

Interstate Compact on the Placement of Children (ICPC)

Nebraska Assessment

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A. Overview

The purpose of the Interstate Compact on the Placement of Children (ICPC) is to establish uniform legal and administrative procedures for the interstate placement of children with a relative or non-agency guardian, including the placement of a dependent child with his or her parent. These procedures govern the obtaining of home studies, the legal and financial protection of the child, jurisdiction, and ensuring that the placement is not “contrary to the interests of the child.” The ICPC also applies to adoptive placements across state lines. The ICPC has been adopted by all 50 states, the District of Columbia, and the U.S. Virgin Islands. Indian Tribes, as sovereign nations, are not required to participate.

The Federal Safe and Timely Interstate Placement of Foster Children Act of 2006 requires that state courts receiving the basic CIP grant assess the role, responsibilities and effectiveness of their own courts in the interstate placement of children. Drawing upon Nebraska state laws, court rules, health and human service policies, interviews with and surveys of participants in the process, this report summarizes how interstate placements both into and out of Nebraska operate. Additionally, this report addresses the following two issues:

- Whether there are legal barriers that prevent timely and thorough judicial decision-making regarding interstate placements.
- Whether and to what extent Nebraska’s state laws and court rules (including the state’s version of the Uniform Child Custody and Jurisdiction Enforcement Act) permit interstate information sharing and participation across state lines.

Overall, although Nebraska has a reasonably efficient and timely ICPC office and effective laws, there is certainly room for improvement. This report contains detailed recommendations for such improvement

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B. Summary of interstate placement process

The interstate placement process applies to all children being placed across state lines for the purpose of parental, relative, foster, facility, and adoptive care except for those situations identified in ICPC Article VIII(a). The Article defines these limitations to the application of ICPC as follows: “The sending or bringing of a child into a receiving state by his parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or non-agency guardian in the receiving state.”¹ Court involvement will occur most frequently when the subject child is a ward of DHHS.

The summary presented here is based on a review of Nebraska’s ICPC and Regulations (see Appendix A), Nebraska Department of Health and Human Services (DHHS) written policy (see Appendix B), interviews with people at the Nebraska ICPC office, and case reviews.

1. Court-Agency Communication and Collaboration

Throughout the process, whether Nebraska is a sending or receiving state, the Nebraska DHHS has specific responsibilities with regard to its interaction and cooperation with the courts. DHHS has the power and duty to promote the enforcement of laws for the protection and welfare of state wards and to exercise supervision over the administration and enforcement of laws governing these children.² When Nebraska’s DHHS is a sending agency and/or a court has awarded the child to the care of DHHS, the department has the authority, *by and with the assent of the court*, to determine the care, placement, medical services, psychiatric services, training, and expenditures on behalf of the child.³ DHHS also has specific notice requirements, which include providing notice to all interested parties at least seven days before the placement of a child is changed from what the court originally considered to be a suitable placement. The department may only make a placement change without court approval if the child is in a harmful or dangerous situation or if the foster parents request the child’s removal. Approval from the court must subsequently be obtained within 24 hours.⁴

Since the court has the power to assent to placement decisions made by DHHS, it also has the power to dissent. In typical cases regarding foster children, the court may remove from DHHS the complete control of a minor whose care is given to the department under the Nebraska Juvenile Code.⁵ However, with regard to ICPC cases, no placement may be made without compliance with “each and every requirement” set forth in Article III of the

¹ NRS §43-1101, Article VIII(a); *see also* Cornhusker Children’s Home, Inc. v. Department of Social Services of State of Neb., 229 Neb. 837, 429 N.W.2d 349 (Neb. 1988), where the Court interpreted the language of the ICPC to include a parent in the definition of “sending agency.”

² NRS §43-707: Protection of Children; Department of Health and Human Services; powers and duties

³ NRS §43-285(1) Care of Juvenile; authority of guardian; placement plan and report; when; standing; State Foster Care Review Board; participation authorized; immunity

⁴ NRS §43-285(3)

⁵ *See* In re Interest of Tanisha P. et al., 9 Neb. App. 344, 611 N.W.2d 418 (2000)

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NE ICPC.⁶ Therefore, once an ICPC process has been initiated, a court should not remove a child from the custody of DHHS and place a child in another state by court order without following through with each step of the ICPC. Such a violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws.⁷

2. Placement of Child out of State (Nebraska as sending state)

a. Initiating the ICPC process

In order to initiate the ICPC process, Nebraska's DHHS ICPC office requires that caseworkers, agency representatives, or other guardians submit the information listed below to the Nebraska ICPC office. A form transmittal letter containing a list of all the documentation needed to process the case is used by the agency and the ICPC office to make the process easier and quicker.⁸

- ICPC 100A form for each child
- Most recent Court Order showing DHHS custody (if a ward)
- Most recent Case Plan and Court Report (if a ward)
- Information about each child such as therapeutic, scholastic, and medical (if available for a ward)
- Cover Letter including reason ICPC is being requested, special needs or circumstances of the child, special circumstances of the potential placement, and a financial and medical plan for each child
- Proof of Paternity (if request is for placement with a paternal relative)
- Birth certificate for each child (if available for a ward)

Form ICPC-100A ("Interstate Compact Placement Request"), when properly completed, contains the following information: 1) the name, date and place of birth of the child, 2) the identity and address or addresses of the parents or legal guardian, and 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.⁹

To the greatest extent possible, when the Nebraska ICPC office receives a request, their policy is to review, process, and if the packet is approved, send it to the ICPC office in the other state within 24 hours. If the packet is incomplete or incorrect, the ICPC office will return it to the caseworker along with a checklist indicating what needs to be corrected and resubmitted.¹⁰

⁶ NRS §43-1101, Article III(a)

⁷ NRS §43-1101, Article IV

⁸ See Nebraska Department of Health and Human Services (DHHS) Training Module, Section III: Sending a Nebraska Child to Another State. [hereinafter NE DHHS Training Module]. Note that Regulation 1 of the ICPC addresses different procedures to be used in application to the movement of an Intact Family Unit across state lines. See Appendix B

⁹ NRS §43-1101, Article III (b)

¹⁰ NE DHHS Training Module, *supra* note 8

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After receiving a complete ICPC-100A form and supporting documents as described, the Nebraska Compact Administrator forwards the notice to the other state's ICPC office, where it is then forwarded to the local public or private welfare agency or residential facility being asked to accept the child. The receiving agency is then entitled to any supporting or additional information from the sending state as it may deem necessary under the circumstances to carry out the purpose and policy of the ICPC. Further action may be requested of the receiving state, depending on the nature of the proposed placement. The receiving state may need to conduct a home study or a review of a prospective facility to determine whether or not its program will be appropriate for the child.¹¹

After all necessary actions have been taken, and all requested additional information provided, the receiving state agency will typically produce a report/home study which includes a recommendation on whether or not the placement should take place. This report is reviewed by the receiving state Compact Administrator. The Compact Administrator of the receiving state forwards the report along with the signed ICPC 100A form indicating approval or denial of placement on to the Compact Administrator in the sending state.¹² The placement shall not take place until the appropriate ICPC authorities in the receiving state have notified the ICPC authorities in the sending state in writing that the proposed placement is not contrary to the interests of the child.¹³

If the placement is approved, the state agencies may begin arranging for the child to be placed in the receiving state. The Nebraska DHHS and the receiving state parties must work together to arrange the details of the placement, including payments for the child's care, monitoring of the placement, and frequency of supervisory reports to be provided to the sending agency. After all the details have been agreed to, the child may be moved to the receiving state. The Nebraska DHHS notifies the receiving state of the placement using form ICPC-100B, "Interstate Compact Report: Child Placement Status"¹⁴ This form is routed to the Nebraska ICPC office.

b. Nebraska's responsibilities for the duration of the placement

According to the ICPC, the sending state retains full jurisdiction over the child until the child is adopted, reaches majority, becomes self-supporting, or is discharged with the concurrence of the appropriate authority in the receiving state.¹⁵ The implication of this continued jurisdiction is that Nebraska is legally and financially responsible for children placed out of Nebraska and into another state for the duration of the placement. Therefore, financial and medical plans are established before the placement of the child in the receiving state. The Nebraska ICPC office notifies the

¹¹ NE DHHS Training Module, *supra* note 8

¹² *Id.*

¹³ NRS §43-1101, Article III(d)

¹⁴ NE DHHS Training Module, *supra* note 8

¹⁵ NRS §43-1101, Article V(a)

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Compact Administrator of the receiving state of any changes in the child's placement or custody status using form ICPC-100B.¹⁶

The issue of financial and medical costs is often a major concern when placing children across state lines. The sending agency bears the responsibility for arranging medical coverage for the child.¹⁷ Typically, a child who is eligible for Medicaid in Nebraska can continue to have medical needs met through Medicaid. When Nebraska is acting as the sending state of a child being placed in non-relative foster care in another state, the following financial plan is followed:

- i. If the child is determined to be Title IV-E eligible AND the placement is determined to be Title IV-E claimable (meaning licensed) then payment may be made out of Title IV-E funds. This includes payments to facilities for placements that are NOT Magellan/Medicaid authorized.
- ii. If the child is determined to be Title IV-E eligible, but the placement is NOT Title IV-E claimable, then a foster care/maintenance payment may be made out of state Child Welfare Funds. This also includes payments to facilities that are NOT Magellan/Medicaid authorized.
- iii. If a child is not eligible for title IV-E benefits, then a child will be funded through Nebraska State Child Welfare Funds.¹⁸

If the placement is with a relative, the new ASFA regulations require that to claim a reimbursement for board payments of a child who is Title IV-E eligible, a relative home must be licensed as a foster home. When Nebraska is acting as the sending state of a child being placed with a relative in another state, Nebraska requests that the relative apply for ADC Relative Payee/TANF Maintenance benefits in their state of residence. The relative must be willing to apply for Relative Payee/TANF in lieu of a Foster Care Payment. TANF Maintenance payments average about \$225/mo for the first child and \$70/mo for each subsequent child. Each state reserves the right to disburse Federal TANF funds to relatives based upon the established criteria for determining the degree of sanguinity for which a relative payment will be made. A few states do NOT disburse TANF funds to relatives caring for children who are wards of another state. If a child is determined to be Title IV-E eligible, but the proposed placement resource is NOT title IV-E claimable, then the child will remain covered by Nebraska Medicaid and one of the following actions needs to occur:

¹⁶ NE DHHS Training Module, *supra* note 8.

¹⁷ NRS §43-1101, Article V states that the sending agency retains jurisdiction over the child "sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child which it would have had if the child had remained in the sending agency's state."

¹⁸ NE DHHS Training Module, *supra* note 8, Financial and Medical Planning for Out of State Placements, Step 3

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- i. Providers need to be located in the other state who are either already enrolled as Nebraska Medicaid providers or who are willing to become enrolled as Nebraska Medicaid providers, or
- ii. Providers need to be located in the other state who are willing to bill Nebraska State Ward Medical at Nebraska Medicaid rates.¹⁹

If the placement is with a birth parent, the child's eligibility for Title IV-E Medicaid may be terminated and the sending state should explore other resources to meet the child's needs when pursuing this type of placement. If a child from Nebraska is being placed out of state with a biological parent, it will be the expectation of NE DHHS that the parent provide financially for the care of his/her child. The parent may qualify for benefits in his/her state of residence such as ADC, Food Stamps, etc, but DHHS will not make a maintenance payment to a biological parent. The child will continue to have Nebraska Medicaid until he or she is no longer a ward.²⁰

c. Priority Placements

ICPC Regulation No. 7 Priority Placement allows for a priority processing of an ICPC request when the court enters an order finding the proposed placement resource is a near relative as defined in Article VIII(a) of the ICPC and at least one of the following is true:

- 1) the child is under two years of age; or
- 2) the child is in an emergency shelter; or
- 3) the child has spent a significant amount of time in the home of the proposed placement resource.²¹

When priority processing applies, the court is to send its order to DHHS within 2 business days, whereupon DHHS is to transmit the order along with Form 100A and all additional required documentation to the sending state ICPC administrator within 3 business days. The Compact Administrator is then to send the request and accompanying documentation to the receiving state within 2 business days. Home studies are to be completed within 20 business days of receipt in the receiving state ICPC office.²² Additional time limitations are placed on requests for additional information to help move the process along.²³ All transmittals of documents or other written materials in priority cases are to be by overnight express mail carrier service.²⁴

¹⁹ NE DHHS Training Module, *supra* note 8

²⁰ *Id.*

²¹ NRS §43-1101

²² Nebraska ICPC, Regulation 7, paragraph 3. Can be found at <http://www.hhs.state.ne.us/chs/icpc.pdf> (last visited June 30, 2008)

²³ See *supra* note 22 at Reg. 7, para. 5(2)

²⁴ See *supra* note 22 at Reg. 7, para (9)

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Cases misidentified as priority placements by the court may be delayed. According to the Manual and Instructional Guide for Juvenile and Family Court Judges²⁵ if a court misidentifies a case as a priority placement, the Compact Administrator will send the request back to the agency. The agency staff should send the case back to the court with a request for modification. A court order for a priority placement is not valid unless it expressly contains the findings as required by the ICPC Regulation 7.²⁶

If additional delays occur in completing the home study within the time period allowed, the court of the sending state may inform an appropriate court in the receiving state and request assistance.²⁷

d. Institutional Care of Delinquent Children

If a child has a delinquency adjudication he or she *must* be processed through the ICPC when being placed in a facility in another state.²⁸ The placement may not be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard prior to being sent to the other state. The court must find, before this placement may be made, that 1) equivalent facilities for the child are not available in the sending agency's jurisdiction and 2) Institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship²⁹. This order is required before the placement may be made.³⁰ However, Nebraska DHHS will sometimes send requests by fax to get an initial verbal approval before sending original documents in order to hasten the process.³¹

e. Terminating or Dismissing Jurisdiction

Article V of the ICPC addresses the issue of retention of jurisdiction. According to the article V, the sending state retains jurisdiction over the child sufficient to determine all matters related to the child's custody, supervision, care, and disposition to the extent that the state would have had if the child had remained in the sending state. This jurisdiction continues until the child is adopted, reaches majority, becomes self-supporting, or is discharged with the concurrence of the appropriate authority in the receiving state. Any other unilateral dismissal of jurisdiction is unlawful.³²

²⁵ THE INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN: A MANUAL AND INSTRUCTIONAL GUIDE FOR JUVENILE AND FAMILY COURT JUDGES (Barbara Seibel, ed. A collaboration of the National Council of Juvenile and Family Court Judges and the American Public Human Services Association) (Fall 2001)

²⁶ See *supra* note 22 at Reg. 7, para (6)(a)

²⁷ See *supra* note 22 at Reg. 7, para 5

²⁸ NE DHHS Training Module, *supra* note 8.

²⁹ NRS §43-1101, Article VI

³⁰ *Id.*

³¹ NE DHHS Training Module, *supra* note 8.

³² NRS §43-1101, Article V (a)

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3. ICPC Home Study Process (Nebraska as receiving state)

a. Completing the home study

When Nebraska's Compact Administrator receives notice from a sending state, the paperwork is forwarded on to the appropriate local DHHS office. DHHS then aims to complete any required home studies within 6 weeks. After the completion of the home study, Nebraska's ICPC office makes the determination whether the placement "does not appear to be contrary to the interests of the child." Nebraska's decision is then forwarded to the sending state's ICPC office.³³

Nebraska agency staff then takes on the responsibility of supervising wards of other states placed within the state as if they were Nebraska's own wards. Nebraska will send progress reports quarterly to the sending state, although more frequent reports may be requested. After a period of time, if appropriate, the supervising caseworker in Nebraska will recommend that the sending state move towards permanency.³⁴

The federal guidelines require that the home study request be completed and returned to the sending state ICPC office within sixty calendar days of when the receiving state Compact Administrator received the notice.³⁵ However, the *recommended* processing time is 6 weeks (30 working days). The Nebraska DHHS policy packet indicates that the required processing time is 6 weeks. Though, placements involving foster home licensing or adoption inevitably take longer. Approval of a placement is then valid for six months after the ICPC administrator signs the ICPC 100A Form, after which the sending agency must reapply.³⁶

b. Responsibilities for the duration of the placement

Nebraska staff will continue to supervise wards from other states placed in Nebraska as if they were Nebraska wards, which includes the opening of Nebraska Medicaid for IV-E eligible children. Regular contact with the family is to be maintained and quarterly progress reports are provided to sending states. Progress reports may be provided more frequently, if requested.³⁷ Lines of communication similar to those established during the approval process (through the state ICPC offices) are followed for case monitoring and support until the child achieves permanency in the receiving state.³⁸

After a child has been placed in Nebraska, staff will do the following:

³³ NE DHHS Training Module, *supra* note 8.

³⁴ *Id.*

³⁵ Safe and Timely Interstate Placement of Foster Children Act of 2006 (P.L. 209-239)

³⁶ See *supra* note 22 at Reg. 6

³⁷ NE DHHS Training Module, *supra* note 8.

³⁸ *Id.*

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- Visit the child and family appropriately based upon the home study and history of the child
- Assist the family in coordinating services approved and authorized by the sending state
- Open Nebraska Medicaid for IV-E eligible children
- Document progress of the child and the family and any other information requested by the sending state, and
- Report on services provided and child and family progress to the sending state at the agreed-upon intervals.³⁹

c. Terminating jurisdiction

After six months have passed since the initial placement in Nebraska, Nebraska agency staff typically recommend that the other state move toward permanency if appropriate. If this recommendation is appropriate, the Nebraska ICPC office will let the sending state know that they have concurrence from the Nebraska ICPC office to move toward permanency and case closure.⁴⁰

C. State Laws, Court Rules, and Policy Directives

Nebraska's laws, court rules, and policy directives provide measures to ensure that all parties, attorneys, and caseworkers can collaborate in interstate placement cases.

3. Nebraska Interstate Compact on the Placement of Children

This Act provides for Nebraska's joinder in Interstate Compact on the Placement of Children with all other jurisdictions that adopt the compact to ensure protection and services to children placed across state lines for foster care or adoption. The Act regulates activities concerning the placement of Nebraska's children across state lines as well as the acceptance of children from other states. The law establishes administrative procedures and legal responsibilities for the states involved in the placement. The law substantially replicates the model interstate compact law enacted by all 50 states, the District of Columbia, and the Virgin Islands.⁴¹

4. Nebraska-Iowa Border Agreement

Effective on September 15, 2004, Nebraska DHHS and Iowa DHS entered into a border agreement for performance of certain home studies and supervision pertaining to the ICPC. The agreement applies only to the geographic area that is the common boundary between the states of Nebraska and Iowa, contiguous counties on either side of the Missouri River. The full text and administrative memorandum can be found in Appendix C.

³⁹ 390 NAC Chapter 9

⁴⁰ NE DHHS Training Module, *supra* note 8.

⁴¹ NRS §43-1101

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The Border Agreement allows for the sending state to complete a home study in the receiving state with the permission of the receiving state's ICPC office. All background and criminal history checks, as well as the final decision to approve or deny the placement remain the responsibility of the receiving state.

The Border Agreement also allows for the sending state to provide supervision of children placed in homes approved by the receiving state's ICPC office. Permission must be granted by the receiving state's ICPC office prior to the sending state providing supervision of children in the receiving state.⁴²

5. Other Relevant Compacts

There are three other compacts that are relevant to the interstate placement of children: The Interstate Compact on Adoption and Medical Assistance, The Interstate Compact on Juveniles, and the Interstate Compact on Mental Health.

The **Interstate Compact on Adoption and Medical Assistance**, which Nebraska has adopted, was created to ensure that adoptive parents of special needs children receive the services and benefits provided for in their adoption assistance agreement. The Compact facilitates the delivery of these benefits and services when a family moves during the continuance of the adoption assistance agreement or if the child is initially placed for adoption across state lines.⁴³ The ICAMA is relevant to the ICPC in that ICAMA does not apply until there is an adoption assistance agreement in place. Therefore, if the child is placed with the potential adoptive family before the agreement is in place, the child must have financial and medical coverage arranged as required by the ICPC. Additionally, if an adoption is disrupted, it is important that the child has medical coverage according to the ICPC, as arranged by the sending state.⁴⁴

The **Interstate Compact on Juveniles (ICJ)**, which Nebraska has enacted⁴⁵, governs the supervision of adjudicated delinquents on probation or parole.⁴⁶ A youth adjudicated as a status offender may also be processed through the ICJ. This Compact also authorizes the return of juveniles who have escaped, absconded, or ran away from their home states.⁴⁷ The receiving state must use the same standards of supervision for juveniles received as it does for juveniles in its own custody or supervision.⁴⁸ The sending state, however, may reassume supervision/custody at any

⁴² Border Agreement between Nebraska Department of Health and Human Services and Iowa Department of Human Services (September 15th, 2004). See Appendix C.

⁴³ NRS §43-117.02

⁴⁴ See *supra* note 25 at 124.

⁴⁵ NRS §§43-1001 to 43-1010

⁴⁶ 390 NAC Chapter 9. In Nebraska, this law applies to delinquent juveniles adjudged to be within the provisions of subdivision (1), (2), or (4) of Section 43-247 of the Nebraska Revised Statutes, and who are still subject to the jurisdiction or supervision of an agency or institution pursuant to a court order.

⁴⁷ NRS §43-1002

⁴⁸ 390 NAC Chapter 9

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time, although the juvenile must be afforded his or her due process rights prior to being returned to the sending state.⁴⁹

According to the Manual and Instructional Guide for Juvenile and Family Court Judges, in order to use the ICJ as opposed to the ICPC for such an out-of-state confinement, a supplementary agreement must be in place between the two states and consent of the parent or guardian is required in order to make the placement. Making the placement through the ICPC does not require the consent of the parent or guardian, so long as a court makes a finding that equivalent facilities for the child are not available within the state, the placement in another state is in the child's best interests, and the placement will not cause undue hardship.⁵⁰

The **Interstate Compact on Mental Health** governs the transfer of mentally ill and mentally retarded children from one public facility to another, across state lines. Unlike the ICPC, a patient transferred through this Compact becomes the responsibility of the receiving state.⁵¹

6. ICPC and the Indian Child Welfare Act (ICWA)

The Nebraska Indian Child Welfare Act⁵² applies to any child who is either a member of a federally recognized Indian tribe or eligible for membership and the biological child of a member of a tribe. ICWA provides procedural and substantive standards on state child welfare proceedings and applies to the placement of such children across state lines.

Federal law clearly establishes that federally recognized tribes exercise powers of self-government.⁵³ Consequently, the ICPC does not apply to the interstate placement of a child if the placement is being made within an Indian reservation unless: the tribal government requests ICPC services; the tribe has adopted the ICPC or incorporated its provisions into its own laws; or the tribe has an existing Title IV-E agreement with the state requiring ICPC compliance. If an Indian child is being placed interstate, but not within a reservation, the ICPC applies to that placement. However, the requirements of the ICWA preempt any ICPC requirements that interfere with or impede the implementation of the placement as required by the ICWA.⁵⁴

⁴⁹ *Morrissey v Brewer* 408 US 471 (1972); discussed in 390 NAC Chapter 9

⁵⁰ See *supra* note 25

⁵¹ NRS §83-801

⁵² NRS §§43-1501 to 43-1516

⁵³ U.S. Constitution, Art. 1, sec 8, clause 4. *see also* *U.S. v Winans*, 198 U.S. 371 (1905); *Lac Court Oreilles v Voigt*, 700 F.2d 341 (1983); *Lac du Flambeau v Stop Treaty Abuse*, 991 F.2d 1249 (1993)

⁵⁴ See *supra* note 25 at 42-44.

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7. ICPC and the NE Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)

The NE UCCJEA⁵⁵, included here in Appendix D, provides requirements for the shifting of jurisdiction from one state to another and allows two states to assume equal jurisdiction in emergency circumstances. However, ostensibly, these statutes can conflict with the ICPC.

The ICPC Manual for Judges indicates that the question of jurisdiction always precedes the question of whether the ICPC applies to a child custody case in the juvenile or family court. Therefore, the UCCJEA must first be applied to determine whether the court and child welfare agency have ongoing jurisdiction over a child's custody before the court may proceed to the stages in the case in which the ICPC apply. Most interstate placements do not involve the UCCJEA, however, because they do not involve custody disputes that would allow for proceedings to be contemplated in the courts of more than one state.⁵⁶ The Nebraska UCCJEA defines a child custody proceeding as "a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear."⁵⁷ The UCCJEA does not govern adoption proceedings.⁵⁸

Although Nebraska case law has not yet addressed such conflicts between the UCCJEA and the ICPC, the courts in other jurisdictions have. There are a line of cases from other jurisdictions taking the position that Article V(a) of the ICPC, relating to jurisdiction, does not apply or negate provisions of the UCCJEA or the PKPA (Federal Parental Kidnapping Prevention Act, 28 USCA s 1738A) or any other jurisdictional statutes.⁵⁹

⁵⁵ NRS §§43-1226 to 43-1266

⁵⁶ See *supra* note 25

⁵⁷ NRS §43-1227 (4). Terms, defined

⁵⁸ NRS §43-1228. Proceedings governed by other law.

⁵⁹ *In J.D.S. v Franks*, 182 Ariz. 81, 893 P.2d 732 (1995), the Arizona Supreme Court held that Article V(a) of the ICPC merely establishes a procedure to follow when an out-of-state placement of a child is made; *In Adoption of Zacharia K.*, 6 Cal. App. 4th 1025, 8 Cal. Rptr. 2d 423 (2d Dist. 1992), the court held that the ICPC can not take precedence over conflicting provisions of the PKPA; the Delaware Family Court in *Adoption House, Inc. v. P.M.*, 2003 WL 23354141 (Del. Fam. Ct. 2003), holding that Delaware's enactment of the UCCJEA determined whether the court had jurisdiction; The Florida District Court of Appeal in *In re D.N.*, 858 So. 2d 1087 (Fla. Dist. Ct. App. 2d Dist. 2003), held that jurisdiction in a proceeding initiated by a father for the return of his children from Florida was controlled by the provisions of the UCCJA and PKPA, and not the ICPC; *In re Marriage of Slate*, 181 Ill. App. 3d 110, 129 Ill. Dec. 844, 536 N.E.2d 894 (1st Dist. 1989), the Illinois District Appellate Court declined to exercise jurisdiction over a child custody determination involving children who had moved out of the state, indicating that the UCCJA should be used to assure that litigation regarding child custody takes place in the state in which the child and the child's family have the closest connection and where significant evidence concerning the child's care, protection, training, and personal relationships is more readily available;

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8. Nebraska Rules of Evidence

According to Neb. Rev. Stat. §43-283, the Nebraska Rules of Evidence are not strictly applied at dispositional or permanency planning hearings. Nonetheless, although relaxed rules may be followed, the proceeding must be fundamentally fair to protect the best interests of the children.⁶⁰

9. Inter-Court Communication

- a. Can judges in different states converse with each other in an effort to facilitate the progression of an ICPC case?

Brief Answer

Yes. Judges in different states can converse with each other regarding ICPC cases, so long as they restrict their conversations to facilitating administrative aspects of the case. If possible, though, communications should be made by speaker phone in the presence of the parties and their counsel and/or communications should be discussed with the parties.

Discussion

Many judges express concerns about the appropriateness of communicating with agency personnel or other judges. *Ex parte* communications are defined as the transferring of information to a judge when one or more party is not present. The Nebraska Code of Judicial Conduct (1992), indicates that a judge shall not initiate, permit, or even consider *ex parte* communications made to the judge outside the presence of the parties.⁶¹

Although *ex parte* communications are generally prohibited, there are still instances where such communications are not only permitted, but may be necessary for the protection of the rights of all parties in the case. Canon 3(b)(7) provides exceptions whereby certain *ex parte* communications may be made. Such communications may be made for scheduling or administrative purposes, or for emergencies that do not deal with the merits of the case, provided that no party will gain an advantage as a result of such communication and the judge notifies the parties of the communication. Or, a judge may initiate or consider such communications when expressly authorized by law to do so.⁶²

⁶⁰ See *In re Interest of Tabatha R.*, 255 Neb. 818, 587 N.W.2d 109 (1998), in which the court held that these proceedings must be fundamentally fair. Also, see *In re Interest of Aaron D.*, 269 Neb. 249, 691 N.W.2d 164 (2005), in which the Court held that in a proceeding to terminate parental rights, fundamentally fair procedures satisfying the requirements of due process must be followed.

⁶¹ Neb. Code of Jud. Cond., Canon 3(b)(7).

⁶² Neb. Code of Jud. Cond., Canon 3(b)(7)(e)

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Although the UCCJEA does not apply to all ICPC cases (see section C(7) above for discussion), it does address the general issue of judicial communications. The purpose of the UCCJEA is to promote cooperation between state courts so that a custody decree is rendered in the state that is in the best position to decide the interests of the child. Another purpose of the UCCJEA is to facilitate the enforcement of custody decrees of other states. Though not required, cooperation and communication between courts in different states is encouraged by the UCCJEA.⁶³

Section 43-1235 of the Nebraska UCCJEA discusses communication between courts. According to this section, a court is encouraged to communicate with other courts. Although telephonic conferences and on-line or other electronic communications are mentioned in the comments from the corresponding section in the UCCJEA (section 110), it also acknowledges that other modern communication techniques will come into play.⁶⁴

10. Admitting evidence and testimony from another state

- a. Can attorneys in other states file motions and cross-examine witnesses in a Nebraska hearing? If so, do they need co-counsel who is a member of the NE State Bar?

Brief Answer

Out-of-state attorneys cannot automatically file motions and cross-examine witnesses in a Nebraska hearing. An out-of-state attorney may practice in Nebraska associated with and on motion of an active member of the State Bar of Nebraska appearing on record in the case.

Discussion

The right of an out-of-state attorney to make an appearance in a particular case in a state court is referred to as an admission *pro hac vice*. In Nebraska, such authority is confirmed by statute.⁶⁵ Additionally, the Nebraska Supreme Court Rules concerning the Admission of Attorneys provide that any lawyer of good moral character who is admitted to and engaged in the practice of law in the courts of another state, or in the District of Columbia, or in any foreign country, having professional business in the courts of Nebraska, may on motion to the court, be admitted for the purpose of transacting such business.⁶⁶

⁶³ NRS §43-1235 Communication between courts

⁶⁴ NRS §43-1235

⁶⁵ NRS §7-103. Practice by nonresident attorneys; requirements; reciprocity.

⁶⁶ Supreme Court Rules concerning the Admission of Attorneys, Rule 6

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In order to be admitted *pro hac vice*, an attorney from another state is required to take the oath as indicated by section 7-104, and must provide, in writing, that he has associated and is appearing with a licensed attorney of Nebraska.⁶⁷ However, licensed attorneys of other states, the laws of which states permit the practice in its courts of attorneys from Nebraska without a local attorney being associated, shall not be required to comply with the provisions of this section. Nonresidents are subsequently admitted only for the purposes of the businesses of the case, and not to practice generally.⁶⁸

- b. Can evidence be sent between states? If so, what are the procedures?

Brief Answer

Yes. There are a variety of methods by which evidence and testimony can be brought in from another state or sent to another state from Nebraska, provided the receiving state permits it. However, many of these methods are spelled out under the UCCJEA or statutorily but in application to specific populations.

Discussion

- a. Taking Testimony in another State; UCCJEA

According to Neb. Rev. Stat §43-1236 (NE UCCJEA), 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. 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.

- b. Holding an evidentiary hearing in another state; UCCJEA

⁶⁷ NRS § 7-103, also *see* State ex rel. Douglas v. Bigelow, 214 Neb. 464, 334 N.W.2d 444 (1983), in which the court explains that the courts of this state look primarily to members of its bar for the conduct of litigation in which they appear. This is one of the reasons for the requirement that attorneys appearing from out-of-state first associate with members of the Nebraska bar when appearing in Nebraska. Also *see* Emry v American Honda Motor co., 214 Neb. 435, 334 N.W.2d 786 (1983); Lincoln Welding Supply v Inhalation Plastics, 213 Neb. 862, 331 N.W.2d 804 (1983); Nebraska State Bank v Dudley, 203 Neb. 226, 278 N.W.2d 334 (1979), *appeal dismissed* 444 U.S. 804, 100 S.Ct. 24, 62 L.Ed.2d 17.

⁶⁸ In re Robinson, 82 Neb. 172, 117 N.W. 352 (1908); In re Admission to the Bar, 61 Neb. 58, 84 N.W. 611 (1900).

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According to Neb. Rev. Stat §43-1237 (NE UCCJEA), in a *child custody proceeding*, a court of Nebraska may request the appropriate court of another state to hold an evidentiary hearing, order a person to produce or give evidence pursuant to procedures of that state, order an evaluation to be made with respect to the custody of a child involved in a pending proceeding, have certified copies of transcripts forwarded, and order a party to a child custody proceeding to appear.

c. Audiovisual court appearance; detainees or prisoners

Nebraska has a statute indicating that *detainees or prisoners* may appear at a non-evidentiary criminal proceeding by audiovisual means. However, a judge or magistrate is not required to allow an audiovisual court appearance and may order the detainee or prisoner to appear physically.⁶⁹ When an audiovisual court appearance is made, the detainee or prisoner is to sign a written consent and waiver of his or her right to a physical personal appearance at the proceeding. The judge or magistrate shall then verify the written consent and waiver and obtain an oral waiver of the detainee's or prisoner's right to a physical personal appearance. Additionally, the audiovisual communication system and facilities shall meet the requirements of section 29-4204.⁷⁰

d. Out of State Depositions; Court Rules

Nebraska Discovery Rules for Civil Cases 26-37 govern discovery rules for all civil cases; there are no specific rules for child protective proceedings.⁷¹ Rule 32 indicates that the deposition of a witness may be used by any party for any purpose if the court finds, among other things, that the witness is out of the state. Rule 28 governs persons before whom depositions may be taken and authorizes the taking of depositions outside the state having jurisdiction. According to this rule, depositions may be taken in other states before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held, or before a person appointed by the court in which the action is pending.⁷² Depositions may also be taken in foreign countries, so long as the specific procedure in Rule 28(c) is followed. In lieu of participating in the oral examination of such parties being deposed, parties may serve written questions in a sealed envelope on the party taking the deposition.

When depositions are taken within Nebraska for use in foreign jurisdictions, NCR 28(e) explains that witnesses may be compelled to appear and testify in the same manner and by the same process and proceedings as may be

⁶⁹ NRS. §29-4202

⁷⁰ NRS. §29-4203.

⁷¹ NCR 26-37

⁷² NCR 28 (b)

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employed for the purposes of taking testimony in proceedings pending in Nebraska. The district court for the county in which the deposition is being taken may make any orders that would be allowed if the deposition were intended for this jurisdiction, but having regard for the laws and rules of the foreign jurisdiction.⁷³

b. Telephone and Video Depositions; Court Rules

NCR 30(b)(7) indicates that parties may stipulate or the court may order that a deposition be taken by telephone. A deposition taken by telephone is taken in the district and at a place where the deponent is to appear to answer questions. A party taking a deposition may have the testimony recorded by videotape, however notice of the deposition shall specify that the deposition will be videotaped. NCR 30(b)(8) spells out a specific procedure for taking depositions by videotape.

c. Recognition and Enforcement; UCCJEA

The NE UCCJEA states that Nebraska shall accord full faith and credit to an order issued by another state and consistent with the Uniform Child Custody Jurisdiction Enforcement Act which enforces a child custody determination by a court of another state.⁷⁴

Neb. Rev. Stat. §43-1406 states that a determination of paternity made by any other state shall be given full faith and credit by the state of Nebraska. This applies whether the paternity determination was made through voluntary acknowledgment, genetic testing, or administrative or judicial process.⁷⁵

d. Facsimile Communication Equipment; Court Rules

Nebraska court rules spell out specific parameters of the use of fax machines for the purposes of court business. A person seeking to file a signed document may fax a copy of the original signed document. Any one who files a signed document by fax represents that the original signed document is physically in his or her possession or control. Every court in the State of Nebraska shall accept for filing a fax transmission of any pleading, motion, or other document, except for briefs. A signed fax transmission is an original signature for the purpose of the fax filing only. A lawyer may accept service of papers by fax by indicating so. Any lawyer who files a paper by fax consents to service of papers on him or her by fax in that proceeding.⁷⁶

e. Telephone and Other Communication Equipment; Court Rules

⁷³ NCR 28(e)

⁷⁴ NRS §43-1260

⁷⁵ NRS §43-1406

⁷⁶ NCR 1-14. Nebraska Supreme Court Rules for the Use of Fax Machines in State Courts

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First Judicial District Rules 1-5, Fifth Judicial District Rules 5-10, Seventh Judicial District Rules 7-10, and Eighth Judicial District Rule 8-4, and Tenth Judicial District Rule 10-5 govern Telephonic conference hearings. Accordingly, a matter may be heard by telephonic conference call by permission of the court. The rules spell out a specific procedure for holding a telephonic conference. Typically, all parties must consent to the hearing being held telephonically and the conference must be arranged in advance.

f. Authentication of Evidence; Evidence Rules

Neb. Rev. Stat. §27-901 contains the evidence rules for the authentication or identification of evidence. Of note, a voice, whether in-person or through mechanical or electronic transmission or recording, must be identified by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.⁷⁷ Telephone conversations are authenticated by evidence that a call was made to the number assigned at the time by the telephone company to a particular person or business if circumstances, including self-identification, show the person answering to be the one called.⁷⁸

D. Statistical Reports of Interstate Placements into and out of Nebraska

The Nebraska DHHS produces aggregate data reports using the American Public Human Services Association (APHSA) database, which was implemented in Nebraska in the fall of 2004. Nebraska reports for 2006 and 2007 can be found in Appendix E.

a) Placements from Nebraska into other ICPC states (NE as sending state)

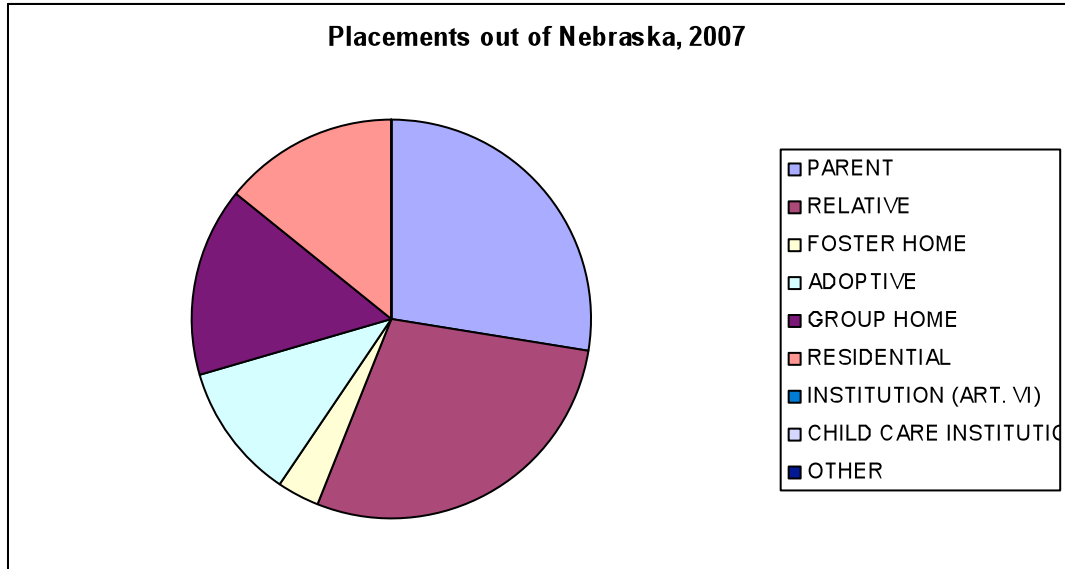
Types of Placements

The attachment in Appendix E, titled “Quarterly Statistical Report: Placements Out of an ICPC State,” dated 01/01/07 – 12/31/07 represent the statistics for placements made from Nebraska into other ICPC states for the year 2007. In 2007, 226 children were placed into other ICPC states from Nebraska. Of these children, about 27% were placed with parents, 28% were placed with relatives, 11% were placed in adoptive homes, 15% were placed in group homes, 14% were placed in residential facilities, and a little over 3% were placed in non-relative foster homes.

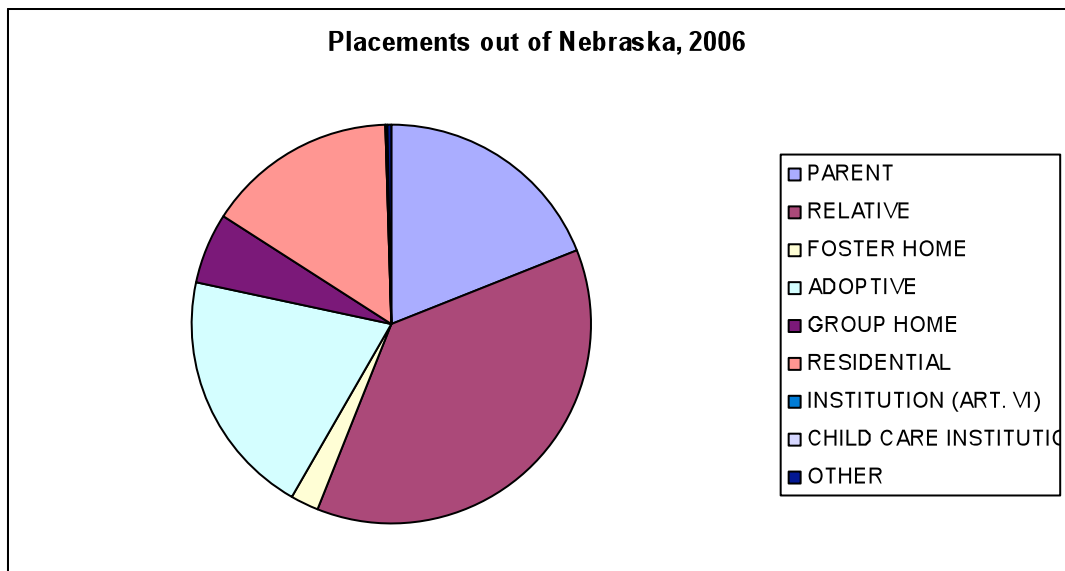
⁷⁷ NRS §27-901(e)

⁷⁸ NRS §27-901(f)

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The attachment titled “Quarterly Statistical Report: Placements Out of an ICPC State,” dated 01/01/06 – 12/31/06 represent the statistics for placements made from Nebraska into other ICPC states for the year 2006. In 2006, 399 children were placed into other ICPC states from Nebraska. Of these children, about 19% were placed with parents, 37% were placed with a relative, 20% were placed in adoptive homes, 6% were placed in group homes, and 15% were placed in residential facilities, and about 2% were placed in non-relative foster homes.

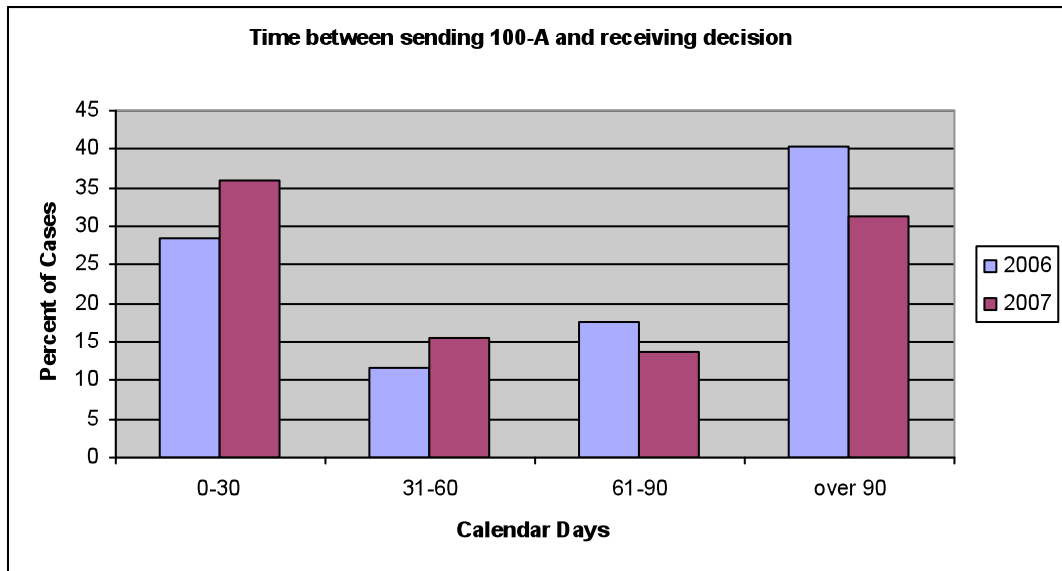


Timeliness of Decision

Section 5 of the statistical reports presents the time between Nebraska sending the 100-A request and the receipt of a decision from another state. For both 2006 and 2007, Nebraska received a decision within 30 days for 28-36% of their cases. For

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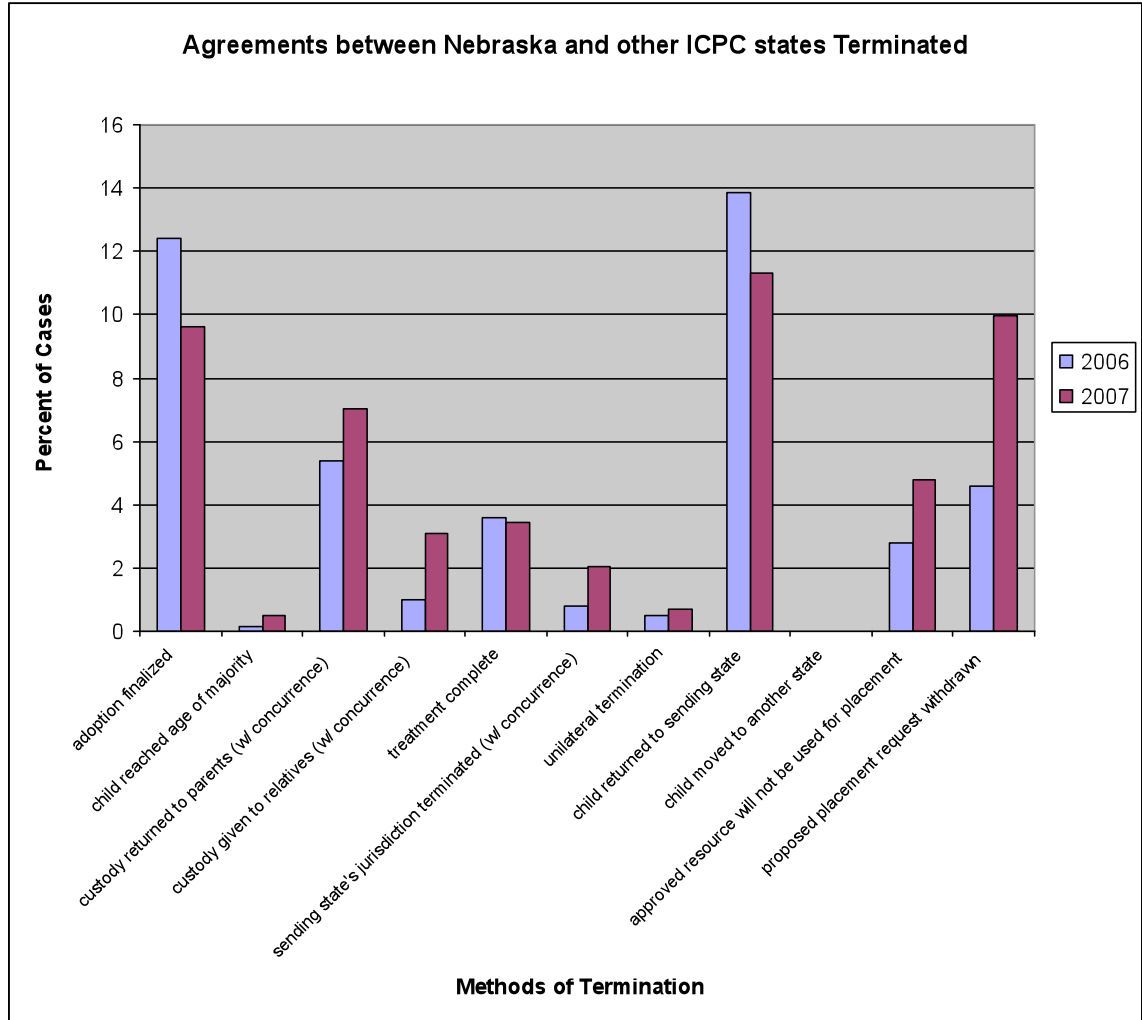
both 2006 and 2007, it took over 90 days for Nebraska to receive a decision in 31-41% of the cases.



ICPC Agreements Terminated

In 2006, where Nebraska was the sending state, the agreements between Nebraska and other ICPC states were terminated in 613 cases. In 2007, where Nebraska was the sending state, the agreements between Nebraska and other ICPC states were terminated in 583 cases. The graph below represents the various avenues used for terminating the cases. A little over half of the cases in 2006 and a little under half of the cases in 2007, not included in the graph below, were terminated for “other reasons.”

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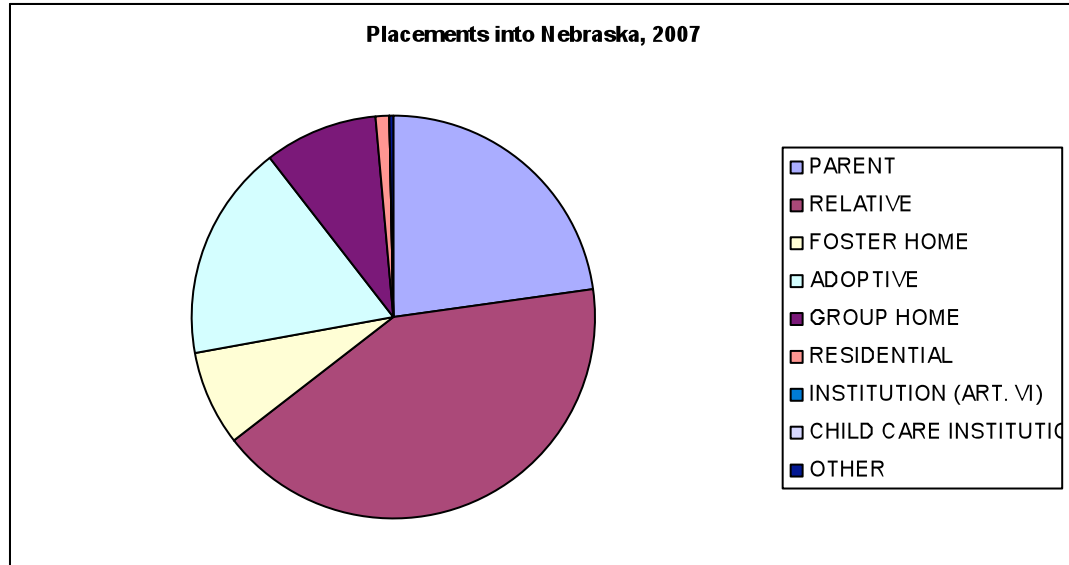


b) Placements from other ICPC states into Nebraska (NE as receiving state)

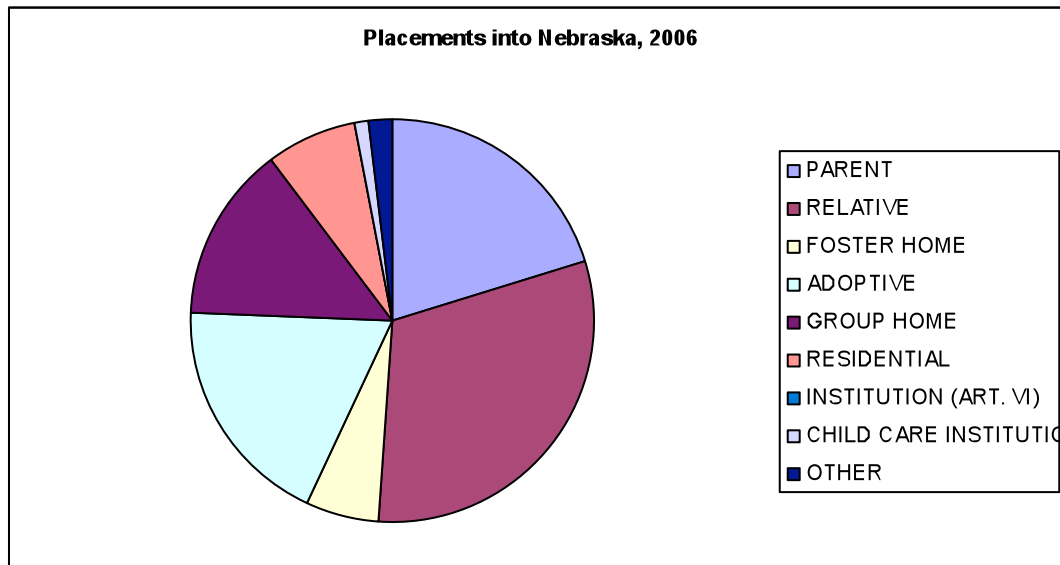
Types of Placements

The attachment titled “Quarterly Statistical Report: Placements into an ICPC State,” dated 01/01/07 – 12/31/07 represent the statistics for placements made from other ICPC states into Nebraska for the year 2007. In 2007, 350 children were placed into Nebraska from other ICPC states. Of these children, almost 23% were placed with parents, almost 42% were placed with relatives, almost 8% were placed in non-relative foster homes, about 17% were placed in adoptive homes, about 9% were placed in group homes, and a little over 1% were placed in residential facilities.

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The attachment titled “Quarterly Statistical Report: Placements into an ICPC State,” dated 01/01/06 – 12/31/06 represent the statistics for placements made from other ICPC states into Nebraska for the year 2006. In 2006, 481 children were placed into Nebraska from other ICPC states. Of these children, about 20% were placed with parents, about 31% were placed with a relative, about 6% were placed in non-relative foster homes, about 19% were placed in adoptive homes, about 14% were placed in group homes, and 7% were placed in residential facilities.

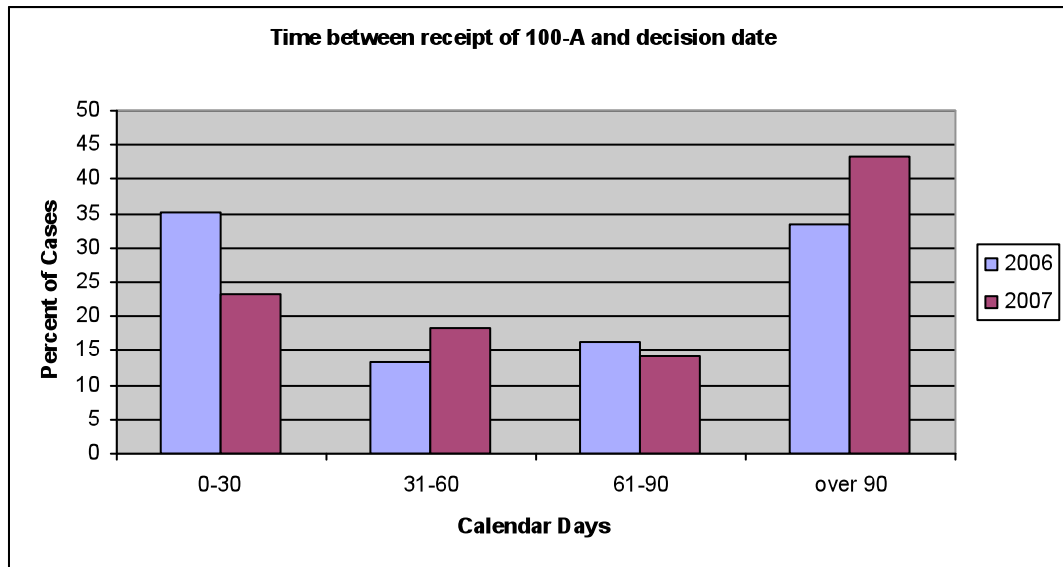


Timeliness of Decision

Section 5 of the statistical reports presents the time between Nebraska’s receipt of 100-A and decision date. For both 2006 and 2007, Nebraska made a decision

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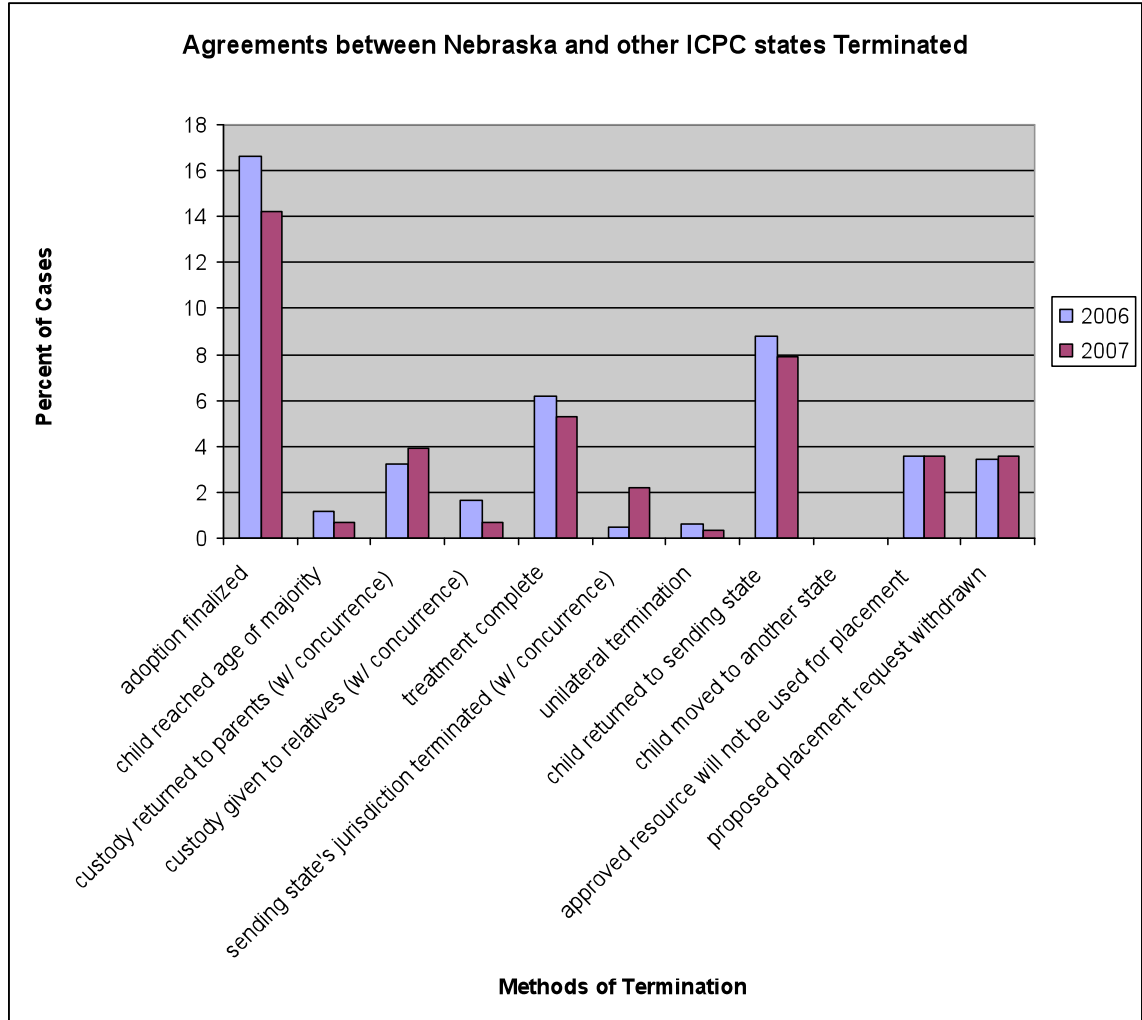
within 30 days for 23-36% of their cases. For both 2006 and 2007, it took over 90 days for Nebraska to make a decision in 33-44% of the cases.



ICPC Agreements Terminated

In 2006, where Nebraska was the receiving state, the agreements between Nebraska and other ICPC states, were terminated in 527 cases. In 2007, where Nebraska was the receiving state, the agreements between Nebraska and other ICPC states were terminated in 399 cases. The graph below represents the various avenues used for terminating the cases. Around 40% of the cases in 2006 and around 26% of the cases in 2007, not included in the graph below, were terminated for “other reasons.”

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E. Case Reviews and Discussion

After reviewing numerous files involving Nebraska as both a receiving and sending state, the following cases were selected for presentation in this report. These files were selected based on how prototypical they are of specific problems or issues selected for discussion and are not intended to reflect or convey a frequency of occurrence.

- c) General delays: One common obstacle to timely placement of children from Nebraska to another state is general delays in processing paperwork, conducting home studies, and completing background checks. The following case summary highlights this issue:

On July 21st, 2006, the six year old child, having been placed in foster care, was adjudicated. It wasn't until approximately a year after that adjudication that the biological father, living in California came forward and expressed an interest in taking custody of the child.

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On October 31st, 2007, Nebraska completed the 100A form, initiating the ICPC process and requesting a home study be done of the biological father. On November 13, 2007, a permanency planning hearing was held. On January 4, 2008, the court held a review hearing and requested an ICPC representative be present at the hearing. Within two weeks of that hearing, the caseworker wrote to the ICPC Administrator (of Nebraska) to inform her that there were concerns with the child's placement in the foster home and to ask if there might be any way to speed up the process to get the child placed with her father. The NE ICPC Administrator then left a message for the California ICPC Administrator on January 15, 2008 (2.5 months after 100A had been completed by Nebraska) requesting the information and an update. The California ICPC Administrator responded by indicating that they have a significant backlog, but that they had requested information from the father about 30 days prior, who had yet to provide the information.

As of the file review that took place on 1/28/08, there had not been any progress on the case.

Discussion: This case highlights the following delays: delays in identifying and pursuing placement with a relative, delays in receiving necessary information from the relative, delays in the receiving state's completion of necessary paperwork, the home study, etc. It is unclear why it took so long for the father to come forward and offer himself as a placement possibility, but Nebraska could possibly have done more to identify and pursue this placement earlier on. The use of pre-hearing conferences to take place before the initial protective hearing is a useful way to identify relatives. Even if the father had been identified but was unable/unwilling to take custody of the child at the time of adjudication, Nebraska could have periodically contacted the father for updates on his situation. The second identified delay involves receiving paperwork from the father. California indicated that they typically wait 30 days before sending another letter to the parent, providing an extra 10 days. More frequent contact with the father might have encouraged him to return the requested information sooner. Relatedly, 3 months after the initial 100A request, California had still not responded to Nebraska's request. In fact, it appears that California did not even request the necessary information from the father until at least 1.5 months after the 100A request. An immediate request of this information, knowing it might take time for the father to collect and return the information might have helped speed up the process.

- d) Premature action by court: One concern expressed by ICPC agency staff is that the courts do not always wait for completion of the ICPC process before ordering a change of custody or even terminating a case. This may be done for a number of reasons, including lack of responsiveness from the receiving state or denial of placement by the receiving state. Regardless of the reason, a court order of custody change before ICPC approval is a violation of the ICPC and therefore a

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safety concern for the children involved in such cases, since the result is that no agency is monitoring the placement. ICPC staff discussed the possibility that the Courts are, in some of these cases, simply using the ICPC process to obtain a home study because no other channels are available for obtaining a home study outside the ICPC process.

On February 10, 2006 two children, ages 15 and 13 were removed from their father's home and on the 13th the court granted temporary custody to DHHS. On the 22nd, supervised visitation with the father was ordered. On March 6th, the NE ICPC office sent a letter to the Missouri ICPC office requesting that Missouri provide a protection and safety worker to have monthly contact in the home with the children to be placed with the mother. On March 10, 2006 a 100A form was sent to Missouri initiating the ICPC process and requesting a home study be done of the non-offending mother's home. Meanwhile, the Court ordered placement in the mother's home before the Missouri home study was completed. Having received court ordered placement, the mother resisted having the home study completed and hired a lawyer. The Missouri ICPC office tried to indicate to the mother that the home study would need to be completed or Missouri would have to deny the placement and the children would have to be returned to Nebraska.

On June 8, 2006, Missouri received background check information on the mother which included a substantiated report for fondling/touching & untreated illness/injury by the mother, which has resulted in the children being placed with Missouri's HHS for a period of time. Unable to complete the home study due to the mother's resistance, Missouri closed the request for the home study and on July 12, 2006, denied the placement.

The Nebraska DHHS, concerned that they still had legal custody of children living in an unapproved home in another state, filed a motion with the Nebraska court to be relieved of responsibility. The Nebraska court relieved HHS of the responsibility and terminated the case on January 3, 2007.

Discussion: In making his decision, the Nebraska court referred to the "Stephanie H" case,⁷⁹ arguing that the ICPC can not trump a parent's constitutional right to raise his or her child without interference from the state as long as the state had not alleged that he/she was an unfit parent. In the Stephanie H case the judge gave physical and legal custody of the non-adjudicated child to the non-offending parent because there existed no evidence to indicate that the non-offending parent was unfit. In this case, however, legal custody of the child had been given to DHHS and the ICPC process had already been initiated. Here, the court wanted a home study and supervision of the mother by Missouri, but then failed to complete the ICPC process. The result was that the children were in NE DHHS

⁷⁹ See *In re Interest of Stephanie H. et al.*, 10 Neb. App. 908, 639 N.W.2d 668

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legal custody, with physical custody to the mother. Missouri's HHS had denied the placement and were not providing any supervision of the children, believing them to be in Nebraska's custody. Nebraska was unable to monitor the children's safety without the cooperation and approval of Missouri's ICPC office.

This type of case does not happen frequently, as indicated by ICPC staff, but when it does happen, it can seriously threaten the safety of the children involved. It is therefore very important for judges to understand the protections and benefits that the ICPC process provides and to understand why it is important to follow through with the process. This is one topic that could be included in a periodic ICPC education or training of judges. It has also been suggested that at times, judges initiate the ICPC process just for the purpose of obtaining a home study, since there are no other private avenues for obtaining home studies. If there are no allegations of parental unfitness, the judge should not need a home study. If, however, there are allegations and concerns about the parent's fitness, the ICPC process should be followed.

- e) Priority placements: ICPC staff has indicated that occasionally the Courts will request an "expedited placement," rather than following "priority placement" procedure. Under the ICPC there exists no such thing as an "expedited home study request." It is unclear if the problem is that judges are not clear on the requirements of priority placements or if they are trying to expedite cases that do not qualify as priority placements. In the event that these cases qualify for priority placements, agency staff must ask the court to reissue an order correctly indicating that the case qualifies for priority placement. This, of course, causes delays that could have been avoided by the court using correct language in the order in the first place. In cases that do not qualify for priority placements, the words "expedited placement" have no effect on the process.

Discussion: this is another area where ICPC education or training of judges would be useful. Additionally, it might be useful to create a system for expediting certain cases that do not necessarily qualify as "priority placements." Clearly, there are some cases that the court thinks need to be expedited and unless the specific "priority placement" language is used, the ICPC office will not expedite it.

F. Survey Results

A total of 520 participants in the juvenile court system in Nebraska were invited to complete the survey (479 attorneys and 41 judges), which can be found in Appendix F followed by a complete summary of the results. Of the 82 who responded, 18.3% of them were judges, 37.8% of them were attorneys representing both parents and children, 12.2% of them were GALs, 19.5% of them were prosecutors, 3.7% of them were parent's attorneys, 1.2% of them were attorneys for the child welfare agency, and 4.9% declared themselves none of the above. Of those 82 people who responded, only 43 had been involved in more than 5 ICPC cases. The survey was set up to automatically direct those who had

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been involved in fewer than 6 ICPC cases not to answer most of the questions in the survey (questions 4-22). Therefore, the response rate was fairly low and the results are not representative of the options of the general population of participants in the juvenile court system.

Based on the responses to the survey, it seems that a fairly significant percentage of these responders' cases involve interstate placements. 55.8% of those who responded reported that between 36 and 65% of their abuse and neglect cases have involved interstate placements (see question 4). Most (83.7%) of the responders reported that non-custodial parents and key relatives are identified by "at or shortly after the initial protective custody hearing"; 25.6% indicated that these identifications are made before the initial protective hearing (see question 5). However, when asked about when ICPC issues are typically identified, the responses indicated that this happens a bit later in the process. Only 46.5% indicated that ICPC issues were typically identified by "at or shortly after the initial protective custody hearing"; only 9.3% indicated that ICPC issues are typically identified before the initial protective hearing. (see question 6).

Responders to the survey indicated that delays are a common problem in ICPC cases. It should be noted, however, that the term "delay" was not defined in the survey. 18.6% indicated that delays are experienced in 96-100% ("all") of their ICPC cases. 34.9% indicated that delays are experienced in 66-95% ("most") of their cases. 27.9% indicated that delays are experienced in 36-65% ("about half") of their cases. 14% indicated that delays are experienced in 11-35% ("some") of their cases. Only 2.3% indicated that delays are experienced in 0-10 ("none") of their cases. (see question 7). When asked to select from a list of potential reasons for delays, "Delay in the agency preparing the ICPC package to send to the sending state ICPC office" was cited most frequently as the most common reason for delays, followed closely by "delay by the receiving state ICPC office processing the case and sending it to the local agency in the receiving state for the home study to be done." (see question 8).

When asked if any of those surveyed had taken any steps to try to reduce delays in interstate placements, several of the judges who responded indicated that they had utilized pre-hearing conferences to reduce delays. Several of the lawyers who responded to this question indicated that they tried to communicate with the ICPC workers in both states in order to reduce delays. Around 40% did not respond to this question at all, which might suggest that many have not taken any steps to try to reduce delays in interstate placements. (see question 9).

In interviews with ICPC workers, it had been suggested that the courts at times act by making a placement or terminating jurisdiction without following through with the ICPC requirements. Only around 5% of those surveyed indicated that this happens in about half of their cases. About 32% of those surveyed indicated this happens in 11-35% ("some") of their cases. Around 50% of those surveyed indicated that this happens in 0-10% ("none") of their cases. Of those who had

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been involved in cases where the court did not follow through with the ICPC requirements, the reason most often provided for why the court commonly did not follow through was “delays.” (see question 11).

The responses to survey questions concerning court-agency cooperation suggest that participants could be doing a better job of communicating to move the process along more quickly. Of those who responded, over half indicated that the court is typically first made aware of the need for an ICPC application between 1 week and 30 days of the agency’s discover that an ICPC was needed (see question 14). When asked what requirements, if any, are placed on the agency to notify the court and lawyers when ICPC results are known, a handful reported that the agency is supposed to notify the parties within 10 days of the results being known. (see question 16).

The responses to survey questions concerning state-state communication suggest that there is a need for greater cooperation between states. Most indicated that the court has shared information with other courts across state lines in fewer than 35% of their ICPC cases (see question 18).

G. Recommendations

The following recommendations were discussed and had general agreement at the Nebraska Supreme Court Commission meeting on July 18, 2008.

1. Judicial Oversight of Agencies

To address some of the delays in the process, judges could exercise their authority over DHHS to provide reasonable and necessary services promptly. By monitoring and enforcing timelines, judges can reduce delays. Of course, since judges do not have authority over the ICPC itself, this may have a limited effect on reducing delays.

2. Training

Given that a lack of knowledge about the ICPC is one barrier to the efficient transferring of children from one state to another, training would help ensure that judges and attorneys interact with the ICPC in the way that most promotes timeliness of the process.

3. Legal Changes

a) Suggested changes to the ICPC itself

- An exemption for non-custodial, non-offending parents based on a best interest standard. Although the new ICPC (not enacted in Nebraska at this time) includes an exemption for parents, members of the Nebraska Supreme Court Commission did not agree with part a requiring a

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substantial relationship and part c requiring that sending states dismiss their jurisdiction. Nebraska's state laws and case law history emphasize parents' rights more than many other states do. As a result, there are inconsistencies between how parents are treated when the case is contained within the state versus when the cases is inter-state.

- Instituting an Interstate Commission with representation from each state with the purpose of monitoring compliance and addressing non-compliance, coordinating training and education regarding regulations, developing a system of uniform data collection, and providing access to information on active cases to qualified authorities.
- Extend the amount of time permission to place a child is valid from 6 months to 1 year to allow for earlier initiating of the process and more flexibility regarding when the placement may occur. Instituting the ICPC process should be an important step in concurrent planning when suitable relatives reside in another state. The Commission members believed this process should begin right away to ensure that there are not significant delays to permanency if reunification does not occur. The current six-month window of validity may create problems in timely concurrent planning if relatives live out of the state.

b) No suggested changes to Nebraska state laws

- The members of the Nebraska Supreme Court Commission felt that Nebraska's current laws appropriately address and allow for judges communicating with judges in other states and, assuming the court rooms have the necessary technology, having parties in other states participate through video or telephonic technology. While Nebraska's laws do not currently allow for taking jurisdiction based on findings from another state's courts, incorporating decisions made in another state's court, or sharing jurisdiction with another state's courts, the consensus at the Commission meeting was that involving another state's courts to this extent would further complicate the process.

4. Policy changes

- Identifying parents by tracking child support payments rather than depending solely on the adjudicated parent to identify the other parent.
- Earlier initiation of ICPC process. At the time of adjudication, if relatives have been identified as potential placements, an ICPC should be initiated as a "reasonable effort" to finalize the permanency plan, even if the plan at the time is reunification. This was seen as a critical step in timely concurrent planning when relatives live out of state.
- Creation and distribution of sample court orders, especially priority placement orders.

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- Initiating discussion with receiving state regarding jurisdiction transfer after child has been placed in the state for a year.