

Juvenile Court Rule 22

Rule 22. Application of Interstate Compact on the Placement of Children to Out-of-State Parents

1. **Pre-Trial.** Whenever a child is in the custody of the Department of Children and Families (the Department) the court shall proceed as if the Interstate Compact on the Placement of Children (ICPC) is applicable to any placement or custody order to an out-of-state parent. Compliance with the ICPC procedures ensures that the court obtains the information necessary to determine whether the parent is fit or unfit, that the parent can care for the child appropriately, including securing necessary services, support and treatment for the child in the other state, and that the parent's home is safe and appropriate for the child.

A. ICPC Request. The Department shall initially follow the requirements of the ICPC when an out-of-state parent has been identified as a possible placement for the child. A request for an expedited placement decision under ICPC Regulation No. 7 shall be made anytime one of the following criteria is met: (1) the child's unexpected dependency is due to a sudden or recent incarceration, incapacitation or death of a parent or guardian, or (2) the child sought to be placed is four years of age or younger or (3) the court finds that the child has a substantial relationship with the noncustodial parent or (4) the child is currently in an emergency placement.

For all other circumstances, the non-expedited ICPC placement procedure shall be followed, and the Department shall report to the court on the progress of the ICPC request every 30 days.

B. Assessment at the Request of a Party. At the request of a party, and for good cause shown, the Court may order the Department to conduct a comprehensive assessment of the parent pursuant to 110 CMR 5.01, 5.05. The assessment shall include a review of the parent's federal and state criminal history, mental health and substance use history, housing, employment and composition of the current home/living arrangements of the parent. The assessment shall also include information regarding the parent's ability to address the specialized needs of the child. If other children live with the parent, the assessment shall include information regarding those children including information from their schools. Additionally, the person conducting the assessment for the Department shall contact the local police department where the parent resides to review any records of police responses involving the parent as well as review any child services records involving the parent.

Upon the filing of the assessment, the Court shall determine whether there is a reasonable basis to believe legitimate protective concerns about the parent exist. If the Court determines there is a reasonable basis to believe legitimate protective concerns exist, the Court shall continue with the ICPC process. If, however, the Court finds no reasonable basis to believe legitimate protective concerns exist as to the parent, the Court may, in its discretion, determine that the ICPC does not apply. An evidentiary hearing is not required, and the Court may make its determination on the basis of sworn affidavits, but in no event shall a child be placed out of state with a parent without sworn testimony and written findings evidencing no protective concerns and supporting a finding that pretrial placement with the parent is in the child's best interest.

Upon the issuance of a temporary custody order to a parent, the court shall appoint a Guardian Ad Litem (GAL) to report monthly to the court regarding the condition of the child. The GAL is required, as part of their appointment, to make visual contact with the child either in person or virtually on a monthly basis. The report shall be submitted to the court and all parties on a form approved by the Chief Justice of the Juvenile Court. Probation shall also monitor the placement in accordance with probation standards. The GAL, probation and any party may request to advance the case before the court if any issues arise regarding the child's welfare.

C. Assessment Due to Receiving State Refusal. If the receiving state refuses to respond to an ICPC placement request because it has determined that the ICPC does not apply to a parent the Court shall order the Department to conduct a comprehensive assessment of the parent pursuant to 110 CMR 5.01, 5.05, as noted above. The assessment shall include a review of the parent's federal and state criminal history, mental health and substance use history, housing, employment and composition of the current home/living arrangements of the parent. The assessment shall also include information regarding the parent's ability to address the specialized needs of the child. If other children live with the parent, the assessment shall include information regarding those children including information from their schools. Additionally, the person conducting the assessment for the Department shall contact the local police department where the parent resides to review any records of police responses involving the parent as well as review any child services records involving the parent.

D. Applicability of Assessment to Household Members. The information required in an assessment as listed in sections B and C of this rule shall also be reviewed for any person living in the home with the parent and be included as part of the Department's assessment. The Department shall provide releases to a household member to allow access to the information. Refusal of a household

member to sign a release is a factor that the court may consider when determining whether to place the child with the parent.

E. Assessment Hearing. In those cases where the court has determined an ICPC is required but the receiving state refuses to respond to an ICPC placement request because it has determined that the ICPC does not apply to a parent, the court shall schedule an assessment hearing to review the Department's assessment of the parent. The Department shall provide the assessment to the court and all parties two weeks prior to the hearing. The hearing is an evidentiary hearing. The Department employee who conducted the assessment is required to appear at the hearing and be available for questioning under oath. Child's counsel shall be prepared to state the child's position at the start of the hearing. The purpose of the hearing is for the court to consider whether there are protective concerns regarding the parent and whether it is in the child's best interest to be placed with the parent. In appropriate circumstances the court may combine the assessment hearing with the hearing on the merits.

F. Conclusion of Assessment Hearing. If, following the conclusion of the assessment hearing in Section E. of this rule, the court finds that the assessment supports the Department's determination of no protective concerns regarding the parent and that placement of the child with the parent is in the child's best interests, the court may issue a temporary custody order granting custody of the child to the parent. The Department shall develop a transition plan to assist with the child's transition to the other state. The custody order shall include as a condition that the parent obtain a permanent custody order from the appropriate court with jurisdiction in their state if the parent was the child's non-custodial parent at the time of the filing of the care and protection case.

Upon the issuance of the temporary custody order, the court shall appoint a GAL to report monthly to the court regarding the condition of the child. The GAL is required, as part of their appointment, to make visual contact with the child either in person or virtually on a monthly basis. The report shall be submitted to the court and all parties on a form approved by the Chief Justice of the Juvenile Court. Probation shall also monitor the placement in accordance with probation standards. The GAL, probation and any party may request to advance the case before the court if any issues arise regarding the child's welfare.

2. **Post-Trial.** If, following a hearing on the merits or best interest trial, the court finds that the Department has not met its burden regarding the parent, the court shall issue a temporary or permanent custody order granting custody of the child to the parent, unless the court finds legitimate protective concerns presenting extraordinary circumstances compelling denial of placement with the parent. Such a finding must be in writing. Absent a finding of legitimate protective concerns presenting extraordinary

circumstances compelling denial of placement with the parent, the Department shall develop a transition plan to assist with the child's transition to the other state. The court may impose reasonable conditions of custody; such conditions must directly relate to ensuring the safety of the child and the court's ability to maintain oversight of the child's safety until such time as the care and protection is dismissed. The custody order shall include as a condition that the parent obtain a permanent custody order from the appropriate court with jurisdiction in their state if the parent was the child's non-custodial parent at time of the filing of the care and protection case.

Upon the issuance of the temporary or permanent custody order, the court shall appoint a GAL to report monthly to the court regarding the condition of the child. The GAL is required, as part of their appointment, to make visual contact with the child either in person or virtually on a monthly basis. The report shall be submitted to the court and all parties on a form approved by the Chief Justice of the Juvenile Court. Probation shall also monitor the placement in accordance with probation standards. The GAL, probation and any party may request to advance the case before the court if any issues arise regarding the child's welfare.