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Protecting Abused, Neglected, and Abandoned Children: A Proposal for Provisional Out-of-State Kinship Placements Pursuant to the Interstate Compact on the Placement of Children

John C. Lore III
Rutgers University School of Law-Camden

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**PROTECTING ABUSED, NEGLECTED,
AND ABANDONED CHILDREN:
A PROPOSAL FOR PROVISIONAL OUT-OF-STATE
KINSHIP PLACEMENTS PURSUANT TO THE INTERSTATE
COMPACT ON THE PLACEMENT OF CHILDREN**

John C. Lore III*

The Interstate Compact on the Placement of Children deals with the interstate placement of abused, neglected and abandoned children. This article addresses the critical need for reform of the Interstate Compact and attempts to tackle its most serious flaw—the lack of a provisional placement for children awaiting approval of out-of-state kinship placements. The recently enacted Safe and Timely Interstate Placement of Foster Children Act of 2006 (the “Act”) is seriously flawed to the detriment of one of our country’s most vulnerable groups and the very population it is designed to protect—children who have been abused, neglected and abandoned. This article criticizes the Act and other current reform efforts and proposes a provisional placement system that would allow children to be immediately placed with family members across state lines. The implementation of a provisional placement will: (1) encourage many courts who are currently ignoring the mandates of the Interstate Compact to comply with its provisions; (2) minimize the trauma associated with being separated from a biological parent; (3) enhance the likelihood that siblings can remain together while in foster placement; (4) decrease the overall number of placements to which a child is subjected; and (5) free up scarce traditional foster placements for other child placements.

INTRODUCTION

Anthony¹, a nine year-old child, has just been removed from his biological mother because they were found to be living on the street without adequate shelter or food. Anthony has never been registered for school and is already years behind in his academic

* Visiting Assistant Clinical Professor of Law and Co-Director, Children’s Justice Clinic, Rutgers University School of Law—Camden. B.A. 1995, Richard Stockton College of New Jersey; J.D. 1999, Northwestern University School of Law. The Author would like to thank James Burton, Marisa Cianciarulo, Zelda Harris, John C. Lore Jr., Beth Lyon, and Malinda Vogel for their insightful comments and assistance through various drafts and Villanova University School of Law for its generous support. Thanks also to my dedicated research assistants Michelle Coleman and Jamie R. Hall. Special thanks to Melissa J. Lore for her continuous support, encouragement and comments through each draft, and the many children who have inspired and continue to inspire me to advocate on their behalf.

1. Anthony is fictional, but his story is based upon the thousands of typical dependency court cases that occur daily in courts throughout the country.

and social development. Unfortunately, Anthony's mother suffers from bipolar disorder and has difficulty getting her medication. Even when she does get it, she frequently refuses to take it. In an attempt to self-medicate, Anthony's mother also uses cocaine when she can get it. Anthony and his mother usually end up sleeping in abandoned cars or on the floor of a friend's or stranger's home. On a recent evening when temperatures hovered around freezing, a woman who observes Anthony and his mother sleeping in an abandoned car calls the Department of Youth and Family Services (hereinafter "Department") hotline to report the situation. In the morning, an investigator from the Department arrives at the abandoned car, which is parked on an empty street in Camden, New Jersey, to find both Anthony and his mother sleeping. At that point, the Department removes Anthony from his mother's care. She is told to appear in court the following morning, when a determination will be made about Anthony's temporary custody. That morning, Anthony's mother admits to both her public defender and the court that: (1) she does not have a place to live; (2) Anthony is not in school; (3) she is using crack cocaine two to three times per week; (4) she is not taking her medication; and (5) she is unable to care for her child. Also present in court is Anthony's grandmother, who lives just across the Delaware River in Philadelphia, Pennsylvania. Philadelphia is where Anthony's mother grew up and is only minutes from the courthouse, just across the Ben Franklin Bridge, which connects Philadelphia to Camden. Anthony's grandmother lives with his grandfather in a three-bedroom home, only four blocks from a local elementary school. The grandparents are willing to provide temporary or long-term care for the child. After hearing testimony from the Department investigator, the court finds that there is probable cause to believe that Anthony is neglected and should be removed from his mother's care and placed in temporary foster care. Despite the court's belief that it would be in Anthony's best interest to live with his grandparents who can provide a stable living situation, it is unable to place Anthony with his grandparents because of the restrictions imposed by the Interstate Compact on the Placement of Children (hereinafter "Interstate Compact").²

2. INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN, <http://icpc.aphsa.org/documents.asp> [hereinafter INTERSTATE COMPACT] (follow "Articles" hyperlink for the articles and "Regulations" hyperlink for the regulations) (on file with the University of Michigan Journal of Law Reform).

Any out-of-state child placement requires approval through the Interstate Compact by administrators from both the receiving and the sending state. This slow and cumbersome process usually takes between six and nine months,³ and sometimes lasts more than a year.⁴ To complicate matters, Camden is currently facing a shortage of foster placements and has no placement available for Anthony.⁵ Tragically, Anthony will not be living with a foster family. Due to the lack of available foster placements, he will be staying at the Youth Detention Center where other children awaiting trial for serious criminal/delinquency offenses are being held.⁶ Nine-year-old Anthony will live in a lock-down facility until a placement can be found, which can often be a lengthy process.

3. Although the recently enacted Safe and Timely Interstate Placement of Foster Children Act of 2006, Pub. L. No. 109-239, 120 Stat. 508 (to be codified in scattered sections of 42 U.S.C.), attempts to shorten this time frame, it has not been in effect long enough to gauge whether it actually will result in a quicker and more efficient process. Further, as discussed in more detail in Section II, *infra*, even if it does shorten the time frame, the provisions of this new legislation do not go far enough to resolve this flaw.

4. See Robin Arnold-Williams & Elizabeth Oppenheim, *Adopting a New Compact*, POL'Y & PRAC., Sept. 2004, at 10, 14 (identifying key areas where Compact revision is necessary). See also *Hearing to Examine Child Welfare Reform Proposals Before the Subcomm. on Human Res. of the H. Comm. on Ways & Means*, 108th Cong. 20 (2004) [hereinafter *Hearing Testimony*], available at <http://waysandmeans.house.gov/hearings.asp?formmode=detail&hearing=161> (statement of Samuel M. Sipes, President & Chief Operating Officer of Lutheran Soc. Servs. of the South, Inc.) ("Recent studies have shown that children placed across state lines end up waiting one year longer to find permanent homes than children placed in-state."); Ursula Gilmore et al., *Delays in the Interstate Foster and Adoption Home Study Process*, 8 U.C. DAVIS J. JUV. L. & POL'Y 55, 56-61 (2004) (outlining home study process and attributing months of delay in child placements to issues in home study process).

5. See Tina Kelley & Richard Lezin Jones, *New Jersey Child Welfare System is Missing its Own Targets*, N.Y. TIMES, Dec. 16, 2005, at B1 (describing failure of court-ordered New Jersey child welfare system overhaul). As part of a settlement of a class-action lawsuit filed by Children's Rights Inc., a Manhattan advocacy group, New Jersey has committed more than \$320 million over the past two years to improving its child welfare system. *Id.* In following this plan, New Jersey has hired an additional one thousand caseworkers and removed one hundred children from juvenile detention who were illegally placed there because the state had nowhere else to place them. *Id.* Despite these improvements, shortcomings persist in the child healthcare and caseworker training areas. *Id.* New Jersey attributes some of these failings to a timetable that is too ambitious. *Id.*

6. See Leslie Kaufman, *Child Detention Centers Criticized in New Jersey*, N.Y. TIMES, Nov. 23, 2004, at A1 (describing conditions in centers). See also New Jersey Office of the Child Advocate, *Many Illegally Held Children Released*, N.J. OFFICE OF THE CHILD ADVOCATE NEWSLETTER, Fall 2005, at 1 (confirming use of juvenile detention facilities to house children in need of foster placement).

A. Defining the Major Flaw—The Lack of a Mechanism to Expedite Out-of-State Kinship Placements

As the previous case example illustrates, the procedure for the placement of abused, neglected, or abandoned children across state lines is seriously flawed to the detriment of these vulnerable children. The Interstate Compact does not provide a mechanism to promptly place children who are removed from the care of their biological parent(s) with an out-of-state relative or caretaker.⁷ The Interstate Compact prevents the sending state from placing a child across state lines without first going through the long and arduous process of getting approval from the Compact administrators of both the sending and receiving states.⁸ This process generally takes at least six months and can last more than one year.⁹ The result is that often a child is not placed in the best possible placement—a relative's home in the receiving state—because the Interstate Compact and its lack of a provisional placement provision prevents the court from making such a placement.¹⁰

Hamstrung by the Interstate Compact, courts frequently are forced to place a child in a traditional foster-home rather than in an out-of-state kinship placement which would be in the best interests of the child.¹¹ The courts temporarily place most of these children, who are dealing with the trauma of family separation,

7. See INTERSTATE COMPACT, *supra* note 2, reg. 7 (outlining the Compact's priority placement provisions). The current priority placement provision is limited to a small class of persons under limited circumstances. In order for a child to qualify for priority placement he or she must meet the following criteria: be under two years of age, be in an emergency shelter, or spend a substantial amount of time in the home of the proposed placement. *Id.* reg. 7(6)(a) (defining class eligible for priority placement). Unfortunately, these requirements include only a small portion of eligible children. It does not include the majority of children who potentially could be placed with relatives who live in a nearby state.

8. See *id.* art. III (noting requirements). Some of the restrictions include information pertaining to the child, the child's parents, and the potential foster parents and such supplemental information as required by the receiving state. *Id.*

9. See Arnold-Williams & Oppenheim, *supra* note 4 at 12–13 (describing problems with interstate placement and amount of time necessary to complete out-of-state placements). See also *Hearing Testimony*, *supra* note 4 (noting one year additional delay in interstate placement of children); AM. PUB. HUMAN SERVS. ASS'N., ICPC TASK FORCE REPORT (Mar. 2004) [hereinafter ICPC REPORT], available at <http://www.grandparentsforchildren.org/News/ICPC%20TASK%20FORCE%20REPORT%20-%20final.pdf> (on file with the University of Michigan Journal of Law Reform) (noting administrative delay). Even with the recent passage of legislation designed to minimize this time frame, the problem persists because, as discussed in Section II, *infra*, the legislation is inadequate.

10. See, e.g., *supra* notes 2–6 and accompanying text.

11. See *Hearing Testimony*, *supra* note 4 (suggesting that while children and families wait for permanent interstate placement, even when the interstate placement is with a biological relative, children are left in foster care).

with a traditional foster family for an extended period of time while they await approval through the Interstate Compact. Because the State is unable to provide a suitable foster home able to handle all of the children, it frequently forces apart siblings who have been one of the few consistencies in each others lives.¹² Therefore, the courts' inability to react quickly and place a child into kinship care in another state where siblings could remain together and children could avoid traditional foster care with an unknown family only exacerbates the traumatic separation of children from their biological parent(s).

The Interstate Compact's restrictions on quickly placing a child across state lines pose a difficult dilemma for dependency court judges: either wait an extended period of time for Interstate Compact approval or ignore the requirements of the Interstate Compact.¹³ When a court ignores the Interstate Compact, it creates two major problems. First, the court is in direct violation of explicit law. Second, the court may place children into a home across state lines without the adequate safeguards of a home study evaluation.¹⁴

12. See Victor Groza et al., *Siblings and Out-of-Home Placement: Best Practices*, FAMS. IN SOC'Y: J. CONTEMP. HUM. SERVS., Oct.-Dec. 2003, at 480, 483-84, (describing studies which detail difficulties in sibling placement). One problem with placing sibling groups is that there are too few foster families willing to accept them. Further, when there are households that will accept groups, they cannot be reserved for when a group comes along, as there is a general shortage of foster homes. Placement of other children in homes that would accept groups means that those homes are not available for sibling placement if a sibling group comes along later. Another issue is that the size of the proposed blended family may exceed physical space requirements. Sometimes this can be overcome with a waiver, but often social workers are not knowledgeable about the existence of waivers. Siblings who are not placed together when they are first removed from the home are unlikely to find placement together later in the process, and will therefore permanently lose their sibling tie. In times of crisis and transition, siblings often turn to each other for support and familiarity, but if denied through separate placements, the complete lack of familiarity can be especially traumatic. *Id.*

13. See *Hearing Testimony*, *supra* note 4 (describing delays and barriers to interstate placement process). The Author has personally witnessed this situation while practicing in the dependency courts and has discussed this dilemma with judges who wish to remain anonymous.

14. See *id.* (elaborating on the Interstate Compact's problems). A home study evaluation of a potential placement is required for all out-of-state placements. See AM. PUB. HUMAN SERVS. ASS'N., UNDERSTANDING DELAYS IN THE INTERSTATE HOME STUDY PROCESS 5-6 (2002) (on file with the University of Michigan Journal of Law Reform) [hereinafter APHSA REPORT], available at <http://icpc.aphsa.org/documents/home%20study%20report.pdf> (describing process). Each home is evaluated to ensure the safety and well being of a child. *Id.* A home study involves a comprehensive report conducted in the state of the prospective foster family and includes the foster parents' health status, medical history, social history, family background, parenting style, approaches to discipline, employment and finances, personal interviews, all required documentation, criminal and child abuse backgrounds,

The new legislation and other current proposals for reform, which are discussed in detail in Section III, *infra*, are inadequate because, although they shorten the period of time a child must wait for an interstate placement, they do not provide enough encouragement to the courts to stop ignoring the provisions of the Interstate Compact.¹⁵ Furthermore, the legislation and proposals do not meet the best interests of these at-risk children because they do not include a provisional placement of a child across state lines.

B. The Critical Need for Provisional Out-of-State Placements

The inability of judges to promptly place children across state lines is a nationwide problem for dependency courtrooms, especially in districts with large urban populations that are geographically situated near a neighboring state.¹⁶ Many such districts also have a high number of cases of abused and neglected children.¹⁷ Although large urban areas closely situated near bordering states are most affected by the Interstate Compact, this is a problem for courts throughout the country. Many families whose children are removed from their custody have relatives in another state who could care for the children and provide a stable and nurturing environment.

references, and foster parent training. *Id.* Also included are a summary and the case worker's recommendation. *Id.*

15. The Safe and Timely Interstate Placement of Foster Children Act of 2006, Pub. L. No. 109-239, 120 Stat. 508 (to be codified in scattered sections of 42 U.S.C.), was passed into legislation on July 3, 2006 and takes effect on October 1, 2006. Other current proposals for reform include those found in the report of the American Bar Association Steering Committee on the Unmet Needs of Children and The Commission on Homelessness and Poverty. *See e.g.*, AMERICAN BAR ASSOCIATION STEERING COMMITTEE ON THE UNMET NEEDS OF CHILDREN, REPORT TO THE HOUSE OF DELEGATES (2003) [hereinafter ABA REPORT TO THE HOUSE OF DELEGATES].

16. For example, Cook County (Chicago) is located a few miles from Illinois' borders with Indiana and Wisconsin. Another major city, Philadelphia, sits on Pennsylvania's border with New Jersey and is within twenty miles of Delaware. Many other major cities with high caseloads are situated near the border of another state, including New York City, which is close to both Connecticut and New Jersey. This is not strictly an urban issue, however, as many rural counties face the same challenges, but on a smaller scale.

17. *See* Timothy Arcaro, *Florida's Foster Care System Fails its Children*, 25 NOVA L. REV. 641,660-61 (2001) (noting that overburdened caseworkers often handle three times the recommended number of cases and that in many states Adoption Assistance and Child Welfare Act ("AACWA") requirements are rarely complied with); Melissa D. Protzek, *A Voice for the Children: Court-Appointed Child Advocates are Trying to Make a Difference One Case at a Time in the Lives of Children in the Juvenile Court System*, PA. LAW., Jan.-Feb. 2000, at 26 (explaining that "[j]uvenile court judges in urban areas have about 15 minutes per case to decide the fate of abused and neglected children" and that "caseworkers carry double the load recommended by state regulations," up to "several hundred clients" scattered across several counties).

Each year, the courts place roughly 25,000 children (five-and-a-half percent of the approximately 542,000 children in foster care) across state lines.¹⁸ The Interstate Compact has a direct impact on these children. The Compact's shortcomings also affect many more children, but it is impossible to accurately calculate this total for several reasons. First, the courts disguise many placements of children across state lines as temporary visits—a practice clearly prohibited by the Compact.¹⁹ Second, the slow and cumbersome process dissuades many courts, social service providers, and attorneys from utilizing this process.²⁰ Additionally, many courts are unaware of the Interstate Compact and how it works.²¹

The children affected by the Interstate Compact, one of this country's most vulnerable populations, need specialized protection. The placement process often separates children from their biological parents and siblings for the first time in their lives. This trauma destroys stability and continuity which are essential for their continued health and development.²²

18. See Arnold-Williams & Oppenheim, *supra* note 4, at 13 (citing Penelope Maza, Address at the AACPC Annual Meeting, Does Being Placed Out-of-State Make a Difference for Children in Foster Care? (May 1, 2004)).

19. See DEPT. OF HEALTH AND HUMAN SERVS., OFFICE OF INSPECTOR GENERAL, INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN: IMPLEMENTATION 8 (1999), (on file with the University of Michigan Journal of Law Reform) [hereinafter IMPLEMENTATION], available at <http://oig.hhs.gov/oei/reports/oei-02-95-00044.pdf> (citing visitations that eventually become placements as a way in which the Interstate Compact is violated). See also INTERSTATE COMPACT, *supra* note 2, reg. 9 (defining permissible visit). Visits to other states are allowed, but not if the visit results in placement. *Id.* Visits within the meaning of the Interstate Compact are not placements and are defined through their purpose, duration, and intention. *Id.* A temporary visit is when the child travels to another state for a short period of time (if this period is under thirty days a visit is presumed). *Id.* For example, this can include travel, camp, or visiting relatives in other states. *Id.* The purpose of allowing visits is to provide the child with social or cultural experience. *Id.* The author has personally experienced this method of circumventing the Interstate Compact. Further, the author has confirmed this practice with several practitioners, social workers, and judges who wish to remain anonymous.

20. See Bernadette W. Hartfield, *The Role of the Interstate Compact on the Placement of Children in Child Adoption*, 68 NEB. L. REV. 292, 323–24 (1989) (noting that the Interstate Compact's lack of specificity in requirements and lack of penalties for violations, combined with its inefficiency, has led placement agencies and courts to ignore the Interstate Compact's requirements).

21. See IMPLEMENTATION, *supra* note 19, at 7–8 (discussing Interstate Compact and courts). Findings indicate that judges would like more education on the Interstate Compact, and Regulation 7 (the provision dealing with priority placement) in particular, while attorneys would like more training. *Id.*

22. See Janet L. Dolgin, *The Law's Response to Parental Alcohol and "Crack" Abuse*, 56 BROOK. L. REV. 1213, 1256–58 (1991) (discussing damaging effects of multiple placements, including children being more likely to experience abuse and have trouble forming attachments and self value); see also JOSEPH GOLDSTEIN ET AL., BEYOND THE BEST INTEREST OF THE

Furthermore, although the “best interest of the child” standard²³ drives the courts’ decisions, the restrictions of the Interstate Compact frequently force courts to make placement decisions contrary to this standard. Dependency court judges’ conscious and blatant disregard of the mandate of the Interstate Compact is evidence of a breakdown in our system. By ignoring the requirements of the Interstate Compact, the courts are sending a message that the system needs to be changed. Clearly, the process is broken and needs to be fixed; the welfare of thousands of fragile children depends on developing a workable solution.

This paper addresses one of the central flaws of the Interstate Compact as well as the new legislation and current proposals for reform and offers an alternative proposal for reform involving a provisional kinship placement for children across state lines. Section I discusses the current system and the way it addresses interstate placement, as well as the problems inherent in the current system. Section II examines the legislation recently enacted by Congress and explains why it is inadequate. Section II sets forth my proposal for a provisional placement system and why this proposal is an improvement on the current system.

I. THE DEPENDENCY COURT SYSTEM AND ITS RELATIONSHIP TO THE INTERSTATE COMPACT

A. *The Current System*

Approximately 517,000 children were in foster care at the end of fiscal year 2003, 305,000 of whom entered foster care during that year.²⁴ Children placed in foster care are the victims of abuse, ne-

CHILD 31–35 (1973) (determining that children without stable environments experience difficulty developing relationships as adults).

23. The “best interest of the child” standard has been traced to the late 1800s, in Justice Brewer’s opinion in the case of *Chapsky v. Wood*, 26 Kan. 650 (1881). See LeAnn Larson LaFave, *Origins and Evolution of the “Best Interests of the Child” Standard*, 34 S.D. L. REV. 459, 467–68 (1989). However, its clear enunciation is generally credited to Justice Cardozo in the 1925 case *Finlay v. Finlay*, 148 N.E. 624, 626 (N.Y. 1925). For other instances where the best interests standard is used, see generally ARK. CODE ANN. § 9-27-316 (2003) (providing that best interest standard determines whether child has right to attorney in family court proceedings, and that if such right is afforded, child’s attorney must act in child’s best interests); CAL. WELF. & INST. CODE § 388 (West 2006) (stating best interest standard appropriate for determining termination of jurisdiction and recognition of sibling relationships); 705 ILL. COMP. STAT. ANN. 405/5-705 (West 2006) (allowing for use of best interest standard in determining whether juvenile delinquents should be placed in state custody).

24. See ADMIN. FOR CHILDREN AND FAMS., CHILDREN’S BUREAU, U.S. DEP’T OF HEALTH AND HUMAN SERVS., THE AFCARS REPORT (2006), (on file with the University of Michigan

glect, or abandonment and are often the most vulnerable part of our community.²⁵ The dependency court, which is designed to decide cases in which a child has been abused or neglected, is the court that places most of these children into foster care.²⁶ The goal of the dependency court system is to provide support and protection for children who are at risk of physical, mental, and emotional abuse or exploitation, and to do so by serving the best interests of the children involved with an emphasis on child safety, permanency, and remediation of the issues that caused the abuse or neglect that resulted in removal from the home.²⁷ The American court system is adversarial by nature, but because the adversary system does not always result in parties coming together for anyone's best interests, many dependency courts are less formal than criminal courts.²⁸

Journal of Law Reform) available at http://www.acf.hhs.gov/programs/cb/stats_research/afcars/tar/report11.htm (providing statistics based upon estimates as of June, 2006).

25. See Sharon Balmer, Note, *From Poverty to Abuse and Back Again: The Failure of the Legal and Social Services Communities to Protect Foster Children*, 32 FORDHAM URB. L.J. 935, 936 (2005) (suggesting that part of what makes foster children so vulnerable is that they have limited causes of action available to uphold their rights). Because so many children remain in foster care for long periods of time while also experiencing foster care drift, the children's lives become very unstable and they are unable to form solid bonds with adults. See *id.* at 939. While no one knows how many incidents are unreported, foster children are over ten times more likely to experience physical abuse and four times more likely to be victims of sexual abuse than children in the general population. See *id.* at 938. Additionally, foster children are seventy-five times more likely to be maltreated and 350% more likely to die from that maltreatment. See *id.* Further, foster children are vulnerable in other, more subtle ways. See also Judith M. Gerber, *Children Adrift: Addressing the Educational Needs of New York's Foster Children*, 69 ALB. L. REV. 1 (2005) (discussing throughout article how foster children face massive disruptions and inadequate schooling). These disruptions and gaps in education put foster children at a disadvantage not only in school as they tend to fall behind, but in their ability to receive critical services. See *id.*

26. See *In re Marilyn H.*, 851 P.2d 826, 833 (Cal. 1993) ("The objective of the dependency scheme is to protect abused or neglected children and those at substantial risk thereof and to provide permanent, stable homes if those children cannot be returned home within a prescribed period of time."); Superior Court of California, County of Santa Clara, Juvenile Dependency Court, <http://www.scselselfservice.org/juvdep/juvdepwhat.htm> (on file with the University of Michigan Journal of Law Reform) (explaining roles and goals of dependency court).

27. See Regina Diehl & Cecilia Fiermonte, *Dependency Court and Removal of Children*, in LEGAL RESOURCE MANUAL FOR FOSTER PARENTS, Ch. 2, at 4-5, (on file with the University of Michigan Journal of Law Reform) available at <http://www.nfpainc.org/training/documents/DependencyCourtandRemovalofChildren.pdf> (explaining how child abuse and neglect cases proceed through dependency system).

28. See *id.* at 1 (noting common atmosphere of dependency courts). Notably, the inefficiencies prevalent in dependency court proceedings are often attributed to crowded dockets. See CHILDREN AND FAMILY RESEARCH CENTER, VIEW FROM THE BENCH—OBSTACLES TO SAFETY & PERMANENCY FOR CHILDREN IN FOSTER CARE: SUMMARY OF KEY FINDINGS FROM A NATIONAL SURVEY OF DEPENDENCY COURT JUDGES (Jul. 2004), <http://>

Allegations of abuse or neglect can come from a variety of sources, which include but are certainly not limited to: family members, law enforcement, the child-victim, a school teacher or social worker, or other health professionals. Initially, a source reports allegations to an individual state's Department of Children and Family Services or its equivalent agency,²⁹ which conducts an initial investigation.³⁰ If the Department thinks it is warranted, it will refer the children and their families to the court for judicial proceedings.³¹ Alternatively, the child may be removed from the

www.fosteringresults.org/results/reports/pewreports_07-01-04_judicialsurvey.pdf (on file with the University of Michigan Journal of Law Reform) (explaining reasons for delay).

29. See Child Welfare Information Gateway, *How Does the Child Welfare System Work?*, <http://www.childwelfare.gov/pubs/factsheets/cpswork.cfm> (on file with the University of Michigan Journal of Law Reform). The most common referral method is placing a call to a Department of Children and Family Services or its equivalent agency's hotline. *Id.* It is estimated that "[i]n 2004 . . . 3 million referrals concerning the welfare of approximately 5.5 million children were made to [child protective services] agencies throughout the United States." Child Welfare Information Gateway, *Child Maltreatment 2004: Summary of Key Findings*, <http://www.childwelfare.gov/pubs/factsheets/canstats.cfm> (on file with the University of Michigan Journal of Law Reform) available at <http://www.acf.hhs.gov/programs/cb/pubs/cm04/index.htm> (citing ADMIN. FOR CHILDREN AND FAMS., CHILDREN'S BUREAU, U.S. DEP'T OF HEALTH AND HUMAN SERVS., *CHILD MALTREATMENT 2004* (2006)).

30. See Doriane Lambelet Coleman, *Storming the Castle to Save the Children: The Ironic Costs of a Child Welfare Exception to the Fourth Amendment*, 47 WM. & MARY L. REV. 413, 428–41 (2005) (outlining reporting and investigation procedures, which involve personnel from both civil Department of Child Services and criminal police department). Sometimes cases are not referred to court and the child is left in the home with his caregiver. See generally Kay P. Kindred, *Of Child Welfare and Welfare Reform*, 9 WM. & MARY J. WOMEN & L. 413 (2002) (explaining desirability of in-home services as alternative to out-of-home placement). This is usually accompanied by the provision of some type of "in-home" or "intact" services for the family to ensure the safety of the child. *Id.* For example, caregivers may be caught in a conundrum where they are unable to work because they cannot afford day care, but unable to care for a child if they do not work. In this type of situation, the family may simply need assistance with day care services, which would not necessarily require the removal of a child from the home or even court involvement.

31. See RICHARD BOURNE & ELI H. NEWBERGER, *CRITICAL PERSPECTIVES ON CHILD ABUSE* 12–14 (1978) (explaining that, upon legitimate allegations of child abuse or neglect, child welfare department will petition the court and the court will review case with goal of "helping parents and protecting children"). Although parents have no constitutional right to appointed counsel, they are entitled to retain their own attorneys, and courts have the discretion to appoint attorneys if necessary. See Bruce A. Boyer, *Justice, Access to the Courts, and the Right to Free Counsel for Indigent Parents: The Continuing Scourge of Lassiter v. Department of Social Services of Durham*, 36 LOY. U. CHI. L.J. 363 (2005) (discussing indigents' right to counsel in civil termination of parental rights actions). During the adjudicatory hearing, the judge will most likely assign the parents an attorney, and may assign an advocate for the child as well. See *id.* (noting method of assigning representation). Child advocates are often referred to as guardians ad litem and may be attorneys or individuals who operate under the supervision of an attorney. A guardian ad litem is appointed by the court, and his or her role is to represent the best interest of the child in any legal proceedings that may ensue, including making necessary recommendations to the court. See 42 AM. JUR. 2D *Infants* § 183 (2006) (discussing role of guardian ad litem). See also Diehl & Fiermonte, *supra* note 27, at 5 (detail-

family by the caseworker, police, or the court if the caseworker believes there is a risk of future harm.³² In that case, the caseworker usually must appear before the court within three days to establish probable cause and for the court to make a determination as to whether the child needs to remain in the care of the Department of Family Services.³³

Dependency court proceedings are conducted in a series of hearings which vary somewhat among jurisdictions.³⁴ The first hearing is the shelter care hearing that occurs shortly after the child is removed from the home.³⁵ At this time a judge hears the petition and, based on the child's immediate protection needs, can order

ing dependency proceedings). Once an investigation has started, a child may be removed from the home at anytime if a parent is found to have harmed the child or if the child is found to be at risk of imminent future harm.

32. See Diehl & Fiermonte, *supra* note 27, at 5–6 (discussing dependency court proceedings). See also Katharine A. Higgins-Shea, Note, *On the Clock: Should State Law Require Child Welfare Workers to Consider Whether there is Sufficient Time to Obtain Judicial Authorization When Effecting Emergency Removals of Children from Their Parents?*, 38 SUFFOLK U. L. REV. 147, 148–49 (2004) (discussing removal process). States may remove a child from its home whenever the child's physical or mental welfare is at risk of imminent harm. See *id.* at 148. See also *Robeson v. Via*, 821 F.2d 913, 921–22 (2d Cir. 1987) (supporting idea that while parents have a constitutional right to a hearing before being deprived of their children, many courts support removing children before a hearing if at any time child's welfare is in potential danger).

33. See generally Diehl & Fiermonte, *supra* note 27 (explaining dependency proceeding process).

34. See Diehl & Fiermonte, *supra* note 27, at 4 (outlining process of dependency court cases). Representation of children in dependency court proceedings and the role of the advocate vary depending on the circumstances of the court and proceeding. See ASTRA OUTLEY, PEW CHARITABLE COMMISSION ON CHILDREN IN FOSTER CARE, REPRESENTATION FOR CHILDREN AND PARENTS IN DEPENDENCY PROCEEDINGS 2–10 (2006) (on file with the University of Michigan Journal of Law Reform) available at <http://pewfostercare.org/research/docs.Representation.pdf> (noting representation variation in proceedings). There is no consensus on the role of an advocate in foster care proceedings, and the role that advocates play often depends on the state in which the proceedings are held. *Id.* at 1. Some reasons for this inconsistency are: (1) a lack of legally binding uniform standards for child representation; (2) ongoing philosophical and theoretical scholarly debate on the issue; and (3) lack of training and compensation for attorneys representing children. *Id.* (discussing representation and inconsistency thereof).

35. See Diehl & Fiermonte, *supra* note 27, at 4 (describing each step of a dependency court case). The shelter care hearing may also be called the removal, emergency, or temporary custody hearing. In most states, statutes provide only a short period of time between taking a child into custody and holding a shelter care hearing. See 705 ILL. COMP. STAT. 405/2-9 (2005) (providing forty-eight hours for shelter care hearing after minor is taken into protective custody in Illinois); MD. CODE ANN., CTS. & JUD. PROC. § 3-815(c)(2)(ii) (LexisNexis 2006) (requiring shelter care hearing to occur no later than next day court is in session in Maryland); Alyson Oswald, Comment, *They Took My Child! An Examination of the Circuit Split Over Emergency Removal of Children From Parental Custody*, 53 CATH. U. L. REV. 1161, 1192 n.187 (2004) (noting that twenty-two states and the District of Columbia require shelter care hearings between twenty-four hours and ten days after removal).

the child to return home, to be placed in temporary foster care, or to be placed with a relative.³⁶ At this stage, a court may face an interstate placement situation, thereby implicating the Interstate Compact. During this initial court proceeding there is not a determination about whether the abuse or neglect actually occurred; rather it is more akin to a “probable cause” hearing in criminal court.³⁷ If the court makes a determination that there is probable cause to believe that allegations of abuse, neglect, or abandonment are founded, the court determines the appropriate temporary custody of the child pending a trial on the merits of the allegations.³⁸

At that point, the court generally proceeds in one of two ways. First, the court can make the determination that, despite the probable cause finding, the child can safely remain in the care and custody of the caregiver. If the court makes such a determination, it orders that the family be provided with the appropriate intact services through the court by the Department of Family Services.³⁹ On the other hand, if the court determines that it needs to remove the child from the caregiver for the child’s own safety, the court will order the child to be placed into a suitable temporary placement. The local child welfare department usually handles the placement and places the child with a family member or in a traditional foster placement.

If the court determines that it is necessary to remove a child from the care and custody of a caregiver, the court⁴⁰ generally will

36. See Diehl & Fiermonte, *supra* note 27, at 6 (explaining judge’s role).

37. See Diehl & Fiermonte, *supra* note 27, at 5–6 (describing shelter care hearing). When a child is removed from the family, there must be a hearing within a few days (often referred to as shelter care hearing, emergency hearing, or removal hearing) in which the Department of Family Services must file a fact-specific petition alleging that the person responsible abused or neglected the child. *Id.* It is at this time that the judge determines whether the child has been abused and what course of action is required for the child’s care. *Id.* See also Ellen Marrus, *Fostering Family Ties: The State as Maker and Breaker of Kinship Relationships*, 2004 U. CHI. LEGAL F. 319, 327–28 (2004) (discussing how pre- and post-removal decisions are made). At this hearing, the agency has the burden to establish that there is a reasonable belief that if the child continues to stay in the home further harm will occur. See *id.* At this stage there is a very low burden of proof because the government and courts are simply concerned with preventing further injury. See *id.*

38. See Kindred, *supra* note 30, at 456–58 (noting court’s oversight of custody status during example of investigation process).

39. Intact services involve assigning a social worker to a family to provide the family with guidance, including identifying unacceptable behaviors, limit-setting, outlining the consequences of breaking limits, identifying needed services, and assisting the family in obtaining those services. See ILL. DEP’T OF CHILDREN AND FAM. SERVS., INTACT FAMILIES § 5.1 (2006) (on file with the University of Michigan Journal of Law Reform) available at http://dcfswebresource.prairienet.org/bp/intact_families/.

40. In some jurisdictions, the state child welfare agency responsible for providing services for the child while in the temporary custody of the state makes a placement decision.

try to place the child in kinship care.⁴¹ Frequently, a family member who is willing and able to provide either short-term or long-term care for the child does not reside in the same state. Sometimes this out-of-state family member is one of the biological parents.⁴² In this situation, the court is limited by its inability to issue enforceable orders beyond its own state's borders. The remedy for this situation is placement via the Interstate Compact.⁴³ Approval through the Interstate Compact, however, is both slow and cumbersome, as Compact approvals take at least six months.⁴⁴

When a child is put in a same-state placement, the parent(s) and child(ren) are almost immediately provided with reunification services.⁴⁵ If the child is sent to another state, however, the receiving state is not obligated to provide any services to the family unless there is approval through the Interstate Compact.⁴⁶

According to the Interstate Compact, there must be financial and medical support in place before a child may be placed. Services required for foster children include: education, medical care,

All out-of-state placements, however, must be approved by the court. See Arnold-Williams & Oppenheim, *supra* note 4, at 11–12 (describing the complexities of interstate placements).

41. Kinship care is care by a family member. See Gilmore, *supra* note 4, at 73–92 (detailing study indicating reasons for delay in home placement process and how delay could be alleviated by kinship care); see also INTACT FAMILIES, *supra* note 39, at 5.1.1 (explaining that intact services department was explicitly created to prevent breakup of families).

42. See INTERSTATE COMPACT, *supra* note 2, art. II(d), reg. 3. The Interstate Compact controls all placements between states. If a biological parent resides outside of the state in which the child currently lives and the court wishes to place the child with that parent, the court must go through the Interstate Compact process to place the child with that parent. *Id.*

43. The Interstate Compact was created because of a need to regulate the movement of children across state lines. See AM. PUB. HEALTH AND HUMAN SERVS. ASSOC., GUIDE TO THE INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN 2 (2002) (on file with the University of Michigan Journal of Law Reform) [hereinafter APHSA, GUIDE TO THE INTERSTATE COMPACT], available at http://icpc.aphsa.org/documents/Guidebook_2002.pdf (outlining the Interstate Compact's inception); see also INTERSTATE COMPACT, *supra* note 2, art. 1.

44. See ICPC REPORT, *supra* note 9 (describing administrative delay); Arnold-Williams, *supra* note 4 (explaining delay in approval process); Gilmore, *supra* note 4, at 81 (explaining that requirements of criminal background checks can add up to four months to home study process); National CASA Association, Introduction to the Interstate Compact on the Placement of Children, <http://www.casanet.org/reference/ic-intro.htm> (on file with the University of Michigan Journal of Law Reform) (explaining delays in interstate placements may be six months or longer).

45. Reunification services are services aimed at addressing the issues that brought the case before a dependency court and that will aid in the reunification of the family at the earliest possible time.

46. See Gilmore, *supra* note 4, at 62 (explaining importance of obtaining placement approval under the Interstate Compact system).

mental health care, and financial assistance.⁴⁷ Often this support comes from public services such as Medicaid and TANF, public programs which cannot begin to be received from the receiving state until the child is legally living in the state.⁴⁸ Children who do not receive these services are more likely to suffer developmental delays.⁴⁹ Foster children who do not receive proper services are also more likely to exhibit poor study habits, acting out, aggression, and major behavior problems than non-foster care children.⁵⁰ In addition, those children who experienced multiple foster care placements and thus had more interrupted schooling, were more likely to perform below grade level.⁵¹

After the initial hearing, the case proceeds through several stages. The second stage, typically occurring within twelve months of the shelter care hearing, is adjudication, which addresses whether the abuse or neglect actually occurred.⁵² If the court finds that the parents have abused or neglected the child, the next stage is disposition, when the court determines what services the family needs.⁵³ The disposition involves a hearing where the parents and agency present evidence and the court presents them each with a specific list of terms with which to comply.⁵⁴

The fourth stage is the permanency hearing.⁵⁵ During the permanency hearing, the court puts into place a clear and definitive

47. See *id.* at 62–63; see also Judith M. Gerber & Sheryl Dicker, *Children Adrift: Addressing the Educational Needs of New York's Foster Children*, 69 ALB. L. REV. 1 (2005) (discussing the educational needs of foster children and how they are not always met).

48. See Gilmore, *supra* note 4, at 62–63 (discussing how ICPC assigns financial responsibility for the child's required services).

49. Jennifer R. Meiselman Titus, Comment, Adding Insult to Injury: California's Cruel Indifference to the Developmental Needs of Abused and Neglected Children From Birth to Three, 39 CAL. W. L. REV. 115, 117–18 (2002) (discussing how neglected and abused children who do not receive proper services are more likely to suffer developmental delays).

50. Cynthia Godsoe, *Caught Between Two Systems: How Exceptional Children in Out-of-Home Care are Denied Equality in Education*, 19 YALE L. & POL'Y REV. 81, 96–99 (2000) (explaining how children who are unable to get proper educational services are more likely to be determined to qualify for special education or be diagnosed with learning disabilities and disorders).

51. *Id.* at 99.

52. See Diehl & Fiermonte, *supra* note 27, at 6–7 (describing stages of dependency court cases). This second stage is also called a fact-finding hearing.

53. See *id.* (outlining process).

54. See *id.* at 9 (providing further discussion of disposition stage). Examples of terms include maintenance of a stable residence for parents, allowance of visitation for the agency holding the child, drug testing and treatment, mental health testing and treatment, securing and maintaining employment, parenting skills instruction, providing adequate space and safety at home where child will be returned, refraining from corporal punishment, as well as any other conditions that the court deems appropriate to ensure the safety of the child. *Id.* at 9.

55. See *id.* (describing court's determination in dispositional stage).

plan to maintain stability for the child. It is at this time that foster parents are given the right to be heard.⁵⁶ Finally, if the family cannot be reunited, the last stage is termination of parental rights, in which the child is freed for adoption.⁵⁷ If the adoption or placement in a group home is in another state, the sending agency and state must seek approval through the Interstate Compact.⁵⁸ Federal law typically requires this clearance for children who have been in foster care for fifteen of the last twenty-two months.⁵⁹ This is a complex stage in which the opposing party must prove specific grounds to show that the child should not be placed back with the parent.⁶⁰

B. The Development of the Interstate Compact

The beginnings of the Interstate Compact date back fifty years. In the 1950s, a group of social service administrators and state legislators joined informally to research out-of-state adoption and foster care.⁶¹ This group recognized the inability of the judiciary to ensure a child's care beyond the borders of its own state.⁶² They found that, in interstate placement situations, the sending state could not compel the receiving state to protect the child and further, found that the receiving state could not compel the sending state to remain financially responsible for the child.⁶³ As a result of these findings, the New York State Legislature drafted the Interstate Compact for the Placement of Children, and in 1960 New York became the first state to adopt it.⁶⁴ Now, the Interstate

56. See *id.* (discussing foster parent roles in permanency hearings).

57. See *id.* at 10–11 (explaining default conclusion).

58. See 2 AM. JUR. 2D *Adoption* § 43 (2006) (noting the Interstate Compact's control over interstate adoptions). It should be noted that the provisional placement that is the subject of this Article is not implicated by the adoption stage of an out-of-state placement.

59. See SUE BADEAU, *CHILD WELFARE AND THE COURTS* 3, <http://pewfostercare.org/research/docs/BadeauPaper.pdf> (on file with the University of Michigan Journal of Law Reform) (noting federal regulations).

60. Diehl & Fiermonte, *supra* note 27, at 10 (noting that most common ground for termination of parental rights is parents' failure to make a plan for child or improve conditions despite dependency court process).

61. See IMPLEMENTATION, *supra* note 19, at 1–2 (noting inception of the Interstate Compact).

62. See APHSA GUIDE TO THE INTERSTATE COMPACT, *supra* note 43, at 2 (explaining group's findings).

63. See *id.* Absent an interstate compact, a state has no jurisdiction or authority over another state's actions.

64. 1960 N.Y. LAWS 2015.

Compact has been adopted by all fifty states, the District of Columbia and the U.S. Virgin Islands, and its regulations and rules serve as an enforceable contract between states.⁶⁵

The administration of the Compact occurs on multiple levels. On the state level, Compact administrators in each state manage the Interstate Compact.⁶⁶ In 1974, these administrators formed the Association of Administrators of the Interstate Compact on the Placement of Children in order to provide technical services and support regarding the Compact.⁶⁷ On the federal level, the agency charged with oversight of the Interstate Compact is the U.S. Department of Health and Human Services Administration for Children and Families.⁶⁸ This agency appointed the American Public Human Services Association (APHSA), a non-profit organization, as the Association of Administrators' Secretariat.⁶⁹

Over time, states have identified concerns about delays in the Compact placement process, its broad application, and its administration, highlighting the need for reform.⁷⁰ A 1995 recommendation by the Association of Administrators of the Interstate Compact on the Placement of Children's Joint Committee resulted in the passage of Regulation 7, which expedites the placement of children who obtain "Priority Placement" status.⁷¹ This status is limited to a small class of persons that meets certain

65. APHSA, GUIDE TO THE INTERSTATE COMPACT, *supra* note 43, at 2 (describing universal acceptance of the Compact).

66. *Id.* at 4 (discussing administration of the Interstate Compact). State administrators handle the day-to-day Interstate Compact administration and are part of the state's public welfare department or equivalent agency. *Id.* Their duties include investigation of the proposed placement and whether it is in the best interest of the child. *Id.*

67. See IMPLEMENTATION, *supra* note 19, at 2 (discussing the Interstate Compact's history).

68. See ABA REPORT TO THE HOUSE OF DELEGATES, *supra* note 15, at 3 n.4 (outlining administration of the Interstate Compact).

69. See *id.* at 3 (discussing organization). See also IMPLEMENTATION, *supra* note 19, at 2. The Secretariat represents the state in health and human services issues. *Id.* They also provide legal and support services for the common problems and concerns of the states included in the Interstate Compact. *Id.*

70. See ABA REPORT TO THE HOUSE OF DELEGATES, *supra* note 15 (discussing the Interstate Compact's flaws); AM. PUB. HEALTH & HUMAN SERVS. ASSOC., REFORM OF THE INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN 1 (Mar. 28, 2004) (on file with the University of Michigan Journal of Law Reform) [hereinafter APHSA, REFORM OF THE INTERSTATE COMPACT], available at <http://www.aphsa.org/Policy/Doc/ICPC%20Policy%20Resolution.pdf>.

71. See ABA REPORT TO THE HOUSE OF DELEGATES, *supra* note 15, at 5 n.14 (outlining difficulty in the Interstate Compact's application). The Joint Committee is composed of representatives from the National Council of Juvenile and Family Court Judges, the National Council of State Human Service Administrators, and The National Association of Child Placement of Children. Priority Placement status places a thirty-day limit on the receiving state for approval or denial of placement. *Id.*

criteria.⁷² In addition to this regulation, Congress passed the Adoption and Safe Families Act of 1997 to enhance safety, permanency, and wellbeing by prohibiting states from delaying or denying placements for adoption when there is an appropriate family in another jurisdiction.⁷³

Regulation 7, however, did not resolve the Interstate Compact's inefficiencies. In March 1999, an investigation by the Office of Inspector General generated a report citing several problems with the Compact, including: lack of Compact knowledge among judges, attorneys and caseworkers; Compact placement violations; excessive time required to complete the placement process; delays in placement due to differing state adoption laws; and a need for peer education, especially in regard to Regulation 7.⁷⁴

In July 2003, APHSA created the Interstate Compact Task Force to address these concerns and improve the interstate placement process.⁷⁵ In August 2003, The American Bar Association Steering Committee on the Unmet Legal Needs of Children and The Commission on Homelessness and Poverty issued its Report to the House of Delegates, recommending faster child placement.⁷⁶ In March 2004, the APHSA and the Task Force determined that, while short-term reform was necessary, the Interstate Compact, even as amended, was insufficient and required comprehensive reform.⁷⁷ This need to reform the provisions of the Compact resulted in the formation of the Interstate Compact Development and Drafting Team, with the goal of developing a new compact for

72. See INTERSTATE COMPACT, *supra* note 2, reg. 7 (outlining Compact). In order for a child to qualify for priority placement he or she must meet the following criteria: be under two years of age, be in an emergency shelter, or spend a substantial amount of time in the home of the proposed placement. *Id.* reg. 7(6)(a) (defining class eligible for priority placement).

73. Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115 (1997).

74. See IMPLEMENTATION, *supra* note 19, at 1.

75. See APHSA, REFORM OF THE INTERSTATE COMPACT, *supra* note 70 (noting reforms). The Task Force consists of state commissioners, state and local child welfare directors, Interstate Compact administrators, and a representative from the American Association of Public Welfare Attorneys. *Id.* See also AM. PUB. HUMAN SERVS. ASSOC., ICPC DEV. AND DRAFTING TEAM FIRST MEETING SUMMARY (Jul. 20-22, 2004) (on file with the University of Michigan Journal of Law Reform) [hereinafter APHSA, DDT MEETING SUMMARY], available at <http://www.grandparentsforchildren.org/News/DDT%20MTC%20I%20SUMMARYfinal904.pdf>.

76. See ABA REPORT TO THE HOUSE OF DELEGATES, *supra* note 15, at 1 (outlining recommendations for ABA).

77. See APHSA, REFORM OF THE INTERSTATE COMPACT, *supra* note 70 (calling for reform of types of Interstate Compact placements, "data collection and exchange, administrative practices, financing, and enforcement").

interstate child placement, which they planned to draft no later than March 2005.⁷⁸

In 2004, the Safe and Timely Interstate Placement Act of 2004⁷⁹ was introduced in Congress as a means to hold states accountable for interstate child placement.⁸⁰ Only recently did this bill become law, when Congress enacted the Safe and Timely Interstate Placement of Foster Children Act of 2006 in an attempt to address the shortcomings of the Interstate Compact.⁸¹

Prior to the adoption of the Interstate Compact, there was no way to ensure the safety and monitoring of children placed across state lines. The Compact ensures that the receiving states will provide the necessary services for placed children while in their state. The Compact also serves as a mechanism to resolve all "jurisdictional, administrative, and human rights obligations of all the parties involved in an interstate placement."⁸²

When a court makes the determination that a child should be placed out of state, the procedure for placing the child is long and arduous.⁸³ The wait for approval of the Interstate Compact varies from state to state. Recent reports, however, estimate the period to be at least four to six months.⁸⁴ The Compact requires that the sending state, usually through the dependency court in conjunction with the Department of Children and Family Services, prepare a report that is sent to its own Compact administrator.⁸⁵ At that point, the Compact Administrator in the sending state submits a

78. See APHSA, DDT MEETING SUMMARY, *supra* note 75, at 2 (concluding that committee would accept public comments, meet twice more, and complete draft revision of Interstate Compact by March 2005).

79. 42 U.S.C. § 671 (2006).

80. See H.R. Res. 4504.IH, 108th Cong. (2004) (enacted) (originally introduced as the "Orderly and Timely Interstate Placement of Foster Children Act").

81. See Safe and Timely Interstate Placement of Foster Children Act of 2006, 42 U.S.C. § 671(A) (2006).

82. See APHSA, GUIDE TO THE INTERSTATE COMPACT, *supra* note 43, at 2.

83. Placement was originally defined as "the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective or epileptic or any institution primarily educational in character, and any hospital or other medical facility." INTERSTATE COMPACT, *supra* note 2, art. II(d). On July 2, 2001, however, an additional regulation was added to include placements into kinship care. The adopted amendment states, "[p]lacement' as defined in Article II (d) includes the arrangement for the care of a child in the home of his parent, other relative, or non-agency guardian in a receiving state when the sending agency is any entity other than a parent, relative, guardian or non-agency guardian making the arrangement for care as a plan exempt under Article VIII (a) of the Compact." INTERSTATE COMPACT, *supra* note 2, reg. 3.

84. See Gilmore, *supra* note 4, at 56–57 (2004) (discussing administrative delay).

85. See APHSA, GUIDE TO THE INTERSTATE COMPACT, *supra* note 43, at 5 (explaining interstate placement request and approval process).

request for approval to the Compact Administrator in the receiving state.⁸⁶ This receiving state assigns the case to a local agency that conducts the necessary home study and evaluation of the prospective placement.⁸⁷ Next, the Compact Administrator in the receiving state receives the report and determines whether all of the requirements have been met.⁸⁸ If all the Compact's requirements are met, the paperwork is forwarded to the administrator in the sending state and is then forwarded to the sending agency.⁸⁹

C. The Implementation of the Interstate Compact: Judicial Non-Compliance

The Interstate Compact is a victim, perhaps deservedly, of judicial non-compliance.⁹⁰ Judicial non-compliance is a strong signal that there is a critical or major problem with a particular regulation, statute, or law. Whether intentional or unintentional, courts are not complying with the mandates of the Interstate Compact.⁹¹ The Compact clearly requires that judges do not place children prior to Compact approval.⁹² However, courts throughout the country are failing to honor the provisions of the Compact.⁹³ Courts are circumventing the Compact's requirements by sending children to another state pending the approval of the Interstate Compact.⁹⁴ Courts generally do so under the guise of a temporary visit.⁹⁵ This situation presents two problems. First, the Compact explicitly prohibits granting visits for the purpose of securing a

86. *Id.* at 4 (describing role of the Interstate Compact Administrator).

87. *Id.* (noting agency role in approval).

88. *Id.* (stating the role of the Interstate Compact Administrator in receiving state).

89. *Id.* (explaining approval process).

90. *See Hearing Testimony*, *supra* note 4 (describing delays and barriers to interstate placement process).

91. The author has personally witnessed this phenomenon and has discussed it with others involved in the dependency courts on a regular basis. *See also* IMPLEMENTATION, *supra* note 19, at 8.

92. *See* INTERSTATE COMPACT, *supra* note 2, art. III (explaining conditions for placement); APHSA, GUIDE TO THE INTERSTATE COMPACT, *supra* note 43, at 3 (stating that "a court of a party state" must follow the Interstate Compact's approval procedures).

93. *See supra* note 74 and accompanying text (noting that courts and agencies fail to follow the Interstate Compact due to its inefficiencies). *See also Hearing Testimony*, *supra* note 4 (describing dilemma faced by courts).

94. *See Hearing Testimony*, *supra* note 4 (describing courts' circumvention of Interstate Compact requirements).

95. *See* IMPLEMENTATION, *supra* note 19, at 8 (citing visitations that eventually become placements as a way in which the Interstate Compact is violated).

long-term or permanent placement.⁹⁶ Second, visits are usually granted without any home study or evaluation, visitation site screening, or other necessary precautions to ensure the safety and care of a child.⁹⁷ Therefore, courts frequently violate the Compact by placing children in environments that have not been thoroughly investigated.

Why are judges taking such an activist role in dealing with the Interstate Compact? In this case, judges' disregard for the provisions of the Interstate Compact seems to indicate that they do not believe that compliance with the Compact provisions is in the best interest of children. Juvenile court has always functioned under the overarching theme of acting in the best interest of the child.⁹⁸ This theme frequently has led to more informal proceedings in the juvenile court, which, in turn, has led to loose and informal use of the law.⁹⁹

Such judicial non-compliance is unlikely to be challenged in many forums because a party only challenges a decision when it believes that the court is not acting in the best interest of the child.¹⁰⁰ Because there has been almost universal agreement that the Interstate Compact on the placement of children is flawed, courts will frequently overlook the requirements of the Interstate Compact, making the decision that they feel is in the best interest

96. See INTERSTATE COMPACT, *supra* note 2, reg. 9 (defining "visit").

97. See *id.* reg. 9, para. 6. The regulation provides that "[a] request for a home study . . . made by the person or agency [sending] . . . a child on a visit and that is pending at the time that the visit is proposed will establish a rebuttable presumption that the intent of the stay or proposed stay is not a visit." *Id.* This presumption makes it more difficult to allow visits if a home study is requested, as it will be at least initially presumed that the purpose behind the visit is actually to place the child. See, e.g., JACOB LEOS-URBEL ET AL., STATE POLICIES FOR ASSESSING AND SUPPORTING KINSHIP FOSTER PARENTS, ASSESSING THE NEW FEDERALISM 25 (1999) (on file with the University of Michigan Journal of Law Reform) available at <http://www.urban.org/Uploadedpdf/discussion00-05.pdf> (stating that particularly with kinship placements, there is often a visit before evaluation can begin to determine whether the placement is an appropriate permanent placement).

98. See *supra* note 23 and accompanying text (outlining development and importance of best interest of child standard).

99. See *supra* note 28 and accompanying text (explaining that dependency courts are typically less adversarial).

100. Courts might be challenged when one party is not satisfied with the decision. In most cases there is a prosecutor representing the state, a guardian ad litem who represents the child's interests, and sometimes a privately retained attorney or a public defender representing one or both of the biological parents. The most likely scenario for the court to be challenged is by one of the parents who does not want the child to live with another relative because of personal conflict or distance. Generally, however, at the time the child is being removed from a parent, the parent is usually dealing with other challenges that require more attention than challenging the Interstate Compact.

of the children. They will do so even if it results in judicial non-compliance and then deal with any consequences in the future.

II. THE INADEQUACY OF THE NEW LEGISLATION AND CURRENT PROPOSALS FOR REFORM

The Safe and Timely Interstate Placement of Foster Children Act of 2006 (the "Act") and the current proposals for reform are inadequate for several reasons. They do not address the need for a provisional placement that would allow for nearly immediate interstate placement and they do not provide an incentive for the courts to abide by the Compact.

The most recent proposal by the American Public Human Services Association recommends that interstate placement be made within sixty days.¹⁰¹ The Act, signed into law by the President on July 3, 2006 and scheduled to take effect on October 1, 2006, attempts to place a sixty-day limit to complete the necessary home study on the receiving state.¹⁰² This legislation does not go far enough to shorten the period of time that a child must wait for placement, especially in situations, such as the one depicted in the Introduction, where a child is placed in a detention facility while awaiting approval of an out-of-state placement. Currently, it can take thirty days or more for a sending state to gather the materials that need to be sent to the receiving state.¹⁰³ Because the sixty-day period does not begin until the receiving state gets these materials, vulnerable children may still wait in excess of three months for placement under the current legislation.¹⁰⁴

101. See *supra* notes 75–77 and accompanying text (noting APHSA's proposal for reform).

102. See Safe and Timely Interstate Placement of Foster Children Act of 2006, 42 U.S.C. § 671(a)(26)(A) (2006).

103. See generally APHSA REPORT, *supra* note 14, at 18–19 (outlining delays caused by sending states.) Top three delays cited were "incomplete request packets, missing court orders, and inadequate financial plans." *Id.*

104. See Memorandum from Admin. For Children and Fams., Children's Bureau, U.S. Dep't of Health and Human Servs. to State, Tribal and Territorial Agencies 2 (Aug. 11, 2006) (on file with the University of Michigan Journal of Law Reform) *available at* www.acf.hhs.gov/programs/cb/laws_policies/policy/im/im0603.pdf (outlining bill and when 60-day period begins). (Although these reports discuss an earlier version of the legislation, the relevant portions discussed herein are substantially similar to the version that ultimately was passed into law.) Additionally, states would have fourteen days to consider the home study's finding before making a final decision, and several exceptions to the sixty-day rule exist. See National Conference of State Legislatures, House Adopts New Requirements for Interstate Adoption and Foster Care, <http://www.ncsl.org/statefed/humserv/>

Under the Act, there is little incentive for judges to abide by the Compact, especially those judges who already ignore the Interstate Compact and place children across state lines under the guise of a temporary visit. Judges who engage in these practices do so because they believe it is in the best interest of a child to be placed in a matter of days, rather than weeks or months. For courts that believe it is in the best interest of the child not to be placed in a temporary placement or traditional foster care—and that are willing to ignore the Interstate Compact and place a child across state lines—the shortening of the waiting period to three months is unlikely to either change their opinions or prevent their knowing violation of the Compact. Accordingly, there is no reason to believe that a judge, who is already ignoring the Interstate Compact for these reasons, will begin to abide by it now that the timeframe for placement has ostensibly been reduced to two to six months. The only solution is to allow the courts to have access to operate in a system where they can act in what they believe is the child's best interest.

III. A PROPOSAL FOR REFORM—PROVISIONAL OUT-OF-STATE PLACEMENTS

A provisional placement that allows for children to be placed across state lines while waiting for full Compact approval is the only proposal for reform that will resolve the problem outlined above. I propose an additional regulation to the current Compact which would allow for a provisional placement of children into kinship care across state lines. This provisional placement mechanism would require five steps to ensure the safety, wellbeing, and best interests of a child.

A. The Five Components of a Provisional Placement

First, this temporary placement would require a determination by the juvenile court that, pending a home inspection, it is in the best interests of the child to be placed into kinship care across state lines rather than traditional foster placement in the sending state.

hr4504.htm (on file with the University of Michigan Journal of Law Reform) (describing bill); *see also* 42 U.S.C. § 671(a)(20)(A)–(B). These exceptions include extensions for completion of criminal background checks and completion of foster parent/adoptive parent training. *Id.* Such exceptions further delay the relocation of children.

Second, within seven days, a social worker would be allowed to cross state lines for the limited purpose of conducting a home study in the receiving state to determine safety and appropriateness. In the alternative, the sending state could contract with a private agency in the receiving state to conduct a home study in anticipation of a provisional placement. Next, upon completion of this home study, the court from the sending state would submit to the receiving state's Compact administrator a request for approval of a provisional placement. This placement would be made in conjunction with the sending state's concurrent request for full approval of the permanent placement under the Interstate Compact. Fourth, the receiving state would be obligated to initiate services for the child within thirty days of the placement, in accordance with the sending state's recommendation. Finally, the receiving state would be obligated to provide the services recommended by the sending state for up to 120 days or until approval of the Interstate Compact, whichever is less.

1. Best Interests Determination by the Dependency Court

A best interests determination by the dependency court is necessary to balance the immediate needs and safety of the child with the potential consequences of traditional placement. The juvenile courts are well-prepared for making best interests determinations.¹⁰⁵ The juvenile court in the sending state is in the best position to hear evidence in an expedited manner regarding the most appropriate placement because it is already familiar with the facts and circumstances surrounding the child's need for placement. The court can hear testimony from social workers, parents, family members, medical and mental health professionals as well as any other witnesses who can provide testimony and evidence relevant to what is in the best interests of the child.

The dependency court has the ability to assess the entirety of the situation and determine what is in the best interests of a child. For instance, under this proposal, there may be a brief period when some services would not be available to the child in the receiving state because of the time it takes to coordinate administratively and

105. See LaFave, *supra* note 23 (describing origins of the best interests of the child standard); see also David A. Harris, *The Criminal Defense Lawyer in the Juvenile Justice System*, 26 U. TOL. L. REV. 751, 756-61 (1995) (describing application of 'best interest' standard in several scenarios).

put into place those services for the child. Ideally, the receiving state would put services into place in a more expedited manner than the thirty days allowed under this proposal. However, if the sending state is not able to immediately provide necessary services, the court would have to take this into account in determining whether a provisional placement is in the child's best interests. In the end, the court could weigh all of the relevant information and make an independent determination of what is in the best interests of the child.¹⁰⁶

Under the current system, where dependency courts are sending a child to a receiving state and ignoring the mandated Interstate Compact approval, the court is making a determination that it is in the best interests of the child to go to the receiving state, despite the fact that this placement is not authorized under the Compact. Conversely, this proposed provisional placement would require courts to make a more informed decision because they would have the benefit of a home and safety inspection which will improve the safety of the child.

2. Seven Day Requirement for Completion of a Home Study Evaluation

Any reform to the Interstate Compact system must include a provision for the nearly immediate placement of children across state lines. The first step in accomplishing this is determining the appropriateness of the potential placement. Under the Compact, an assessment of the potential placement must be performed to determine its safety and appropriateness prior to placement. A home study evaluation completed within the seven-day time period would get the placement process started almost immediately. At the same time, this period would provide adequate time for social workers to complete both a home study evaluation and safety check of the home in the receiving state.¹⁰⁷ Home study evalua-

106. Despite the presence of an appropriate out-of-state placement, it will not always be in the child's best interests to enter such a placement. For example, a child may have a serious medical or mental health condition that requires immediate and intensive services. These services would be difficult, if not impossible, to coordinate in a receiving state on such short notice. Additionally, a child that is likely to reunify with a biological parent in a short period of time might not be best served through kinship placement if it is far away and difficult for the parent to reach.

107. A home study evaluation can generally be completed rather quickly. For a description of what a home study entails, see Debra J. Braselton, P.C., *What is Involved in a Home*

tions, depending on their complexity, generally can be completed within a couple of days, if not sooner.¹⁰⁸ Furthermore, seven days would give the Compact Administrator in the receiving state adequate time to process the request.¹⁰⁹

A seven-day time period in which a home study evaluation must be completed, allowing the placement to occur, should mollify those judges who are ignoring the Compact because of the current excessive waiting period. This shorter time frame would also ease the burden on sending states that have a severe shortage of temporary placements for children awaiting Compact approval, and would hopefully reduce the need to use detention facilities as temporary placements, because children would more quickly be placed in a permanent foster home.

3. Cooperation of Sending and Receiving States to Complete Home Study Evaluation

There must be greater cooperation between states to facilitate the completion of the home study evaluation in the seven-day time period. As noted above, the receiving state would have seven days to ensure that a home study evaluation is completed. My proposal for increased cooperation between the sending and receiving states offers an option to facilitate the completion of the home study evaluation.

Currently, social workers are required to obtain a separate license to practice in each state and are not allowed to practice in states where they are not licensed.¹¹⁰ This prevents social workers

Study?, http://www.illinois-adoption-law.com/adopt_home_study.html (on file with the University of Michigan Journal of Law Reform) (outlining home study process).

108. See The Arrow Project, Treatment Foster Care: Frequently Asked Questions, http://www.arrow.org/program/faq_foster.htm#4 (on file with the University of Michigan Journal of Law Reform) [hereinafter Arrow Project FAQs] (noting that home studies take between four and eight hours to complete, and simply involve interviews of family members as individuals and as a group).

109. The current state of technology allows the necessary communications to implement this process almost immediately. However, despite the advancement of technology, it is understood that this proposal may still create a greater burden on resources. However, the alternative to having a provisional placement is unacceptable because of the potential consequences to the vulnerable population.

110. See generally Association of Social Work Boards, Social Work Laws & Regulations: Online Comparison Guide, <http://www.aswbdata.powerlynxhosting.net> (follow "Social Work Laws & Regulations: Online Comparison Guide" hyperlink) [hereinafter ASWB, Comparison Guide] (noting that each jurisdiction has its own requirements and outlining requirements of all American states and Canadian provinces). For instance, Pennsylvania

licensed in the sending state from traveling across state lines to complete home assessments designed to ensure the safety of children being placed.¹¹¹ As the Compact is currently structured, the sending state is prevented from being proactive in the placement of children. Instead, they simply must wait for a response from the receiving state.

This proposal calls for allowing the sending state to be proactive in the placement.¹¹² Through either the Interstate Compact or certain border state agreements, social workers from the sending state should be granted permission to travel to the receiving state and conduct a home evaluation and safety check therein. In border state agreements, one state permits another state (or their contractors) to conduct home studies in another state.¹¹³ Such agreements tend to expedite the home study process and are favored by leading reform groups, but must operate within the parameters of the Interstate Compact.¹¹⁴

Although some might argue that this would impose too great a burden on the social workers in the sending states, most home studies can be completed within several hours.¹¹⁵ Additionally, although few precise statistics are available, out-of-state placements generally occur in nearby areas, enabling social workers to easily

has only one category of social worker, a "Licensed Clinical Social Worker," requiring 3500 hours of experience over two years for certification, while Oklahoma has four different levels of certification, each requiring at least 4000 hours over a two-year period for certification. *Id.* Rhode Island's single classification requires only 3000 hours within six years of application. *Id.*

111. A social worker licensed in one state is not allowed to practice in other states because each state has its own licensing requirements. *See generally* ASWB Comparison Guide, *supra* note 110 (noting that social work licenses are nontransferable). *See, e.g.,* N.J. STAT. ANN. § 45:15BB-4 (West 2006); 63 PA. CONS. STAT. ANN. § 1920 (West 2006). These regulations make it impossible for a social worker from the sending state to assess the home in the receiving state.

112. The sending state is in the best position to make this determination because it is already familiar with the facts and circumstances surrounding the child's need for placement and can hear testimony from any necessary witnesses relevant to the needs of the child.

113. *See* Gilmore, *supra* note 4, at 72–73 (2004) (defining border state agreements).

114. *See id.* For example, Kansas and Missouri have entered into a border state agreement for the express purpose of expediting family assessments. *See* KAN. DEP'T OF SOC. AND REHAB. SERVS., CHILDREN AND FAMILY SERVICES POLICY AND PROCEDURE MANUAL § 9530 (2005) (on file with the University of Michigan Journal of Law Reform) available at http://www.srskansas.org/CFS/cfp_manuals/ppnepmanuals/ppm_manual/PPM%20Sections%20Jan%202006/SECTION%204000.htm (providing social services information).

115. Although the exact format of home studies varies, it generally takes between four and eight hours, and involves interviews of each family member individually and as a group. *See* Arrow Project FAQs, *supra* note 108 (describing home study process). Interview topics include the family's finances, work history, marriage/dating background and extended family. *Id.*

travel to the prospective placement. Even if a social worker is required to travel a significant distance, the burden on the resources of the sending state will likely be mitigated by the more immediate placement of the child in the receiving state.¹¹⁶

This proposal also offers the alternative of allowing the sending state to contract with a private social work agency in the receiving state to conduct the assessment. Contracting with private agencies would provide the additional benefit of facilitating out-of-state placements that may not be close to the sending state. For instance, in a situation where the potential placement is in a non-border state or is significantly far from the sending state, this option would preserve the sending state's resources, such as money and time, that otherwise would have been expended to send a state social worker to conduct the home study evaluation.

4. Thirty Days for Receiving State to Initiate Services

Any workable proposal must balance the need for prompt placement with the need for adequate time for both the sending and receiving states. Although thirty days does not allow for the initiation of immediate services which might otherwise be available in the sending state, it allows enough time for the receiving state to ensure child safety and to administratively prepare for the initiation of care for the child.¹¹⁷ Thirty days allows the receiving state enough time to contact the state's Department of Family Services and to put a social worker into place to assist with the care and monitoring of the child, satisfying the goal of finding a safe placement for the child. Although the immediate initiation of services would be ideal, the benefit to the child in terms of minimizing the

116. When a child is placed in the receiving state, the burden of the social worker or caseworker in the sending state is significantly reduced because the child is no longer under the worker's direct supervision. Therefore, any expenditure of resources by the worker during the stage of placing a child through a provisional placement of the Interstate Compact is mitigated by this lessening of the burden following the placement of the child.

117. Within the thirty-day period the home study and its approval could be completed so that the sending state can be assured that the child is being sent to a suitable home. See Cecilia Fiermonte, *Interstate Placements: Applying the IPCP*, 21 CHILD L. PRAC. 66, 70 (2002) (describing interstate placement process). The process of the home study could be made more efficient by focusing on the most important parts of a home study such as: references, criminal background checks, and training the prospective family on how to care for foster children. See APHSA REPORT, *supra* note 14, at 5. After getting the child placed quickly and safely in a home, the focus could then shift to providing sufficient medical, educational, and mental health services.

trauma of being separated from his or her biological parent(s) and eliminating multiple placements (including a potential placement in a detention center) by placing the child in an out-of-state kinship placement outweighs the brief delay in the implementation of services in the receiving state.¹¹⁸

5. Services Provided by Receiving State for 120 Days

Services must be provided by the Department of Family Services in the receiving state to a child who is in temporary care while awaiting approval of placement through the Interstate Compact. The recently enacted legislation appears to require a similar time limit for the approval of the Interstate Compact.¹¹⁹ These time frames tend to be approximately ninety to 120 days. Accordingly, under the provisional placement proposal, the receiving state must continue to provide services for 120 days or until the Interstate Compact placement is approved, whichever is shorter. A 120-day approval period during which the receiving state must provide services does not appear to create too much of a burden on the receiving state if for some reason the placement of the child in the state is not approved for long-term care.

Some might argue that such a requirement creates too great a financial burden on the receiving state by unfairly shifting the cost of caring for the child from the sending state to the receiving state. The Author recognizes that this inequitable financial situation exists not only with the provisional placement proposed herein, but also with permanent interstate placements pursuant to the Compact.¹²⁰ Rarely will two states have an equal number of interstate placements between them, such that the costs will balance out.¹²¹ In

118. See *infra*, notes 124–128 (describing how a kinship placement minimizes the trauma of being separated from the biological parent(s)) and 135–139 (describing how a kinship placement reduces the total number of placements to which a child is subjected) and accompanying text.

119. See Safe and Timely Interstate Placement of Foster Children Act of 2006, Pub. L. No. 109-239, 120 Stat. 508 (to be codified in scattered sections of 42 U.S.C.).

120. See AM. PUB. HUMAN SERVS. ASS'N, THE NEW INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN: ADMINISTRATION & GOVERNING STRUCTURE 6 (on file with the University of Michigan Journal of Law Reform) available at <http://www.aphsa.org/Policy/Doc/Admin%20Governing%20Structure%20-%2010-21-04.pdf> (discussing the contentious financial issues involved in interstate placements).

121. See LIZ OPPENHEIM, RE-FORMING THE INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN 1–2 (on file with the University of Michigan Journal of Law Reform) available at <http://csg-web.csg.org/programs/ncic/documents/Oppenheim%20-%20Reforming%20the%20CPC.pdf> (discussing anecdotal evidence of the disproportionate number of

fact, it is quite likely that border states of major metropolitan areas will end up with a disproportionate share of the costs associated with such placements. Accordingly, the Author believes that Congress should address the unbalanced division of costs associated with Interstate Compact placements generally.

B. How Children Will Benefit from a Provisional Placement

Rather than waiting an extended period of time for placement approval through the Interstate Compact, an immediate provisional placement option would be in the best interests of countless children.¹²² A provisional placement of a child into out-of-state kinship care can be in the best interests of a child and the dependency court system because it: (1) minimizes the trauma associated with being separated from the biological parent(s); (2) enhances the likelihood that siblings can remain together; (3) decreases the likelihood that children will have multiple foster home placements; and (4) alleviates the burden on some states to find suitable foster families.¹²³ Further, such placements are consistent with the statutory mandates of many states that give preference to kinship placement.

placements between states, which suggests that the initial hope when forming the Interstate Compact—that the financial burden on border states would balance out—has not been realized).

122. While kinship care is usually preferred over foster care, there is some research that points to kinship care being less effective and kinship caregivers receiving fewer resources, training, and support than foster caregivers. This theory is complicated because there are significant gaps in available research resulting in no definitive answer to whether kinship caregivers are less effective by nature or if it is the lack of resources that results in kinship caregivers being less effective. See Gary S. Cuddeback, *Kinship Family Foster Care: A Methodological and Substantive Synthesis of Research*, 26 CHILD. & YOUTH SERVS. REV. 623, 623–24 (2004). For example, in studying drug-exposed children in foster care and kinship care, it was found that the foster care families had higher incomes and were more likely to adopt than the kinship families. See Devon Brooks & Richard P. Barth, *Characteristics and Outcomes of Drug-Exposed and Non Drug-Exposed Children in Kinship and Non-Relative Foster Care*, 20 CHILD. & YOUTH SERVS. REV. 475, 483 (1998). With respect to services, while the groups rated the quality of services the same, kinship families thought that the availability of services was better than the non-relative families. However, kinship children were found to see their caseworkers for less time per month than children in foster families. *Id.* at 487–88; see also Timothy J. Gebel, *Kinship Care and Non-Relative Family Foster Care: A Comparison of Caregiver Attributes and Attitudes*, 75 CHILD WELFARE 5 (1996) (providing results of similar survey in which it was found that the disparate monetary reimbursements resulting in kinship families receiving less may be justified but that kinship care families may still need more services than foster families).

123. This list is not intended to be exhaustive of all factors; rather, it seeks to highlight some of the most significant factors.

1. Minimizes the Trauma Associated with Separation from the Biological Parent(s)

The separation of a child from his or her biological parent(s) can be tragic.¹²⁴ Such separation can result in bonding and attachment issues, which often materialize into more serious issues later in life.¹²⁵ However, placement into kinship care can lessen these detrimental effects of separation from the biological parent(s). "Compared to nonkin foster care, kinship foster care has many advantages for children. It usually preserves family, community, and cultural ties. For most people, staying in the extended family is in and of itself a benefit for children."¹²⁶ Kinship placement avoids the trauma experienced when children move in with strangers, as children are likely to already be familiar with their new caregivers.¹²⁷ Further, the chances of parental contact and the likelihood of remaining with siblings are greatly improved for children living with relatives instead of being placed in "nonrelative foster care."¹²⁸

2. Enhances the Likelihood that Siblings Can Remain Together While in Foster Care

During the last decade, there has been increased recognition regarding the importance of the bond between siblings. "Unlike the period prior to 1991, sibling issues have become preeminent among state and federal bills, statutes and cases Legislators have begun to recognize the emotional, as well as the financial,

124. See Dolgin, *supra* note 22, at 1255-58 (suggesting that child placement in multiple foster homes and inability to form stable parental ties are often worse than allowing child to stay in home with drug or alcohol-abusing parent).

125. *Id.*

126. Dorothy E. Roberts, *Kinship Care and the Price of State Support for Children*, 76 CHIL.-KENT L. REV. 1619, 1625 (2001) (describing many benefits of kinship care over non-kin foster care).

127. *Id.* at 1625 n.42 (citing James P. Gleeson & Lynn C. Craig, *Kinship Care in Child Welfare: An Analysis of States' Policies*, 16 CHILD. & YOUTH SERVS. REV. 7, 10 (1994); see also Gayle Hafner, *Protections Extended to Foster Children in "Kinship Care"*, YOUTH L. NEWS, Jul.-Aug. 1991, at 8, 8-9).

128. Jill Duerr Berrick et al., *A Comparison of Kinship Foster Homes and Foster Family Homes: Implications for Kinship Foster Care as Family Preservation*, 16 CHILD. & YOUTH SERVS. REV. 33, 36 (1994); Roberts, *supra* note 126, at 1625 n.41 (citing Mark F. Testa, *Kinship Foster Care in Illinois*, in 2 CHILD WELFARE RES. REV. 101, 124 (Richard P. Barth et al. eds., 1997)); Marla Gottlieb Zwas, Note, *Kinship Foster Care: A Relatively Permanent Solution*, 20 FORDHAM URB. L.J. 343, 354 (1993)).

importance of recognizing sibling bonds."¹²⁹ The interference and disruption of sibling relationships, which can many times be avoided by placement in kinship care,¹³⁰ should be taken into account when deciding the appropriate placement for a child.

The traditional foster family is generally less likely to accommodate multiple children and such placements make it more likely that siblings will be separated.¹³¹ These separations occur because traditional foster placements lack the available resources¹³² or willingness¹³³ to accept multiple siblings. For example, a traditional foster placement may have only one available bedroom that can accommodate a maximum of two children. In many situations where three or four siblings need to be placed due to abuse, neglect, or abandonment, it is inevitable that some of the siblings will have to be separated.

When children are placed in kinship care in another state, the likelihood increases that siblings can remain together as compared to traditional foster placement. With a kinship placement, there may be a willingness to expend resources and to care for the entire

129. See William Wesley Patton, *The Status of Siblings' Rights: A View into the New Millennium*, 51 DEPAUL L. REV. 1, 3-4 (2001) (discussing siblings' legal status).

130. See *id.* at 26-27. Kinship care makes it less likely that foster care drift will be experienced by siblings. *Id.* at 27. Further, sibling groups are more likely to permanently stay together even in the event that their parents' rights are terminated when in kinship care. *Id.* at 27-28.

131. See, e.g., N.J. CHILD WELFARE PANEL, PERIOD II MONITORING REPORT 23-24 (Oct. 11, 2005) (on file with the University of Michigan Journal of Law Reform) available at http://www.aecf.org/njpanel/NJ_Monitoring_Report_II.pdf (indicating that in New Jersey, siblings are only able to be placed with all other siblings about fifty percent of the time); see also William Wesley Patton & Sara Latz, *Severing Hansel from Gretel: An Analysis of Siblings' Rights*, 48 U. MIAMI L. REV. 745, 757-58 (1994). From August 9, 1990 to November 8, 1991, California separated forty to fifty-six percent of siblings. New York and Illinois separated siblings at comparable rates: forty percent and forty-one percent, respectively. The Patton and Latz article suggests that the state median of out-of-home sibling placements in which siblings are separated is forty-one percent. *Id.* at 758-59.

132. See *In re David A. Jr.*, 1998 WL 910258, at *5 (Conn. Super. Ct. Dec. 18, 1998) (discussing the difficulties of one set of siblings being permanently placed together); see also Groza, *supra* note 12, at 483-84 (in some cases the blended families would be too large for the physical space in the home, although waivers may be available to accommodate for this issue, often caseworkers and agencies are not always knowledgeable or flexible with regard to waivers.).

133. See Groza, *supra* note 12, at 483; Patton, *supra* note 129, at 1 n.4 (citing *Sibling Groups in Foster Care: Placement Barriers and Proposed Solutions*, in REPORT TO THE LEGISLATURE, at 6 (1997)) ("Relatives often express a commitment to care for the children until they come of age and only twenty-three percent of children initially placed with kin experienced another placement within three to five years as compared to fifty-eight percent of children in nonrelative foster homes.").

family unit.¹³⁴ For example, a family member might be willing to purchase a bed or rearrange rooms to accommodate the placement of several children whereas the traditional foster placement has already had their home evaluated for maximum capacity and may have set personal limits as to how many children they are willing to accommodate.

3. Avoids Multiple Foster Placements of Children

Multiple placements can be traumatic for children at a time when they are most vulnerable and in need of stability. A young child who is exposed to multiple foster placements has difficulty forming appropriate bonds.¹³⁵ This difficulty may plague a child throughout his lifetime.¹³⁶

A child who must wait for approval of the Interstate Compact before being placed across state lines is guaranteed to experience an increase in the total number of placements prior to permanency. Initially, the child will need to be placed while awaiting approval of the Interstate Compact. This situation itself adds at least one additional placement.¹³⁷ Because “[m]ost children in foster care for as little as six months experience multiple placements,”¹³⁸ many of these children may be exposed to multiple

134. See Roberts, *supra* note 126.

135. See Dolgin, *supra* note 22, at 1256–58 (discussing damaging effects of multiple placements including children being more likely to experience abuse and have trouble forming attachments and self value).

136. *Id.* at 1258 n.193 (citing J.C. Barden, *After Release from Foster Care, Many Turn to Lives on the Streets*, N.Y. TIMES, Jan. 6, 1991, at A1) (suggesting that many foster children never achieve stability as a result of abuse and stability issues developed while in foster system); *id.* at 1258 n.196 (citing D.J. Besharov, *The Misuse of Foster Care: When the Desire to Help Children Outruns the ability to Improve Parental Functioning*, 20 FAM. L. Q. 213, 220 (1986)). It is suggested that children who spend more time in the foster care system are more likely to experience multiple placements and more life-long effects ranging from psychological scars and chaotic lives to homelessness and lives of crime. *Id.* at 1258.

137. A child can sometimes be placed in multiple foster homes while waiting for approval of the Interstate Compact. For example, a recent case handled by the author demonstrates one of hundreds of possible reasons for multiple placements. This particular case involved a cross-racial placement. The child had difficulty adjusting to the placement and the foster family was frequently offended and disturbed by the actions of the child. Therefore, this four-year-old child was moved to another home while she waited almost six months for approval of the Interstate Compact and eventual placement with her maternal grandmother.

138. Dolgin, *supra* note 22, at 1257. Children in foster care for longer periods of time often experience even more placements and, as a result, an increase in emotional and behavioral problems. *Id.*

placements while awaiting the time-consuming approval of the Interstate Compact.

A provisional placement provides a solution by avoiding these multiple placements. In general, "kinship foster care is more stable: children living with relatives are less likely to be moved to multiple placements while in substitute care."¹³⁹ A provisional placement for children into an out-of-state kinship placement pending the full approval of the Interstate Compact would decrease the total number of placements.

4. Allowing Children to be Provisionally Placed in Another State Increases the Total Number of Available Placements

Many states struggle to secure and certify appropriate foster family placements.¹⁴⁰ The immediate placement of a child alleviates the need to find an appropriate foster care family in the sending state. When a child must remain in a sending state pending the approval of the Interstate Compact, a potential foster placement option is taken away from another child—a problem compounded by the already severe shortage of available foster placements in some states.¹⁴¹ Furthermore, if a family member in a receiving state is

139. Roberts, *supra* note 126, at 1625. In addition, children placed in kinship care are likely to be better cared for. *Id.*

140. See Marla Gottlieb Zwas, *Kinship Foster Care: A Relatively Permanent Solution*, 20 *FORDHAM URB. L. J.* 343, 343–44 (1993) (discussing increased difficulty with finding appropriate placements due in part to the increased need for placements which began in 1980s); Karina Bland, *Foster Care Shortage Detailed in Study*, *ARIZ. REPUBLIC*, Aug. 10, 2005, at 3B, available at <http://www.azcentral.com/arizonarepublic/local/articles/0810CPSbrief.html> (noting that, despite 1000 empty foster care placements, 1500 children in Arizona are living in group homes due to shortage of placements for children of certain ages, locations, and behaviors); Ruth Teichroeb, *With Fewer Willing to Take on the Job, Foster Care is in a Worsening Crunch*, *SEATTLE POST-INTELLIGENCER*, Sept. 24, 1999, at A1, available at <http://seattlepi.nwsource.com/littlerefugees/fost24.shtml> (explaining that King County has been unable to maintain the number of foster care homes it needs, despite doubling its recruitment budget and increasing its training budget by \$500,000, due in part to the region's reduction in number of stay-at-home parents and increased housing costs); Diana Heil, *Foster-Care Shortage*, *THE FREE NEW MEXICAN.COM*, Aug. 15, 2005, <http://www.freewmexican.com/news/31276.html> (on file with the University of Michigan Journal of Law Reform) (explaining that shortage of foster care families in Santa Fe forces state authorities to place children throughout state).

141. See Jill Duerr Berrick, *When Children Cannot Remain Home: Foster Family Care and Kinship Care*, 8 *FUTURE OF CHILD.* 1, 72, 74 (1998) (discussing shortage of placements). Factors that make it difficult for households to take on foster children and are often noted as responsible for the decline of available foster homes include increases in single-parent homes, women working outside the home, divorce rates, and rising costs. *Id.*

willing and able to accommodate more than one sibling, this could keep open several placements in the sending state where the children might have been separately placed.

Some might argue that the net result would be the same because the immediate placement would take away a potential foster placement in the receiving state. This is not true in most cases, however, because the kinship placement results in the creation of a new foster family who otherwise would not be a foster family.¹⁴² Although this is not a long-term solution for the shortage of potential foster care placements, it at least reduces the burden on an already overburdened system.

5. Kinship Care is Consistent with the Goals of Sending States

Many states and courts agree that kinship care is better for children than traditional foster care.¹⁴³ Undoubtedly, kinship care can prevent a child from being moved on multiple occasions, can help keep siblings together, and is better than keeping a child in detention.¹⁴⁴ Indeed, many states mandate that courts consider kinship

142. Kinship care has experienced an increase in its numbers largely due to the lack of traditional foster homes. See Child Welfare League of America, Kinship Care: Fact Sheet, <http://www.cwla.org/programs/kinship/factsheet.htm> (on file with the University of Michigan Journal of Law Reform) (detailing the factors behind the increase in kinship care numbers). Thus, these kinship placements supplement the traditional foster placements available.

143. Yet, there is still some debate about whether kinship care is the superior placement alternative compared to traditional placement. See Cuddeback, *supra* note 122, at 631 (citing Devon Brooks & Richard P. Barth, *Characteristics and Outcomes of Drug-Exposed and Non-Drug Exposed Children in Kinship and Non-Relative Foster Care*, 20 CHILD. & YOUTH SERVS. REV. 475, 475–501 (1998)); J.M. Gaudin & R. Sutphen, *Foster Care vs. Extended Family Care for Children of Incarcerated Mothers*, 19 J. OF OFFENDER REHABILITATION vols. 3/4, 129, 129–147 (1993); Timothy J. Gebel, *Kinship Care and Non-Relative Family Foster Care: A Comparison of Caregiver Attributes and Attitudes*, 75 CHILD WELFARE 5, 5–18 (1996).

144. See Editorial, *Foster Kids in Jail? No*, SEATTLE POST-INTELLIGENCER, Dec. 7, 1999, at A18, available at <http://seattlepi.nwsourc.com/opinion/dshsed1.shtml> (reporting that judges admit ordering detention for children who have committed no crimes due to lack of foster homes); Randi Mandelbaum, *Are Abused and Neglected Children in New Jersey Faring Any Better Since the Tragedies of 2003?*, N.J. LAW. MAG., Oct. 2005, at 9, 10–11 (explaining that children with mental and/or emotional health needs are more likely to be kept in juvenile detention facilities for months while the state finds an appropriate placement); Ruth Teichroeb, *Judge's Choice: Lock Up the Kids or Put Them Out On the Street*, SEATTLE POST-INTELLIGENCER, Sept. 23, 1999, at A1, available at <http://seattlepi.nwsourc.com/litderefugees/lock231.shtml>; Ruth Teichroeb, *Lockup of Foster Youths May Lead to Suit; Shortage of Homes Results in Illegalities, Group Says*, SEATTLE POST-INTELLIGENCER, Dec. 6, 1999, at A1, available at <http://seattlepi.nwsourc.com/local/lock06.shtml> (noting foster children being kept in detention).

placement as a first priority¹⁴⁵ and courts should have the option to send a child across state lines into kinship care if they determine that doing so is in the best interests of the child.¹⁴⁶

C. Enhancing the Safety Provisions of the Interstate Compact

Originally, the Interstate Compact on the Placement of Children was created to ensure that there are adequate safety precautions and uniform standards when sending a child across state lines.¹⁴⁷ This proposal does not intend to minimize or lessen those protections. In fact, its aim is to provide greater security and protection for these susceptible children. If courts are regularly ignoring the rules of the Interstate Compact, children are being sent to other states without full and adequate home study evaluations. Under this provisional placement proposal, courts are more likely to abide by the provisions of the Interstate Compact because children would be placed more quickly into stable environments. The incentive for courts to ignore the Interstate Compact and disguise placements as temporary visits would largely disappear. With a provisional placement option added to the Interstate Compact, children would be more likely to be protected than under the current structure and operation of the process, which often places children across state lines without adequate precautions and safeguards.

With a provisional placement option added to the Interstate Compact, children would be more likely to be protected than under the current structure and operation of the process that places children across state lines.

145. For statutes in which it is expressly stated that kinship care is a top priority in child placement see CAL. WELF. & INST. CODE § 361.3 (West 2006); MD. CODE ANN., FAM. LAW § 5-534 (West 2006); 62 PA. CONS. STAT. ANN. § 1303 (West 2006).

146. There may, however, be isolated situations in which a kinship placement is not in the best interests of the child. If the court determines that a specific kinship placement is not as good as traditional foster care, then the court obviously should do what is in the best interests of that child.

147. See APHSA, GUIDE TO THE INTERSTATE COMPACT, *supra* note 43, at 2 (explaining how the Interstate Compact provides the necessary safeguards to ensure a stable environment and protection when children are placed with families). Additionally, it provides a mechanism for children to return to their home state if the placement fails to work out. The Interstate Compact's main concern is providing that children receive the same protections and services in placement states as in their home states. *Id.*

CONCLUSION

This Article addresses a serious shortcoming in the protection of one of our country's most vulnerable populations—abused, neglected, and abandoned children. The current system is not adequately protecting and caring for children who could be placed in out-of-state kinship care, and many juvenile courts have responded by no longer complying with the mandates of the Interstate Compact. By disregarding these mandates, courts are sending a message that the system is in need of repair. Despite attempts by the legislature to resolve the inadequacies of the Interstate Compact, the newly enacted legislation does not go far enough in protecting these children.

The Interstate Compact was originally developed due to a concern that children placed across state lines were not being provided with adequate services. The provision placement proposal presented in this Article is designed to address those concerns while also providing for a more expedited method of secure out-of-state placements. In order to ensure the safety and care of the child in the receiving state, the system needs to become more flexible and accommodate a timelier provisional placement.