the completed form as soon as possible.
- d. Once the completed form is received by the Unit, the background checks are processed through the Residential Licensing Unit. The information is reviewed by the Unit's supervisor, and the matter is assigned to either a foster care licensing worker or special investigation unit worker. The RLU also informs the placement resource where to go to have their fingerprints completed.<sup>23</sup>
- e. A worker from the appropriate unit contacts the placement resource to schedule a time to meet regarding the home study. Under Vermont Department for Children and Families policy, the home study should be completed within 25 days of the unit's receipt of the request.<sup>24</sup> If there are delays, the Vermont Compact Administrator follows up with licensing supervisors to find out where delays are with respect to pending cases and ways to minimize delays.

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<sup>21</sup> Social Security Act section 471(a)(26)(A)(i), 42 U.S.C. §671 (a)(26)(A)(i).

<sup>22</sup> As of fall 2003, the Residential Licensing Unit (RLU) has been handling these home study requests rather than the local district social worker. This change in practice has reduced the time to complete a home study from an average of 90 days to 48 days. As of February 2007, the Special Investigations Unit (SIU) began handling home studies for parent placements.

<sup>23</sup> In July 2007, Vermont implemented the fingerprint provisions of the Adam Walsh Act.

<sup>24</sup> Family Services Policy Manual, Policy #181, Vermont Department for Children and Families, eff. 9/98.

- f. The home study includes the social worker's recommendation about placement and supervision of the child, and the rationale for the recommendation. Upon completion, it is submitted to the unit supervisor for review and approval.
- g. The paperwork with a recommendation regarding approval or denial of the placement resource is then sent to the ICPC office for review.
- h. The ICPC Administrator makes a decision regarding placement and faxes the home study to the sending state and later sends the remaining contents of the placement request packet by mail.

### **Court role**

There is little for the Vermont Family Court to do when Vermont is the receiving state. Because home studies are largely completed on time by Vermont, it is uncommon for the sending state to contact a Vermont judge to request assistance in expediting the process.

## **b. Vermont as sending state (Placing Child Out-of-State)**

### **Agency role**

- a. A potential out-of-state placement option is identified.
- b. Caseworker from the local Family Services Division district office initiates the process by compiling the referral packet paperwork using a checklist provided by the Vermont ICPC Compact Administrator's office. (If a residential treatment facility is contemplated, a court order or a Waiver of Hearing form must be included.<sup>25</sup>)
- c. The caseworker's supervisor reviews paperwork.
- d. The paperwork is sent to the Vermont ICPC office.
- e. After reviewing the referral for completeness, the Vermont Compact Administrator forwards the paperwork to the receiving state with a request for home study and a decision regarding placement.
- f. The receiving state's ICPC office reviews the referral, and then assigns the referral to the appropriate local office.
- g. Once the home study has been written and approved by the local office, it is sent to the receiving state's ICPC office for review and a decision.
- h. The receiving state's ICPC office sends the paperwork to the Vermont ICPC office.

NOTE: If the Vermont ICPC office has not heard back from the receiving state within 60 days of the request, it is the practice of the Vermont Compact Administrator to inquire with the receiving state about the status of the home study, and to follow up every 30 days thereafter. The receiving state may have a 15 day extension if there are complications and it is documented that information necessary to complete the home study (for example, fingerprints, FBI checks) has been timely requested but has not been received.<sup>26</sup> After

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<sup>25</sup> This applies to [delinquent children](#) as well as [neglected or unmanageable children](#).

<sup>26</sup> Safe and Timely Interstate Placement of Children Act of 2006, P.L. 109-239.

completion of the home study, the ultimate decision to approve or deny the placement request could be delayed until such further information is received.

Delay in completion of home studies by receiving states is the primary barrier to the Vermont child welfare agency making timely placements of children interstate. See section D for a discussion of this.

### **Court role**

One role the court in a sending state can play is to ask early in the court proceeding whether there are potential out-of-state placements, and if so, whether the social worker has begun the ICPC process. Once a request for home study is made, Vermont judges usually schedule a status conference to check on the status of the home study.<sup>27</sup> Vermont's courts do hold telephonic hearings in interstate cases; out-of-state individuals are not required to be in the courtroom for the hearing. Vermont judges do not have any say in the receiving state's final decision regarding whether a child will be approved to be placed in that state.

For a discussion of how judges can impact how timely a decision is made by the receiving state, see Sections D and E.

## **C. State Laws and Court Rules Governing Interstate Information Sharing**

Vermont's laws, court rules, and practices provide some measures to ensure that out-of-state parties, attorneys, and caseworkers can participate in cases without requiring them to be physically present in a Vermont courtroom. Of the judges who responded to the survey, some have allowed out-of-state litigants to participate in Vermont hearings without traveling to Vermont.<sup>28</sup> Although Vermont judges do monitor the progress of ICPC cases to some extent, they can take a more active role in these cases.<sup>29</sup>

The following is a discussion of Vermont law as it pertains to sharing information needed to expedite the placement of children across state lines. The agency handling those matters is the Department for Children and Families, and the cases are heard in the Vermont Family Courts. To the extent there is some distinction between "children in need of care or supervision" (CHINS) and delinquency cases, that distinction is addressed

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<sup>27</sup> Survey Questions #10 and #12.

<sup>28</sup> 64% of the judge respondents said they have allowed parties living in other states to participate in interstate litigation without having to travel to Vermont, and 46% enable parties living in other states to testify and present evidence in the Vermont court without traveling to Vermont. (Survey Question #20).

<sup>29</sup> Vermont judges commonly order that a report on ICPC progress be given at the next hearing but rarely contact a judicial officer in another state. 92% of the judge survey respondents require the social worker to notify the court and attorneys when the ICPC result is known (Survey Question #17). 92% reported not having contacted the ICPC Administrator in Vermont or in a receiving state (Survey Question #18).

below. The legal authorities cited in this section provide methods to obtain information and testimony from agencies and parties in other states without requiring interstate travel, but are not necessarily specific to juvenile proceedings. Vermont's juvenile child welfare statutes cover both dependency and delinquency cases.

## **1. Can an attorney from another state file motions and examine witnesses in a Vermont court proceeding?**

Yes, if the attorney is licensed to practice law in the State of Vermont. Attorneys who are not licensed to practice law in Vermont, commonly referred to as “non-resident attorneys,” cannot file motions, examine witnesses or otherwise engage in the practice of law in Vermont unless they have been granted *pro hac vice* status by the court before whom they wish to appear.

This *pro hac vice* status in family court proceedings is governed by V.R.F.P 15(a). *Pro hac vice* status may be granted by the court in proceedings to find a child in need of care or supervision, termination of parental rights cases, divorce actions, and abuse prevention cases. *Pro hac vice* status may not be granted in delinquency cases. A non-resident attorney seeking *pro hac vice* status must also comply with the licensing requirements of Administrative Order (A.O.) 41.

**Relevant statutes and rules:** [V.R.F.P. 15\(a\), \(e\)](#); [A.O. 41 §13](#)

## **2. What Vermont legal authority exists to allow verbal and written evidence to be obtained and sent between states?**

### **a. Depositions of out-of-state witnesses**

A party to a civil case in Vermont, such as a CHINS proceeding, may use existing civil rules and statutory procedures to take the deposition of an out-of-state witness. Under V.R.C.P. 30, a party is entitled to take the deposition of any person by oral examination. V.R.C.P. 28(b) explicitly allows a party to take the deposition of a nonresident witness by obtaining a commission (letters rogatory<sup>30</sup>) from a Vermont court. The Vermont commission (letters rogatory), in turn, is enforced by the court of the state where the nonresident witnesses is to be deposed. Similarly, in a delinquency proceeding, the State or the juvenile may use the rules of family and criminal procedure in order to take the deposition of an out-of-state witness. See V.R.Cr.P. 15 (k).

There are no specific procedures for depositions by phone.

**Relevant Statutes and Rules:** [V.R.F.P. 1 a\(1\), a\(3\), d\(4\)](#), [V.R.F.P. 2 a\(1\), a\(3\), d\(5\)](#); [V.R.C.P. 28](#), [V.R.C.P 30](#); [12 V.S.A. §1248](#); [V.R.Cr.P. 15\(k\)](#).

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<sup>30</sup> A written request by a judge to a judge in another state asking that a witness in the other state have his/her testimony taken in the other state's court for use in the local court case. See [www.dictionary.law.com](http://www.dictionary.law.com)

## **b. Testimony of out-of-state witnesses**

The Uniform Act to Secure Attendance of Witnesses from Without the State in Criminal Cases, 13 V.S.A. §6641 et seq., authorizes the State or defense to seek the Vermont court's assistance in securing the presence of an out-of-state witness who is "material and necessary" to a criminal prosecution within the State. This statutory procedure may be a possible means to secure a material and necessary witness for a delinquency prosecution.

**Relevant Statutes and Rules:** [13 V.S.A. §6641](#) et seq.

In civil child custody cases as well as in juvenile delinquency cases, use of a non-resident witness deposition as substantive evidence in a proceeding may be possible if the requirements of V.R.E. 804(b)(1) (hearsay exception if the declarant is unavailable as a witness) are satisfied.

**Relevant Statutes and Rules:** [V.R.E. 804\(b\)\(1\)](#)

If a case falls within the Uniform Child Custody Jurisdiction Act (UCCJA), a party to a child custody proceeding is authorized to offer into evidence the testimony of a witness in another state, including through deposition. Section 111 of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) pertains to the presentation of testimony and evidence taken out-of-state. However, Vermont has not adopted the UCCJEA and therefore those provisions facilitating out-of-state testimony would not apply.<sup>31</sup>

**Relevant Statutes and Rules:** [15 V.S.A. §1046](#)

See #3 below regarding witnesses appearing by phone.

## **c. Out-of-State Documents**

The admissibility and authentication of records and documents from other states, including faxes, for use in a Vermont court proceeding is governed by statute and the rules of evidence. Certain types of out-of-state records, such as governmental records bearing the seal of the State, are self-authenticating and require no extrinsic evidence of authenticity as a precondition to admissibility.

**Relevant Statutes and Rules:** [12 V.S.A. §1692](#), [12 V.S.A. §1698](#), [12 V.S.A. §1700 et.seq.](#); [V.R.E. 901](#), [902](#), [903](#), [1003](#), [1005](#)

If a case falls within the UCCJA, certified copies of court orders, transcripts of proceedings and any record that is part of a court file or proceeding in another state may be transferred to Vermont from the out-of-state court. The UCCJEA provisions regarding transmission of documentary evidence by technological means do not apply in Vermont because Vermont had not adopted the UCCJEA.

**Relevant Statutes and Rules:** [15 V.S.A. §1049](#), [15 V.S.A §1050](#).

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<sup>31</sup> Vermont is one of [four states](#) that have not adopted the UCCJEA.

One-third of judge survey respondents report admitting authenticated evidence offered from another state.<sup>32</sup>

### **3. May Vermont courts permit out-of-state witnesses to appear by phone?**

Yes. V.R.F.P. 4(g) permits a court, upon motion, to approve telephonic testimony of witnesses in divorce and relief from abuse proceedings if certain conditions are met.

While there is no specific statutory provision or rule, courts have permitted out-of-state social workers, physicians, law enforcement officers, and lay witnesses to appear telephonically in CHINS proceedings. Relying on their inherent authority to control orderly progress of proceedings, *see, In Re H.A.*, 153 Vt. 504 (1990), the courts have been guided by V.R.F.P. 4(g) in deciding whether to allow a witness to appear by phone. Results of surveys and the focus group indicate that out-of-state persons' participation through telephone/speakerphone conferencing is common; interstate travel is not required.<sup>33</sup> All judge survey respondents indicated they allow caregivers to participate in Permanency Hearings by phone.<sup>34</sup>

A.O. 38 sets forth experimental rules for the utilization of video conferencing and telephone participation in Bennington County Family Court. This electronic participation applies to incarcerated parties and "certain witnesses." Bennington Family Court has not used video conferencing for ICPC cases.<sup>35</sup> Focus group participants in Chittenden County indicated an interest in using videoconferencing if that resource were available.

**Relevant Statutes and Rules:** [V.R.F.P 4\(g\)](#); [A.O. 38 \(b\)](#)

### **4. Is interstate inter-judicial communication permissible for Vermont judges in a family court proceeding?**

The UCCJA applies to all child custody proceedings, including those instituted under the Juvenile Judicial Proceedings statute.<sup>36</sup> See 15 V.S.A. §1031(3). *In Re B.C.*, 169 Vt. 1 (1999). The UCCJA clearly permits judge-to-judge discussions about concurrent child custody proceedings pending in two or more states. If a Vermont judge can invoke the UCCJA, then the judge may communicate directly with a judge in another state regarding various issues such as jurisdiction, venue, and procedure.

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<sup>32</sup> Survey question #20.

<sup>33</sup> Survey question #20.

<sup>34</sup> Survey question #19.

<sup>35</sup> The videoconferencing equipment is located in the district court courtroom, not the family courtroom.

<sup>36</sup> This statute is found at 33 V.S.A. Chapter 55 but effective 1/1/09 it will be replaced by 33 V.S.A. Chapters 51, 52, 53.

While UCCJA allows this inter-judicial communication, Vermont judges are not doing this.<sup>37</sup> Under the present statutory scheme, situations where this would assist the parties would be quite rare. Under the UCCJA, this communication requires court proceedings pending in both states. Focus group participants noted that in ICPC cases, there may be no court case in the potential receiving state.

**Relevant Statutes and Rules:** [15 V.S.A. §1035 \(b\), \(c\)](#), [§1036 \(d\), \(h\), \(i\)](#), [§1047](#), [§1048](#), [§1049](#), [§1050](#).

## **5. Can a judge of another State request that a Vermont court hold a hearing to admit evidence and examine witnesses on behalf of the other state?**

If the out-of-state judge can invoke that state's version of UCCJA, then the out-of-state court could request a Vermont court to order the appearance of a person before the Vermont court for the express purpose of the Vermont judge taking testimony or producing evidence. A certified copy of any record made in Vermont would be forwarded to the out-of state court requesting the Vermont court's assistance.

It appears rare that a judge from another state asks a Vermont judge to hold a hearing in Vermont.<sup>38</sup>

**Relevant Statutes and Rules:** [15 V.S.A. §1048](#)

## **6. Can an out-of-state judge assist a Vermont court by holding a hearing to admit evidence and examine witnesses for Vermont?**

If the judge can invoke the UCCJA, a Vermont judge may ask a judge in another state to hold evidentiary hearings on behalf of Vermont. A transcript of the proceedings would then be forwarded to the Vermont court.

**Relevant Statutes and Rules:** [15 V.S.A. §1047](#)

## **7. Is there authority for Vermont to cooperate with other states' requests for central registry information?**

Vermont has been authorized to share central registry information with child protection agencies of other states.<sup>39</sup>

**Relevant Statutes and Rules:** [33 V.S.A. §4919\(a\)\(7\)](#)

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<sup>37</sup> Survey question #20. Focus group participants found the notion odd that a Vermont judge would call a judge in a large jurisdiction in another state to request that judge to ask a local social worker to speed up a home study.

<sup>38</sup> Only one judge reported holding a hearing in Vermont as a result of a request by a judge in another state. Survey question #20.

<sup>39</sup> Central registry check must include every adult living in the household of the prospective placement. Social Security Act section 471(a)(20), 42 U.S.C. § 671 (a)(20)(B).

## D. Legal and Practical Barriers

Vermont's assessment uncovered a number of factors that contribute to delays in the timeliness of the ICPC process. Court practices with respect to interstate sharing of information were not among the top legal or practical barriers identified with respect to delay. Primary factors contributing to delay in the ICPC process include:

- **Home studies:** although delays vary state to state, some states take too long to complete the home study. The fingerprinting requirement of the Adam Walsh Act sometimes contributes to delays.
- **Delays caused by ICPC paperwork requirements:** delays in the local DCF office preparing the referral paperwork to send to the ICPC Administrator's office for review was linked to the perception that the referral packet is cumbersome and time consuming to prepare.
- **Communication barriers and confusion over roles:** social workers, attorneys, and guardians ad litem reported that sometimes they do not know where in the ICPC process a case is, and that they do not know who to contact for that information. There also seems to be confusion over roles, responsibilities and differing requirements with respect to home studies, placement approval and children's eligibility for services state to state.
- **Untimely identification of out-of-state placement resources:** Parent reluctance to identify out-of-state relative placement options coupled with a case plan goal of reunification may delay initiation of the ICPC process.

### 1. Home Studies

#### a. Completion of Home Studies

The 2006 Safe and Timely Interstate Placement of Children Act (P.L. 109-239) requires that home studies requested by a sending state be completed within 60 days.<sup>40</sup> There are currently no sanctions for states that do not comply with the 60 day time period. Additionally, the Act created incentive payments for states completing home studies within 30 days, but that provision was never funded, effectively negating any impact it might have had on improving states' timeliness.<sup>41</sup> The most common source of delay identified by survey respondents was the time it takes the receiving state's ICPC office to process the home study request and the time its local agency takes to do the home study. Although delays vary from state to state, some states take an inordinate amount of time (sometimes six months or more) to complete home studies and make their recommendation for a denial or approval of the placement.

Since the enactment of the 2006 "Safe and Timely" Act, the Vermont ICPC Administrator has observed improvement in the timeliness of some states'

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<sup>40</sup> 42 U.S.C.A. § 671(a)(26) (A)(i)

<sup>41</sup> For purposes of the incentive payment, 42 U.S.C.A. § 673c defines "timely interstate home study" as a home study completed, with results reported, within *30 days* after receipt of the request.

completion of home studies, but no improvement with other states.<sup>42</sup> Only one-fifth of all Vermont's survey respondents noticed an improvement in the timeliness of the ICPC process.<sup>43</sup>

Vermont tends to be more timely in completing home study requests when compared to other states from which Vermont frequently requests home studies. Vermont's average turnaround time for completing home studies in CY 2007 was 46 days, while other states' turnaround time for completing home studies requested by Vermont was 104 days.<sup>44</sup> Vermont's timely home study completion process can be attributed in part to a shift in responsibility for conducting home studies from local district caseworkers, who experience large caseload/workload challenges, to its centralized Licensing Unit.<sup>45</sup>

### **b. Fingerprinting**

The fingerprinting requirement of the Adam Walsh Act presents a barrier to timely completion of home studies when Vermont is the sending state because many states experience a six to eight week lag once the placement resource's fingerprints are taken. (See recommendation in section E.1.A.4.)

### **c. Regulation 7**

Although ICPC Regulation 7 was intended to assist the court under certain situations when the placement resource is a relative, it is not used in Vermont. A Regulation 7 court order is supposed to speed up a placement by obtaining a determination from the receiving state within 20 days, and allows the sending state's court to contact a court in the receiving state if the receiving state does not meet the time frames contemplated by Regulation 7.<sup>46</sup> For practical reasons discussed below, states often cannot comply with these time periods. There is no penalty for a state's non-compliance with Regulation 7, and no mechanism for a Vermont judge to compel compliance by a receiving state.

Vermont has not found Regulation 7 to be an effective means of expediting the home study process, mostly due to licensing and fingerprinting requirements. In

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<sup>42</sup> Of the receiving states that Vermont commonly works with, Massachusetts' and New Hampshire's timely completion of home studies has improved, while New York's has not. Source: Margo Bryce, Vermont ICPC Deputy Compact Administrator.

<sup>43</sup> Survey question, section II #4.

<sup>44</sup> See Tables 2 & 4, §B.2 of this report. Statistics from Margo Bryce, Vermont ICPC Deputy Compact Administrator.

<sup>45</sup> Rather than the local district social worker handling home study requests, the Residential Licensing Unit (RLU) began handling home studies in 2003, and the Special Investigations Unit (SIU) has been handling home studies for parent placements since early 2007.

<sup>46</sup> The Sending State's court can issue a Regulation 7 court order to expedite a placement request if the receiving state does not make a recommendation within 45 days and there is no 15 day extension.

order for a relative placement to receive a foster care subsidy they must complete the same licensing requirements as a non-relative. Many states have licensing processes in which the potential placement resource must complete 12 weeks of training prior to becoming licensed, thus making it impossible for those states to comply with the Regulation 7 timeframe.<sup>47</sup> In contrast, foster care placements in Vermont have one year to complete mandatory training for licensing, so a child may be placed in that home before the training is completed.

In Vermont, while a request under Regulation 7 is given priority, similar to some other states, it is unrealistic for licensing and/or fingerprinting requirements to be met within 20 days.

## **2. Delays By Local Family Services Office Preparing Initial Paperwork; Cumbersome Paperwork Requirements**

Survey respondents rated delay by the local Family Services district office in preparing the ICPC referral paperwork to send to the Vermont ICPC Administrator's office as the second most common reason for delay. Some focus group participants identified the paperwork associated with requesting an ICPC home study as lengthy, cumbersome, and repetitious. Social workers in particular expressed frustration with completing multiple forms that require multiple copies as deterrent to the timely filing of ICPC requests.<sup>48</sup>

## **3. Communication, Responsibility, and Role Confusion**

While each state is required to have an ICPC Administrator, other roles and tasks associated with the ICPC process vary from state to state. Most states have a county based governmental system and multiple required administrative steps for assigning, completing and reviewing the completed home study documents prior to returning them to the sending state. Requests may be sent to a state central ICPC office, which then sends the request to the local agency to be assigned and completed, and back again to the central office for final processing. Vermont social workers who have questions, who need additional information, or who simply want an update on the status of a request often make multiple calls to multiple persons attempting to find out where and with whom the request or information is currently held and at what point it is in the ICPC process.<sup>49</sup> Focus group participants commented that judges may set a status conference to monitor the progress of an ICPC matter, but the hearing is unproductive if there is no information to share.

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<sup>47</sup> Those states will not provide a sending state with a determination until after the placement resource has completed the foster care training and is licensed. Source: Interview with Margo Bryce, Vermont ICPC Deputy Compact Administrator, 3/26/08.

<sup>48</sup> 44% of legal survey respondents and 29% of DCF survey respondents (38% combined) cited delays by social workers in preparation of ICPC paperwork as an issue. DCF cited lengthy and repetitive paperwork requirements as one of the things that contribute to the delay.

<sup>49</sup> Feedback from social workers participating in 3/27/08 focus group.

Although not a primary cause of delay, sometimes poor quality home studies contribute to additional delays. Insufficient and incomplete information, poor written quality, and a wide variety of home study formats contribute to confusion and a lack of clarity concerning the actual placement and the other state's placement standards. Vermont social workers find themselves needing to contact the receiving state with questions or concerns, which can take multiple calls to multiple contacts in attempting to obtain additional information and sort out a variety of complex issues.<sup>50</sup> Related to these conversations is the difference in eligibility requirements for services, which necessitates more phone calls and negotiation.

#### **4. Early Identification of Placement Options**

One barrier to timely out of state placement occurs when potential out-of-state placements are not identified early in the court process, with a corresponding early request for home study. This is a problem for Vermont as a sending state because many states take more than 60 days to complete a home study. Some focus group participants thought it was effective when judges request the parties to identify placement options early in the court process.

When children are removed from their parent's custody, some parents are reluctant to provide information concerning out-of-state extended kin or fictive kin as possible placement resources to the court or social workers, even knowing that their children may be faced with weeks or months of placement with a stranger. Additionally, reunification is generally the goal early in the court process, and sending children to out-of-state placements is not conducive to achievement of that case plan goal.

When these factors are present, months may pass before out-of-state kin or fictive kin are needed or identified as potential placement options, delaying requests for ICPC home studies.<sup>51</sup> When out-of-state placement resources are not identified early in the court process, coupled with significant delays by some states in completing home studies, it is hard to meet the timely permanency requirements of the Adoption and Safe Families Act.

#### **5. Other:**

With regard to interstate sharing of information, it should be noted that Vermont has not adopted the UCCJEA, which has provisions to facilitate the sharing of information interstate. The UCCJEA facilitates judge to judge communication and interstate testimony by telephonic, video, and electronic means when courts are deciding which state has jurisdiction of a child custody case. Section 110 applies to communication between courts when such communication would be helpful. Section 111 applies to courts facilitating testimony or depositions of parties and witnesses in other states. Section 112 applies to courts in one state requesting that courts in another state hold

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<sup>50</sup> Feedback from 3/27/08 focus group.

<sup>51</sup> 92% of the judges responding to the survey reported that they sometimes order the DCF worker to look into potential out-of-state placements. A majority of the judges reported asking the social worker to request a home study at least half of the time.

evidentiary hearings, order a person to give evidence, or order an evaluation with respect to custody. Vermont family courts have not extended the interstate communication provisions of the UCCJEA to ICPC cases.

Vermont judges typically do not contact judges in receiving states about ICPC matters.<sup>52</sup> This lack of court-to-court communication was not perceived as a significant legal barrier to timely interstate placement.

## **E. Recommendations to Eliminate Barriers to Safe and Timely Placement**

Vermont survey respondents and participants in the focus group made a number of recommendations they believe would improve the timeliness of the ICPC process. These suggestions fall into two categories: national legal and practical reforms and state reforms.

### **1. Suggested National Reforms**

#### **a. Home Studies**

##### **1. Funding penalties and incentives:**

- a. Fund incentives for timely completion of home studies within 30 days;
- b. Create a process for assessing states that are exceeding required timeframes, and attach penalties when necessary for failure to improve;
- c. Provide federal grants to states to assist with system improvements;
- d. Connect compliance with home study timeframes to IV-E or other federal funding streams.

A common perception among Vermont participants in the assessment of the ICPC process is that timely completion of ICPC home study requests are not a priority for many receiving states. Courts, child welfare, and juvenile justice agencies across the nation have long been challenged by high caseloads and high expectations for meeting outcomes and achieving outcome improvements, coupled with significant budget shortfalls. Unfunded mandates exacerbate an already overburdened system. The above recommendations may provide states with the monetary support and incentives needed to help improve the timeliness of the ICPC process.

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<sup>52</sup> Only one judge who answered the survey indicated that he or she had: been asked by a judge in another state to conduct a hearing in Vermont; had cooperated with a judicial officer in another state to hold hearings where Vermont witnesses are sworn in to testify interstate; or had contacted judicial officers in other states. (Survey question #20)

## **2. Develop a national home study format**

A standard home study format and process could improve confidence in the results and may reduce delays caused by asking multiple questions of multiple parties, requests for updated or additional information, and confusion on what criteria was included for approval or denial. A national home study format with core elements should be developed in a way that gives states the ability to add information that their particular state requires.

## **3. States not able to meet acceptable home study timeframes should be required to contract with private agencies.<sup>53</sup>**

In order to expedite the ICPC process, potential placements (typically a grandparent or other close relative) will sometimes procure a “courtesy” home study from a private agency. However, the courtesy home study is not sufficient to meet ICPC requirements. States then conduct their own secondary home study, which adds unnecessary time and additional costs. Incentive payments (recommendation A.1) may be a mechanism to provide the resources that states accepting the requirements of a national home study format (recommendation A.2) would need to contract with private agencies.

## **4. Fingerprinting**

Funding should be made available to assist states to utilize the latest fingerprinting technology. Rhode Island is an example of a state that has improved its timeliness in obtaining fingerprint results through the rental of fingerprint processing equipment. Another consideration would be a change in federal law to give child protection agencies and others conducting ICPC home studies the same access to federal criminal record information that law enforcement currently has. This might reduce delays associated with waiting for fingerprint results.

### **b. Laws and regulations**

#### **1. There should be a process for emergency or provisional placements**

The priority placement rule, Regulation 7, does not anticipate immediate placement in the receiving state, but rather attempts to expedite the home study process. Immediate placement with a close relative in the receiving state, on a temporary basis pending the outcome of the home study, could be advantageous to placing the child in non-relative foster care.<sup>54</sup> Judges are required to make decisions in the child’s best interest, and recognize that the child’s safety is the greatest concern. If there is evidence suggesting the relative is not capable of caring for the child on a temporary emergency basis, the judge is in the best

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<sup>53</sup> Under the Safe and Timely Interstate Placement of Foster Children Act of 2006, states are permitted to contract with a private agency to conduct the home study.

<sup>54</sup> For example, a very young child who has spent much of his or her life with that relative, is bonded with that relative, and there have been no safety concerns reported about that relative.

position to make that determination. Likewise, there needs to be a policy change on the federal level to create an ICPC exemption allowing provisional placements pending final approval of a placement resource. Federal policy makers should consider a temporary placement protocol that would allow children to avoid placement in non-relative foster care, under specified conditions when possible.

**2. The ICPC exemption for non-custodial parents should not require the court to close its child abuse/neglect case.**

The ICPC does not apply to cases in which the child is placed with a non-custodial parent and the court dismisses jurisdiction over the case. This narrow exception may not be in the child's best interests. Allowing the non-custodial parent to assume custody without closing the court case could eliminate the need for non-relative foster care placement and give the parties the opportunity to work toward reunification.

**c. National Oversight**

**1. A national ICPC oversight body should be established.**

A national oversight body could:

- a. Provide monitoring and assure state-to-state compliance and uniform application of the Compact requirements. While the current Commission has a global view of the challenges and concerns experienced by states in adhering to a timely ICPC process, they have no authority to support or sanction non-complying states.
- b. Assist states in assessing the reasons for delays and brainstorm system improvements, including establishing agreed upon protocols when social workers in receiving states are not responsive, or when receiving states are reluctant to do home study updates.
- c. Act as the clearinghouse for allocating financial resources to states for system change/system improvements in the event that federal funding was secured.
- d. Foster and establish coordination between sending and receiving states regarding residency requirements for education, Medicaid and TANF, service access, and payment of services for children and youth, factors that sometimes cause delays in placing children in receiving states.

## **2. Suggested State Reforms**

### **a. Explore a family court rule on telephonic testimony in juvenile cases**

The Vermont Family Rules Committee will consider extending Vermont Family Court Rule 4 (g) regarding telephonic testimony to juvenile proceedings, with the exception of delinquency merits hearings.

### **b. Explore a change to Family Court Rule 15 to apply to delinquency proceedings**

The Vermont Family Rules Committee should consider extending Vermont Family Court Rule 15 (e) regarding pro hac vice licensing to delinquency proceedings under Family Court Rule 1.

### **c. Establish capability for video testimony**

Participants in the March 2008 focus group were strongly supportive of the use of video testimony, should the resources become available. Feedback from one of Vermont's judges was that, while participation by phone is sometimes necessary and helpful, the ability to observe the body language and affect of a person giving testimony is extremely valuable.

### **d. Identify potential out-of-state placement resources and monitor the referral process as early as possible**

As discussed in Section D on barriers, identification of placement resources early in the court case is often challenging. It may be effective for judges to make inquiries of social workers, parent(s), and their attorneys regarding potential placement resources early in the case (at removal or merits). Once placement resources are identified, judges can inquire whether the ICPC referral process has been started and can monitor the status of an ICPC referral through status conferences or requiring the social worker to make progress reports to the court and parties.

### **e. Establish a process and communication protocol for monitoring ICPC case progress and information sharing.**

1. Vermont judges, attorneys, guardians ad litem, and Assistant Attorneys General (AAGs) identified a lack of timely updates on progress and other information in ICPC cases as a source of delay and frustration. Currently, court status hearings are often used to obtain updates, which although often effective, tie up valuable court time and may unintentionally delay important communications that would be helpful for judges and parties to have access to sooner rather than later. A protocol for sharing information via confidential e-mail, direct contact, or other confidential communication methods would provide more timely information to judges and others, potentially free up court time and when that is not possible, provide important and needed information prior to the hearing.
2. Updates between states on home study progress would be more easily obtained by access to contact information, such as the names, e-mail address

and telephone number(s) of the receiving state social worker and other contact persons involved in ICPC process.

3. Formal and informal sharing of ICPC case information is governed by confidentiality and other provisions that are either not known or not well understood. Training or written materials governing information sharing should be developed and provided to court personnel, GALs, attorneys, and other interested persons.

**f. Recommend to the Vermont Bar Association that it considers adding the UCCJEA to its legislative agenda.**

The UCCJEA facilitates court to court communication and could assist in ICPC cases when appropriate.

**g. Develop and disseminate ICPC training and educational materials**

Training and education that provides a clear understanding of national and state legal and practical requirements and processes will become increasingly important if Vermont's and other states' requests for ICPC home studies increase due to more active consideration of kinship placements.

1. Vermont should review existing national and state curricula and other materials designed for certain participant roles in the ICPC process, and adapt those materials for use in trainings, workshops, and practice manuals.
  - a. Training should be provided to Vermont's judges and attorneys (juvenile prosecutors, parents' attorneys, and children's attorneys.)<sup>55</sup>
  - b. A resource guide should be developed for social workers that addresses a wide variety of issues, including critical information on receiving states' resources, Medicaid regulations, and residency requirements around placement and post-placement processes.
2. Vermont's ICPC Administrator should update DCF Policy #181 to reflect new procedures and the informational packet on the ICPC process.

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<sup>55</sup> Vermont's juvenile prosecutors received training on the ICPC on 6/12/08.

## HISTORY OF THE ICPC

### *Background*

The current ICPC was drafted in 1960 and has been enacted by all states, the District of Columbia, and the U.S. Virgin Islands. It is the only public law in existence to ensure that children placed across state lines for foster care or adoption are placed with persons who are safe, suitable, and able to provide proper care. It also fixes legal and financial responsibility and responsibility for supervision and the provision of services for the child.

The ICPC process entails a complete home study conducted by the receiving state. This involves assessments of social and medical histories of the placement family, their backgrounds, parenting and discipline styles, employment and financial histories, physical evaluation of their home, criminal and child abuse background checks, personal and professional references, foster or adoptive parent training, and case worker recommendations. Once the placement is determined to be "not contrary to the welfare of the child" and the child is placed, the receiving state is responsible for ongoing supervision of the placement and for providing support services to the family and regular reports to the sending state agency and court. In addition, agreement must be reached between the sending and receiving states on how services and supports will be financed. This can be complex as it may involve cooperation of several systems in both states, including education, mental health, and education.

The existing compact provision and rules are administered by the Association of Administrators of the Interstate Compact on the Placement of Children (AAICPC), which is an affiliate of APHSA. It is a professional association of government officials and also serves as the administrative body charged with carrying out the terms of the current compact provisions and rules. This body, however, is not specifically designated under the compact, nor is it given specific authority to make and enforce rules or the provisions of the compact.

### *Road to Change*

Renewed focus on safety and permanency for children in our public child welfare system brought the Interstate Compact on the Placement of Children (ICPC) into the spotlight. While this renewed focus confirmed the important role the ICPC plays in ensuring appropriate placements, it has also highlighted many problems with the compact as it is currently written and implemented. Concerns about the timeliness of the ICPC process causing unnecessary delays for children being placed across state lines, and its "overly broad" application to all interstate placements of children, not just those in the foster care system, coupled with an outdated administrative process and lack of accountability, gave rise to great dissatisfaction with the ICPC from states, outside stakeholders, and Congress. In addition, the compact language and procedures are insufficient and antiquated; its rules and procedures are not widely followed or understood; and its current structure lacks enforcement and accountability. Finally, as geographical boundaries are blurred by the Internet and interstate placements of children in foster care become a significant part of states' efforts to find permanency for these children, the importance of a sound legal framework for interstate placements is even more critical. The compact was written before the interstate highway system, before the development of administrative law, and before the computer revolutionized the way we live. In short, the ICPC is no longer contemporary for child welfare practice in the 21<sup>st</sup> century.

In March 2004, the state human service leadership of the American Public Human Services Association (APHSA) adopted a policy resolution directing a rewrite of the ICPC. While the association members agreed that there are a number of issues that need to be addressed in order to improve the process of placing children across state lines, true reform required revisions to the language of the ICPC itself. A solid legal foundation for interstate placements was critically needed to ensure the timely placement of children. In response to this resolution, APHSA assembled a development and drafting team composed of a diverse group of state human service administrators, state and local child welfare directors, compact administrators, and representatives from a broad and diverse group of national organizations, including the U.S. Department of Health and Human Services, Administration for Children and Families and Children's

Bureau; the Child Welfare League of America; the National Court Appointed Special Advocates Program; the American Academy of Adoption Attorneys; the American Bar Association; the Center on Children the Law; the National Council of Juvenile and Family Court Judges; the National Indian Child Welfare Association; the National Association of Attorneys General; and the Council of State Governments, to identify and provide recommendations for addressing the issues in the compact and its implementation. After intensive meetings and extensive communication with the states and outside stakeholders on the direction that a comprehensive amended compact should take, a drafting team developed and disseminated two drafts of the rewritten compact—the Interstate Compact *for* the Placement of Children—for review and comment. This circulation and review took place from December 2004 through September 2005. The comments and concerns of the states and stakeholders were compiled and integrated by APHSA staff and the drafting team. In June 2005 an issue memorandum outlining the legal and practice arguments for the remaining unresolved issues was sent to state human service administrators. Administrators were asked to submit their position on which direction the compact should go for each issue. Based on a majority of state positions, the drafting team created the final draft of the compact, which was sent to each state for final approval in November 2005. In March 2006, APHSA received the necessary support to move forward with assisting states in getting the new compact adopted nationally.

With a grant from the Dave Thomas Foundation, APHSA was able to develop legislative informational materials and begin the work of getting the new compact enacted by states, the District of Columbia, and U.S. territories.

### *Solutions for the Future*

The proposed compact spells out the authority for the Interstate Compact for the Placement of Children to exist and operate and replaces the problematic and legally deficient language of the 1960 compact. The proposed compact will enable states to successfully address the deficiencies documented in the current compact system, including enforcement, administration, finances, communications, data collection and exchange, and training. In turn, this will improve and remove many of the barriers to the timely placement of children across state lines. The Interstate Compact *for* the Placement of Children, among other improvements, provides:

1. Clear language regarding applicability of the compact.
2. Clear rulemaking authority delegated to the Interstate Commission and provisions ensuring that the development of rules is in compliance with the due process principles of notice and comments of the Model State Administrative Procedures Act.
3. Meaningful enforcement of this important child welfare permanency tool. For the first time, the compact includes provisions that provide a wide range of tools to secure compliance, including technical assistance, mediation and arbitration, remedial training, and legal action in federal court.
4. Collection of standardized information and development of a secure and affordable information system that will facilitate timely information sharing and help ensure accountability for the interstate placements of children.
5. Clarification regarding retention of legal jurisdiction and under what circumstances jurisdiction may be terminated.
6. Administrative review of a receiving state's decision at the request of an interested party.

In summary, the new Interstate Compact for the Placement of Children will provide a better legal framework to ensure that children are placed in a timely manner with safe and suitable persons.

## Appendix #2: Helpful links: Contact information & Definitions

### Helpful links ~ Contact information

- **To find a judge** – the National Center for State Courts maintains a webpage with state contact information to help people in one state find a judge in another state who might be able to help with an ICPC problem in the receiving state. See <http://cosca.ncsc.dni.us/ICPCContactList.pdf>
- **To find each state's ICPC Administrator** – The name and contact information for all state ICPC Administrators may be found at the American Public Human Services Association's website at <http://icpc.aphsa.org/Home/states.asp>
- **To find child welfare agencies in each state** -- Child welfare agency directors may be found at AAICPC's (Association of Administrators of the Interstate Compact on the Placement of Children) website at [http://icpc.aphsa.org/Home/states\\_websites.asp](http://icpc.aphsa.org/Home/states_websites.asp).

### Helpful links ~ Definitions & commonly used terms in this report:

**Home study:** an assessment of the placement resource(s), the home, and the community, particularly in terms of education and other resources which may be needed for the child expecting to be placed there.

**Placement resource:** a placement in the receiving state being considered by the sending state.

**Referral:** a request for a home study and placement decision. A sibling group can be one referral.

More terms are defined in [Policy #180](#) and in [33 V.S.A. §5902](#).