The current Interstate Compact on the Placement of Children (ICPC or current ICPC) has been around for over 40 years. While it was enacted to ensure the safe movement of foster and adoptive children between states, it has not achieved that goal. Over the years, there have been many complaints about the ICPC with little done to make it work better. That is until recently. A new proposed ICPC promises to improve the interstate placement process by clarifying roles and responsibilities, setting timetables, ensuring greater oversight and accountability, and offering a dispute resolution process. These and other improvements are the focus of this article.

The basics of what the ICPC is and how it works are found in an excellent article by Cecilia Fiermonte, MA, JD, in the July 2002 ABA Child Law Practice. I urge you to read it along with this article for background on the ICPC and to understand the proposed changes.

As the ICPC exists today, judges can make a difference for children in the interstate process by picking up the phone and speaking with their state’s ICPC administrator or the judge in the other jurisdiction where the child may be going. I have found my state’s ICPC administrator and judges in other states to be very helpful in moving an agency to complete its home study.

I have also received calls from judges who need help because of some delay in the process that needs an extra nudge. These calls are not to tell the agency what decision they are to make but rather to ask the agency to make a decision so that the judge can then try to take other steps toward permanency for a child in the event he/she is not allowed to move to the receiving state.

I have also heard judges say that they have ignored the ICPC and made the placement without the required home study. They seem proud that they were able to move the child quickly; and while prompt movement of children is important, safe movement of children is more important. We judges are able to encourage the first and help ensure the second.

Reforming the ICPC: Key Steps
Four events have shaped the proposed ICPC changes:

- The American Bar Association (ABA), House of Delegates passed a resolution in August 2003 supporting timely disposition of requests for interstate placements and cooperation among state, local, and territorial officials responsible for seeking and granting such placements. It urged improved laws, policies, procedures and practices on

"Change is good!," exclaims Dilbert on a sweatshirt I saw years ago. “You go first” is his directive to each of us. Changing the system for children in foster care who must move from one state to another is the promise of the proposed Interstate Compact for the Placement of Children (proposed ICPC). There is still much to do to achieve that goal.

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E-mail: childlawpractice@staff.abanet.org • Internet: http://www.childlawpractice.org
CASE LAW UPDATE

Special Needs Child Not Entitled to Retroactive Adoption Subsidies

A one-year-old child was placed with foster parents in 1998. The child’s parents’ rights were terminated a year later and the foster parents then adopted her. A preadoption child profile given to the foster/adoptive parents noted that the child had made significant progress while in the foster parents’ care and was developmentally on target. The profile also cited the birth families’ significant health issues, including substance abuse, mental health problems, heart disease, high blood pressure, eczema, and diabetes.

Four years later, the adoptive parents requested adoption assistance payments for the child from the child welfare agency. The child had started to show behavior problems that the adoptive parents believed were tied to her family history. The agency denied the request, however. On appeal, an administrative judge (ALJ) affirmed the agency’s denial after finding no evidence that the child had a physical, emotional, mental, or genetic condition at the time of adoption. Without this evidence, the child did not meet the definition of a special needs child and was ineligible for adoption assistance.

The Secretary of the Department set aside the ALJ’s order and remanded for a new hearing to allow testimony from the child’s therapist, who had examined the child in 2004. At the hearing, the child’s therapist said that the child’s preadoption profile stated that the adoptive parents would need to be sensitive to the birth family’s history and how it may affect her future. The therapist said she diagnosed the child with general anxiety disorder, attachment difficulties, and early trauma.

The ALJ found that the child suffered physical, emotional, and mental problems that were consistent with early trauma and were linked to her birth family’s history. This time, the ALJ found the child met the definition of a special needs child and that the agency had withheld key information from the adoptive parents about the child’s birth family’s history and the availability of adoption subsidies. The ALJ ordered adoption subsidy to begin as of the date of the termination of the birth parents’ rights. The agency appealed.

The Commonwealth Court of Pennsylvania reversed. The agency argued that adoption assistance should not have been ordered because there was no evidence that the child had special needs at the time of the adoption. It also claimed that evidence showing the child’s current behavior problems did not meet the parents’ burden to show their child had special needs.

The court found the child’s therapist’s testimony did not diagnose any disorders at the time of the child’s adoption. Rather, it was limited to disorders the therapist observed in 2004. While the therapist linked the child’s current behaviors to her family history, the court found this was too speculative to conclude that the child actually had a physical, mental, or emotional handicap at the time of the adoption.

The parents countered that the child qualified as special needs based on the birth family’s history of medical and mental disorders. They claimed the therapist’s testimony and the preadoption profile identified the child’s behavioral...
disorders at the time of the adoption.

The court agreed with the agency, finding that an adoptive family is not eligible for adoption subsidies based on a physical, mental, or emotional condition arising after the adoption. The child’s therapist stopped short of diagnosing the child as having a special need at the time of the adoption. Further, the parents cited no authority for their position that information in the preadoptive profile about mental health and medical diseases in the child’s birth family represented proof of a genetic condition that would place the child at risk for developing a disease or handicap.

Without such a diagnosis or authority to use information in the preadoptive file as proof of a genetic predisposition, the parents failed to show the child had special needs at the time of the adoption.

The court therefore concluded that the ALJ improperly ordered the agency to pay retroactive adoption subsidies for the family and reversed.

**Editor’s Note:** In Allegheny County Office of Children v. Dep’t of Pub.

## Children Not Entitled to Dual Representation


A Connecticut child welfare agency petitioned to terminate a couple’s rights to their three children. Separate counsel was appointed for the parents and their children. During the termination hearing, the children’s lawyer supported the agency’s position that terminating their parents’ rights was in children’s best interests. Although the court recognized the parents’ and children’s mutual love for one another, it determined the agency had proved the allegations and terminated the parents’ rights.

The parents appealed, challenging the trial court’s failure to appoint a guardian ad litem for the children, in addition to a lawyer. The parents claimed the trial court was constitutionally obligated to appoint an independent lawyer to advocate the express wishes of the children when those wishes conflicted with the position advocated by the children’s appointed lawyer.

The Supreme Court of Connecticut affirmed. The appellate court found the parents had standing to raise their claim since inadequate representation of their children could harm them and their rights were intertwined with their children’s rights.

The parents claimed that although the trial court appointed a lawyer for the children, the children did not receive conflict-free representation. They claimed the children’s lawyer supported the agency’s position to terminate their rights, despite the children’s expressed wishes to stay with their parents. Because of this conflict of interest, the parents argued the trial court was constitutionally required to appoint an independent lawyer to advocate the children’s wishes.

Considering the parents’ claim, the court explained that a court must intervene when it suspects a child’s lawyer is not advocating for the child’s expressed wishes. In such circumstances, the court must conduct an inquiry to determine if the lawyer is representing the child according to the Rules of Professional Conduct.

Borrowing from the criminal context, the court examined the requirements for demonstrating conflict-free representation of counsel. It found two circumstances that impose a duty by the court to ask about a conflict of interest. First, the court must intervene when an objection is raised at trial. When no objection is raised at trial, the defendant must show that a conflict of interest affected his lawyer’s performance.

Second, the court must intervene when it knows, or reasonably should know, that a conflict exists. The evidence must be sufficient to alert the trial judge that the defendant’s right to effective assistance of counsel is in jeopardy.

The court found the record in this case was insufficient to determine if the trial court knew or should have known of a conflict between the children’s wishes and their lawyer’s advocacy. The only evidence of a conflict between the wishes of the children and their lawyer’s position at trial involved a psychological report in which one child expressed a wish to return to her parents. However, at trial, the children’s foster mother testified that the child said she wanted to live with her and her husband forever. Without more, the trial court could not have known that a conflict existed. Therefore, the trial court did not have a duty to examine the lawyer’s representation.
In re A.T.A.,
District of Columbia
tion statute.
himself in compliance with the termina-
tional disposition and termination
process rights by conducting a simulta-

DEPENDENCY, APPEALS

Where trial court closed a child welfare
case based on improved circumstances
and finding that children were no longer
at risk, father’s appeal of original depend-
ency adjudication was moot; father’s
primary basis of appeal, the “social
stigma” from the dependency adjudica-
tion, was not so important to the public
interest to override the mootness doctrine.

In re A.N.,
Iowa
termination of parental rights petition
without mother’s consent.

In re Deztiny C.,
Nebraska
father about child so that he could take
steps to contact child and intervene in a
meaningful way.

In re D.D.,
California
the issue during trial forfeited the issue
on appeal.

California
In re Daisy D.,
California
no evidence sug-
gested that the sibling relationship would
be affected, and mother’s failure to raise
this issue during trial forfeited the issue
on appeal.

In re Daisy D.,
California
DEPENDENCY, SIBLINGS
Trial court did not have duty to consider
whether child’s adoption would harm
sibling relationship; no evidence sug-
gested that the sibling relationship would
be affected.

In re D.D.,
California
DEPENDENCY, REPRESENTATION
Termination proceedings against an
unrepresented minor who was the pre-
sumed father were fundamentally unfair
and were therefore vacated; although
father did not personally appear for
termination proceedings, trial court
incorrectly failed to appoint a guardian ad
litem for the minor father.

In re T.L.B.,
California
DEPENDENCY, SIMULTANEOUS
HEARINGS
Trial court did not violate father’s due
process rights by conducting a simulta-
aneous disposition and termination
hearing; father received a full evidentiary
hearing and an opportunity to defend
himself in compliance with the termina-
tion statute.

In re A.T.A.,
District of Columbia
ADOPTION, CONSENTS
Clear and convincing evidence supported
trial court’s conclusion that mother
withheld consent to adoption against
children’s best interests; trial court
carefully considered six factors outlined
in the statute to grant the adoption
petition without mother’s consent.

In re Harold,
Maryland
TERMINATION OF PARENTAL RIGHTS,
DISABILITIES
Mother’s neurological problems, which
were caused by a stroke and required
mother to live in a nursing home, met
statutory definition of “disability” to
terminate her parental rights; mother had
profound neurocognitive deficits, lacked
good judgment, was unable to think and
reason at higher levels, was unaware of
dangers, and was unable to recognize
when she was being exploited.

In re Harold,
Maryland
TERMINATION OF PARENTAL RIGHTS,
AGGRAVATED CIRCUMSTANCES
Father’s prior conviction in Texas for
indecent exposure constituted sexual
abuse under Montana law and established
aggravated circumstance to forego
reunification efforts and move directly to
termination of parental rights.

In re Harold,
Montana
TERMINATION OF PARENTAL RIGHTS,
ABANDONMENT
State failed to prove father intended to
abandon child six months before filing of
termination of parental rights petition
since child welfare agency did not inform
father about child so that he could take
steps to contact child and intervene in a
meaninngful way.
In re Ethan M., 723 N.W.2d 363 (Neb. Ct. App. 2006). TERMINATION OF PARENTAL RIGHTS, AGGRAVATED CIRCUMSTANCES
Evidence of aggravated circumstances did not exist to excuse reasonable efforts requirement to reunify father with biological son since son did not suffer any physical injuries while living with father and there was no other evidence of abuse or neglect; prior abusive incidents involving mother’s children from a previous marriage while biological father was married to mother and living in same home were not material to determining if agency had to make reasonable efforts to reunify father with biological son.

New York
Father’s mental illness prevented him from adequately caring from his children and supported terminating his parental rights; psychologist’s report stated that father had poor impulse control and personality disorders that prevented him from caring for children, and father’s sex offender treatment counselor stated that father would require support services for life and that he had made little progress in 3 ½ year treatment program.

North Dakota
In re T.A., 722 N.W.2d 548 (N.D. 2006). TERMINATION OF PARENTAL RIGHTS, CONTINUED DEPRIVATION
Father’s history of incarceration supported trial court’s finding that children’s deprivation was likely to continue to support terminating his parental rights; father showed little interest in being part of children’s lives, and his job instability and inability to secure adequate housing made it unlikely that he would overcome children’s deprivation in reasonable time.

Ohio
In re E.R., 2006 WL 2661046 (Ohio Ct. App.). DEPENDENCY, HEARSAY
Juvenile court properly found that child’s statements to physician that she did not want to live with her family anymore and that she had suicidal and homicidal thoughts and voices telling her to kill people were not hearsay since they were not offered for the matter asserted; even if statements were hearsay, they fell within the exception to the hearsay rule for statements made for the purpose of medical diagnosis and treatment.

Utah
State ex rel. B.A.P., 2006 WL 3197183 (Utah Ct. App.). TERMINATION OF PARENTAL RIGHTS, APPEALS
 Expedited timeframes in appellate rules governing child welfare cases did not violate state constitution’s right to appeal by providing insufficient time to review record and transcript and prepare appellate legal argument; rules recognized and addressed problem by requiring trial attorney to prepare petition describing legal file, trial exhibits, trial testimony and court rulings relevant to appeal, and making audio recordings of trial proceedings immediately available for small fee.

State v. S.D., 2006 WL 3231261 (Utah Ct. App.). TERMINATION OF PARENTAL RIGHTS, EXPERT WITNESSES
Trial court’s decision not to admit expert testimony about ultimate issue of child’s best interests in termination of parental rights case was not an abuse of discretion since parties stipulated to bond between mother and child and court received other testimony from one of mother’s experts on ultimate issue, therefore expert’s testimony would have been cumulative.

Virginia
Noncustodial father lacked statutory right to voluntarily relinquish his parental rights to two children; state statute provides a way for custodial parents to relinquish parental rights, but no such provision exists for noncustodial parents.

Washington
Mother was denied her due process right to effective assistance of counsel when her lawyer failed to object to introduction of written psychiatric evidence from expert witnesses who were absent from termination or parental rights hearing; court relied on written expert opinions, which were highly damaging to mother, and incorporated them verbatim into its findings.

In re H.S., 144 P.3d 353 (Wash. Ct. App. 2006). DEPENDENCY, VOLUNTARY COMMITMENT
Fifteen-year-old child who suffered from many psychological problems met definition of “dependent child” based on parent’s inability to pay for his continuing care in residential treatment facility and their inability to meet his psychological needs in their home; under the circumstances, minor was in danger of damaging his psychological or physical well-being.

FEDERAL CASES
Sixth Circuit
After mother’s custody rights to daughter had been terminated, federal habeas jurisdiction was not available for mother’s claim that daughter was being unlawfully detained by Ohio child welfare agency and should be returned to her custody; under Supreme Court’s 1982 decision in Lehman v. Lycoming County Children’s Services, 458 U.S. 502, federal courts lack habeas jurisdiction to review state court judgments involuntarily terminating parental rights.

Seventh Circuit
Sanchez v. Barnhart, 467 F.3d 1081 (7th Cir. 2006). CHILDREN’S RIGHTS, SUPPLEMENTAL SECURITY INCOME
Twelve-year-old child who had been sexually abused when she was young did not qualify as disabled to receive Supplemental Security Income benefits; court did not credit mother’s description of child’s behaviors, which she based on a neuropsychologist’s diagnosis, but instead credited a clinical psychologist’s opinion that the child had no serious psychological issues.

Via v. LaGrand, 2006 WL 3333019 (7th Cir.). LIABILITY, INVESTIGATOR
Appellate court lacked jurisdiction to review investigator’s appeal of summary judgment order denying him qualified immunity for his actions in child abuse investigation in which he indicated child care provider for abuse and neglect without any evidence to support finding; fact issues remained over whether investigator lacked evidence to indicate provider.

Call 202/662-1724 for a copy of any case reported here.
interstate placement of children in juvenile or family court in
cases involving child abuse, neglect, delinquency, adoption, or guardianship.²

- The National Council of Juvenile and Family Court Judges (NCJFCJ) passed two resolutions in July 2004. One supported proposed federal legislation relating to the ICPC and the other sought passage of a resolution regarding the current ICPC by the Conference of Chief Justices.³

- The Conference of Chief Justices and the Conference of State Court Administrators passed Resolution 19 in late summer 2004. Resolution 19 supports increased judicial involvement in interjurisdictional movement of children through the Interstate Compact on the Placement of Children (ICPC).⁴

- The new proposed ICPC⁵ was drafted by a group of experts on compacts and child welfare brought together by the American Public Human Services Association (APHSA) and led by Liz Oppenheim, JD. The proposed compact must be joined by the states. As of this writing, it has been enacted by Ohio and New York and is pending in the Oklahoma legislature.

The Proposed ICPC

The proposed ICPC has 18 Articles aimed to improve the current ICPC and to ensure a more effective, efficient, and fair process for the interstate movement of children.

Some notable improvements include:

- More detailed and precise definitions—Article II
- New ways to move children – provisional placements and only a notice requirement for residential placements—Article II
- Creation of the Interstate Commission, which will make and enforce rules governing the interstate movement of children—Articles II, —VIII, and IX
- Clarification of when the proposed ICPC applies and when it does not—Article III

The current ICPC has good intentions, but is plagued by delays, lack of an enforcement mechanism, unclear mandates, and no review process to resolve disagreements. As a result, judges too often ignore it, states use it as a negotiating tool, and children may be moved with little attention to the ICPC’s safeguards and procedures.

The proposed changes to the ICPC seek to ensure a clear and swift process for practitioners to follow when placing children across state lines.

Jurisdiction over child. A major issue while drafting the proposed ICPC centered on what state would make decisions under the proposed ICPC. Would it be the state that sends the child to live in another state, or the state that is receiving a child for placement from another state? Article IV provides an answer.

Section A provides that the sending state retains jurisdiction over the child, but allows sending and receiving state courts to confer in certain circumstances, such as when an issue of child protection or custody is brought before the court in the receiving state.

The sending state court may voluntarily end its jurisdiction over the child under Section C with the agreement of the receiving state. This may occur, for example, when the child is adopted, attains the age of majority under the laws of the sending state, becomes legally independent, a guardianship is created in the receiving state with the agreement of the court in the sending state, or for other reasons spelled out in that Section. The receiving state is also allowed to have jurisdiction over the child on other matters, such as truancy, crime, delinquency, and emergencies.

Placement assessments. Before a child may be moved, sent, or brought to a receiving state, an assessment must occur in the receiving state. Assessments are defined in Article V of the proposed ICPC and replace what is commonly referred to as home studies under the current compact. Once the proposed ICPC is enacted by at least 35 states, the Interstate Commission, which the proposed compact creates, must establish procedures for this process, including the time in which assessments must be done and uniform standards for the assessment of safety and suitability of the interstate placement. When the proposed placement is with a relative, the sending state can ask for a provisional placement as defined by Article II N of the compact.

Approval from receiving state.

Under Article VI, no placement can occur without approval from the receiving state. This is consistent with the current law. However, under Article VI C of the proposed ICPC, if a receiving state denies a...
Responsibility for ongoing support and maintenance. Article VII requires the sending state to continue to be responsible for ongoing support and maintenance of the child. This includes services for the child beyond those public services for which the child is eligible in the receiving state. The receiving state is financially responsible for the cost of the assessment and the ongoing supervision of the placement, unless the states agree otherwise. Once again this is consistent with the current ICPC.

Licensed private agencies and individuals can conduct the assessments and provide the supervision in the receiving state, and the receiving state is allowed to contract for those services. With private placements prior to adoptions, the private agency is responsible for the child and any financial requirements absent a contract to the contrary.

State coordinating board. Each state must create a coordinating board, either by establishing a new advisory council or using an existing board or council to coordinate the state branches of government regarding the compact. Having advisory council members, including judges and lawyers who know about child welfare and the importance of prompt movement of children to safe placements is critical if the proposed ICPC is going to differ from the current one.

Role of the Interstate Commission in rulemaking and enforcement. There has not been consistent implementation of the ICPC across the country, and there has never been a process to uniformly enforce the compact. Articles VIII and IX establish an Interstate Commission for the Placement of Children and an executive committee; detail how that is to happen; and lay out the powers and duties of the Interstate Commission. Among its duties, the Commission will establish rules, provide dispute resolution for the states, issue advisory opinions, and enforce compliance with the compact, in addition to other administrative and ministerial duties.

Essential to the success of the proposed ICPC is the work of the Interstate Commission, which will require effective rules and consistent enforcement of those rules. If those things do not happen, the promise of the proposed ICPC will fail the children in foster care who need to move between states.

Commission operation and oversight. Article X establishes how the Interstate Commission will organize and operate including a requirement that bylaws be adopted within 12 months of its first meeting and that there be open meetings.

Article XI requires that the rulemaking process comply with the Model State Administrative Act or similar administrative procedures act and details how the Interstate Commission will establish, publish, and finalize the rules. This includes a requirement that the Commission must listen to and consider the responses of others to the proposed rules. The final rules adopted will, under Article XI(D) of the proposed ICPC, “have the force and effect of statutory law and shall supersede any state law, rule, or regulation to the extent of any conflict.”

Article XII establishes how the Interstate Commission will oversee the interstate movement of children, dispute resolution for the states, and how the states will help enforce established rules and procedures. It also requires state courts to take judicial notice of the compact and any of its rules in any judicial or administrative proceeding in a member state.

Other important provisions. Each state must have a central compact office; border agreements are permitted with the consent of the Interstate Commission; and the sending state must ensure compliance with the Indian Child Welfare Act (ICWA) in cases involving a Native American child.

The remaining Articles establish how the Interstate Commission will be financed and how a state can withdraw or reenter the compact. It also directs that the provisions of the proposed ICPC be liberally construed to achieve its purpose, be binding on the states and supersede conflicting state laws, and that the Interstate Commission work with and make reasonable efforts to consult with Indian tribes to establish guidelines so they can use the compact.

Remaining Challenges

The challenges facing the proposed ICPC are genuine, including that it must be passed by at least 35 states. Beyond that, however, are greater challenges including effective bylaws for the Interstate Commission, rules that ensure an effective process, and proper oversight so the new ICPC will lead to substantive change rather than window dressing.

As of this writing, a resolution is pending before the Board of Trustees of the National Council of Juvenile and Family Court Judges that supports state enactment of the proposed ICPC while raising concerns about several issues not addressed in the language of the proposed ICPC. Most of these issues can be addressed as the ICPC rules are proposed, adopted, and implemented. Most importantly, the board resolution urges “that all participants involved in the ICPC process have a sense of urgency in their work and that all actions taken … occur while
recognizing that delays in the ICPC process are harmful to children awaiting placement.” This view is consistent with the plea of Judge William Byars, Jr., who urged attendees at the Delaware State Leadership Summit on the Protection of Children to perform their tasks not in adult time but in the child’s time because children can’t wait.7

Some remaining concerns include:

Establishing and enforcing deadlines. Clear, enforceable deadlines and high levels of efficiency are essential in the ICPC process. The rules established by the Interstate Commission must have legally binding deadlines for all stages of the process of interstate placements.

Collecting data. Data on all parts of the process must be collected and reported including compliance by states with established deadlines. The Children’s Bureau at HHS and Congress will need to collaborate with and assist the Interstate Commission as it develops an automated data collection system to track the interstate movement process and its timeliness. Data must be provided to the Children’s Bureau at HHS at least annually so it can consider how to improve the process, support the Interstate Commission, and report its findings to Congress.

Supporting border agreements. Consistent and liberal support of border state agreements is needed to speed movement of children across state lines when needed. It is important to empower staff of the Interstate Commission to work with states that wish to create such agreements.

Providing a review process. Another real concern is whether the state Administrative Procedures Acts will apply to cases and, if so, their effectiveness. A related issue is whether there will be any appellate process when a receiving state objects to a decision.

Supporting judicial communication. Under the current ICPC, more judges are becoming involved with interstate placement cases and are working to move them along. The rules developed by the Interstate Commission need to allow judges in the sending state overseeing a child’s case to speak with and work with the judges in the receiving state where the child’s potential placement may occur to help ensure effective and swift movement of these cases.

Permitting interstate hearings and testimony. Another area that the rules need to address involves the need for interstate testimony and hearings where judges in both jurisdictions cooperate through video or telephone conferencing, and where lawyers, who may not be admitted to practice in both states, are permitted to participate in the hearings without becoming licensed in both states.

Providing a process for transferring jurisdiction. A clear, workable process is needed to transfer jurisdiction of a case from the sending state to the receiving state. This includes the ability to register orders from the sending state so the receiving state may obtain jurisdiction over the child and the case. In that regard, states need to give full faith and credit to other state courts’ findings of abuse and neglect and allow transfer of the court proceedings to the other state. This includes establishing more explicit guidelines for the transfer of guardianships from one state to another.

Holding judges accountable. Under the current ICPC, some judges choose, usually out of frustration, to ignore the requirements of the compact. If this new compact is going to succeed, judges will need to comply with the law. Judges and others will also need to notify appropriate officials when judges from other states fail to follow the compact’s requirements.

Providing a dispute resolution process. The Interstate Commission needs to establish a procedure that allows for binding resolution of disputes of interstate placement decisions either by the Commission or by a body established by the Commission.

Encouraging Interstate Commission involvement. The proposed ICPC allows for associate nonvoting members to be appointed to the Interstate Commission. It is vital that there be representatives of the ABA, NCJFCJ, Child Welfare League of America, National Association of Counsel for Children, Conference of State Court Administrators, and Conference of Chief Justices, as well as representatives of other national organizations, included as associate nonvoting members of the Interstate Commission.

Conclusion

The proposed ICPC promises the foster children of this country more effective interstate collaboration when they are being placed across state lines. Early enactment of the compact by the required 35 states is the critical first step in the process. Thereafter the Interstate Commission, its executive committee, and national organizations and individuals interested in this issue must work
to ensure an effective, fair, and efficient process is implemented. With that, the promise of the Interstate Compact for the Placement of Children will be realized, and we all can know we have followed Dilbert’s admonition that “Change is good! You go first.”

Judge Stephen W. Rideout (ret.) is the former chief judge of the Alexandria Juvenile and Domestic Relations District Court, Alexandria, VA. He now serves as a judicial consultant on child welfare and juvenile justice issues.

Endnotes
2. Ibid.
6. Ibid, 23.

RESEARCH IN BRIEF

Substance Abuse Services Often Not Delivered to American Indian Caregivers

American Indian caregivers with alcohol, drug, or mental health problems are less likely to receive services, according to a new study. Researchers at the University of Colorado, Health Sciences Center, used national data involving children in the child welfare system to compare American Indian caregivers with White, Black, and Hispanic caregivers in their need for and receipt of alcohol, drug, and mental health treatment. Caregivers were evaluated at the time of the initial child welfare investigation for the following risk factors:

- serious alcohol or drug problems
- serious mental health or emotional problems
- physical impairment
- impaired parenting
- active and current domestic violence

These caregivers were evaluated again at 18 months to determine if they received assessments, referrals, and services for identified alcohol, drug, and mental health problems.

Among caregivers identified at investigation with alcohol, drug, and mental health problems, only 15% of the American Indian caregivers received a formal assessment; 25% were referred to services; and only 12% received services. American Indian caregivers were much less likely to receive services than Hispanic caregivers, although not significantly less likely than White or Black caregivers.

The researchers linked the disparity in treatment of American Indian caregivers to the complexity surrounding oversight of Indian child welfare matters between tribal and state authorities. The researchers called for better education efforts for nontribal service providers and technical assistance to tribes for improving existing service systems in this area.

The researchers also found the age of the child affected whether caregivers received services. Caregivers of younger children (3-5 years) received more services. Researchers attributed this trend to the concern that younger children would suffer greater harm from a caregiver’s substance use. However, they noted that older youth are also vulnerable, since untreated alcohol, drug, and mental health problems increase the chance that older youth will engage in risk-taking behaviors and experiment with substance use.

Another noteworthy trend is that the co-occurrence of alcohol, drug, and mental health problems increased the odds that the caregiver would receive services by more than double.

Finally, the study found that, nationally, most caregivers with identified alcohol, drug, or mental health problems do not receive treatment services. This suggests that child welfare agencies and related organizations need to improve efforts to ensure quality service delivery for these caregivers.

This study was published in the American Journal of Public Health, April 2006, Vol. 96(4), pp. 628-631.
Restoring Parental Rights: Giving Legal Orphans a Chance at a Family

By Cameryn Schmidt and Brenda Dabney

“The only reason a juvenile court terminates parental rights is to free the child for adoption. If the child is not adoptable, termination merely renders the child a legal orphan.”—In re J.I., 134 Cal. Rptr. 2d 342 (App. Ct. 2003).

Creating legal orphans is a decades-old problem. Recently, legal advocates and judges working with abused and neglected children in California’s child welfare system got creative to solve it. The result was groundbreaking legislation that allows California’s juvenile courts to reinstate parental rights when in a child’s best interest. Advocates and policymakers nationwide might consider modeling similar efforts on California’s work so that more children have the option of exiting legal orphanhood.

Legal Orphan Limbo

Legal orphans are dependent children who were freed for adoption but were never actually adopted. Typically, the juvenile court’s finding that the children were adoptable was based on the availability of a specific prospective adoptive parent and after the court terminated parental rights, the adoptive placement failed.1 Often, these children are older, have special physical or emotional needs, or are part of a designated sibling group—making it difficult to find adoptive homes for them.

According to a 2003 report by the California Department of Social Services, as of July 30, 2002, there were 5,846 legally-freed children in the state who were not yet placed in an adoptive home. For nearly 1,000 of these freed children, their case plan goal was no longer adoption. In addition, in one 12-month period, over 100 children were removed from their adoptive homes.2

Until recently, California law offered no remedy for children left orphaned by the state. Juvenile courts lacked any authority to set aside an order terminating parental rights, even where circumstances had changed dramatically and it was clear the child would no longer be adopted. The reason was to prevent parents from collaterally attacking the termination order and delaying the child’s right to a permanent home.3 However, for children who were unlikely to ever be adopted, the law merely rendered them permanent orphans.

In 2004, responding to a 14-year-old foster child’s unsuccessful plea to undo the order terminating his parents’ rights after the planned adoption by his stepfather failed to materialize, California’s First District Court of Appeal invited the California legislature to consider allowing juvenile courts to reinstate parental rights where the child would otherwise be left a legal orphan. The court lamented: “To avoid such an unhappy consequence, legislation may be advisable authorizing judicial intervention under very limited circumstances following the termination of parental rights and prior to the completion of adoption.”4

California’s Solution

The court’s invitation was accepted by the Children’s Law Center of Los Angeles which, together with the Judicial Council of California, the County Welfare Directors Association of California, and other children’s advocacy organizations, began crafting a legislative solution to the legal orphan problem that impacts as many as 1,000 children each year in California. The result was passage of Assembly Bill 519, codified in California Welfare & Institutions Code § 366.26(i)(2), which took effect January 1, 2005.5

The statute allows a dependent child who has not been adopted within three years of the date parental rights were terminated to petition the juvenile court to reinstate parental rights. The child may file the petition before three years have passed if the state adoption agency stipulates. The court must also have determined that adoption is no longer the child’s permanent plan goal. Assuming the child makes a prima facie showing of changed circumstances, such that it would now be in his or her best interest to reverse the termination order, the court is required to set a hearing and give notice to the former parent(s). Evidence that there is currently no one who is willing or able to adopt the child, that the parent’s circumstances have significantly improved, and/or that the child wishes to return to the parent may be used to support the petition. If the evidence is clear and convincing that the child is no longer likely to be adopted and it is in the child’s best interest to reinstate parental rights, the court must grant the petition.

Some adoption advocates were concerned that parents might purposely try to derail pending adoptions to take advantage of the new law. Therefore, the statute was tailored to allow only the child, not former parents, to bring the petition. Cal. Welf. & Inst. Code § 366.26(i)(2) also contains an express retroactivity clause so that dependent children who were left legal orphans years ago can still benefit.

Once parental rights are reinstated, the judge may order the child returned to the parent’s custody. In
that case, the court will likely order the child welfare agency to provide services to assist the family with the transition and maintain jurisdiction temporarily to monitor the child’s progress. Or, the court may grant an additional reunification period for the parent. In some cases, return to a parent may not be an option. An older child may simply want his or her legal relationships with biological relatives (including inheritance rights) restored before aging out of the foster care system.

**Practice Tips**

- Consider whether it is in the child’s interest to reinstate the rights of just one parent or both parents. Occasionally, one parent may pose such a risk that it would not be in the child’s interest to allow that parent any legal rights to the child.

- Determine whether the parents’ whereabouts are known for purposes of providing notice; if not, a due diligence search and notice by publication will likely be necessary. Also, determine if the court will require the agency or the child to provide notice.

**Stephen’s Story**

_The following story shows how the California legislature helped a youth in foster care. “Stephen” is a composite client drawn from a few clients who filed petitions to restore parental rights._

At age three, Stephen entered the foster care system when his mother began abusing drugs and alcohol. Recently abandoned by Stephen’s father, his mother began a binge that lasted several months before Stephen was removed from her care by social workers. He was initially placed with his grandmother who, though elderly, wanted to help her daughter while she got treatment. However, after a year of failing numerous treatment programs, his mother’s parental rights were terminated to free Stephen for adoption.

Due to her ailing health, Stephen’s grandmother was not interested in adoption, and he was instead placed with a young couple who were thrilled at the chance to adopt and raise him as their own. However, before the adoption was finalized, the couple had a change of heart when Stephen began to develop some behavioral problems. The adoption never occurred, and Stephen was moved back into his grandmother’s home.

Last winter, when 10-year-old Stephen came to the Children’s Law Center of Los Angeles, and asked how he could go back to live with his now-sober biological mother. His dependency court lawyer was happy to tell him that under a new law, he could start the process to restore his mother’s parental rights.

That afternoon, Stephen and his lawyer sat down and talked for a while about how he felt about losing the chance at having a “real family” when his prospective adoptive parents decided that adopting a growing boy was no longer in their life plans. He said that at each review hearing, his mother had been more clear-headed and excited about visiting him. He described how their visits started out at a local fast-food restaurant with her unsure if he liked ketchup on his fries or not and increased to overnight visits at her newly-furnished apartment in a drug-free neighborhood and a good school district.

He said his mother would show him pictures of his cousins and grandparents, after he had spent years without having any family connections. He said these things and much more, as he described what he saw as hope for a “real family” with his own mother after so many years in foster care.

After listening to Stephen, during what was probably the most important conversation he ever had with an adult, his lawyer told him that based on all he described she thought it would be possible to go to the judge in his case, ask her to reinstate his mother’s rights, and allow him to return to live with her in her new home. Stephen was overjoyed, and his lawyer felt for the first time in many weeks that she was about to play an important role in reunifying a family. Just a year ago, that would not have been possible.

A petition was filed to reverse the termination of parental rights. Given the circumstances of Stephen’s legal limbo, the court agreed it was in his best interest to reinstate his mother’s parental rights and return Stephen to her care.

**Conclusion**

The addition of Welf. & Inst. Code § 366.26(i)(2) in California has turned a previously insurmountable legal problem into a new opportunity to provide children the hope of a “real family.” At minimum, it allows juvenile courts to correct a mistake that does not benefit a child who is never adopted. As lawyers representing children in the most important cases of their lives, we owe it to them to use all our talents, both legal and legislative, to find creative ways to repair their families when possible and not subject them to the unhappy consequence of life as a permanent legal orphan.

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**Endnotes**


6 Names changed for confidentiality.
Teen Pregnancy Rates High Among Foster Youth: How Advocates Can Help

New research on teen pregnancy among foster youth suggests that frontline advocates have a role to play in engaging youth and changing their behavior and attitudes about sex. Consider these trends:

- Almost half of young women in foster care become pregnant by age 19 (compared to one-fifth of nonfoster youth).
- 46% of teen girls in foster care who have been pregnant have a second pregnancy by age 19 (compared to 29% of nonfoster youth).
- Teen girls in foster care are more likely to have sexual intercourse by age 19 than nonfoster youth (90% vs. 78%).

A recent research brief published by the National Campaign to Prevent Teen Pregnancy compared data from two major studies—one on teens in foster care and one on teens in the general population. The data show that teen girls in foster care are at a higher risk of engaging in sexual relations, becoming pregnant, and having a child while in foster care than teens in the general population. This is true even though foster youth are twice as likely to have received family planning services by age 17 than youth in the general population. Girls in foster care who have been pregnant by age 19 were 70% more likely to have received prenatal care during their pregnancy than girls in the general population (62%).

This trend continues once teens leave foster care, as foster youth who age out of the system at age 19 are more likely to become pregnant at least once compared to 19 year olds who are still in foster care. The problems are compounded for youth who leave foster care since many find themselves without health insurance needed to access critical health care services, such as prenatal and postpartum services. The research found that just 47% of foster youth who left the system by age 19 had health insurance, compared to 78% of 19 year olds in the general population.

Because more girls who leave foster care become pregnant and have a second pregnancy than foster youth who remain in foster care, they have a pressing need for reproductive health care services. The research showed that once sexually active teens left foster care, they were more likely to report not using birth control than those still in the system. The researchers did not know whether this reflected risky behavior or a deliberate attempt by the teen to have a child. One trend in the research was that at age 19, one-third of female foster youth wanted to become pregnant and to marry the father—a finding that suggests that reducing teen pregnancy must include more than just access to birth control.

Most teen mothers in foster care live with their babies (96%), a finding that emphasizes the need for legal permanency planning to address the needs of teen parents and their babies. The number of boys who have fathered children while in foster care and who live with those children is relatively low (5.6% compared to 30% of boys who have left foster care)—a finding that highlights the need to also include and involve young fathers in permanency planning for their children.

Practice Tips

Advocates who work directly with teens in foster care—legal professionals, child welfare caseworkers, service providers, and others—can play a role in changing these trends. The researchers suggested the following practice tips:

- Address barriers that prevent teens in foster care from seeking services and taking steps to protect themselves from pregnancy.
- Begin efforts early to help foster youth avoid pregnancy.
- Ensure prenatal care is available and used by teens in foster care to support their and their babies’ health.
- Form relationships with teen pregnancy prevention professionals and work together to educate teens about sex, love, and respectful relationships.
- Evaluate teen pregnancy programs for their effectiveness with foster youth. Many programs exist, but little is known about how well they respond to the unique issues foster youth face.
- Address teens’ motivations for becoming pregnant, considering specific issues teens in foster care face: poor relationships with parents, inconsistent relationships with caregivers, histories of sexual abuse.
- Target the motivation among many foster girls to become parents early and encourage them to delay childbearing until they are older.
- Include teen boys in pregnancy prevention efforts. Ensure programs, materials, services, and messages about pregnancy prevention focus on boys as well as girls.
- Train and support service providers who counsel youth on sexual health issues. Training topics should include adolescent development, teen sexual behavior and teen attitudes about sex.

Changing teens’ sexual behavior won’t happen overnight. Changing attitudes and deeply seated motivations about sex and pregnancy takes time and effort. Advocates can play a role by talking to and listening to youth, finding out their attitudes about sex, and counseling them about sexuality and pregnancy. They can also connect them to a teen pregnancy program or trained service provider that can help.

—Claire Sandt Chiamulera

Endnotes
Federal Child Welfare Law Developments

By Howard Davidson

Four legislative developments enacted in 2006 will reshape child welfare activities in the year ahead. These laws are wide-ranging, touching on new Title IV-E requirements, two new court improvement grant opportunities, strengthened interstate placement procedures, caregiver background checks, and enhanced funding to support a range of child and family services. Highlights of these four laws appear below.


This law amends Section 472(a) of the Social Security Act (SSA) and repeals the Rosales v. Thompson, 321 F.3d 835 (9th Cir. 2003) decision (affecting California and other states in the 9th Circuit). It makes many relative caretaker placements ineligible for Title IV-E. The projected impact in federal cuts is $397 million over five years and $879 million over 10 years.

Key provisions:

Limits on Title IV-E Administrative Costs

A new Section 472(i) of the SSA limits states from claiming Title IV-E administrative costs while a child is in an unlicensed home or facility, or when a child has been removed from a relative’s home and placed in foster care. If a child is being placed with another relative, a claim can be made for the average time it takes to license or approve that relative, or 12 months, whichever is less. Alternatively, a claim may be made for up to a calendar month for a child transitioning from an institution outside the foster care system (e.g., a hospital or juvenile facility) to a licensed or approved foster home or institution. The projected impact in federal cuts is estimated at $180 million over five years and $411 million over 10 years.

IV-E administrative support, which is available for children who are still at home but are “at imminent risk of removal,” will now require states to redetermine such risk no less than every six months. However, the IV-E eligibility test is simplified: the only point of “means testing” will now be the point at which the child was originally removed from his/her home (i.e., no redetermination will be needed at the time adoption proceedings begin).

PSSF Funding Increase

The law provides a one year $40 million increase in federal Promoting Safe and Stable Families (PSSF) program (IV-B) funding. This brings the total to $345 in mandatory (guaranteed) PSSF funding.

Continued IV-B/IV-E Eligibility During Open Court Proceedings

A new provision has been added that is consistent with another provision in the Child Abuse Prevention and Treatment Act (CAPTA) amendments of 2003. Title IV-B and IV-E eligibility would not be lost if a state chooses to make court proceedings open to the public. At a minimum, as with the CAPTA amendment, the “safety and well-being of the children, parents, and family” must be ensured.

Targeted Case Management Changes

The law changes the Medicaid-supported “Targeted Case Management” (TCM) services. These changes may affect foster children who receive such services, given a congressional expectation of cuts in Medicaid costs that may shift to the foster care system. As of 2001, 38 of 50 states used TCM services for foster children, resulting in greater access to medical, prescription drug, dental, rehabilitative, inpatient, clinic and home health care services.

New Court Improvement Grants

Two new grant programs have been added to the Court Improvement Program through FY 2010. Awards will go to the highest court of each state (a 25% match is required). Each is a $10 million annual grant program, and is in addition to the original $10 million/year Court Improvement Program grant. The two new grant programs will support:

1) Improving courts’ timeliness, including ensuring safety, permanence, and well-being of children in foster care cases through improved data collection and better coordination between the courts and the child welfare agency; and

2) Training judges, attorneys, and other legal personnel in child welfare proceedings, including cross-training with child welfare agency staff and contractors.

A key eligibility requirement for these is a demonstration of “substantial, ongoing and meaningful collaboration” between the child welfare agency and the courts as
well as (where applicable) meaningful and ongoing collaboration with Indian tribes. See ACF Program Instruction ACYF-CB-PI-06-05 (June 2006). HHS says that, at a minimum, there must be a statewide multidisciplinary task force that includes state/local courts, the state agency or agencies under contract for provision of IV-B and IV-E services, and where applicable Indian Tribes.

Two additional court improvement grant requirements were created by other legislation. Also, a provision of the reauthorization of the Promoting Safe and Stable Families legislation has reauthorized the basic Court Improvement Program through FY 2011. These new provisions are described below.


This law adds provisions to federal child welfare statutes, intended to promote more timely interstate placements.

Key Provisions:

Home Studies
Foster and adoptive home studies requested by another state must be completed within 60 days unless, through 9/30/08, the failure is outside of the state’s control, such as a delay in getting requested federal criminal history record checks returned; but that only gives a state another 15-day extension. Once a state gets the completed home study, it has 14 days to determine if relying on the study will be contrary to the child’s welfare. States can contract with private agencies to perform these home studies. A new “Home Study Incentive Payments” grant program of $10 million/year (through FY 2010) will give states $1,500 for each interstate home study completed within 30 days of a request.

Cross-jurisdictional Resources
Each state IV-B Plan must now show “effective use of cross-jurisdictional resources” when placing children. Plans must also show how states are eliminating “legal barriers” to timely interstate adoptions of foster children. Adoption and other permanency plan recruitment efforts are supposed to include state, regional, and national adoption exchanges and electronic exchange systems to promote orderly and timely in-state and interstate placements.

Reasonable Efforts
The IV-E “reasonable efforts” requirements have been modified to require:
1) consideration of interstate placements in permanency planning decisions when appropriate,
2) consideration of in-state and out-of-state permanent placement options at permanency hearings (and whether out-of-state placement is appropriate and in the child’s best interests), and
3) identification of in-state and out-of-state placements when using concurrent planning.

Caseworker Visits
Caseworkers are required to visit each child in out-of-state foster care placement every six months. However, the law permits them to use a private agency, under contract, to perform these visits.

Health and Education Records
A provision of the law unrelated to interstate issues requires the child welfare agency to keep current health and education records for all foster children. When a child is “emancipated” from foster care, the child must be given a copy of their current health and education records at no cost.

Speeding Interstate Placements and Sharing Information
States receiving original court improvement grant funding must assess their effectiveness in speeding interstate placements. They must also assess how well courts in different states share information about interstate placements. Courts are “authorized” by this law to obtain information and testimony from out-of-state agencies and parties, and to have parents and children in other states participate, without requiring them to travel.

Notice and Opportunity to be Heard
For states receiving any court improvement grant funding, all courts, through a statewide court rule, must now ensure that foster parents, preadoptive parents, and relative caregivers are notified of “any” proceedings involving a foster child. These parties also now have a “right” to be heard in “any proceeding,” rather than the prior more limited “opportunity to be heard in any review or hearing” provided by the Adoption and Safe Families Act.


This law requires background checks of foster, adoptive, and other caregivers for children in the child welfare system.

Key Provisions:

Criminal Background Checks

The law will eventually eliminate states’ ability to “opt out” of the criminal record checks provisions in Title IV-E (as of 10/1/08). It requires that criminal record checks be:
1) done on all children (not just those IV-E eligible), and
2) that checks be “fingerprint-based checks of national (FBI) crime
information databases” for any prospective foster or adoptive parent.

State CAPTA eligibility, since 2005, has required criminal background checks (at the state or federal level, or both, at the state’s discretion). This has not only been required for all prospective foster and adoptive parents but also for “other adult relatives and nonrelatives residing in (their) household.”

**Child abuse/neglect registry checks**
The law also requires a “check” with any child abuse and neglect registry of a prospective foster or adoptive parent or on “any other adult living in (their) home” in states in which they have lived during the preceding five years. States must cooperate in providing registry information. Safeguards must also be in place to prevent unauthorized disclosure of registry information, or its use for any purpose other than foster or adoptive placement background checks.

A two-year delay on implementing the criminal and child abuse/neglect registry checks is permitted if new state legislation is required.

**National Registry of Substantiated Child Abuse or Neglect**
The Department of Health and Human Services (HHS), however, without any recognized congressional delays, must establish a “national registry” of substantiated cases of child abuse or neglect. To create this registry, states must provide information in a “standardized electronic form” that HHS will determine, with “case-specific identifying information” that includes the name of the perpetrator and the “nature of” the substantiated case. Registry information may only be accessed by any federal, state, Indian tribe, or local government entity, or any of its agents, who need the information to carry out its legal responsibilities to protect children from child abuse and neglect. HHS must establish “standards for the dissemination of information” in their registry. Within a year from the law’s enactment, HHS must study the feasibility of “establishing data collection standards” for this registry, looking at costs/benefits of such standards, identifying current standards in use, and examining due process procedures.

### 4. Public Law 109-288, the “Child and Family Services Improvement Act” (Reauthorization of the Promoting Safe and Stable Families Program, S.3525)

This is the major designated federal funding source for family preservation and reunification (a.k.a. Title IV-B, Subpart 2). This legislation has been reauthorized every four to five years since 1993. This reauthorization extends the Mentoring Children of Prisoners Program; continues the Court Improvement Program through 2011; and provides an increase from 1% to 3% of all PSSF funds to be set aside for tribal programs, including those operated by a tribal consortium ($40 million/year).

**Key Provisions:**

**Support for Families Affected by Substance Abuse**
The final approved bill, for fiscal year 2007, devotes the $40 million increase in PSSF funds toward supporting “regional partnership” interagency collaborative (competitive) grants that will aid families affected by parental methamphetamine or other drug abuse. Judges and court personnel must be a part of these “partnerships.”

**Standards for Caseworker Visits**
In FY 2008, $5 million of the $40 million increase in PSSF funds will be allocated to states to promote enhanced frequency of caseworker visits to children in foster care. In 2009, that share will grow to $10 million. In 2010 and 2011, the money will be split equally between caseworker visit enhancement and grants for services to families affected by substance abuse.

The law requires states to, within the next fiscal year, describe their standards for the content and frequency of caseworker visits for children in foster care. They must also state what they are doing to ensure foster children are visited monthly and that visits are well-planned and focused on issues related to case planning and service delivery to ensure their safety, permanency, and well-being. The law requires that at least 90 percent of all foster children are visited by social workers at least once a month, starting no later than October 2011.

**Transition from Foster Care**
The law requires that youth be involved in judicial decision making regarding their exit from the foster care system. For youth who have reached age 16, the law requires, at any permanency hearing or any hearing related to a youth’s transition from foster care to independent living, that he or she be consulted in an age-appropriate manner about any proposed permanency or transitional plan.

**Speedy Placement of Newborns**
States are now required to “have policies and administrative and judicial procedures” for children abandoned at or shortly after birth, which enable permanent decisions to be made promptly with respect to the placement of the children. This is similar to an earlier-enacted CAPTA state grant eligibility provision.

**Medical Care for Foster Children**
Child welfare agencies must assure that physicians and other medical professionals be “actively consulted and involved in” health and well-
being assessments and appropriate medical treatment for children and youth in the child welfare system. This is apparently a response to the need for states to better address the health care needs of children in foster care, as identified through the federal Children and Family Services Review (CFSR) process.

**Child Welfare Procedures for Responding to Disasters**

Responding to Hurricanes Katrina and Rita and their impact on affected child welfare systems, the law requires all states, within one year of its enactment, to have procedures providing for how their child welfare agency will respond to a disaster, in accordance with criteria established by HHS. This must include how they will:

1) identify, locate, and continue availability of services for children under state care or supervision who are displaced or adversely affected by a disaster;

2) how they will respond to new child welfare cases in areas adversely affected by a disaster, and provide services in those cases;

3) how they will remain in communication with caseworkers and other essential child welfare personnel who are displaced because of a disaster;

4) how they will preserve essential program records; and

5) how they will coordinate services and share information with other states.

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**Federal Law Calls for Involving Foster Youth in Court**

Last month’s issue featured the article, *Seen and Heard: Involving Children in Dependency Court,* by Andrea Khoury. In addition to the states that have statutory guidance for youth involvement in court proceedings, the federal government recently placed further requirements for older youth aging out of foster care.

Title IV-B of the Social Security Act, which reauthorizes the Promoting Safe and Stable Families program, has been amended by the “Child and Family Services Improvement Act of 2006.” The amendment requires procedural safeguards to assure the court or administrative body conducting a permanency hearing involving older and transitioning youth must consult with the child about the proposed permanency or transition plan. These consultations must be conducted in an age-appropriate manner.” This amendment took effect October 1, 2006. States are allowed up to two years to implement its requirements if statutory amendments are needed.”

The amendment is significant because the federal government now formally recognizes the importance of a youth’s voice in planning for her future and expects judges to engage and involve older youth in permanency hearings that shape their futures. Judges are the final gatekeepers when a youth is leaving the care and security of foster care to begin a life without that support. Judges should see it as their responsibility to ensure that the youth has skills and a support system as they enter adulthood.


** Ibid., Section 10

*** Ibid., Section 12