

Teleconference on Interstate Placements – March 10, 2008

A summary of the teleconference hosted by the National Child Welfare Resource Center on Legal and Judicial Issues, ABA Center on Children and the Law.

Notes from call:

1. Introduction by Scott Trowbridge:
 - a. Scott Trowbridge will post on our website state specific instruments and other materials showing how various Court Improvement Programs (CIPs) are conducting their assessments of interstate placements.
 - b. Will post other non state specific materials for interstate litigation assessments, many of which we have sent out in the past.
 - c. Four features of assessments and call outlined:
 - i. Courts' role in implementing federal deadlines for interstate home studies. (But problem with loophole asserted by some states: just start over again from scratch with apparently no penalty.)
 - ii. Courts' role generally in helping states conduct timely and safe interstate placements of foster children, including laws other than the Safe and Timely Interstate Placement Act.
 - iii. Making interstate placement for children less complicated while still providing better procedural protections for parties; such as through judge-to-judge contact, interstate conference calls, involvement of out of state attorneys, and other mechanisms specified by federal law and ABA materials.
 - iv. A full list of all assessment steps.
2. State presentations:
 - a. **Virginia** – presented by Judge Steve Rideout and Lori Battin.
 - i. Surveying has already been completed in Virginia. Judge Rideout sent out surveys to CIP listserve. There was an attempt to make the surveys short, and to the point, as to increase response rate.
 - ii. They had a good response rate with approximately 40% of judges and 50% child welfare offices completing the surveys, whose results have automatically been calculated with Survey Monkey.
 - iii. Got good information about what judges are doing and not doing.
 - iv. Included in the listserve e-mails were questionnaires for the VA ICPC office and for judges that indicated a willingness to speak with the CIP.
 - v. Also included was information on Virginia legislation and court rules that may be useful for other states especially regarding taking electronic testimony in interstate cases and VA UCCJEA portions that are helpful.
 - vi. Judge Rideout is working with Lori Battin, who is in the process of writing the report on survey results. Judge Rideout is working on the portion of the report regarding legal research.
 - vii. Rideout recommends using retired judges who understand local laws regarding discovery; swearing of witnesses and teleconference call hearings. In his process of doing the legal

- section of the report he has been noting challenges in court rules that may form the basis for CIP to recommend legislative or court rule changes.
- viii. Interviews are planned mostly by phone. They have seven or eight judges who are planning to participate. Among other things, they plan to talk to judges near the borders of other states with special issues related to moving children across state borders.
 - ix. Judge Rideout suggests that CIPs jump into the assessment, and as challenges surface start doing it and call around to other states or judges who have been active in the process and see what ideas they have for resolving the issues.
- b. **Connecticut** – presented by Marilou Giovannucci. She expressed her gratitude to Steve Rideout for his help. Connecticut is mostly following the format suggested by the ABA.
- i. Unless there are complications in your law, the legal research isn't that onerous.
 - ii. Their research attorney will have a report available shortly.
 - iii. Have created a "high end" flow chart of the process for Connecticut that will be in their report. Have asked ICPC administrator to review the flow chart and make any corrections.
 - iv. Have preliminary survey instruments and we have asked the ICPC folks to weigh in on.
 - v. For the next two or three weeks they will disseminate the surveys and then will plan on targeted interviews for more in depth questions. Like Virginia, they will offer individuals the opportunity to be interviewed. Think that interviews will happen in April.
 - vi. At the same time, asking ICPC compact administrator to give a list of cases in an identified cohort so they can review them as files. They are working on a file review instrument. Due to being a small state with few cases, the statistical cohort won't be very large – will review whatever is statistically appropriate.
 - vii. From there they will analyze the data, with help hopefully from the ABA, and present this to the statewide task force and finalizing the report.
 - viii. Target date for draft report is May 15 to allow time to present it to the task force.
- c. **Delaware** – presented by Trish Hearn, along with Robert Cummins the chair of the committee. Delaware has also used the ABA materials.
- i. They have a task force that meets monthly, includes ICPC office, attorneys, representatives from the Department of Justice as well as from the Department of Children, Youth and Their Families.
 - ii. They have reviewed state and federal statutes, had a presentation from the interstate (ICPC) office on the ICPC process. Through those meetings they identified some problems.

- iii. They are focusing on the surveys and got attachments from other states.
 - iv. They plan to survey judges, attorneys for agency, parents, and children, workers, and ICPC workers.
 - v. From those surveys they will identify additional challenges.
 - vi. From their full list of challenges, they will identify a list of strategies; this should be done in May.
 - vii. They are already aware of delays in getting criminal records checks.
- d. **Florida** – presented by John Couch.
- i. Florida process has been similar to the above. An attorney has started with a literature review and legal analysis.
 - ii. The attorney made a data collection instrument and they reviewed 131 files.
 - iii. Based on the results of the file reviews they prepared surveys which will be sent to all participants, using software for analysis.
 - iv. After surveys are sent out they will conduct focus groups in a central location of the state. This will involve judges, attorneys, agency staff, GALs, state ICPC office staff, etc.
 - v. After that they will develop recommendations based on the data and will meet with the statewide advisory task force to seek approval of the recommendations.
3. Questions and comments from additional states regarding the four previously highlighted areas. These areas may not be mandatory, but are, in ABA's estimation, important best practices in the assessments.
- a. Efforts to assure compliance with the Safe and Timely Interstate Placement of Foster Children Act of 2006 home studies timelines. Mark Hardin asked if any state had addressed compliance with the timelines for home studies in the Act (30 and 60 day)? Including whether states had complied with the spirit of the statute, for example whether states would 'restart the clock' if a request did not meet all requirements.
 - i. Marilou Giovannucci, Connecticut will address federal timeframes in their assessment via the file reviews.
 - ii. Judge Rideout, Virginia will be recommending courts have early court hearings to review interstate placement processes, as a way to hopefully increase compliance with the timeframes. Also, he is preparing a judicial checklist to help judges keep agencies compliant. Last, he is recommending the court have standing orders for family group conferences to help identify potential placement resources to be held early on in the case.
 - iii. Florida will be receiving data from its ICPC office as to the compliance with the timeframes. Survey also addresses whether participants would support making an earlier timeframe of 30 days for all cases.

- iv. Michigan has recent data; for MI as sending state they have had 84% cases completed within 60 days.
- b. Mark Hardin asked whether there were other areas of timeliness and safety that states were looking at more generally. There were no responses. Some suggestions he gave were, looking at how quickly requests are getting to other states, using regulation 7, sending information via e-mail, and not waiting a long period before notifying other states of incomplete requests. Hopefully as states share instruments they will see these types of possible improvement areas.
- c. Mark Hardin asked what states are seeing in regard to sharing information, evidence, testimony across state lines. There were no responses.
- d. Mark asked how states are doing on the legal analysis portion.
 - i. Michigan seems to have things in place for the most part in this area. One issue seems to be lack of judge to judge communication. They are struggling with what the solution is. Mark suggested there may be hearsay issues, may be questions about written reports. Mark suggested conference calls in those situations.
 - ii. North Dakota asked for clarification. Their impression was that the legal analysis was to determine whether there was any impediment in their state statute or other rule to enforce the federal requirements. Mark Hardin agreed that that was the purpose, and to put it another way 'was there law in the state that could facilitate the federal directives when appropriate.' Mark reported that he had received messages from people asking why they needed to do legal analysis, 'wasn't this just ICPC to ICPC communication?' He suggested that there are situations, for example when you receive a report that is unfavorable toward your client and lacking in detail, you would want to know the legal protections available.
 - iii. Judge Rideout added that he has often suggested that judges make contact when there was a problem getting the report done. He suggested that if there was no pressure as to whether the report should be approved or denied, there is not an ex parte issue.
 - iv. Tom Hornsby noted that you can often easily find the appropriate judge through the national conference. As to the ethical issues, you can always bring parties in and make a record and that should prevent any ex parte issues.
- e. Steps of the assessments. Mark Hardin asked if anyone had given thought to how they will explore what reforms are feasible.
 - i. Trish Hearn, Delaware, stated that it may be easier for them to make reforms since they are small and have constant contact with their partners. For example, with background checks, the parties involved will come. She doesn't think that the assessment task is to have the reforms completed by June by the proposals by June.

- ii. Judge Rideout suggested that you address CIP advisory committee to get ideas for addressing reforms, for example introducing legislation, judicial rule making.
 - iii. Mark stated that, based on experience with original assessments, he is worried that CIPs will have their work done, but will be stuck not being able to affect needed reforms. He is not sure if the Children's Bureau will tolerate that at this point.
 - iv. Michigan will not have all reforms completed, but will have a report with all reforms. Do not think it will be a problem. However, several reforms already desired are changes to federal requirements. Mark thinks that this will be welcomed by the feds.
 - v. Judy Nord, Minnesota asked if anyone had information on how the assessment recommendation would affect the congressional law that is pending approval by 35 states. It was clarified that she was talking about the ICPC. Judy asked how it all fits together. Mark stated that due in part to the Resource Center being federally funded, we were not in a position to be a focal point or to tell CIPs how to proceed as to the new ICPC, but that they were free to organize as they saw fit. She said she was not trying to get organized, and to rephrase her question, will the results of the assessments get to Congress? Mark thought that, especially where views were consistent, they would get to Congress, especially through HHS which is very influential. Judge Rideout clarified that the ICPC is a state law, a Compact, not a federal law. He hopes that the assessments will help inform the courts and states as to how to better implement the new ICPC.
- f. Other questions people have.
- i. Cheryl, Nevada, stated she had heard 17 states had enacted the Compact. She asked if anyone knew how close we were to the new compact being ratified by 35 states. Mark suggested she contact APHSA. Judge Rideout only knew of one state, Ohio, that had enacted it. He said there was a map on APHSA's website. He thought maybe it had been introduced in 17 states, but not passed. Dale(?) James from Ohio reported that only Ohio and Missouri had passed the new Compact.
 - ii. Rick Copeland, Washington state, asked why interstate placement were made the biggest priority for CIPs. Mark Hardin reported that a lot of states had reported major problems, but was wondered what the actual percentage of foster children placed interstate was. Michigan estimates 3 to 5% of foster children are placed interstate. Delaware also had wondered why it was a big focus, they also had very small percentages.
 - iii. Delaware also expressed a concern about the new ICPC. In the past you could give states a week or two to make a few changes to their home, now you have to reject the home study and reapply. Mark

- asked, as to federal timeframes, does resubmitting restart the clock? Michigan, was looking at it primarily as a delay.
- iv. Someone asked if the assessment was to be included in each reassessment grant or is it part of the basic grant? Mark replied that he thought he had seen something from Emily that indicated it was the basic grant. Several people said that was correct.
 - v. Someone asked about the Virginia survey. Have any other states used that survey and if so did they have any problems? Judge Rideout said they ultimately broke it into two surveys. Marilou reported that their survey approach was similar, also making it concise to increase response rate. They are building a database to assess the results. She would appreciate hearing from states using survey monkey, because their legal dep't told them they could not use it.
 - vi. Erica Lamont, Maryland, has proposed new legislation regarding in-state and out-of-state, consultation of the child, and foster parents rights. She also asked if she could get a copy of Connecticut's flow chart. She will provide it when it is done.
 - vii. Helene Hornby asked whether states were looking at the agency role or only the court role. Mark stated that under this grant, they are only looking at the court's role. He said that it would be wonderful if states had the money or will to look at the agency role. Delaware is looking at all participants, not defining it narrowly as court's role. Minnesota and New Mexico reported doing the same thing.
 - viii. New Mexico did focus groups with judges and legal analysis; do they need to be doing surveys? Mark's opinion was that it depends on the quality of the information you get from whatever source. Delaware felt it could be one or the other. Connecticut said you need to assess your own capacity. The value of the surveys is that it gets some information and tells you where you can follow up.
 - ix. Rick asked if people having problems with fingerprint checks? Cheryl, Nevada said that it has been a problem for them as well. Rick, Washington, said that they are not told for a long time when they are rejected as insufficient. Mark asked if they were using Live Scan. Rick said they are stuck with whatever the local area has, not all law enforcement has this, and even live scan is rejected sometimes.
 - x. Stephanie, D.C. asked if others had difficulty getting engagement from stake holders. Nancy Gettinger from Indiana said their major problem is that courts do not see this as a court problem, but an agency problem. Scott Trowbridge stated that one response to that claim is that part of IV-E, as added in 2006, requires courts specifically to make reasonable efforts findings as to whether the agency explored in and out-of-state placements for children in a timely manner.

4. Next steps:
 - a. Scott Trowbridge will send message to listserv in three weeks asking whether CIPs want another call.
 - b. Will continue to post materials. Scott will send a link to the list serve.
 - c. If states have resolutions of issues they are dealing with, they should send to listserv.