

# Colorado Judicial Branch

## Colorado Court Improvement Program

### **Assessment, analysis and recommendations regarding the effectiveness of the Interstate Compact for the Placement of Children (ICPC) in Colorado courts**

PETER M. KOELLING, J.D., Ph.D. Candidate  
[pmkoelling@msn.com](mailto:pmkoelling@msn.com)

June 18, 2008

## Table of Contents

|       |                                   |    |
|-------|-----------------------------------|----|
| I.    | Executive Summary                 | 3  |
| II.   | Introduction                      | 5  |
| III.  | Methodology                       | 5  |
| IV.   | Legal Review                      | 8  |
| V.    | Case File Review                  | 16 |
|       | ➤ Denver County                   |    |
|       | ➤ Boulder County                  |    |
|       | ➤ Morgan County                   |    |
| VI.   | Survey and Interview Results      | 23 |
| VII.  | Additional Issues                 | 28 |
| VIII. | Summary                           | 30 |
| IX.   | Recommendations                   | 32 |
|       | ➤ Improved Practice and Procedure |    |
|       | ➤ Training                        |    |
| X.    | Appendix                          | 34 |

## **I. Executive Summary**

The Colorado Court Improvement Program undertook a mandated assessment of the role, responsibilities and effectiveness of state courts in the interstate placement of children under the Interstate Compact for the Placement of Children (ICPC). The assessment and analysis process included six key steps including interviews, focus groups, review of training materials, legal review, case file review and surveys.

State wide, approximately 13% of all cases involved the ICPC protocol with some courts seeing up to 25% of their dockets involving interstate placement. The ICPC process typically caused delay in these cases. Where out-of-state placement was a high priority, the ICPC process caused delay 79% of the time. The study found that the ICPC process is not working in a timely manner across multiple districts and county systems. By far the most pressing issue is completing the home-study in a timely manner in the other state. In addition, there are bureaucratic slow downs, communication lapses, improper preparation of the necessary paperwork, and the non-disclosure of out-of-state relatives by the family involved in the case, that also cause delay. Further, more than half the judicial officers and attorneys agree that failure to bring the ICPC process in a timely manner is one of the main causes of delay. Finally, delays result from the

failure of the federal government to timely complete required background checks.

The ICPC itself is under review and a new ICPC has been proposed. The focus of this study is on how to improve the ICPC process under the present protocol. Two recommendations are offered and, even if the process is modified, these issues would not be affected by the change.

**1. Implement Monitoring.** Presently the court has no way to monitor ICPC activity in a case. There is no formal mechanism to inform the court if the ICPC process has been started, when it began, when it should be complete, what is the cause of delay, or the state and county where the potential placement resides. Often the court is not even told that the ICPC process is being used. Without such information the court cannot intervene to help.

**2. Improve Training.** Judges and lawyers are aware of the ICPC but are not familiar with the process, provisions of the Act, or regulations both intrastate and interstate. The assessment reveals that the court and attorneys are not often aware of the Colorado interpretation of the statute. Additional training would help courts to avoid and address problems of delay and, also, to avoid potential jurisdictional issues such as not being the “sending agency” for purpose of the

protocol and failure to hold best interest hearings prior to placement or return of a child.

## **II. Introduction**

The Colorado Court Improvement Program has been mandated under provisions of the Social Security Act to assess the role, responsibilities and effectiveness of state courts in the interstate placement of children. The focus of this assessment is on the courts. The court must interact with and react to the actions of the Department of Human Services and, to that extent, it is important to understand how the department handles these cases. However, the department's procedures are not the focus, but rather the procedures and practices of the courts. This assessment attempts to look at how the ICPC affects judicial decisions and processes. Likewise, this assessment does not attempt an in depth analysis on the process used by the department. In addition, a new interstate compact has been proposed; however, the focus of this assessment is not on the proposed protocol, but on the protocol currently in place.

## **III. Methodology**

In order to complete the assessment the following steps were taken. The initial step was to meet with the Colorado Department of Human Services state administrator of the ICPC in Colorado. The ICPC protocol was reviewed as well

as the training materials used within the state. However, Colorado does not require the County department to use the state office. The counties send their requests directly to the state ICPC administrator in the receiving state. Therefore, the state has little direct information with regard to the number of requests that are made and how quickly counties receive responses. Next, it was necessary to review the legal framework Colorado uses to make interstate placements. The focus of this review was on three major areas of legislation: the Interstate Compact for the Placement of Children, the regulation promulgated within the state, and the Uniform Child Custody Jurisdiction and Enforcement Act. That legal framework is set out below. The next step was to undertake a case file review on only three counties due to cost restraints. In order to get as near to a representative sample as possible, a small, medium, and large sized county was selected. Morgan, Boulder and Denver were the participant counties. Within each county, all cases in the Department of Human Services database (TRAILS) which indicated that the ICPC protocol had been initiated in that particular case for the first six months of 2006 were selected. The year 2006 was used to provide a longer history and the stronger likelihood of a disposition that could be traced. Court case files were then matched to the corresponding cases in the court database (ICON/ECLIPSE). Not all departmental files necessarily resulted in a court case; only 15 out of the 18 could be matched. Out of the selected files, seven cases in Denver County, six cases in Boulder County, and two cases in Morgan County were reviewed.

The next step was to meet with and interview stakeholders in the medium sized county. We attempted to create a focus group of social workers and other agency staff in Boulder. Although cooperative in the sense of agreeing to meet, there was little genuine interaction with agency staff. Most of the group failed to appear and those who did so could only stay for a short period of time. Some phone interviews followed, but were very short in length. Following the meetings with agency staff, individual interviews with judicial officers in Boulder were pursued. The meeting with one of the magistrates was very helpful and adequate time was allowed; however, the District Court Judge in Boulder declined to meet for an interview. A focus group was formed for attorneys and was well attended; there was participation from lawyers who represented the county, children and respondent parents. Information from these interviews was used to define survey questions and is incorporated into the final report.

The interviews along with other materials were used in order to form survey questions. Three separate surveys were developed: one for agency staff; one for judicial officers; and a third for attorneys. Similar to the interviews, the survey for agency staff had the lowest level of response (13) and therefore is not generalizable to all agency staff, but is still helpful in creating construct validity for responses in other surveys. Construct validity is established when a measure relates to other variables as expected. The judicial officers had the next highest

response rate at thirty-three. Of these, nineteen were District Court Judges and fourteen were magistrates. This group represented judicial officers in 16 out of the 22 judicial districts with multiple respondents from districts in major urban areas. Due to the specialization of the judiciary in large districts and the broad representation across districts, this response is likely representative of judicial views within the state. Sixty four attorneys responded to the survey. They came from 17 of the 22 districts. Fifty-eight percent primarily practiced as Guardians *ad litem*, 30 % as respondent parents' counsel, and 8% as county attorneys. There is a fairly strong over representation by GALs and an under representation of county attorneys, but because of the distribution across districts it is likely representative of attorneys as a whole within the state.

## **IV. Legal Review**

Colorado is a signatory to the Interstate Compact for the Placement of Children C.R.S. 24-60-1801. (ICPC). This Compact allows a state to retain jurisdiction over a child even if that child is placed outside the borders of that state. ICPC is utilized when a sending agency such as the Department of Human Services or a court wants to place a child in another state on a temporary or permanent basis. Typically, this is in order to place a child who has been removed from the home with relatives who live in another state. In order to retain extraterritorial jurisdiction, states must comply with the ICPC. Under provisions of the ICPC a

sending state must inform the receiving state in writing and may not place a child in the other state until “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 best interests of the child.” (C.R.S. 24-60-1801) Human Service agencies in states that are signatories to the compact use ICPC Form 100A to accomplish the written notice requirement of the act. These forms are sent from the ICPC coordinator in the sending state to the ICPC coordinator for the appropriate human service agency in the receiving state. The sending of this form invokes the provision of the compact. This form gives identifying information about the child and potential placement and indicates the services that are being requested. It also contains a section where the receiving state can note whether it approves or disapproves of the placement. A copy of the form, signed by the receiving state, must be received by the sending agency before the child can properly be placed in another state.

In order for the receiving state to make its determination and also to allow the sending agency or court to determine if the placement is in the best interest of the child, a home study request is almost always made. Some states complete these studies in a timely manner. Others can be very slow to honor the requests.

Delays can therefore impact the progress of the case that is before the court in the sending state. In the Act which established the need for this assessment,

Congress also attempted to create financial incentives to encourage states to

complete these home studies within 60 days of the date they were requested. *See*, Public law 109-239, July 3, 2006. 120 Stat. 513. Hopefully, such incentives will cut down delays caused by untimely responses and home studies.

Colorado regulations are included at 12 CCR 2509-4. These regulations set out the requirements and procedures for the Department of Human Services when it is requesting placement or responding to a request from another state. The regulations describe the use of form 100A and the associated attachments. The form is used by all signatories to the compact. The regulations do not require that the court be involved or even informed of the process. Under the regulations, court orders are not required for out of state placement.

Lack of orders or court involvement could prove problematic based on the Colorado interpretation of the ICPC. In *In the Interests of A.J.C.* 88 P.2d 599 (Colo. 2004) the Colorado Supreme Court addressed the ICPC among other provisions involving the interstate placement of children. In that case, a child was born in Missouri and adoption proceedings were filed in that state. The child was placed with a Missouri adoption agency that placed the child with a Colorado couple soon after the child was born. The couple immediately returned with the child to Colorado. The Missouri court ultimately entered an order withdrawing the mother's consent and ordering the physical custody of the child to be returned to the mother. Art. V of the ICPC states that "the sending agency shall retain

jurisdiction of the child sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child...” The Colorado Supreme Court determined that, for the purposes of the Act, the adoption agency and not the Missouri court was the sending agency. Since the adoption agency was not requesting return of the child, the court failed to give full faith and credit to the Missouri court ruling and allowed a Colorado District Court to hear the matter to determine the proper allocation of parental rights and responsibilities. A Colorado court would be bound by this ruling if it does not designate itself as the sending agency. This would be problematic in a case where a child was placed outside the state and the court wanted the child returned, but the foster parents went to the courts in their own state to prevent the child’s return to Colorado. If the court and the local agency disagreed whether a child should be returned to Colorado, the agency’s, and not the Court’s decision would prevail.

The additional focus of the assessment was on whether courts are authorized to obtain information and testimony from out of state and to allow the participation of other parties and attorneys without the necessity of interstate travel. The ICPC is silent with regard to these particular issues. Information or testimony in the form of a deposition may be used in court under current rules so long as the transcript is certified under Rule 80(c) of the Colorado Rules of Civil Procedure and will be allowed under exceptions to the exclusion of hearsay. Rule 804 of the

Colorado Rules of Evidence allows evidence that would otherwise constitute hearsay to be considered credible. In addition, the case file review found that in a number of informal hearings, judges have allowed individuals to appear by phone especially in cases where one of the parents was incarcerated. But it is unclear if the court allowed sworn testimony to be admitted over the phone in any of these matters. In any case, the court cited no formal rules in order to permit the practice.

Out-of-state attorneys may appear in Colorado *pro hac vice* under rules 220 and 221 of the Colorado Rules of Civil Procedure, but must file a verified notice to appear, associate with local counsel, and pay a \$250 fee. This is expensive and it would seem fairly inconvenient for this type of case where legal fees are relatively low. There are no other provisions under Colorado rules that allow for out-of-state attorneys to file motions or otherwise appear in a Colorado proceeding.

The Uniform Child Custody Jurisdiction and Enforcement Act, C.R.S. 14-13-101 et. seq., provides a framework to meet the objectives of gaining information and testimony from out-of-state and allowing the participation of other parties and attorneys without the necessity of interstate travel. The UCCJEA, according to its own language, applies to all child custody determinations including abuse, dependency and neglect proceedings. While the language would imply that a

court could use these provisions in a dependency and neglect matter, no Colorado court has construed these provisions in a published case. The act provides:

CRS 14-13-110 Communication between courts.

- (1) A court of this state may communicate with a court in another state concerning a proceeding arising under this article.
- (2) 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.
- (3) 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.
- (4) Except as otherwise provided in subsection (3) of this section, 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.
- (5) 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.

CRS 14-13-111 Taking testimony in another state.

- (1) In addition to other procedures available to a party, a party to a child-custody proceeding or other legal representative of the child 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.
- (2) 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.
- (3) 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.

CRS 14-13-112. Cooperation between courts - preservation of records.

(1) A court of this state may request the appropriate court of another state to:

- (a) Hold an evidentiary hearing;
- (b) Order a person to produce or give evidence pursuant to procedures of that state;
- (c) Order that an evaluation be made with respect to the custody or allocation of parental responsibilities with respect to a child involved in a pending proceeding;
- (d) 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
- (e) 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.

(2) Upon request of a court of another state, a court of this state may hold a hearing or enter an order described in subsection (1) of this section.

(3) Travel and other necessary and reasonable expenses incurred under subsections (1) and (2) of this section may be assessed against the parties according to the law of this state.

(4) 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 eighteen 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.

The focus of this statute has been to resolve jurisdictional disputes. The official comment to the uniform act stated that the act should be interpreted to “Avoid jurisdictional competition and conflict with courts of other States.” The plain language of the statute does not limit it to such purposes. It could be argued that these provisions should be applied to interstate placement. The strongest

argument to be made in favor of such use is that, while the provisions are not being applied in a case where there is a jurisdictional dispute, application of these provisions may help to “avoid” jurisdictional disputes. Courts may be less willing to interfere with the jurisdiction of a sending state where they see that their own citizens will have meaningful access to the sending state court and that the sending court has not created barriers to participation. The UCCJEA provisions for communication and cooperation between courts and the taking of testimony certainly address the key elements that Congress asked state courts to assess. It does not address the ability to appear as a party from out-of-state. However, it should be made clear that no Colorado court has applied these provisions to the interstate placement of children.

In addition to looking to Colorado law, it was considered helpful to look at the law of neighboring states to see if their statutory schemes allow for a different approach to interstate placement. A brief review of Wyoming and Nebraska law finds a similar situation to that of Colorado. Both states are ICPC signatories and have passed UCCJEA as well. The language of both is not substantially different from the statutory language in Colorado. Their courts have not, in any written opinion of a court, interpreted the ICPC nor allowed the application of the provisions of the UCCJEA to the interstate placement of children. There are no other provisions that would allow for out-of-state provision of testimony or appearance. Wyoming, likewise, allows for the use of depositions in hearing and

has provisions for out-of-state attorney to appear *pro hac vice*. Nebraska does not have any statewide *pro hac vice* provisions. Colorado therefore does not seem to be in a unique position.

## **V. Case File Review**

Case files were reviewed in order to gain an understanding of how the interstate placement of children operates in the context of an actual court case and to determine the issues that the court needs to address with these cases. A summary of the findings in these cases is set out below.

### **Denver County:**

#### Cause #99JV178 –

This case involved three children and was initiated in 1999. One child aged out of the system; a second child was transferred to youth corrections, and a third child is still the subject of this ongoing case. The case file documents have no reference to ICPC; however, one of the children was placed in foster care with relatives in the state of New York and was later returned to Colorado. Parental rights were terminated in August 2003. This was appealed and affirmed. The reason for the initiation of ICPC was not designated within the court file. There is no out of state social study or out-of-state party reference in the file.

Cause 04 JV 2240

This matter involves seven children. Parental rights were terminated in June of 2007. This is an ongoing matter and the department still has custody of the children. There appears to be no reference in the file to ICPC or out of state placement. There are no out of state social studies and no request for out-of-state testimony or evidence in the file.

Cause 05 JV 2148

This matter involves three children. The children were placed in foster care in November 2005. In March of 2007, permanency plan was modified to attempt reunification with the father. By December of 2007, the court did not believe reunification was possible. A cousin of the mother is a resident in South Dakota. Although reference is made in the court documents that a social study was complete, it is not in the file. No other reference was made to ICPC. At last hearing, the court stated "Children to be transitioned to [cousin] by the next hearing." This is an ongoing matter.

Cause 05 JV 2258

This case involves three children. Parental rights were terminated and termination was appealed and affirmed in November of 2007. An October 2007 order states that ICPC home study was approved with regard to grandparents in Chicago. There is no out of state social study in the file. At the same time, the

court stated that permanency goal was adoption by non-relative. There is no reference to ICPC or indication by the court that it is asserting its continuing jurisdiction. The children are presently in Chicago. Local foster parents objected to placement with grandparents. This is an ongoing matter.

Cause 05 JV 2447

This case involves one child. Both parents were incarcerated for some period of time during the course of the case. Motions to terminate were filed with regard to each of the parents in March and November of 2006. Reference to ICPC was made in the family service plan with regard to relative placement. There is also a motion before the court to allow out-of-state testimony by the paternal grandmother. The child has not been placed out-of-state. The matter is ongoing.

Cause 06 JV 0144

This case involves two children. Who were placed with grandparents while the mother was in jail. The permanency goal was reunification with parents but changed to placement with relative on October 2006. Nothing in the file makes reference to out-of-state placement or makes an ICPC reference. Jurisdiction was terminated in August of 2007.

## **Boulder County**

### Cause 2003 JV 461 – consolidated with 2005 JV 538

This case involves two children. The eldest child in the first case was placed in Georgia with grandparents for a period of time and then returned to Colorado. Nothing in the file involves ICPC or a claim of retention of jurisdiction. At the beginning of the second case the father resided in Florida and was unable to leave due to probation restrictions. There is an out-of-state social study in the file for the original out-of-state placement in Georgia. In the second case, father appeared by phone for the adjudication hearing. In September of 2007, the permanency plan was foster care but changed later that month to reunite with father who relocated to Colorado after probation. A permanency review hearing is scheduled for December 2008.

### Cause 2005 JV 433

This case involves two children who lived with their mother in Colorado. Father resides in California. The court requested ICPC home study on paternal grandparents in October 2005. The father was allowed by the court to appear by phone. No out-of-state social studies are filed. Children are in foster care in Colorado. The case is on-going.

Cause 2005 JV 515

This case involves two children. Parental rights were terminated in October of 2006. Father was in jail in Texas at the time of the proceeding. The family service plan makes passing reference to ICPC home study on an aunt. No social studies are in the file. No other reference to ICPC is made. Children have been adopted.

Cause No. 2005 JD 778, 576, 474

This case involves three consolidated juvenile delinquency matters. There is reference in the file to ICPC for a home study on the grandparents who live in Oregon. Nothing else is in the file with reference to interstate placement. The child has failed to appear and is at large. A warrant has been issued and is outstanding.

Cause 2006 JV 110

Two children with separate biological fathers were removed from the home of the mother and placed with the maternal grandparents in Colorado. One of the fathers was from out-of-state. There is no reference in the file with regard to ICPC. There is no home study in the file. Children are placed back with mother as of the summer of 2007. The case is on-going.

### Cause 2006 JV 131

This case involves one child who resided with the mother in Colorado. Father resided in South Dakota. An ICPC home study was requested on the father. Father, however, relocated to Colorado. In May of 2007, the permanency plan was for adoption by a relative. Within months, the child was placed with the father the case is on-going.

### **Morgan County**

#### Case 05 JV-100

This case involves three children, each of whom has a separate biological father. The eldest (16) was placed with the biological father in Colorado. Two younger children were placed with an aunt. Mom was in jail on drug charges. The biological father of the middle child resides in Utah and wanted custody of the two youngest children, ages 7 and 5. Counsel for father objected to ICPC home study claiming it did not apply to placement with a biological father. The court ruled ICPC did apply. Utah would allow the biological child to be placed in Utah, but not the youngest child because the father of second child had a domestic violence record. Father would have to qualify as a foster parent in order to take the third child and could not. No social studies are in the file. No reference is made to its completion. Jurisdiction has been terminated as to the two oldest children. The case continues for the youngest who is placed with an aunt.

Case 05 JV- 59

This case involves five children, ages 1 to 8. The mother was arrested and the father resides in Utah. An ICPC home study was requested on the father and was filed in July of 2006. The order placing children with the father pre-dates the social study the children are in Utah. There is no reference or order that indicates that the court is invoking the ICPC or attempting to retain jurisdiction. The case is on-going.

The implementation of ICPC tends to happen at the bureaucratic level rather than the judicial. The ICPC form 100A's is not required under any regulations or court rules to be included within the court files and they are not included, nor is any other type of filing required. The sharing of information at the bureaucratic level seems to happen consistently, if not always in a timely manner, but sharing with the court seems to be inconsistent. Occasionally out of state home studies will reach the court file. There is no rule or pattern of practice that requires that these studies be made a part of the file. References to ICPC requests appear in the court files most often as part of the service plan or may be referenced in the court minutes. Colorado has no formal rules or procedures in place to allow the court to clearly invoke the provisions of the ICPC in a particular case. It is not clear from the file review if judges are being made aware of an ICPC request or its status.

## VI. Survey and Interview Results

Interviews with stakeholders were conducted in Boulder, the medium sized county, as part of the case file review. Brief interviews both in person and via the phone and a small focus group of social workers and other agency staff were conducted. Following meetings with agency staff, one of the Magistrates handling juvenile matters in Boulder engaged in an extensive interview. After meeting with the magistrate, a focus group was formed for attorneys and was well attended and had participation from lawyers who represented the county, children, and respondent parents'. The information from the interviews was used to inform the design of the surveys. The results of the interviews conform to the results of the surveys.

Three separate web-based surveys were distributed electronically to agency staff, judicial officers and attorneys. The surveys revealed that, among judicial officers, approximately 13% of all cases involved the ICPC protocol. The median answer was 10 and the most common answer was tied at both 10 and 15%. This is likely a fair estimate of the number of cases seen statewide. The standard deviation in this data set is almost 11, meaning that at least two thirds of all Colorado Judicial Districts should lie between one standard deviation below and one standard deviation above the mean of 13. In other words about 15 of the 22 Judicial Districts should see ICPC cases somewhere between 2% and 25%. Of the

responses from 33 judicial officers representing 16 judicial districts, 17 were below the average and 16 were above it. Only three judicial officers indicated a percentage higher than 25%. This is very consistent with the finding of 13% as the average. The average is also between the modal points of 10 and 15 and near to the median of 10 indicating a strong level of reliability.

Both the judicial officers and attorneys were asked in what percentage of the cases the ICPC process causes delay. This question was broken into two parts looking at cases where the out-of-state placement was a high priority in the case and where such a placement was a low priority. Even where the placement priority was low, the ICPC process still caused delay in 45% of all cases. Where an out of state placement was a high priority, it caused delay in the case 79% of the time. This strongly indicates that the ICPC process is not working in a timely manner. This is the experience across multiple districts and county systems, showing that ICPC is a consistent cause of delay. Since ICPC cases represent a significant portion of the docket, they should explain a large amount of delay in the system as a whole.

There are multiple causes of delay in the ICPC process. Both judicial officers and attorneys were asked what they saw as the cause of such delay. In these questions the respondent could choose multiple answers so the source of delay is

cumulative. Multiple causation is likely in most cases due to the large percentage identified for each potential cause.

#### What is the Cause of Delay?

|  | <u>Judicial Officers</u> | <u>Attorneys</u> |
|--|--------------------------|------------------|
| Receiving state response                               | 88%                      | 95%              |
| Completion of home studies                             | 81%                      | 75%              |
| Completion of paperwork                                | 53%                      | 60%              |
| Federal background check                               | 28%                      | 48%              |
| Delayed disclosure of out of state relatives by family | 34%                      | 35%              |

This shows that there are three sources of delay. The primary source involves the receiving state. It is both slow in responding and in completing the home-study in a timely manner. Delay in responding is likely due to the delay in completion of home studies, but since there is a divergence between 8 and 20%, the slow response may also be attributed to other factors as well. The second source is the sending state. Both the sending and receiving state may be delayed by the preparation of the correct paperwork, but the primary cause is typically an incomplete file coming from Colorado. A third of judges and more than half of the attorneys said that getting our agencies to file the paperwork is a major cause of delay in the system. Another delay that originates in the sending state is the non-disclosure of out of state relatives by the family involved in the case. All respondents to all three surveys state that it is important to attempt to get information about potential out-of-state placement as soon as possible at the beginning of the case and such is the practice. However, family members are

often reticent to disclose the problems they are having to the rest of the family. Not until they see the real possibility that the children will be taken from them for an extended period or even permanently, do some of the parties consider that placement with a relative would be preferable and let case workers know of potential placement in other states. More than half the judicial officers and attorneys agree that beginning the process in timely manner is one of the biggest problems with these cases. The third source of delay is the federal government who does not complete required background checks in a timely manner. Federal background checks are mandated by federal law.

Judicial Officers are not always informed of the fact that the ICPC protocol has been engaged and that there has been a request for a home study for a relative out-of-state. Attorneys disclose that, on average, the court is informed that the ICPC is being used about 78% of the time. This is also confirmed by the limited number of agency staff respondents who agreed that the court is informed only about three fourths of the time. In the focus group, lawyers also agreed that the court was not always aware that the department had made an ICPC request. In addition case file reviews indicate a consistent finding. Where TRIALS had indicated that a case was an ICPC case, reference to such could not be found in the court file about 25% of the time. Even when the court is informed, there is no mechanism in place to inform the court of progress of the application.

There is no formal mechanism to inform the court that the ICPC protocol has been engaged. It is most common that the court is informed in open court.

According to attorneys, this is the method by which the court is always informed. Typically this is reflected in the court minutes but not consistently.

The most common filing that includes reference to a possible out-of-state placement is the family treatment plan. Attorneys represented that an ICPC reference appears in the treatment plan 58% of the time. There is no required filing that would inform the court with regard to the ICPC.

Another finding of interest was with regard to whether the court conducted a “best interest” hearing prior to out-of-state placement. While 77% of all judicial officers state that they “usually” or “always” had such a hearing, only 36% of attorneys agreed that the court “always” or “usually” held such a hearing. This is too wide a discrepancy to be attributed to mere sampling error. If the court is doing so, the purpose of such a hearing is not being communicated.

Judges state and attorneys agree that most courts will allow parties to appear by phone. Court officials state that they are more willing to allow sworn testimony. With regard to sworn testimony, 79% of judicial officers said they “usually” or “always” allow it and 21% said it is “sometimes” allowed. None of the judicial officers said that they “rarely” or “never” allow sworn testimony over the phone. Attorneys, however, stated a different view. They said that judges hear slightly

more un-sworn testimony than sworn. In addition, despite the fact that no judges said they never allow it, attorneys stated that 5% of the courts never allow sworn testimony over the phone. This discrepancy could be explained by the fact that the samples do not perfectly align district to district and judge to judge. However the difference between courts that say they allow sworn testimony, 79%, and attorneys who say that courts do, 59%, is quite large and may not simply be due to disparate samples. Interestingly, both attorneys and judges themselves say that un-sworn testimony is never allowed via the phone in 12% of the courts. Clearly, courts feel empowered to allow testimony over the phone by whatever statutory authority.

## VII. Additional Issues

### ASFA

The federal Adoption and Safe Families Act allows states to require that when a child is IV E eligible or eligible for any other federal funding source the potential foster parents must become licensed as foster parents in the receiving state. Even if the ICPC process is completed quickly, it is not reasonable that the licensing requirements could be completed in the 60 day window, if the potential foster family is not presently licensed. Four to five months would seem to be a more reasonable time frame.

## **Relocation**

Attorneys, in both interviews and the survey, reflected one area of concern involves foster parents who need to relocate to another state. Often this is due to employment. Regulations have been adopted under article VII of the compact by the Association of Administrators to address this situation. (See <http://icpc.aphsa.org/Home/regulations.asp>) Regulation No 1, 3, d, provides that, where the foster family holds a license or approval in the sending state, the receiving state can use this as sufficient support of qualification unless there is “substantial evidence to the contrary.” It seems that this provision of the regulations is being universally ignored by receiving states and not pressed by the sending states.

## **Initiating ICPC Broadly**

Agency staff has indicated that, because the process takes so long, they will initiate an ICPC home study even in cases where the permanency plan or the plan being developed by the Department does not include out-of-state placement. This is considered a form of concurrent planning by the Agency that will create options if other more likely places or dispositions do not work out. It is recognized that this shotgun approach is also used by other states. Many of the home studies completed are neither reviewed nor used by the sending states. This fact removes a sense of urgency from the requests that are received by Colorado. It also adds an undue burden to the system.

## **Biological Parents**

Another area of strong concern was the placement of children with their biological parent located in another state. Under the protocol, if the court wishes to place the child with their parent, they must go through the ICPC process and the receiving state may exercise its authority to deny the placement. Since there is no corresponding case in the receiving state, there is nowhere the parent can intervene. The sending state does not have the authority to place the child over the receiving state's objection. Parents can be effectively denied the right to their child through a bureaucratic process in which they have no right to be heard and no due process of law.

## **VIII. Summary**

The ICPC process is fraught with delay. Some from the sending state, some from the federal government, but most from the receiving state. This delay is difficult for the court to monitor and to control. Part of the reason is that the ICPC process is initiated by the agency and not the court. There is no formal, informal or consistent procedure or practice for involving or informing the court of the process of invoking the ICPC. The court often does not know that out-of-state placement is being contemplated or that a home study has been requested from

another state. Although often informed in open court, it is not clear if court is told when the form 100A was completed and filed and the record rarely contains this information. Therefore, the court is not in a strong position to monitor completion. Nor is the court in a position to assist the department in dealing with the receiving state agency.

When children are placed out-of-state, courts allow the Department of Human Services to be the sending agency for the purposes of ICPC even where the court reviews and orders the placement. Courts do not formally invoke the ICPC and none designated themselves as the sending agency pursuant to the compact. It is unclear if courts consistently hold best interest hearings prior to placement out-of-court. This could create difficulties if the court wishes to have a child returned to Colorado but the parent or foster parents object and try to bring court proceedings in another state.

Because of our mobile society, families move far more often than they did in the 1960s when the ICPC was created. In Colorado, the ICPC is being used in more than one out of eight cases on average. Both the sending process and the receiving process workloads are very high. It would not be surprising if both continue to increase. The procedures created have not kept up with the times.

## IX. Recommendations

### **Improved Practice and Procedures**

Local Departments of Human/Social Services in collaboration with the Court should create a mechanism for formally informing the court that the ICPC is being invoked in all cases and, also to inform the court when and to whom that request was made. In addition, this notice should indicate the county in the receiving state where the potential placement resides and the name of the judicial officer who presides over such cases in that county. The court should take proactive steps to stop those requests that are not likely to be pursued and lower some of the burden, at least from Colorado, on receiving states. At the 90th day after the ICPC request has been sent to the receiving state, the system should generate a letter to be signed by the judicial officer directed to the receiving state's Compact Administrator to inquire as to the status of the pending request. When this has been undertaken by judges the process seems to get back on track. At 120<sup>th</sup> day a letter should be generated to the judicial officer in the receiving state in the county of the potential placement to ask for cooperation and assistance from that court in getting the matter completed. Thereafter the judicial officer may contact the counter part in the receiving state by phone. This contact could be instrumental in making sure the case does not have excessive delay.

## **Training**

It is clear that additional training is needed for both lawyers and judges so that they can more effectively use the provisions of the compact and the corresponding regulations, both those promulgated by the State of Colorado and the AAICPC to move the process forward. The Association of Administrators of the Interstate Compact on the Placement of Children (AAICPC) was established in 1974 and consists of members from all 50 states, the District of Columbia and the U.S. Virgin Islands. The AAICPC has authority under ICPC to “promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.” While all stakeholders tend to be aware of the compact, they are not familiar with its provisions and few are aware of the corresponding regulations promulgated by the AAICPC. While there is only a single published case that directly deals with ICPC, judges and lawyers should be aware of its impact. Under that ruling Courts in Colorado should designate themselves as the sending agency in order to make certain that the court retains the jurisdiction to determine if a child should be returned to Colorado. Likewise courts should hold best interest hearings when both placing and ordering children to be returned other wise under the Colorado Supreme Court rulings the court could lose jurisdiction.

# X. Appendix

ICPC 100A  
REV. 8/2001

One form per child  
Please type

## INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN REQUEST

TO:

FROM:

| SECTION I - IDENTIFYING DATA  |   |  |        |
|---|---|--|--------|
| Notice is given of intent to place - Name of Child:   |   | Ethnicity: Hispanic Origin: <input type="checkbox"/> Yes <input type="checkbox"/> No<br><input type="checkbox"/> Unable to determine/unknown   |        |
| Social Security Number:   |   | Race:<br><input type="checkbox"/> American Indian or Alaskan Native<br><input type="checkbox"/> Asian<br><input type="checkbox"/> Native Hawaiian/ Other Pacific Islander<br><input type="checkbox"/> Black or African American<br><input type="checkbox"/> White  |        |
| Sex:  | Date of Birth   | ICWA Eligible<br><input type="checkbox"/> Yes <input type="checkbox"/> No<br>Title IV-E determination<br><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Pending   |        |
| Name of Mother:   |   | Name of Father:  |        |
| Name of Agency or Person Responsible for Planning for Child:  |   |  | Phone: |
| Address:  |   |  |        |
| Name of Agency or Person Financially Responsible for Child:   |   |  | Phone: |
| Address:  |   |  |        |
| SECTION II - PLACEMENT INFORMATION  |   |  |        |
| Name of Person(s) or Facility Child is to be placed with:   |   | Soc Sec # (optional):<br>Soc Sec # (optional):   |        |
| Address:  |   | Phone:   |        |
| Type of Care Requested:   |   | <input type="checkbox"/> Parent<br><input type="checkbox"/> Relative (Not Parent)<br>Relationship: _____<br><input type="checkbox"/> ADOPTION<br><input type="checkbox"/> IV-E Subsidy<br><input type="checkbox"/> Non IV-E Subsidy<br>To Be Finalized In:<br><input type="checkbox"/> Sending State<br><input type="checkbox"/> Receiving State |        |
| <input type="checkbox"/> Foster Family Home   | <input type="checkbox"/> Residential Treatment Center   | <input type="checkbox"/> Other: _____  |        |
| <input type="checkbox"/> Group Home Care  | <input type="checkbox"/> Institutional Care-Article VI, Adjudicated Delinquent  |  |        |
| <input type="checkbox"/> Child Caring Institution   |   |  |        |
| Current Legal Status of Child:  |   | <input type="checkbox"/> Protective Supervision<br><input type="checkbox"/> Parental Rights Terminated-Right to Place for Adoption<br><input type="checkbox"/> Unaccompanied Refugee Minor<br><input type="checkbox"/> Other: _____  |        |
| <input type="checkbox"/> Sending Agency Custody/Guardianship  | <input type="checkbox"/> Parent Relative Custody/Guardianship   |  |        |
| <input type="checkbox"/> Court Jurisdiction Only  |   |  |        |
| SECTION III - SERVICES REQUESTED  |   |  |        |
| Initial Report Requested (if applicable):<br><input type="checkbox"/> Parent Home Study<br><input type="checkbox"/> Relative Home Study<br><input type="checkbox"/> Adoptive Home Study<br><input type="checkbox"/> Foster Home Study   | Supervisory Services Requested:<br><input type="checkbox"/> Request Receiving State to Arrange Supervision<br><input type="checkbox"/> Another Agency Agreed to Supervise<br><input type="checkbox"/> Sending Agency to Supervise | Supervisory Reports Requested:<br><input type="checkbox"/> Quarterly<br><input type="checkbox"/> Semi-Annually<br><input type="checkbox"/> Upon Request<br><input type="checkbox"/> Other:   |        |
| Name and Address of Supervising Agency in Receiving State:  |   |  |        |
| Enclosed: <input type="checkbox"/> Child's Social History <input type="checkbox"/> Court Order <input type="checkbox"/> Financial/Medical Plan <input type="checkbox"/> Other Enclosures<br><input type="checkbox"/> Home Study of Placement Resource <input type="checkbox"/> ICWA Enclosure <input type="checkbox"/> IV-E Eligibility Documentation |   |  |        |
| Signature of Sending Agency or Person:  |   |  | Date:  |
| Signature of Sending State Compact Administrator, Deputy or Alternate:  |   |  | Date:  |
| SECTION IV - ACTION BY RECEIVING STATE PURSUANT TO ARTICLE III(d) of ICPC   |   |  |        |
| <input type="checkbox"/> Placement may be made  |   | <input type="checkbox"/> Placement shall not be made   |        |
| REMARKS:  |   |  |        |
| Signature of Receiving State Compact Administrator, Deputy or Alternate:  |   |  | Date:  |

**DISTRIBUTION (Complete six (6) copies):**

- Sending Agency retains a (1) copy and forwards completed original plus four (4) copies to:
- Sending Compact Administrator, DCA, or alternate retains a (1) copy and forwards completed original and three (3) copies to:
- Receiving Agency Compact Administrator, DCA, or alternate who initiates action (Article III(d) and forwards a (4) copies to each of the following: