
Assessment of the Court's Role in the Interstate Placement of Wisconsin Children

Produced For:

Wisconsin Supreme Court
Director of State Courts Office

Produced By:

Hornby Zeller Associates, Inc.

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Hornby Zeller Associates, Inc.
48 Fourth Street
Troy, NY 12180
518 273-1614

Principals:

Dennis Zeller, Ph.D.
Helaine Hornby, M.A.

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EXECUTIVE SUMMARY

For nearly 50 years the interstate placement of children in the child welfare system has been governed by a compact among the states detailing how responsibilities will be divided between the sending and receiving states. Although such cases amount to a small portion of the total number of child welfare cases, less than 6 percent of the children placed in foster care, the differences among states often lead to delays in processing the cases and sometimes to violations of the terms of the compact due to frustration over the delays.

The issues of delay and non-conformance have resulted in recent attempts both to improve performance and to re-structure the compact. A new proposed Interstate Compact on the Placement of Children (ICPC) has been developed by a group of state experts with two of the major changes being the creation of an Interstate Commission authorized to make and enforce rules governing interstate placements and a process for appealing the refusal of a receiving state to accept a placement. The new compact must, however, be enacted into law in 35 states before it takes effect, and only a few states, excluding Wisconsin, have passed the necessary legislation.

At the federal legislative level the major recent action was passage of the Safe and Timely Interstate Placement of Foster Children Act of 2006 (P.L. 109-239). This report is the result of one of the provisions of that act, that state courts receiving grants through the Court Improvement Project assess their effectiveness in expediting interstate placements. The assessment should include a review of another provision of the law, the new authority for courts to obtain information and testimony from service providers and parties to the case without requiring interstate travel. In response to this requirement, the Wisconsin Director of State Courts Office (DSCO) retained the services of Hornby Zeller Associates, Inc. (HZA) to complete the required assessment of Wisconsin's interstate placement of children laws and procedures.

Findings

The following findings are organized by the research areas guiding the study.

Court Role and Responsibilities in Interstate Placements

The primary responsibility the court has prior to the child's placement out-of-state is to ensure that the child will be safe in the new setting. This involves ensuring that a home study has been conducted and that the receiving state approves the placement.

Once the out-of-state placement has occurred, P.L. 109-239 requires that during the permanency hearing the court determine whether the placement continues to be in the

child's best interest and that foster parents, pre-adoptive relatives and relative caregivers are notified of any court proceedings.

The newest responsibility of the court involves permanency issues. P.L. 109-239 requires that courts consider both in-state and out-of-state permanency options for a child during the permanency hearing. Finally, courts may not terminate jurisdiction in an interstate case without the agreement of the receiving state. Like the home study, that agreement comes from the child welfare agency, not from the court.

Wisconsin State Laws and Local Court Rules

This section covers two of the issues the assessment was designed to address: the strengths and challenges of the court system in handling interstate placements, as indicated by what state and federal law permit, and the extent to which state laws and court rules permit the forms of interstate information sharing intended by the federal statute and policy.

The basic requirements related to courts in cases of interstate placements are found in Wisconsin's Uniform Child Custody Jurisdiction and Enforcement Act, Section 48.822 of Wisconsin's statutes. While other parts of the Children's Code incorporate the provisions of the Interstate Compact on the Placement of Children, these place no additional requirements on the courts related to the key questions of sharing or obtaining information.

There are two types of provisions in the statute. One type represents requirements. For example, Wisconsin courts are required to follow the specified procedures for determining jurisdiction and are also required to give out-of-state parties notice of a court proceeding. In contrast, the powers granted to the courts to share information with out-of-state are authorizations, not requirements. By authorizing the use of faxes and telephone or video conferencing during court hearings, the act gives the information obtained through these technologies the same weight and status as if the information were presented in person or through written communications which are already recognized in court proceedings. The statute does not, however, require the use of these technologies; that is left to the discretion of the courts.

Two additional state statutes governing the courts are relevant here. Section 801.16, cited in the Court Rules for many of Wisconsin's Circuit Courts, enables local courts to adopt a rule that "permits the filing of papers with the clerk of circuit court by facsimile transmission." However, the statute provides that acceptance of facsimile transmissions is dependent on the local court having established a rule permitting those transmissions. If the court does not establish that rule, faxes are not permitted. Of the 19 randomly selected local courts whose rules HZA reviewed, 12 allow for court documents to be filed this way and six courts do not have any rules regarding fax

technology, effectively prohibiting it. However, with technology moving so quickly this does not appear to pose a significant problem.

The other provision, found in Section 807.13, also applies to all kinds of court cases and defines when a court may allow proceedings to be carried out with the use of “telephonic and audiovisual technologies.” The authorization to use telephonic and audiovisual technology is applicable regardless of what the local courts have or have not done with their local rules. The statute is still an authorization rather than a requirement, but no local court rule is required to make the authorization effective. Despite the absence of a requirement to enact local rules on this issue, seven of the 19 courts whose rules HZA reviewed have local rules governing the use of telephones and telephone conferences in the court.

In sum, from the point of view of the statutes, Wisconsin’s courts are in a strong position in relation to what is permitted. Long before the enactment of the Safe and Timely Interstate Placement of Foster Children Act of 2006, the state’s courts were permitted to use a range of technologies to allow the participation of out-of-state parties without requiring interstate travel. With the exception of the counties where no local rule exists to authorize faxed information and those counties where the courts have affirmatively banned such transmissions, local court rules represent no more a barrier to information sharing and the participation of parties to interstate placement cases than do state and federal rules. Indeed, the only barrier of any type relates to faxed information and it was state law which specified that the authorization to use such information had to be embedded in a local court rule.

Court Effectiveness: Information Sharing, Party Participation and Judicial Role

Even if the statutes and court rules permit the use of various means to participate in court procedures without being physically present, the question remains of whether courts actually use them and, even more importantly, whether participation actually occurs. Here, the answers are less encouraging.

Among the five cases reviewed for this assessment, one showed an instance in which out-of-state parties participated in a hearing. This, however, involved a child living with his or her mother within an hour’s drive of the court. In this instance, both the mother and the non-custodial father physically attended the only hearing to occur during the review period.

Although in only this one case was there participation by an out-of-state party for any court hearing, other court records did show either that notice was given or that information was sent to the court by a caregiver.

Both the case reviews and the interviews with the judges indicated that the courts are not always obtaining all of the information to which they might have access. The most important example of information needed for judicial decision-making is the home study, which is required before an out-of-state placement can be made. While the ICPC makes it clear that a receiving state must complete a home study and approve the placement before a child is sent out-of-state, none of the five cases reviewed contained the results of a home study in the court file or even a mention of approval of the placement.

Recommendations

Overall, this assessment suggests that two related issues need to be addressed to improve court compliance with those requirements. The first is that parties other than the local caseworker are rarely encouraged to provide their input for court hearings. The second issue has to do with home studies. In both cases, the issue is one of ensuring that the courts obtain all of the information they need to make decisions which promote safety, permanency and well-being for children.

Based on these broad findings, HZA makes the following recommendations.

Recommendation 1: The Director of State Courts Office should ensure that all judges hearing child welfare cases have the opportunity to receive training on the requirements for interstate placements.

Recommendation 2: The Director of State Courts Office should develop a "crib sheet" for judges which summarizes ICPC requirements for those occasions when the information is needed.

Recommendation 3: Circuit Courts should utilize all of the tools at their disposal to elicit testimony and other input from all parties to child welfare cases, including interstate placement cases.

BACKGROUND

For nearly 50 years the interstate placement of children in the child welfare system has been governed by a compact among the states detailing how responsibilities will be divided between sending and receiving states. Although such cases comprise only a small portion of the total number of child welfare cases, less than 6 percent of the children placed in foster care,¹ they can require significant time and attention because of the differences among states in the array of services available, in the laws and regulations and in how courts handle child welfare cases. These differences sometimes lead to delays in processing the cases and sometimes to violations of the terms of the compact due to frustration over the delays.

The issues of delay and non-conformance have resulted in recent attempts both to improve performance and to re-structure the compact. A new proposed Interstate Compact on the Placement of Children (ICPC) has been developed by a group of experts brought together by the American Public Human Services Association (APHSA), with two of the major changes being the creation of an Interstate Commission authorized to make and enforce rules governing interstate placements and a process for appealing the refusal of a receiving state to accept a placement. Under the current compact the states appoint individuals who jointly have the authority to promulgate rules, but they do not have enforcement power, nor is there any appeal when a state refuses to accept a placement. The new compact must, however, be enacted into law in 35 states before it takes effect, and only a few states have passed the necessary legislation.

One of the recent efforts aimed at improving performance was passage by Congress of the Safe and Timely Interstate Placement of Foster Children Act of 2006 (P.L. 109-239). Some of the key features of this legislation include the following.

- Receiving states are required to complete and report on foster and adoptive home studies requested by a potential sending state within 60 days of the request.
- Fiscal incentives are provided to receiving states which complete home studies within 30 days of the request.
- States are required to consider interstate placements in permanency planning decisions, specifically when permanent placement options are considered at permanency hearings and when concurrent plans for permanency are developed.
- At permanency planning hearings courts are required to determine whether the child's current out-of-state placement continues to be in the child's best interests.

¹ 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 Annual Conference, May 2003.

- Caseworker visits to children in out-of-state placements must now occur every six months rather than every 12 months.

This report is the result of an additional set of provisions of the act. The statute:

- requires that state courts receiving grants through the Court Improvement Program assess their effectiveness in expediting interstate placements;
- requires courts in different states to cooperate in the sharing of information;
- authorizes courts to obtain information and testimony from service providers and parties to the case without requiring interstate travel; and
- permits the participation of parents, children and other parties involved in interstate placements without requiring interstate travel.

In response to the requirement to assess court effectiveness, the Wisconsin Director of State Courts Office (DSCO) retained the services of Hornby Zeller Associates, Inc. (HZA) to complete the required assessment of laws and procedures related to interstate placements.

Both the federal requirement and the Wisconsin request for proposals are focused on a relatively narrow range of issues related to interstate placements. First and foremost, the assessment covers only court actions, not the actions of the state child welfare agency. As in other child welfare cases, most of the work involved in ensuring conformity with the compact falls to the public child welfare agency, which gets involved both in cases where the state sends a child out-of-state and in cases where the state receives a child from another state. Courts have an increased set of responsibilities under the 2006 law, particularly during permanency hearings, but their role remains secondary to that of the administrative agency.

Second, because states sending children to other states retain legal jurisdiction over those children, courts in the receiving state do not have any responsibilities in relation to the placements of children coming into the state. If additional harm is alleged to have occurred to the child while in the receiving state or if the child becomes involved in the juvenile justice system, the court may take action, but that action is unrelated to the procedures of the interstate placement.

This report deals, therefore, only with court issues of interstate placement and only with cases where Wisconsin sends the child to another state. It is not a review of all Interstate Compact issues and in Wisconsin this makes a very large difference. As the following table shows, the population of children Wisconsin sends to other states is dramatically different than the population it receives from other states.

Wisconsin Cases Involving Interstate Placement, 2007

	Foster			Relative	Residential	Totals	% Total
	Adoption	Home	Parent				
Receiving	50	61	105	196	366	778	52%
Sending	27	162	193	263	64	709	48%
Totals	77	223	298	459	430	1487	100%

While the number of children Wisconsin receives from other states is only slightly different than the number it sends to other states, the differences in the distribution of those populations are stark. Although adoption represents the least frequent reason for interstate placement both for children coming into and going out of Wisconsin, those coming into the state to be adopted are nearly double the number going out. When Wisconsin uses interstate placement for a potentially permanent placement, it appears to be either a placement with a parent or a placement with a relative, not explicitly for adoption. The number of children sent out-of-state to a parent or relative under the auspices of ICPC is more than 50 percent higher than the number coming into the state for those kinds of placements.

The pattern of temporary placements is also interesting. Wisconsin sends more than two and one-half times as many children to out-of-state foster homes as it receives from other states into its own foster homes. However, other states send six times more children to residential care in Wisconsin than Wisconsin sends to residential facilities elsewhere.

While the scope of this report does not permit an interpretation of the policies, practices and resource patterns which cause these differences, it is clear that an assessment of court performance in relation to interstate placements in Wisconsin will be different than a similar assessment elsewhere. Some of those differences, especially those involving parent and relative placements, will become clear simply from examining some of the cases reviewed for this assessment.

The remainder of this report is divided into three parts: methodology, findings and recommendations. The first sets out the research questions which were asked and the methods used to answer those questions. The second presents the findings of the assessment of court performance in interstate placements. The final section then proposes means of improving that performance.

METHODOLOGY

This assessment of court performance in interstate placements was designed to address four issues:

1. the court system's role, responsibilities and effectiveness in the interstate placement of children;
2. the current strengths and challenges of interstate placement as indicated by what is allowed under current state and federal law;
3. the extent to which state laws and/or state court rules permit the forms of interstate information sharing and participation described in the Program Instruction; and
4. the effectiveness of:
 - a. Wisconsin's laws and strategies for state courts sharing information with out-of-state courts,
 - b. the methods used to obtain information and testimony from agencies and parties in other states without requiring out-of-state travel,
 - c. the processes used to permit parents, children and other parties to participate in cases involving interstate placement without requiring them to travel and
 - d. judicial involvement in requesting timely evaluation of foster homes, parents and children located in another state.

To address these areas HZA examined state and federal laws, federal policies and local court rules relating to interstate placements; reviewed the paper records of a sample of interstate placement cases; and interviewed judges who handle such cases. Each of these methods is discussed below.

Reviews of Laws, Policies and Court Rules

As part of an earlier assessment of the Court Improvement Project, HZA provided the Director of State Courts Office with a comprehensive catalog of standards for judicial practice in child welfare. Because this catalogue was delivered in January of 2005, its content is still relatively current. For the current project HZA updated the entire catalogue but then extracted the standards relating to interstate placements. The revised catalog includes requirements from four sources, including:

- Titles IV-B and IV-E of the Social Security Act,
- The Interstate Compact on the Placement of Children,
- Chapter 48 of Wisconsin's statutes, also known as the Children's Code and
- The Uniform Child Custody Jurisdiction and Enforcement Act.

Titles IV-B and IV-E of the Social Security Act are the federal statutes governing child welfare services. As noted earlier, the Interstate Compact on the Placement of Children

is an agreement among the states that establishes a set of processes for the interstate placement of children. The ICPC is located in Wisconsin state statute in sections 988 and 989 of Chapter 48, which also includes other provisions governing the placement of children, whether in-state or out-of-state.

The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) began as a piece of model legislation provided to states to encourage uniformity in their policies and procedures as a means of minimizing the difficulties in interstate placements. The UCCJEA has been adopted by 46 states (including Wisconsin where it is found in Section 48.822), the District of Columbia and the U.S. Virgin Islands. It has relevance here both as part of Wisconsin law and as a kind of national standard against which court performance can be measured.

Wisconsin Statute 801.16 governs the use of facsimile transmissions for court documentation, while 807.13 governs the use of telephone and video conferencing technologies in the court room. The state statutes are intended to provide boilerplate language for local court rules to increase the uniformity of court rules across the state. HZA staff reviewed court rules from 19 randomly selected Wisconsin Circuit Courts to assess how local courts use these forms of modern technology, faxes to obtain information from out-of-state agencies and parties and telephone and video conferencing to enable participation by out-of-state parties without requiring the use of interstate travel.²

Case Review

Five cases of interstate placement were selected by the ICPC office in the Division of Children and Family Services of the Wisconsin Department of Health and Human Services. Five cases are too few to be statistically significant, so the selection process was purposeful, not random. Cases were selected which ICPC staff perceived as problematic in some way.

Two of the cases were from a large county, two from a medium-sized county and one from a small, rural county. HZA examined the selected cases for documentation of out-of-state party participation, indications of specific technologies used to enable participation in local proceedings and information sharing with out-of-state entities.³

² Circuit court rules were obtained at http://www.wisbar.org/AM/Template.cfm?Section=Circuit_court_rules2.

³ A copy of the case review instrument can be found in Appendix A.

Interviews

HZA conducted interviews with five judges in the same three counties as the case reviews, as well as with representatives of Native American tribes. All judges had some experience with interstate placement procedure and cases. The interviews focused on qualitative rather than quantitative information.⁴ The judges were not queried in regard to specific cases. Instead, the interview tool focused on their broad body of experience in interstate cases. The interviews were designed to help HZA understand how the courts actually handle these cases and particularly to explain processes that would not be contained in a court file.

The tribal representatives were also knowledgeable about interstate placement cases. They were people directly involved in child welfare services for tribal members. HZA sought in this case to understand how the requirements and processes relevant to Indian children interacted with the requirements and processes involved in interstate placements.

Although it was not an interview, there was one additional discussion of these issues. After submitting a draft of this report, HZA presented its findings and recommendations to the Wisconsin Commission on Children and Families, chaired by the Chief Justice of the Wisconsin Supreme Court. This group consists of a wide variety of people including state, county and tribal child welfare officials, judges, attorneys working with the child welfare system and advocates, among others. One of the issues on which the Commission commented the most was the frequency, noted above, of children coming into the state for institutional placements. Several members noted that it is frequently difficult to have Wisconsin children placed into in-state institutions; data in this report showing that the preponderance of out-of-state children coming into Wisconsin do so for institutional placement reinforced anecdotal information these members had heard, namely that slots in institutions were difficult to secure because they are used at least in part, by children coming from other states. The disparity in reasons for interstate placement between those coming into the state and those leaving the state perhaps illustrates how differently interstate placements are utilized in different states.

⁴ A copy of the interview guide can be found in Appendix B.

FINDINGS

Court Role and Responsibilities in Interstate Placements

To the extent that the court's role and responsibilities in interstate placements are different than in other placements, the court-related requirements of the Interstate Compact and the new requirements imposed by P.L. 109-239 represent the best sources of information for describing those roles and responsibilities.

The primary responsibility the court has prior to the child's placement out-of-state is to ensure that the child will be safe in the new setting. This involves ensuring that a home study has been conducted and that the receiving state approves the placement.

Once the out-of-state placement has occurred, the court has a responsibility to supervise the placement and ensure that the placement continues to be in the best interests of the child. Specifically, P.L. 109-239 requires that during the permanency hearing the court determine whether the placement continues to be in the child's best interest and that foster parents, pre-adoptive relatives and relative caregivers are notified of any court proceedings.

The newest responsibility of the court involves permanency issues. P.L. 109-239 requires that courts consider both in-state and out-of-state permanency options for a child during the permanency hearing. Whether it is being initiated by the courts or by the child welfare personnel, the large number of relative placements among interstate cases suggests that Wisconsin has been satisfying the intent of this part of the new statute for some time.

Finally, courts may not terminate jurisdiction in an interstate case without the agreement of the receiving state. Like the home study, that agreement comes from the child welfare agency, not from the court. Neither the five cases nor the interviews for this assessment suggested that there is any issue with this requirement.

Legal Analysis: Wisconsin State Laws and Local Court Rules

This section covers two of the issues the assessment was designed to address: the strengths and challenges of the court system in handling interstate placements, as indicated by what state and federal law permit, and the extent to which state laws and court rules permit the forms of interstate information sharing intended by the federal statute and policy.

As indicated above, the Interstate Compact on the Placement of Children, which is over forty years old, has been updated to clarify the roles and responsibilities of the parties, set timetables for achieving milestones, ensure greater oversight and accountability, and

offer a process for dispute resolution. The revised compact will not take effect, however, until 35 states agree to it, and very few have thus far.

The other major action at the federal level was the passage of the Safe and Timely Interstate Placement of Foster Children Act of 2006 (P.L. 109-239). The Background statement above summarizes its key provisions. Those with the greatest impact on the courts are the requirement that interstate placement options are considered at permanency planning hearings; in addition, if a child is already living out of state, that the court determine if the placement continues to be in the child's best interest at permanency planning hearings. This law also mandates states such as Wisconsin which receive court improvement funding to assess the effectiveness of court processes in interstate placement cases.

State Laws

As indicated above, the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) began as a piece of model legislation which encourages states to use uniform policies and procedures when engaged in interstate placements. The UCCJEA applies to all child custody determinations including abuse, dependency and neglect proceedings. It provides a means of gaining information and testimony from people in other states without requiring interstate travel. The UCCJEA is also intended to create uniform procedures for assessing court jurisdiction in interstate custody disputes.⁵ The basic requirements related to courts in cases of interstate placements are found in Wisconsin's UCCJEA, Section 48.822 of Wisconsin's statutes.

There are, however, two different types of provisions in the statute. One type represents requirements. For example, Wisconsin courts are required to follow the specified procedures for determining jurisdiction and are also required to give out-of-state parties notice of a court proceeding. In contrast, the powers granted to the courts to share information with out-of-state are authorizations, not requirements. By authorizing the use of faxes and telephone or video conferencing during court hearings, the Act gives the information obtained through these technologies the same weight and status as information presented in person or through written communications which are already recognized in court proceedings. The statute does not, however, require the use of these technologies; that is left to the discretion of the courts. Thus, while the UCCJEA provides a uniform legal framework for sharing information with out-of-state parties, its actual impact on practice is largely dependent on state courts' knowledge of or willingness to use the authorizations they have been given.

⁵ Missouri, Massachusetts, New Hampshire, Vermont and Puerto Rico have not passed this piece of legislation. Thus far in 2008 Massachusetts, Missouri and New Hampshire have introduced the UCCJEA in their State Legislatures. Interstate placements to and from these states may differ from the UCCJEA legal framework outlined in the body of this report.

Wisconsin's enactment of ICPC can be found in Wisconsin Statutes in Sections 48.988 and 48.989.⁶ While some of the ICPC's provisions place requirements on the courts, e.g., the court must wait for permission from the receiving state before making the interstate placement, the information provisions of the ICPC relate primarily to the administrative agency, not to the courts. In fact, the compact does not add anything to the requirements on the court related to obtaining or sharing information that is not contained in the UCCJEA. The compact's impact on information sharing is, therefore, neutral, not only in Wisconsin but elsewhere as well.

While both UCCJEA and ICPC deal specifically with child welfare cases, two additional state statutes governing the courts are relevant here. Section 801.16, cited in the Court Rules for many of Wisconsin's Circuit Courts, enables local courts to adopt a rule that "permits the filing of papers with the clerk of circuit court by facsimile transmission." For local courts who choose to allow individuals to file court documentation via fax, this statute clearly defines when and under what circumstances this is acceptable.

As with the UCCJEA, this section of the statute permits but does not require utilization of faxes. In fact, the statute provides that acceptance of facsimile transmissions is dependent on the local court having established a rule permitting those transmissions. If the court does not establish that rule, faxes are not permitted.

The other provision, found in Section 807.13, also applies to all kinds of court cases and defines when a court may allow proceedings to be carried out with the use of "telephonic and audiovisual technologies." Specifically, these means may be used for oral arguments, evidentiary hearings, oral testimony subject to cross-examination, conferences and notices. The language of this statute is slightly different than that in Section 801.16. The authorization to use telephonic and audiovisual technology is applicable regardless of what the local courts have or have not done with their local rules. The statute is still an authorization rather than a requirement, but no local court rule is required to make the authorization effective. Each individual judge may exercise his or her own discretion.

In sum, from the point of view of the statutes, Wisconsin's courts are in a strong position in relation to what is permitted. Long before the enactment of the Safe and Timely Interstate Placement of Foster Children Act of 2006, the state's courts were permitted to use a range of technologies to allow the participation of out-of-state parties without requiring interstate travel. The state statutes promote information sharing and do not hinder it in any way. They do not, however, any more than does federal law, require that the court make use of the available technology to ensure that it has access to all the information that might be available in an interstate placement case.

⁶ The exact language for Articles of the ICPC relevant to this report can be found in Appendix D.

Local Court Rules

The two areas in which local court rules are relevant to this assessment both have to do with technology. As noted above, state law permits faxed documents if the Circuit Court has passed a rule permitting them. Of the 19 randomly selected local courts whose rules HZA reviewed, 12 allow for court documents to be filed this way and six courts do not have any rules regarding fax technology.⁷ Because a local rule is required for faxes to be accepted, these six courts must be presumed not to accept faxed documents. In addition, the largest local court system, Milwaukee County's, has a local rule affirmatively banning the use of fax technology for filing court documentation.

The state law on the use of telephone and video technology is more permissive; it acknowledges the validity of testimony and other information given in these ways, even if the local courts have not created their own rules in that regard. Despite the absence of a requirement to enact local rules on this issue, seven of the 19 courts whose rules HZA reviewed have local rules governing the use of telephones and telephone conferences in the court.

With the exception of the counties where no local rule exists to authorize faxed information and those counties where the courts have affirmatively banned such transmissions, local court rules represent no more a barrier to information sharing and the participation of parties to interstate placement cases than do state and federal rules. Indeed, the only barrier of any type relates to faxed information and it was state law which specified that the authorization to use such information had to be embedded in a local court rule.

Tribal Issues

While Wisconsin does not have any specific rules relating to the interstate placement of Indian children, it is important to note that in some instances Indian children are not covered by ICPC. While interstate placements of Indian children governed by the local courts must follow all of the rules and regulations set out in both ICPC and the Indian Child Welfare Act, interstate placements made by tribal courts are not subject to the obligations or protections provided by the current ICPC. Ten of the eleven tribes in Wisconsin have their own tribal courts which may make interstate placements, although such placements are not common.

Tribal experts in Wisconsin noted that there are two different types of interstate placements a tribal court may make. In the first type of placement, an Indian child is placed into a home on a reservation or other tribal lands in another state. In the second

⁷ Notably, the circuit court in Florence County does not have any local rules listed with the Wisconsin Bar.

type an Indian child is placed into a Native American household that is not on a reservation or tribal lands.

When a child is placed into a home on a reservation in another state, the tribal court typically contacts the reservation's child welfare agency, provided that such an agency exists. If the local tribe has the necessary child welfare infrastructure, the court will request home studies, complementary supervision, or other services deemed appropriate from this local agency. Provisions for carrying out and monitoring the placement are *ad hoc* and vary from placement to placement.

When a child is placed into a home that is not on a reservation, the process becomes significantly more difficult. Unless the local non-tribal child welfare agency is accustomed to working with the tribes, the request for complementary services from tribal court is inevitably denied because the request did not originate from the receiving state's local ICPC office. In most cases, states do not have a process for receiving placements which are not subject to the ICPC. In many cases the local agency is unaware that it is even possible to place a child into another state without going through the ICPC. Wisconsin's tribes have dealt with this situation by relying on tribal legal experts to iron out the legal questions and concerns with the receiving agency. Developing *ad hoc* agreements between individual tribes and agencies is a slow process and an agreement is never guaranteed. Some states such as Washington State do allow the tribal child welfare agencies to take advantage of the ICPC, and the Indian Child Welfare Manual for Washington State⁸ outlines the requirements the tribes must meet to use the state's ICPC process. In most states, however, the process is not that clear.

Court Effectiveness: Information Sharing, Party Participation and Judicial Role

Even if the statutes and court rules permit the use of various means to participate in court procedures without being physically present, the question remains of whether courts actually use them and, even more importantly, whether participation actually occurs. Here, the answers are less encouraging.

Among the five cases reviewed for this assessment, one showed an instance in which out-of-state parties participated in a hearing. This, however, involved a child living with his or her mother within an hour's drive of the court. In this instance, both the mother and the non-custodial father physically attended the only hearing to occur during the review period.

Although in only this one case was there participation by an out-of-state party for any court hearing, other court records did show either that notice was given or that

⁸ http://www1.dshs.wa.gov/ca/pubs/mnl_icw/chapter9.asp

information was sent to the court by a caregiver. On the issue of determinations of the placement continuing to be in the best interests of the child, nothing was noted in the case records, but this is not unexpected for several reasons. In one case the interstate placement apparently never took place, while in another it lasted only nine days. In addition, at least some of the hearings occurred prior to the enactment of the 2006 act, which first established this requirement.

All of the judges interviewed were aware of their authority to use telephone and video conferencing technologies. They would permit it if asked but do not necessarily promote its use. And, while the judges do report making use of direct telephone calls to obtain information when necessary, this does not appear to happen on a regular basis. Likewise, video-conferencing, despite the capacity to do so in most courts, remains infrequently utilized.

Some of the judges noted that when the interstate placement is relatively near them they can sometimes order the relevant out-of-state parties to appear in person before the court. When this is not possible, the small sample of courts reviewed appeared to be willing to make decisions without having these individuals present in the court room via telephone or video conference.

Both the case reviews and the interviews with the judges indicated that the courts are not always obtaining all of the information to which they might have access. The most important example of information needed for judicial decision-making is the home study, which is required before an out-of-state placement can be made. While the ICPC makes it clear that a receiving state must complete a home study and approve the placement before a child is sent out-of-state, none of the five cases reviewed contained the results of a home study in the court file or even a mention of approval of the placement.

It should be emphasized, however, that these cases were selected precisely because they were thought to violate ICPC rules. They cannot, therefore, be considered representative of the majority of interstate placements from Wisconsin, and some of the cases presented special issues precisely in relation to home studies. One of the cases involved a mother moving out-of-state with her child. While the court lifted the residency requirement for the mother prior to her relocation, it did not specifically address the out-of-state nature of the move nor did it consider whether a home study needed to be done before the mother relocated. In still another case it appears that the out-of-state placement never occurred. Under these conditions, it is not entirely clear what to make of the fact that none of the five cases had home studies.

Even if the five cases are unusual, it is clear that there are some interstate placement cases in which judges have neither important documents such as home studies nor the participation of parties who live out-of-state. In the interviews, Circuit Court judges reported that Wisconsin's courts rely principally on child welfare personnel for

information which originates from others. While this appears to be the case for both inter- and intrastate placements, all five judges noted that it is difficult to get information on interstate placement cases. That is understandable, given that the actual supervision of the case is conducted by the caseworkers in the receiving state and it is the Wisconsin caseworker who is testifying.

Judges also highlighted a lack of consistency in what is shared with the court as well as the quality of the information. Sometimes the court obtains the actual results of the home studies, other times it does not. They reported that this inconsistent pattern of information sharing also extends to other important forms of documentation such as psychological evaluations and licensing assessments. These cases were not pertinent to other requirements in the federal law that judges make sure that out of state options are considered in permanency hearings or that the best interest of the child be reviewed at the permanency hearing if the child is already out of state. However, as suggested in the recommendations below, it would be useful to reinforce these new requirements with the courts.

RECOMMENDATIONS

Child welfare cases constitute a small percentage of the cases coming before the courts in Wisconsin; interstate placements make up only one in twenty of those cases. It is, therefore, not surprising that judges report not being overly familiar with all of the requirements governing interstate placements.

Overall, this assessment suggests that two related issues need to be addressed to improve court compliance with those requirements. The first is that parties other than the local caseworker are rarely encouraged to provide their input for court hearings. This is an issue which may affect intrastate as well as interstate placements. Information is presented to the court largely by the local caseworker. In any kind of case this will involve only one perspective and, at best, a translation of points of view other than those of the worker. In interstate placements the issue is even larger because the primary work is being done by a worker in another state and quite often neither that worker nor the family participates in the court hearings.

The second issue has to do with home studies. In none of the five cases reviewed for this assessment was the home study included in the court record, nor was there evidence that testimony was given that any of the homes had been approved by the receiving state. The records include information that home studies were requested, but not that they were completed or approved. It is difficult to say that these results are representative given the small and non-random sample chosen for the review, as well as the uniqueness of some of these cases specifically in regard to the need for home studies. Nevertheless, the issue is again one of the courts having all of the information they need to make decisions which promote safety, permanency and well-being for children.

Based on these broad findings, HZA makes the following recommendations.

Recommendation 1: The Director of State Courts Office should ensure that all judges hearing child welfare cases have the opportunity to receive training on the requirements for interstate placements.

Awareness of the requirements often helps to solve many issues of non-compliance. The need for training has, however, become more acute because of the new requirements in the federal law, and if and when the new compact goes into effect, there will be another set of new requirements. When those requirements relate to fewer than one percent of the cases judges hear, the likelihood that they will discover the requirements in the normal course of their duties is quite remote. Thus, the training needs to be an ongoing opportunity for judges, not a one-time effort. However, it can be incorporated into other conferences and training events that judges will already be attending that relate to child welfare and juvenile matters.

Recommendation 2: The Director of State Courts Office should develop a “crib sheet” for judges which summarizes ICPC requirements for those occasions when the information is needed.

It would be useful for judges to have a mini-bench book or crib sheet that could be distributed at the trainings and also be available on-line. This quick reference guide would summarize when ICPC requirements should be followed, what the roles of the sending and receiving child welfare agencies are in these cases and what the court requirements are beyond those normally applicable to child welfare cases. It should also include a reference to the American Public Human Services Association website where all of the ICPC state contact information resides.

Recommendation 3: Circuit Courts should utilize all of the tools at their disposal to elicit testimony and other input from all parties to child welfare cases, including interstate placement cases.

Some Wisconsin courts are already doing some of this, going beyond even the authorizations already existing in state law. For instance, some local courts have created rules allowing for documents to be e-mailed, a process that is probably faster and easier than faxing for most people.

Whatever the tools that are used to elicit additional input, the real point here is that people other than local caseworkers often have information relevant to judicial decision-making and many times those people need to be encouraged, not merely permitted, to provide that information. Involving parents, substitute caregivers and agencies in receiving states in the court processes will also reinforce the idea that it is not merely the local child welfare agency which is responsible for the child’s safety, permanency and well-being. Everyone involved should be working towards those goals.

APPENDIX A: CASE REVIEW INSTRUMENT

**Wisconsin Court Systems
 Director of State Courts Office
 Case Review of the Interstate Placement of Children**

Client Demographics

Child's Name: _____ DOB: _____
 ___/___/___
 County: _____ Gender: _____

Entry into Care Information

- Date of Petition Leading to Latest Removal: ___/___/___
- Reason for Latest Removal:
 Physical abuse Sexual abuse Neglect Child's behavior problem
 Parent incarceration Death of parent Other (specify) _____
- Date of Discharge from Latest Removal: ___/___/___

Placement Information

4. To the extent shown in the court record, record in the table below the requested information for each placement setting since the child's latest removal from the home. Start with the most recent placement and work backwards.

Placement Type	Date of Entry	Date of Exit	Reason for Exit	Interstate
Foster home Relative home Group home Institution Other (specify) _____	___/___/___	___/___/___	Higher care level Lower care level Child's behavior Place w/relative Adoption Other (specify) _____	Yes State: _____ No Unknown
Foster home Relative home Group home Institution Other (specify) _____	___/___/___	___/___/___	Higher care level Lower care level Child's behavior Place w/relative Adoption Other (specify) _____	Yes State: _____ No Unknown

Placement Type	Date of Entry	Date of Exit	Reason for Exit	Interstate
Foster home Relative home Group home Institution Other (specify) _____	___/___/___	___/___/___	Higher care level Lower care level Child's behavior Place w/relative Adoption Other (specify) _____	Yes State: _____ No Unknown

Permanency Goal

5. If shown in the court record, record all permanency goals for the child since the latest removal from the home.

Permanency Goal	Date Reviewed or Approved by Court
Reunification Live with other relatives Adoption Long term foster care Emancipation Guardianship Other (Specify) _____ None	___/___/___
Reunification Live with other relatives Adoption Long term foster care Emancipation Guardianship Other (Specify) _____ None	___/___/___
Reunification Live with other relatives Adoption Long term foster care Emancipation Guardianship Other (Specify) _____ None	___/___/___

6. Record all the legal statuses of the child since the latest removal from the home.

Legal Status	Date Legal Status Began	Date Legal Status Ended	Reason Status Ended
Physical Custody (by agency) Guardianship (parental rights terminated) Juvenile Detention Juvenile Probation Juvenile Incarceration Other (Specify) _____	___/___/___ —	___/___/___ —	Next custody type Reunification with parents Place with relatives with whom child has not been living End public custody without change of placement Other (Specify) _____
Physical Custody (by agency) Guardianship (parental rights terminated) Juvenile Detention Juvenile Probation Juvenile Incarceration Other (Specify) _____	___/___/___ —	___/___/___ —	Next custody type Reunification with parents Place with relatives with whom child has not been living End public custody without change of placement Other (Specify) _____
Physical Custody (by agency) Guardianship (parental rights terminated) Juvenile Detention Juvenile Probation Juvenile Incarceration Other (Specify) _____	___/___/___ —	___/___/___ —	Next custody type Reunification with parents Place with relatives with whom child has not been living End public custody without change of placement Other (Specify) _____

Initiation of Interstate Placement

7. Record the date of the first petition to the court for an out-of-state placement.

___/___/___

8. What was the reason for the out-of-state placement?

- Placement with parent
- Placement with relative
- Adoptive placement
- Higher level of care needed is out of state
- Other (specify) _____

9. Record the date the Wisconsin agency received the completed home study.

10. Did the Wisconsin agency accept the home study?

Yes Record the date: ___/___/___

No Why not? _____

11. Record the date the court was provided a copy of the home study.

___/___/___

12. Record the date, if shown in the court record, on which the child was actually placed in the out-of-state setting.

___/___/___

13. Did the Wisconsin court approve the out-of-state placement?

Yes Record the date:

___/___/___

No Why not? _____

Neither approved nor disapproved

14. Prior to the placement of the child, did the receiving state declare that the placement in that state would not be "contrary to the interests of the child?"

Yes

No – court record indicates such statement not received by Wisconsin

No – nothing in the court record on this issue

15. In considering the placement, did the court have access to the receiving state's statement on the child's best interests and did it acknowledge that statement in the hearing or the order?

Yes, the court had access to and acknowledged the statement

The court had access to the statement but there is no indication it considered it

The court had access to the statement but it is clear the court did not consider it

No, the court did not have access to that statement (i.e., it is not in the file and does not appear to have been mentioned during the hearing)

16. Was a subsequent home study required?

Yes Completed? Yes No

No

Court Hearings Subsequent to Interstate Placement

17. This question and Q. 18 go together and ask about the court hearings since the child's most recent removal. This one asks about notifications of out-of-state participants; Q. 18 asks about their participation in the hearings and their notifications of the results. Both questions should show the same dates.

Hearing Date	Reason for Hearing	Out-of-state Parties Notified (Check all that apply)	Method for Notifying Out-of-state Parties (Complete for each participant)
__ __ / __ __ / __ —	Permanency plan hearing Termination of parental rights Adoption finalization Placement change Other (specify) _____	Child Receiving worker Proposed caregiver Biological parents Adoptive parents Receiving state court Other (specify) _____	Mail Phone Fax Courier Mail Phone Fax Courier Mail Phone Fax Courier Mail Phone Fax Courier Mail Phone Fax Courier Mail Phone Fax Courier Mail Phone Fax Courier Mail Phone Fax Courier Mail Phone Fax Courier
__ __ / __ __ / __ —	Permanency plan hearing Termination of parental rights Adoption finalization Placement change Other (specify) _____	Child Receiving worker Proposed caregiver Biological parents Adoptive parents Receiving state court Other (specify) _____	Mail Phone Fax Courier Mail Phone Fax Courier Mail Phone Fax Courier Mail Phone Fax Courier Mail Phone Fax Courier Mail Phone Fax Courier Mail Phone Fax Courier Mail Phone Fax Courier Mail Phone Fax Courier
__ __ / __ __ / __ —	Permanency plan hearing Termination of parental rights Adoption finalization Placement change Other (specify) _____	Child Receiving worker Proposed caregiver Biological parents Adoptive parents Receiving state court Other (specify) _____	Mail Phone Fax Courier Mail Phone Fax Courier Mail Phone Fax Courier Mail Phone Fax Courier Mail Phone Fax Courier Mail Phone Fax Courier Mail Phone Fax Courier Mail Phone Fax Courier Mail Phone Fax Courier

19. Describe the child's current status, including the next legal step which is expected and the time frame in which that step is likely to occur.
20. Please summarize anything notable about this case which has not been covered adequately in the above answers.

APPENDIX B: JUDICIAL INTERVIEW GUIDE

**WISCONSIN SUPREME COURT
DIRECTOR OF STATE COURTS OFFICE
INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN ASSESSMENT PROJECT
Interview Guide for Judges**

As you know, the Director of State Courts Office has contracted with our firm to conduct an assessment of the way that cases involving the interstate placement of children are handled here in Wisconsin. The assessment is one of the federal requirements attached to the court improvement funds the state receives. As part of that assessment, we wanted to hear about these cases from the perspective of some of the judges who handle them.

- Q1. Within the past year do you remember handling any cases involving placement of a Wisconsin child out of state? About how many?
- Q2. Do you find it more difficult to get the same level of information on those cases as on others? If so, what kinds of information might be missing or slow in coming?
- Q3. In your experience, do people from out of state typically testify at hearings on interstate placement cases? If so, is that usually in person or do you use video- or tele-conferencing? If usually in person, does that delay the process at all? Under what conditions would you introduce other methods to speed the process?
- Q4. Does your court make any special provisions in getting orders delivered or in other parts of the process to ease the work across state lines and agencies? Has anyone suggested, to your knowledge, that orders from this court need to be delivered more quickly in interstate cases?
- Q5. Have you experienced delays in interstate cases because of slowness on the part of the other state? If so, is this at the beginning, e.g., with the approval of the home? At the end, i.e., with the closing of the case? How do you handle these types of delays, e.g., wait or order the action anyway?
- Q6. Have you experienced situations where you do not receive concurrence about ending jurisdiction from the receiving state? How often does that happen? Do you have any recommendations about how to remedy that?
- Q7. Aside from anything we have already talked about, are there other ways in which the handling of interstate placement cases should be changed?

APPENDIX C: UCCJEA INFORMATION SHARING

The text for this Appendix was obtained from the University of Pennsylvania's Law School. <http://www.law.upenn.edu/bll/archives/ulc/fnact99/1990s/uccjea97.htm>

SECTION 108. NOTICE TO PERSONS OUTSIDE STATE.

(a) Notice required for the exercise of jurisdiction when a person is outside this State may be given in a manner prescribed by the law of this State for service of process or by the law of the State in which the service is made. Notice must be given in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective.

(b) Proof of service may be made in the manner prescribed by the law of this State or by the law of the State in which the service is made.

(c) Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court.

SECTION 110. COMMUNICATION BETWEEN COURTS.

(a) A court of this State may communicate with a court in another State concerning a proceeding arising under this [Act].

(b) The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.

(c) Communication between courts on schedules, calendars, court records, and similar matters may occur without informing the parties. A record need not be made of the communication.

(d) Except as otherwise provided in subsection (c), a record must be made of a communication under this section. The parties must be informed promptly of the communication and granted access to the record.

(e) For the purposes of this section, "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

SECTION 111. TAKING TESTIMONY IN ANOTHER STATE.

(a) In addition to other procedures available to a party, a party to a child-custody proceeding may offer testimony of witnesses who are located in another State, including testimony of the parties and the child, by deposition or other means allowable in this State for testimony taken in another State. The court on its own motion may order that the testimony of a person 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 State may permit an individual residing in another State to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated court or at another location in that State. A court of this State shall

cooperate with courts of other States in designating an appropriate location for the deposition or testimony.

(c) Documentary evidence transmitted from another State to a court of this State by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission.

SECTION 112. COOPERATION BETWEEN COURTS; PRESERVATION OF RECORDS.

(a) A court of this State may request the appropriate court of another State to:

- (1) hold an evidentiary hearing;
- (2) order a person to produce or give evidence pursuant to procedures of that State;
- (3) order that an evaluation be made with respect to the custody of a child involved in a pending proceeding;
- (4) forward to the court of this State a certified copy of the transcript of the record of the hearing, the evidence otherwise presented, and any evaluation prepared in compliance with the request; and
- (5) order a party to a child-custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.

(b) Upon request of a court of another State, a court of this State may hold a hearing or enter an order described in subsection (a).

(c) Travel and other necessary and reasonable expenses incurred under subsections (a) and (b) may be assessed against the parties according to the law of this State.

(d) A court of this State shall preserve the pleadings, orders, decrees, records of hearings, evaluations, and other pertinent records with respect to a child-custody proceeding until the child attains 18 years of age. Upon appropriate request by a court or law enforcement official of another State, the court shall forward a certified copy of those records.

SECTION 207. INCONVENIENT FORUM.

(a) A court of this State which has jurisdiction under this [Act] to make a child-custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another State is a more appropriate forum. The issue of inconvenient forum may be raised upon motion of a party, the court's own motion, or request of another court.

(b) Before determining whether it is an inconvenient forum, a court of this State shall consider whether it is appropriate for a court of another State to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:

- (1) whether domestic violence has occurred and is likely to continue in the future and which State could best protect the parties and the child;
- (2) the length of time the child has resided outside this State;
- (3) the distance between the court in this State and the court in the State that would assume jurisdiction;

- (4) the relative financial circumstances of the parties;
- (5) any agreement of the parties as to which State should assume jurisdiction;
- (6) the nature and location of the evidence required to resolve the pending litigation, including testimony of the child;
- (7) the ability of the court of each State to decide the issue expeditiously and the procedures necessary to present the evidence; and
- (8) the familiarity of the court of each State with the facts and issues in the pending litigation.

(c) If a court of this State determines that it is an inconvenient forum and that a court of another State is a more appropriate forum, it shall stay the proceedings upon condition that a child-custody proceeding be promptly commenced in another designated State and may impose any other condition the court considers just and proper.

(d) A court of this State may decline to exercise its jurisdiction under this [Act] if a child-custody determination is incidental to an action for divorce or another proceeding while still retaining jurisdiction over the divorce or other proceeding.

SECTION 209. INFORMATION TO BE SUBMITTED TO COURT.

(a) [Subject to [local law providing for the confidentiality of procedures, addresses, and other identifying information], in] [In] a child-custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present address or whereabouts, the places where the child has lived during the last five years, and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit must state whether the party:

- (1) has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the child and, if so, identify the court, the case number, and the date of the child-custody determination, if any;
- (2) knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding; and
- (3) knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with, the child and, if so, the names and addresses of those persons.

(b) If the information required by subsection (a) is not furnished, the court, upon motion of a party or its own motion, may stay the proceeding until the information is furnished.

(c) If the declaration as to any of the items described in subsection (a)(1) through (3) is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and other matters pertinent to the court's jurisdiction and the disposition of the case.

(d) Each party has a continuing duty to inform the court of any proceeding in this or any other State that could affect the current proceeding.

[(e) If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of identifying information, the information must be sealed and may not be disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety, or liberty of the party or child and determines that the disclosure is in the interest of justice.]

APPENDIX D: ICPC ARTICLES

48.988(3)(b)

Prior to sending, bringing or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

1. The name, date and place of birth of the child.
2. The identity and address or addresses of the parents or legal guardian.
3. The name and address of the person, agency or institution to or with which the sending agency proposes to send, bring or place the child.
4. A full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

48.988(3)(c)

Any public officer or agency in a receiving state which is in receipt of a notice pursuant to par (b) may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive there from, such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

48.988(3)(d)

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

Regulation 7 (3)

Whenever a court, upon request, or on its own motion, or where court approval is required, determines that a proposed priority placement of a child from one state into another state is necessary, the court shall make and sign an order embodying that finding. The court shall send its order to the Sending Agency within two (2) business days. The order shall include the name, address, telephone number, and if available, the FAX number, of the judge and the court. The court shall have the sending agency transmit, within three (3) business days, the signed court order, a completed Form 100A ("Request for Placement") and supporting documentation pursuant to ICPC Article III, to the sending state Compact Administrator. Within a time not to exceed two (2) business days after receipt of the ICPC priority placement request, the sending state Compact Administrator shall transmit the priority request and its accompanying documentation to the receiving state Compact Administrator together with a notice that the request for placement is entitled to priority processing.

Regulation 7 (4)

The court order, ICPC-100A, and supporting documentation referred to in Paragraph Three (3) hereof shall be transmitted to the receiving state Compact Administrator by overnight mail together with a cover notice calling attention to the priority status of the request for placement. The receiving state Compact Administrator shall make his or her determination pursuant to Article III (d) of ICPC as soon as practicable but no later than

twenty (20) business days from the date the overnight mailing was received and forthwith shall send the completed 100-A by FAX to the sending state Compact Administrator.

Regulation 7 (5)

(a) If the receiving state Compact Administrator fails to complete action as the receiving state prescribed in Paragraph Four (4) hereof within the time period allowed, the receiving state shall be deemed to be out of compliance with 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. Within its jurisdiction and authority, the requested court may render such assistance, including the making of appropriate orders, for the purpose of obtaining compliance with this Regulation and ICPC.

(b) The foregoing shall not apply if:

(1) within two (2) business days of receipt of the ICPC priority placement request, the sending state Compact Administrator determines that the ICPC request documentation is substantially insufficient, specifies that additional information is needed, and requests the additional documentation from the sending agency. The request shall be made by FAX, or by telephone if FAX is not available, or

(2) within two (2) business days of receipt of the ICPC priority placement request, the receiving state Compact Administrator notifies the sending state Compact Administrator that further information is necessary. Such notice shall specifically detail the information needed. For a case in which this subparagraph applies, the twenty (20) business day period for the receiving state Compact Administrator to complete action shall be calculated from the date of the receipt by the receiving state Compact Administrator of the information requested.

(c) Where the sending state court is not itself the sending agency, it is the responsibility of the sending agency to keep the court, which issued the priority order, informed of the status of the priority request.

Regulation 7 (7)

Time periods in this regulation may be modified with a written agreement between the court which made the priority order, the sending agency, the receiving state Compact Administrator, and the sending state Compact Administrator. Any such modification shall apply only to the single case to which it is addressed.

Regulation 7 (9)

Unless otherwise required or allowed by this regulation, all transmittals of documents or other written materials shall be by overnight express mail carrier service.

Regulation 8 (1)

An ICPC-100B should be prepared and sent in accordance with its accompanying instructions whenever there is a change of purpose in an existing placement, e.g., from foster care to pre-adoption even though the placement recipient remains the same. However, when a receiving state or a sending state requests a new ICPC-100A in such a case, it should be provided by the sending agency and transmitted in accordance with usual procedures for processing of ICPC-100As.