Speakers

The Hon. Tanya Bullock, VBJDR, Chief Judge

A native of Virginia Beach, Judge Bullock is a graduate of Bayside High School and NC State University where she received her BA in political science with a concentration in criminal justice. She received her JD from Regent University School of Law in 2000. After graduation, Judge Bullock was an Assistant Commonwealth Attorney in Norfolk and Virginia Beach. Thereafter, she entered private practice and started her own firm with her sister, Wanda Cooper. Her primary areas of practice were criminal defense and federal civil litigation, where she developed a niche in litigating what has become known as foreclosure rescue scams. This led to her assistance in obtaining Virginia's first foreclosure rescue scam statue, which was passed in 2008. Judge Bullock has received numerous awards and honors, including Hampton Roads "Top 40 Under 40," the Partners in Education Award from VB Public Schools, the Urban League Silver Star Legacy Award, the Outstanding Professional Woman Award and the 2011 Trailblazers Under 40 Award from the National Bar Association. Judge Bullock was appointed to the bench in 2012 and became chief judge of VBJDR in 2014. She currently serves on the board for the Association of District Court judges and as the secretary of the Virginia Association of District Court Judge. She was also appointed by the Chief Justice of the Virginia Supreme Court as a member of the Committee on District Courts.

Betty "Sunshine" Arnold, VDSS ICPC

Betty Arnold, more commonly referred to as "Sunshine," is a VDSS ICPC Specialist based in Richmond under Denise Dickerson. She handles all ICPC matters regarding foster care placement and adoptions.

Kerriel Bailey, Esq.

Kerriel Bailey earned her J.D. Degree from Regent University School of Law where she received the "Most Inspirational Graduate" award. Ms. Bailey's undergraduate studies include graduating *summa cum laude* with a Bachelor of Arts degree in Political Science from California State University Fullerton. She also holds an Associate of Arts degree in Philosophy from Cerritos College where she graduated with Highest Honors. Ms. Bailey is licensed to practice law in all courts in Virginia, Washington DC, and in the United States Bankruptcy Court Eastern District of Virginia. Attorney Bailey taught Legal Advocacy at Handong International Law School in Pohang, South Korea. She teaches for her alma mater Regent University School of Law on a variety of subjects. In 2013 Ms. Bailey's book *They've Crossed the Line A Patriot's Guide to Religious Freedom* was released. She co-authored this work with Pennsylvania legislator Steven Bloom; Rick Santorum provided the forward. In addition to working for various private civil and criminal law practices, Ms. Bailey clerked for Jay Sekulow's American Center for Law & Justice. Ms. Bailey also held a Judicial Internship with the Honorable Judge Dewey Lawes Falcone of the Los Angeles County Superior Court. Prior to pursuing her legal career, Attorney Kerriel Bailey spent nearly a dozen years as a non-uniformed employee of the California Highway Patrol. Attorney Bailey belongs to numerous professional organizations including: the Virginia Bar Association, American Bar Association, Virginia Trial Lawyer's Association, Virginia Women Attorney's Association, The Federalist Society, and the Christian Legal Society.

Marc Birnbaum, Assistant Attorney General

Marc Birnbaum serves as an Assistant Attorney General in the public safety and criminal division. He is responsible for investigating and prosecuting violent crimes, gun trafficking offenses, and the distribution of narcotics resulting in death. He also serves as special counsel to the Northern Virginia multi-jurisdiction grand jury and as a Special Assistant U.S. Attorney for the Eastern and Western districts of Virginia. Marc previously served as an Assistant Commonwealth's Attorney for Fairfax County for almost seven years. Before that, he was an associate at the law

firm Morgan, Lewis & Bockius. Marc is a graduate of The George Washington University and Tulane University School of Law.

Melissa Bray, Assistant Public Defender

Ms. Bray received her Bachelor's Degree from Oral Robert's University in 2006. Thereafter, she decided to attend law school with the hopes of one day working in the public defender system. She graduated from Regent University School of Law in 2011, and has been employed as an Assistant Public Defender for the City of Virginia Beach since 2012.

Mitch Broudy, Assistant Attorney General

Mitch Broudy has been practicing before the Virginia Beach Juvenile and Domestic Relations District Court since 1985 in various roles – private practitioner, assistant commonwealth's attorney, assistant public defender, GAL, and an AAG representing Virginia Division of Child Support Enforcement. He has been with the OAG's office full-time for the past fifteen years. Mr. Broudy is currently a Senior Assistant Virginia Attorney General that is based in the Pembroke 3 offices of the AG in Virginia Beach. He primarily handles all child support enforcement matters coming out of Virginia Beach. Mr. Broudy holds a B.A. from James Madison University, and a J.D. from Mercer University School of Law. He is very active with the Virginia Beach Bar Associations' JDR Subcommittee and was recently an integral player in procuring the monitors seen throughout the VBJDR complex, which provide much needed resources to citizens in the courthouse.

Scott Darnell, Assistant Attorney General

Geoffrey "Scott" Darnell has been with Office of the Attorney General representing the Virginia Division of Child Support Enforcement for 25 years. He is currently a member of the Federal Office of Child Support Enforcement's "International and Interstate Child Support Workgroup" and has been an instructor at national and local conferences on UIFSA since its adoption. He is also currently a member of OAG's Legislative Committee.

Wilimina Davis, VDSS ICPC

Ms. Davis is a VDSS ICPC Specialist based in Richmond under Denise Dickerson. She handles all ICPC matters regarding foster care placement, adoptions, and international adoptions.

Denise Dickerson, VDSS, ICPC Deputy Compact Administrator

Denise Dickerson is the Deputy Compact Administrator for the Virginia Office of the Interstate Compact on the Placement of Children for VDSS. She oversees the operation of two interstate compacts: ICPC and the Interstate Compact on Adoption and Medical Assistance as well as managing the International Adoptions function. She has previously worked as the Director of Housing Operations for the Richmond RDHA, as the Director of Social Services for the City of Petersburg, and as Deputy Director for the Department of Mental Health, Mental Retardation, and Substances Abuse for the City of Richmond, and position within the Department of Human Resources and the City Manager for the City of Richmond. She is a member of the Board of Trustees for the Valentine Richmond History center and member of the advisory committee for the Partnership for Nonprofit Excellence. She holds a BA in Sociology from Iona College in New Rochelle, NY and a MPA from Virginia Commonwealth University.

Christianna Dougherty-Cunningham, Associate City Attorney

Ms. Cunningham is an Associate City Attorney for the City of Virginia Beach, and has been with that office since 2004. She originally handled eminent domain, 42 USC §1983 defense, collections, housing, local taxation, worker's compensation, municipal liability claims, and other general civil litigation. Sometime in 2007, she was assigned to handle Child Protective Services, Foster Care, Adult Protective Services, Mental Health, Developmental Services, Adult Corrections, and Protected Information, and has handled social services matters almost exclusively for the past six years. She is a member of the Virginia Beach Juvenile and Domestic Relations Court Improvement Committee, the Virginia Beach JDAI committee, the Virginia Beach Bar Association Juvenile Court Committee, the Virginia Beach Capstone Committee for the Georgetown University Child Welfare and Juvenile Justice Multi-System Integration Reform Program, and on the Executive Committee for the James Kent Inn of Court. She has been a speaker at numerous CLEs and conferences across the Commonwealth on various topics involving child welfare, mental health, and adult services. Prior to joining the Virginia Beach City Attorney's Office, Ms. Cunningham was an Associate Attorney at Tavss Fletcher in Norfolk, Virginia, where she handled both civil litigation and criminal defense (state and federal), residential and commercial real estate, family law, business formation, and general transactional matters. Ms. Cunningham has a BA in Broadcasting, *cum laude*, from Arizona State University and a JD, c*um laude*, from Saint Louis University School of Law. She is admitted to practice in the Courts of Appeals for the Fourth Circuit and the District Court for the Eastern District of Virginia, as well as before the Supreme Court of Virginia, and has completed the National Institute for Trial Advocacy's Intensive Trial Advocacy Skills Certification at Georgetown University School of Law.

Elena Ilardi, Associate City Attorney

Elena E. Ilardi is an Associate City Attorney with the City of Virginia Beach City Attorney's Office. She joined the office in 2007 and primarily represents the Virginia Beach Department of Human Services in child abuse and neglect civil cases and Adult Protective Services matters. Prior to joining the City Attorney's Office, Ms. Ilardi worked at Hunton & Williams, LLP in Richmond, Virginia from 2001 to 2007. There she practiced commercial civil litigation and also received the E. Randolph Williams Award for Outstanding Pro Bono Service from 2002-2006 because of her work with the Richmond area Big Brothers/Big Sisters Program, the Women's Advocacy Project, a project that represents indigent victims of domestic violence, and the Chesapeake CASA Program. While in Richmond, Ms. Ilardi was a member of the Lewis F. Powell, Jr. American Inn of Court. Ms. Ilardi graduated from the University of Chicago Law School, with honors, in 2001. She received her Bachelor of Media Arts, Magna Cum Laude, from the University of South Carolina Honors College in 1998, where she was a Carolina Scholar and a National Merit Scholar. Ms. Ilardi also attended the University of Strathclyde in Glasgow, Scotland for one year of her undergraduate study. Ms. Ilardi attended the University of Waikato in Hamilton, New Zealand on a Rotary Ambassadorial Scholarship in 1997. Ms. Ilardi is a member of the James Kent American Inn of Court, the Local Government Attorneys of Virginia, and the Virginia Beach Bar Association. She is admitted to practice in the Courts of Appeals for the Fourth and Sixth Circuits, the District Courts for the Eastern and Western Districts of Virginia, the Western District of Wisconsin, and the Supreme Court of Virginia. She is licensed to practice law in Virginia and South Carolina.

Maheen Kaleem, Esq., Staff Attorney, Rights4Girls

Maheen is a staff attorney at Rights4Girls, an organization based in Washington, D.C. committed to ending gender-based violence against young women and girls in the U.S. Maheen's work focuses on the intersection between commercial sexual exploitation and justice involvement. She has extensive experience working with system-involved youth and their families in Washington, D.C., Pennsylvania, and California, with a particular focus on

sexually exploited youth. She is an alum of the Equal Justice Works Fellowship, the Stoneleigh Emerging Leader Fellowship, and the National Juvenile Justice Network Youth Justice Leadership Institute. She holds a B.S.F.S. in International Politics from Georgetown University's Walsh School of Foreign Service and a J.D. from Georgetown University Law Center. She is a member of the New York State Bar.

Bretta Lewis, Esq.

Bretta Zimmer Lewis holds an undergraduate degree in History from the University of Virginia (1994), a Master's Degree in English and Teaching of Writing from George Mason University (1996) and a Juris Doctorate from The Marshall-Wythe School of Law at William and Mary, where she received the J.D. Carneal, Jr. and Bendheim Scholarships. Ms. Lewis has been a member of the Virginia Bar since 2000. As an associate at Willcox & Savage, P.C., Ms. Lewis gained bench and jury trial experience, trying complex cases in many areas of the law, including land use, family law and general corporate litigation. She has practiced in District, Circuit, and Federal Courts. Since 2003, Ms. Lewis has been the managing partner at Zimmer & Lewis, specializing in Family Law, with a specific concentration in representing children as a Guardian *Ad Litem* in abuse, neglect and contested custody matters. Ms. Lewis has served as a member of the Virginia State Bar Disciplinary Board since 2013, and served the Second District Disciplinary Committee prior to being selected to serve on the Board. Ms. Lewis has served as a faculty member for Virginia CLE as well as the Virginia Employment Law Association, the Virginia State Bar, the Virginia Beach Juvenile Court, and the Tidewater Paralegal Association for topics relating to Family Law and Legal Ethics.

Brandy Newton, 2nd District CSU

Ms. Newton is an intake supervisor with the 2nd District CSU. She has implemented the JDAI philosophy in her management of the unit. JDAI is a project of the Annie E. Casey Foundation and has demonstrated jurisdictions can safely reduce reliance on secure confinement and generally strengthen their juvenile justice systems by promoting changes to policies, practices, programs, and implementing a series of interrelated reform strategies. Those strategies include collaboration, reliance on data, objective admissions screening, alternatives to secure detention, expedited case processing, rigorous facility inspections, and strategies to reduce racial disparity. The 2nd District CSU Intake team processes over 13,000 petitions per year.

The Hon. Deborah M. Paxson, VBJDR Judge

Judge Paxson attended Virginia Wesleyan College and graduated *summa cum laude* with a bachelor's degree in English. She attended the University of Vermont where she obtained a masters degree in English and the University of Virginia School of Law where she received her law degree. She worked from 1988 to 2000 in the Virginia Beach Commonwealth's Attorney's office where she prosecuted a full range of cases from misdemeanors to capital murder. From 1994 to 2000 she was a deputy commonwealth attorney supervising the economic crimes trial team, the drug crimes trial team and the juvenile court trial team. During this time she taught trial advocacy for the National District Attorneys' Association and was a visiting faculty member for the National Advocacy Center in Columbia, South Carolina. On April 1, 2000 she was elected to the Virginia Beach Juvenile and Domestic Relations District Court where she currently serves. She was chief judge of the court from January 2005 to July 2006. She has served on the Virginia Supreme Court's Commission on Judicial Performance Evaluation and the Court's Commission on Judicial Education, "Journey Through Justice." She was a Commission member and co-chair for the Task Force on Children and Adolescents for the Virginia Supreme Court's Commission on Mental Health Law Reform. She currently serves on the Board of Trustees for Virginia Wesleyan College and the board of the Norfolk County Historical Society.

Olymphia Perkins, 2nd District CSU, Director

Ms. Perkins, a 30+ year veteran in the juvenile justice field, is the director of the 2nd District Court Services Unit in Virginia Beach, VA and has held that position since 2007. She holds a BA from University of Virginia and a MS from the University of Cincinnati. She is also a graduate of the Annie E. Casey Applied Leadership Network, a collaboration of supervisors and judges dedicated to implementing the Results Based Leadership strategies to transform the CSU into a client focused agency committed to improving outcomes for youth and families. The 2nd District CSU Team has developed a strong working relationship with VBDHS, VBPD, and VB Public Schools. The 2nd District CSU Unit has 2 "expeditors" and a family engagement specialist through the Tidewater Youth Services Commission that utilize diversion and engagement principles to reduce unwarranted detention among juvenile offenders and/or to reduce length of stay amongst juvenile offenders.

Paul Powers, Assistant Commonwealth Attorney

Paul joined the Virginia Beach office of the Commonwealth's Attorney in February 2005. He grew up in central New York and received his B.A. from Utica College of Syracuse University in 1996. Paul went on to law school at the University of Pittsburgh and received his J.D. in 1999. He went straight into private practice with a small firm in north western Pennsylvania for five years focusing mostly on criminal defense. In his time with Virginia Beach, he has taken an active role in the office training of attorneys and paralegals, and trains all new attorneys in juvenile. Paul has spent over seven years prosecuting child abuse, murder, and child sex cases on the office juvenile prosecution team. He has tried several criminal and civil jury trials as a prosecutor, defense attorney, and representing civil plaintiffs. He is also part of the Commonwealth Attorney Services Counsel Juvenile Impact and Trial Advocacy faculties as well as faculty for ChildFirst.

Mindy Stolworthy, Assistant Public Defender

Ms. Stolworthy graduated from Virginia Commonwealth University with her Bachelor's and Master's Degrees in social work. While earning her degrees, she worked as a residential counselor at an independent living group home. After earning her Master's she worked as a juvenile probation officer in Henrico County for over two years until she decided to go to law school. She attended law school at The Catholic University of America in Washington, D.C. She has been on the juvenile team at the Virginia Beach Public Defender's Office since August of 2011 where she has served on various juvenile committees.

LaTasha Vaughn, DCSE

Ms. Vaughn works for the Virginia Department of Child Support Enforcement ("DCSE") and is an integral part of the child support team serving Virginia Beach. Latasha Vaughan has been with the agency for 14 years. She started in the Suffolk District Office in 2002 as customer service representative and was promoted to an Establishment Specialist, then Court Specialist before coming to Virginia Beach District Office as Support Enforcement, Sr. Last year, DCSE located 268,511 noncustodial parents and established paternities for 4,902 children. In addition, DCSE programmatically and financially supported the establishment of paternity for an additional 25,724 children at birthing hospitals. Virginia collected more than $661 million (a slight decline of -.04% from the previous year) for the children of Virginia. Currently, there are 305,942 child support cases in Virginia. Collectively, 374,000 of Virginia's children are owed more than $2.64 billion in unpaid child support.

Det. William Woolf, Fairfax County PD

Detective William Woof is currently assigned as the lead investigator the Fairfax County Police Department's Human Trafficking Unit tasked with investigating all forms of human trafficking in Northern Virginia. Prior to this assignment, he was assigned to the Fairfax County Gang Investigations Unit, where he was responsible for investigating all gang related crime, compiling intelligence, and disseminating information through the DC metro area in an effort to make the war against street gangs more effective. He has investigated and prosecuted crimes in state and federal court and has partnered with the FBI and Homeland Security. Det. Woolf regularly provides training on human trafficking identification, response, and victim restoration both across Virginia and nationally, and has become a nationally recognized expert in the field. He is the recipient of the 2012 Gang Investigator of the year Award, the 2012 Milton Thrasher Award for Superior Excellence in Gang Prevention, and has continued to foster collaborative relationships with agencies and service providers in both the public and private sector to comprehensively combat the issue of human trafficking. Det. Wool is also a graduate of the University of Virginia.

VIRGINIA BEACH BAR ASSOCIATION – JDR SUBCOMMITTEE ANNUAL CLE

SEPTEMBER 15, 2016 8:30A-5:00P

Virginia Beach TCC Advance Technology Center- Main Theater

1. Human Trafficking and Virginia Juveniles (1.5) 9a-10:30a
    a. Profile of the Victim/Target/Recruitment
    b. Prosecution Barriers
    c. Victim and Treatment; Barriers to Treatment
    d. Addressing Concerns from the Bench
        i) Placement of Children in Congregate Care
        ii) Use of Criminal Charges to "Hold" Victim
            1. The Hon. Tanya Bullock, VBJDR, Chief Judge, moderator
            2. Detective William Woolf, Fairfax County PD/Trafficking Task Force
            3. Marc J. Birnbaum, Assistant Attorney General
            4. Maheen Kaleem, Esq., Staff Attorney, Rights4Girls

Break 10:30a-10:45a

2. Disposition and Commitment Issues in Juvenile Criminal Cases (1.0) 10:45a-11:45a
    a. Options Before the Court
    b. Considerations for Defense Counsel of a Juvenile Criminal Defendant
        i) Paul Powers, Assistant Commonwealth Attorney
        ii) Mindy Stolworthy, Assistant Public Defender
        iii) Melissa Bray, Assistant Public Defender
        iv) Olymphia Perkins, 2nd District CSU

3. Interstate Compacts – ICPC and ICJ (1.0) 11:45a-12:45p
    a. Application in Foster Care Cases/Dual Agency Cases (VDSS & DJJ)
    b. Juveniles with Criminal Charges or Status Offenses- run-aways, absconders, etc. (DJJ)
        i) Denise Dickerson, Deputy Compact Administrator, VDSS ICPC
        ii) Sunshine Arnold, VDSS, ICPC Office
        iii) Whilmina Davis, VDSS, ICPC Office
        iv) Brandi Newton, 2nd District CSU
        v) Elena Ilardi, Associate City Attorney

Lunch 12:45p-1:30p

4. Indian Child Welfare Act (1.0) 1:30p-2:30p
    a. General Application and Compliance
    b. Possible Application in Juvenile Criminal Cases and/or Dual Agency Cases
    c. Current Virginia Precedent and Controlling Federal Case law
    d. Pending Enhanced Federal Regulation
        i) Christianna Dougherty-Cunningham, Associate City Attorney
        ii) Kerriel Bailey, Esq.

5. Child Support (1.0) 2:30p-3:30p
    a. Basic Guidelines Overview
    b. Military/DFAS Issues
    c. DCSE – current hot issues: SHOW CAUSES
    d. UFISA
        i) The Hon. Deborah Paxson, VBJDR
        ii) Mitch Broudy, Assistant Attorney General
        iii) Scott Darnell, Assistant Attorney General
        iv) Latsha Vaughn, DCSE

Break 3:30p-3:45p

6. Ethics: Social Media & Discovery (civil and criminal cases) (1.0) 3:45-4:45p
    a. Use by GALs
    b. Use by CAC or Retained Counsel
    c. Email Security Issues; New VSB Opinion
        i) Bretta Lewis, Esq.

Procedures for setting a matter on the CIVIL Motions docket:

When you set civil motions, these notices should reflect a time of 11:30 a.m. and will be placed on the CIVIL Motions docket. There is one CIVIL Motions docket on any given day except for Friday. Any miscellaneous motions related to a pending civil case are to be scheduled on the CIVIL docket of the Judge assigned to hear that specific case. If your office notiees parties for a different time, without prior approval by the Judge, your Notice of Hearing and Motion will not be docketed and will be returned for you to make the appropriate corrections. The clerk's office will no longer correct Notices of Hearings. If you have a Civil Motion that needs to be heard on a Friday, it will be placed on the DUTY docket at 8:30 a.m. for a hearing at 9 a.m.

If the respondent / defendant is detained, the **arraignment will be by video conferencing.** Juvenile arraignments are conducted Monday through Friday at 11:30 a.m. Adult arraignments are conducted Monday through Friday at 11:00 a.m. These are heard in courtroom #7. If the Respondent / defendant is not detained the arraignment will be Monday—Friday at 9 A.M in #7.

How to set a contested case on the docket?

The Judges handle their contested dockets differently. Please contact the Judges' courtroom clerks and they will advise you on this procedure.

How to get on the Virginia Beach Juvenile & Domestic Relations District Court Court Appointed Counsel / Guardian Ad Litem List?

The attorney can submit a letter requesting to be placed on the Virginia Beach Juvenile and Domestic Relations District Court's [VB J&DR Court] Court Appointed Counsel/Guardian Ad Litem List [CAC/GAL] The letter is addressed to the Chief Judge of the VB J&DR Court with certification letters attached. The Judges will review the letter and the certifications for approval to be added to the VB J&DR Court CAC/GAL duty list. The attorney will receive notification if approved.

Qualifications required and maintained:

A. Guardian Ad Litem for Children
   a. Certification received through Supreme Court of Virginia
   b. www.courts.state.va.us
B. Virginia Indigent Defense Commission
   a. must be Certified to handle Felony, Misdemeanor, and Juvenile delinquency cases.
   b. All three certifications.
   c. www.indigentdefense.virginia.gov

CAC/GAL duty calendars time period:
January through June [emailed out in October]
July through December [emailed out in April]

The duty attorney is assigned a specific docket(s) to cover:

- Division of Child Support Enforcement docket [DCSE]
- Department of Human Services docket [DHS]
- General Duty [all remaining dockets]

If attorney is unable to cover their duty days, the attorney is required to find another attorney on the VB J&DR Court CAC/GAL list to cover the duty day. The attorney is to send a letter to the court notifying of the change of duty attorney on a specific day. An Order of Substitution of Counsel MUST be filed with the court on each individual case when requesting a change of attorney. **Substitution as a GAL requires court approval.**

Any questions, please contact Peggy Davy, Chief Administrative Assistant, at (757) 385-8366.

Virginia Beach
Juvenile & Domestic Relations District Court

2425 Nimmo Pkwy, Bldg 10A
Virginia Beach, VA 23456

Main Line: 757-385-4391
Fax: 757-385-5683

Hours: Monday - Friday 8 am to 4 pm

Updated August, 2016

Introduction to the Virginia Beach Juvenile & Domestic Relations District Court

Virginia Beach Juvenile and Domestic Relations District Court

Local procedures for the Virginia Beach Juvenile and Domestic Relations District Court Clerk's office:

The Court recommends all filings for **support** (DC-610), **custody and visitation** (DC-511) are filed on the state's forms with the proper affidavits (DC-418 and DC-620). These forms are located at the Clerk's Office and on the court's website at www.vbgov.com/courts. The forms for a **Motion to Show Cause** (DC-635) and **Motion to Amend/Review** (DC-630) are located on the court's website as well. Ensure the appropriate affidavits accompany these pleadings.

Remember, if custody/visitation petitions are filed on the same day, a payment of $25 is required per family per filing date.

If a custody, visitation and support case meets specific criteria they are referred to orientation with a mediator before the first court hearing.

At the first hearing, depending on the circumstances, a judge may appoint a GAL on a custody or visitation case. This is not the practice on every custody and visitation case. The appointment of a GAL is determined on a case by case basis.

No court dates will be given at the time of filing, so make sure your available dates, 30 to 90 days out, are submitted with these pleadings. If not, the paperwork will be returned by the clerk's office.

Also, when submitting paperwork to the clerk's office, make sure three extra copies are submitted for service of process on each party that needs to be served. If not, the clerk's office will return your paperwork.

Numerous questions have been raised regarding which petitions or motions will be accepted by the Court regarding custody, visitation, and child support matters.
To clarify:

When a visitation order based on a previously filed visitation petition has been entered in this court or in a Final Decree of Divorce, then a Motion to Amend/Review (DC -630) may be filed to modify visitation. If a divorce decree states reasonable visitation, a new petition needs to be filed at the Court Service Unit.

If prior visitation was awarded as a result of a visitation petition filed in another Virginia J&DR Court, from

which the case was transferred to this court, visitation can be modified upon filing a Motion to Amend/Review on the Court's form (DC-630).

If there has been no visitation order entered by any court, a new visitation petition must be filed (DC-511).
For all custody matters (original or modifications) a new petition must be filed on the Court's form DC-511.

If there is an existing support order from any court, and DCSE is not involved, and a party wishes to change the order, the party must file a Motion to Amend/Review on the J&DR Court's form (DC-630).

If there is an existing support order from any court, and DCSE is involved:

Custodial parents need to file at DCSE and noncustodial parents can file at the Clerk's office.

If a DCSE administrative support order (but not a court order) has been entered and:

The **respondent/payor wants that order changed,** a new support petition must be filed in JDR Intake (because the court has no case number for that support matter.)

If the **petitioner/payee wants the order changed**, the petitioner must file a new petition for support with JDR Intake, and advise the intake officer that a DCSE case exists.

If there is no existing support order from any court or from DCSE ordering child support for the petitioner who is now asking for support, an initial support petition (DC -610) must be filed by the petitioner at Intake.

Miscellaneous Motions: A Motion to Expedite, to Appoint a GAL, to Withdraw as Counsel, to Continue a Matter, to Advance on the Docket, to Quash, to Compel, to Vacate an Order, to Rehear, for Attorney's Fees, or to Enter an Order (if the case has already been heard and the Court is expecting an order as a result), or any other similar motion (other than a motion to modify visitation or custody) ***may be filed on the attorney's or pro se party's own pleading form*** (original and two copies).

In other words, these do not have to be filed on the court's Motion to Amend/Review form. However, the court has a form that can be utilized for these filings.

These should be noticed for 11:30 a.m. on the appropriate judge's Civil Motions docket.

No court dates will be given at the time of filing, so make sure your available dates, 30 to 90 days out, are submitted with these pleadings. If not, the paperwork will be returned by the clerk's office.

Please note that notices (original and two copies) must accompany these pleadings on attorney forms. Please contact the court to obtain a court date.

Motions to Show Cause must be filed on the Court's Motion to Show Cause form DC-635 (an original and two copies)

When that motion is submitted, the Court will issue an order to appear. Therefore, only the motion, and not a notice or an order is required to be filed.

Make sure the date of the order the defendant is allegedly not complying with is noted on the show cause, or a copy of that order accompanies the pleading.

Where to file:

Motions may be filed at the front counter at the J&DR Clerk's office Monday through Friday 8 a.m. to 4 p.m.

All petitions for custody, visitation and support are to be filed at the Virginia Beach Court Services Unit Monday - Friday, 8:00am to 3:30pm. Please contact Court Services at 385-4361 for additional information.

If an attorney prepares the motion or petition on the Court's form for filing, it may be filed at the Clerk's office (any filing in the wrong place will be returned to the attorney or filing party.)

Applicable fees apply if custody/visitation or spousal support petitions are filed.

(Continued on back page)

HUMAN TRAFFICKING AND VIRGINIA JUVENILES

rights4girls

ISSUE BRIEF:
FOSTER CARE, JUVENILE JUSTICE, AND DOMESTIC CHILD SEX TRAFFICKING

INTRODUCTION

Domestic Child Sex Trafficking (DCST)[i] is a form of commercial sexual exploitation of children (CSEC) here in the United States. As defined in the Trafficking Victims Protection Act, it is the "recruitment, harboring, transportation, provision, obtaining, patronizing, soliciting or obtaining of a person for the purpose of a commercial sex act" where the victim is a U.S. citizen or lawful permanent resident under the age of 18.[ii]

RISK FACTORS

Risk factors for domestic child sex trafficking include but are not limited to: being between the ages of 12 and 14, having a history of sexual and physical abuse, community and family instability and dislocation, being a runaway, poverty, and being female.[iii] These factors make youth vulnerable and easy prey for traffickers and exploiters looking to turn an easy profit, and too often go unidentified and fall through the cracks of our child welfare and juvenile justice systems.

CASE FOR CROSS-SYSTEM COLLABORATION

Based on these risk factors, existing data suggests that a large number of domestic child sex trafficking victims are youth that have crossed over from the dependency system to the juvenile justice system, or are dually involved in both. For example:

- The Department of Justice estimates that approximately 250,000 youth are arrested each year under the status offenses of "runaway," "loitering and curfew," and "vagrancy" – all risk factors for domestic child sex trafficking. For juvenile justice involved girls, nearly 40% are remanded to the justice system for nonviolent status offenses as well as violations to court orders ("VCOs") for prior status offenses. Further, it is recognized nationally that approximately 73% of all juvenile justice involved girls have histories of physical and sexual abuse.[iv] And, up to 92% of incarcerated girls have experienced one or more forms of physical, sexual, and emotional abuse prior to entering the juvenile justice system.[v]

- A California-based study found that a large proportion of juvenile justice involved girls were child welfare referred.[vi] Another Arizona-based study found that at least 42% of all youths in probation placement were dual system involved.[vii]

- A California-based study of domestic child sex trafficking victims found that approximately 53% of the girls in the survey study were foster care youth.[viii]

- Further, child abuse and neglect increase the risk of any arrest of a juvenile by 55%[ix] and children placed in foster care are three times more likely to be subject to abuse or neglect.[x]

A lack of cross system collaboration has numerous negative and costly consequences:[xi]

- Lost prevention opportunities
- Caseworkers not trained or prepared
- No coordinated response for identification
- Lack of information sharing with courts
- Ineffective service delivery
- Lack of engagement with educational and behavioral health systems
- Failure to recognize the impact of trauma on behavior
- Failure to engage families
- Decreased permanency and less successful transition out of system

INNOVATIVE STATE APPROACHES

Research is still needed to determine the best methods for assessing and identifying domestic child sex trafficking populations that are system involved and best practices for service delivery. However, numerous states such as California, Connecticut, Alabama, New York, Pennsylvania, New Mexico, Arizona, Delaware, and Texas, and select counties within these states have recognized the need to work collaboratively to address the needs of youth who are dual system involved or crossover youth.

In a seminal report by Siegel and Lord, "When Systems Collide: Improving Court Practices and Programs in Dual Jurisdiction Cases" the authors identified five necessary elements for the provision of services to this vulnerable population.[xii] These five recommended elements include:

- Screening/Assessment – The juvenile justice system must be aware of a youth's involvement in an abuse and neglect situation when a delinquency referral is made and vice versa. Mechanisms must be in place to notify the other system of dual involvement. Assessments must include all forms of possible abuse including specific indicators of domestic child sex trafficking, the youth's strengths, needs, and risks to determine how to allocate resources and plan a strategy of service delivery.

- Case Assignment – Judges, attorneys, court appointed advocates, and those working on cases involving crossover or dual-involved youth must have knowledge and understanding of the child, including family history and prior court history, as well as the dynamics of both child welfare and juvenile justice. Specific recommendations include implementing one family/one judge courts, dedicated dockets, and specially trained attorneys to handle dual jurisdiction cases.

- Case Flow Management – Case flow management should focus on efficient and timely court practices. Joint pre-hearing conferences, combined dependent/delinquency hearings, joint court reports, and court orders have been suggested along with mandated appearances by probation officers and social workers at court hearings.

- Case Planning and Supervisions – Developing and implementing case plans often determine the fate of the involved youth. Consideration should be given to the use of specialized case management and supervision units, multidisciplinary teams in case planning, special training for these units or teams, and reduced caseloads.

- Interagency Collaboration – A dedicated entity must exercise its leadership and oversight function to ensure that interagency collaboration occurs and translates into effective action on behalf of involved youths.

[i] Also known as "domestic minor sex trafficking," "survival sex," "child prostitution," & "juvenile prostitution."
[ii] 22 U.S.C. §§ 7102(9)-(10).
[iii] Kate Walker, California Child Welfare Council, *Ending the Commercial Sexual Exploitation of Children: A Call for Multi-System Collaboration in California* (2013), pp.18-20.
[iv] Francine Sherman, Annie E. Casey Foundation, *Pathways to Juvenile Justice Reform: Detention Reform and Girls Challenges and Solutions* (2005).
[v] Physicians for Human Rights, *Unique Needs of Girls in the Juvenile Justice System*, pp. 1-2.
[vi] Shay Bilchik & Michael Nash, *Child Welfare and Juvenile Justice: Two Sides of the Same Coin*, in Juvenile and Family Justice Today (Fall 2008), pp.16-20.
[vii] *Id.*
[viii] Motivating, Inspiring, Supporting, and Serving Sexually Exploited Youth (MISSSEY), *MISSSEY Data Report* (June 2009); Kate Walker, California Child Welfare Council, *Ending the Commercial Sexual Exploitation of Children: A Call for Multi-System Collaboration in California* (2013).
[ix] David Altschuler, Kent Berkley, Leonard Burton, & Gary Stangler, Georgetown University Center for Juvenile Justice Reform, *Support Youth in Transition to Adulthood: Lessons Learned from Child Welfare and Juvenile Justice* (April 2009).
[x] Children First Advocacy, *Foster Care* (accessed December 2015).
[xi] Denise Herz, Phillip Lee, Lorrie Lutz, Macon Stewart, John Tuell, & Janet Wiig, Georgetown Center for Juvenile Justice Reform & Robert F. Kennedy Children's Action Corps, *Addressing the Needs of Multi-system Youth: Strengthening the Connection between Child Welfare and Juvenile Justice* (March 2012).
[xii] Shay Bilchik & Michael Nash, Child Welfare and Juvenile Justice – Two Sides of the Same Coin, Part II, in Juvenile and Family Justice Today (Winter 2009), pp. 22-25.

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DOMESTIC CHILD SEX TRAFFICKING AND THE JUVENILE JUSTICE SYSTEM

DOMESTIC CHILD SEX TRAFFICKING

Domestic child sex trafficking (aka "child prostitution," "juvenile prostitution," commercial sexual exploitation of children (CSEC), domestic minor sex trafficking, "survival sex," etc.) is among the most heinous abuses of children. While child sex trafficking is most often considered an international crime, or one only involving foreign nationals, data shows that over 80% of all confirmed sex trafficking cases in the U.S. involve U.S. citizens.[i] Unfortunately, due to a lack of understanding and the hidden nature of this vulnerable population, survivors are often criminalized and placed behind bars when they are in fact victims of crime, as federal and most state laws define these youth as victims of trafficking.[ii]

Numerous independent studies and information from providers working with this population have painted a picture of this vulnerable and overlooked population. Risk factors for domestic child sex trafficking include having a history of sexual and physical abuse and/or involvement in the child welfare system, being a runaway or homeless youth, and poverty. [iii] Sadly, many of these characteristics are also risk factors for girls' involvement in the juvenile justice system.[iv]

JUVENILE JUSTICE INVOLVEMENT

Too often, children who fall victim to domestic child sex trafficking are charged with prostitution or prostitution-related offenses. Between 2010 and 2013, Florida's Department for Children and Families investigated 1,266 cases of alleged of child sex trafficking and of those cases, 717 were already involved in the Department of Juvenile Justice.[v] Girls are disproportionately affected by these practices as they comprise 78% of all juvenile arrests for prostitution.[vi] Racial and ethnic disparities also cannot be ignored as nationally, 52% of all juvenile prostitution arrests are African-American children.[vii]

Victims of child sex trafficking are also frequently arrested for non-violent status offenses directly related to their exploitation, like truancy and running away.[viii] A study on "juvenile prostitution" found that of cases involving a third-party exploiter, victims were almost exclusively female. Eighty-four percent of these girls had a history of running away and 43% had a history of prior arrests or detentions; including 45% who were detained or arrested as part of the current offense. [ix] There is no mandate that juvenile justice agencies or law enforcement screen children upon intake for possible victimization. Consequently, these victims are not clearly identified. Instead they are funneled through the Sexual Abuse to Prison Pipeline[x], where they are arrested for their victimization, unable to receive appropriate services and supports, and returned to communities or remanded to placements that do not contemplate their unique vulnerabilities and needs as trafficking victims.

CONDITIONS OF CONFINEMENT

Once trafficked and exploited girls are remanded to the justice system, they are forced to maneuver a system designed for males that does not address the specific needs of girls or take into account the complex trauma and violence they have endured. Upon intake, victims are subject to invasive searches and physical restraints including shackling that can be especially damaging for children with extensive histories of sexual abuse.[xi] One study demonstrated that 22% of girls entering juvenile hall had been sexually assaulted within seven days of their arrest.[xii] For trafficking victims, many have been sexually assaulted within hours or even minutes of arrest, and yet they are rarely screened for this trauma. Instead, they are treated as criminals and denied the necessary mental and physical health interventions afforded other child abuse victims. Once inside the system, girls are also susceptible to further sexual victimization at the hands of staff and/or other youth.[xiii]

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NEED FOR IMPROVED IDENTIFICATION AND SERVICE DELIVERY

To combat this growing problem, DOJ has encouraged law enforcement agencies nationwide to change policies that once treated youth engaged in "prostitution" as offenders or delinquents, and to instead view such children as victims of child sexual abuse or sex trafficking.[xiv] Several jurisdictions have implemented first responder protocols that mandate law enforcement to refer identified victims to child welfare or community-based services rather than arrest them.[xv] Rights4Girls and the National Council of Juvenile and Family Court Judges have also launched a National Judicial Institute to train judges to better identify and respond to these victims when they appear in their courtrooms.

Other recommendations include:

- **Shift from Criminal to Victim Status** – All juvenile justice systems and law enforcement agencies must recognize implement policies and procedures that ensure that children who fall victim to domestic child sex trafficking readily identified and treated as other victims of crime and child abuse.
- **Improved Screening, Assessment, and Documentation** – New efforts must be put into place across systems that are focused on developing and implementing screening and assessment tools and protocols for accurate documentation of children at-risk for or who are victims of domestic child sex trafficking. Assessments must include all forms of possible abuse including specific indicators of domestic child sex trafficking, the youth's strengths, needs, and risks to determine how to allocate resources and plan a strategy for service delivery.
- **Cross System, Multi-Disciplinary Approach** – All victims of domestic child sex trafficking must be viewed and treated as children in need of child protective services. Therefore, a cross system approach between the juvenile justice and child welfare system is imperative. It is equally necessary to engage other stakeholders including community-based agencies, healthcare providers, placements, families and guardians, defenders, and prosecutors to develop interagency protocols and a continuum of care that addresses the specific needs of each victim.

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[i] Bureau of Justice Statistics, *Characteristics of Suspected Human Trafficking Incidents, 2008-2010* (April 2011).
[ii] 22 U.S.C. §§ 7102(9)-(10).
[iii] Kate Walker, California Child Welfare Council, *Ending the Commercial Sexual Exploitation of Children: A Call for Multi-System Collaboration in California* (2013), pp.18-20.
[iv] Rebecca Epstein, Lindsay Rosenthal, Malika Saada Saar, & Yasmin Vafa, Georgetown Law Center on Poverty and Inequality, Ms. Foundation for Women & Rights4Girls, *The Sexual Abuse to Prison Pipeline: The Girls' Story* (2015).
[v] Margie Menzel, The News Service of South Florida, "Foster care sex trafficking: Pimps, labor contractors targeting youth in Florida foster care system" (January 24, 2013).
[vi] Federal Bureau of Investigation, *Crime in the United States 2014*, Tables 38, 40.
[vii] Federal Bureau of Investigation, *Crime in the United States 2014*, Table 43B.
[viii] Coalition for Juvenile Justice, Safety Opportunity & Success (SOS): Standards of Care for Non-Delinquent Youth, *Girls, Status Offenses, and the Need for a Less Punitive and More Empowering Approach* (2013), p.3.
[ix] David Finkelhor, Kimberly J. Mitchell, & Janis Wolak, University of New Hampshire, *Conceptualizing Juvenile Prostitution as Child Maltreatment: Findings from the National Juvenile Prostitution Study* (2009).
[x] Supra, n. iv.
[xi] Stephanie Covington, National Girls Initiative Webinar Series, *Trauma: A Recurring Theme in Girls' Lives* (June 7, 2016).
[xii] Leslie Acoca & Mana Golzari, *Girls Health Screen Validation Study* (2013).
[xiii] Bureau of Justice Statistics, *Sexual Victimization Reported by Juvenile Correctional Authorities, 2007-2012* (2016).
[xiv] Jessica Ashley, Illinois State Bar Association, *Child sex exploitation study probes extent of victimization in Illinois* (June 2008).
[xv] Peter Edelman & Rebecca Epstein, Georgetown Law Center on Poverty & Inequality, *Blueprint: A Multidisciplinary Approach to the Domestic Sex Trafficking of Girls* (2014); *See also* County of Los Angeles, *Los Angeles County Law Enforcement First Responder Protocol for Commercially Sexually Exploited Children* (2015); *See also* Hennepin County, *No Wrong Door Protocol*.

rights4girls

CHILD WELFARE AND DOMESTIC CHILD SEX TRAFFICKING

WHAT IS DOMESTIC CHILD SEX TRAFFICKING?

Domestic Child Sex Trafficking (DCST)[i] is a form of commercial sexual exploitation of children (CSEC) here in the United States. As defined in the Trafficking Victims Protection Act, it is the "recruitment, harboring, transportation, provision, obtaining, patronizing, soliciting or obtaining of a person for the purpose of a commercial sex act" where the victim is a U.S. citizen or lawful permanent resident under the age of 18.[ii]

WHAT MAKES A YOUTH VULNERABLE TO BE TRAFFICKED?

The following factors make youth vulnerable and easy prey for traffickers and exploiters[iii]:

- Being a female between the ages of 12 and 14
- A history of sexual and physical abuse
- Child welfare involvement, especially out-of-home foster care placement
- Living in an impoverished community
- Disconnection from education system and off-track for achievement
- Substance dependency

WHAT IS THE RELATIONSHIP BETWEEN CHILD WELFARE AND DCST?

While much more research is needed, current data suggests that the majority of trafficked youth in the United States have a history of child welfare involvement:

- In 2013, 60% of the child sex trafficking victims recovered as a part of an FBI nationwide raid from over 70 cities were children from foster care or group homes.[iv]
- In 2012, Connecticut reported 88 child victims of sex trafficking. Eighty-six were child welfare involved, and most reported abuse while in foster care or residential placement.[v]
- In 2012, Los Angeles County, California reported that of the 72 commercially sexually exploited girls in their Succeed Through Achievement and Resilience (STAR) Court Program, 56 were child-welfare involved.[vi]
- In 2013, 85% of trafficking victims in New York had prior child welfare involvement.[vii]
- In Alameda County, California, a one-year review of local CSEC victim populations found that 53% had lived in a group home, and 83% had previously run away from home.[viii]
- In Florida, an FBI agent and head of a law enforcement task force to rescue and restore trafficking survivors estimated that 70% of identified victims in Florida were former foster youth.[ix]

[i] Also known as "domestic minor sex trafficking," "survival sex," "child prostitution," & "juvenile prostitution."
[ii] 22 U.S.C. §§ 7102(9)-(10).
[iii] Kate Walker, California Child Welfare Council, *Ending the Commercial Sexual Exploitation of Children: A Call for Multi-System Collaboration in California* (2013), pp.18-20.
[iv] Carrie Johnson, Michael Martin & Malika Saada Saar, NPR, "Finding and Stopping Child Sex Trafficking" (August 1, 2013).
[v] Connecticut Department of Children and Families, *A Child Welfare Response to Domestic Minor Sex Trafficking* (2012).
[vi] Kate Walker, California Child Welfare Council, *Ending the Commercial Sexual Exploitation of Children: A Call for Multi-System Collaboration in California* (2013), p.10.
[vii] Representative Louise M. Slaughter Human Resources Subcommittee Testimony, House Ways and Means Hearing on "Protecting Vulnerable Children: Preventing & Addressing Sex Trafficking of Youth in Foster Care" (October 23, 2013).
[viii] Motivating, Inspiring, Supporting, and Serving Sexually Exploited Youth (MISSSEY), *MISSSEY Data Report* (June 2009).
[ix] Jessica Vander Velde, Tampa Bay Times, "FBI agent leads task force targeting pimps in child prostitution" (October 4, 2010).

There is No Such Thing as a Child Prostitute

There is **No Such Thing** as a "child prostitute." There are only victims and survivors of child rape.

All across the United States, American children are bought and sold for sex. Each year in this country, more than 1,000 victims of child sex trafficking are arrested and charged with prostitution. Many of these children experience torture and abuse at the hands of traffickers and buyers. Despite the fact that these children are too young to consent to any sexual activity, and the fact that federal law defines them as victims of human trafficking, they are not contemplated as victims. Instead, these children, many of them girls between the ages of 12 and 16, are arrested, prosecuted, and detained for prostitution when they are in fact, victims of crime.

How We Are Named is How We are Treated

The **No Such Thing** Campaign seeks to eradicate the term "child prostitute" in language and in law. The term "child prostitute" trivializes the egregious abuse experienced by the most vulnerable members of our communities— our marginalized girls. We owe it to trafficked and exploited children to make clear that the victimization and abuse they suffered is no different or more tolerable than other forms of child sex abuse. And we owe it to these children to hold accountable those who have purchased and raped them.

We Need Your Voice as We Come Together to Take a Stand

The Campaign has four primary goals:

- To end the use of the term "child prostitute" in the Associated Press and other media outlets' coverage of child sex trafficking issues and encourage the signing and sharing of our change.org petition to that end;
- To encourage stakeholders to pass policies ending the arrest, prosecution, and detention of victims of domestic child sex trafficking;
- To urge for the treatment of trafficked and exploited children as victims of child rape entitled to all of the services and protections available to other victims of child abuse, both in and out of the courtroom; and
- To promote the deterrence and apprehension of child sex buyers through prevention strategies, awareness raising, and application of laws that criminalize sex with minors.

Learn more at www.rights4girls.org

DISPOSITION AND COMMITMENT ISSUES IN JUVENILE CRIMINAL CASES

DISPOSITION AND COMMITMENT ISSUES: CONSIDERATIONS FOR DEFENSE COUNSEL

I. JUVENILES WHO ARE BEING TREATED AS JUVENILES

A. Plea Bargaining and Sentencing Discretion of Court

1. The Juvenile Court judge will still have the ultimate say in the sentence

2. Unlike in Circuit Court, the juvenile defendant cannot withdraw his guilty plea if the judge gives him a more severe sentence than that recommended by the prosecutor

2. But the juvenile can always appeal to the Circuit Court for a de novo trial. (§16.1-296) *See* Hailey v. Dorsey, 580 F.2d 112 (1978); Berger v. Harris, 2012 Va. App. Lexis 172 (2012).

B. Preparation of Social History (§16.1-273)

C. Disposition Options (§16.1-278.8)

1. Court Service Unit Programs (see attachment)

2. Probation (§16.1-278.8(A)(7))

3. First Offender-for any drug or alcohol offense (§16.1-278.8:01)

a. Not previously found delinquent of drug offense nor had a drug offense previously dismissed under this section

b. Requires substance abuse evaluation and complying with recommendations, random drug testing, suspension of OL suspended

c. 50 hours or $500 fine required for alcohol offenses (§4.1-305)

4. Deferred Findings (§16.1-278.8(A)(4))

a. Can be in conjunction with probation, community service (§16.1-278.8(A)(11)) , and payment of restitution (§16.1-278.8(A)(10))

b. The charge may be dismissed or reduced after a period of time

5. Guilty finding along with probation, community service, and Restitution

6. Sex Offense cases: Sex Offender Treatment, psychosexual evaluations, polygraphs, reviews

i. Registration (9.1-9.1(G))-must be ordered by Court

7. Detention Programs (§16.1-284.1)

a. "Post-D" Program (see attached brochure)

i. For those eligible for commitment

ii. Must be placed on a suspended commitment

b. "Post-D" START (Secure Treatment for Adolescent Recovery and Transition) (see attached brochure)

i. For those not eligible for commitment

c. Requirements (see attachments)

i. No violent felony adjudications (§16.1-228, §16.1-269.1)

ii. Has not been released from DJJ within 18 months

iii. Must be at least 14 years old when enters

iv. Must be court ordered

v. Juvenile receives no credit for time served pre-dispositionally

8. Commitment (§16.1-278.8(A)(14))

a. Indeterminate (§16.1-285)

i. Maximum length: 36 months or 21st bday

b. Serious Offender (§16.1-285.1)

i. Felony and

ii. One of the following

a. on parole for felony

b. committed for another felony within immediately proceeding 12 months

c. felony max punishment is greater than 20 years

d. previously adjudicated delinquent for an offense that has max punishment of 20 years plus and found appropriate by Court

iii. Max punishment-7 years or 21st birthday

iv. Statutory Reviews (§16.1-285.2)

D. Loss of Driving Privileges (§16.1-278.8(A)(9))

a. Drug cases-no restricted OL permitted

b. Alcohol cases

E. Significant consequences if a guilty finding in Juvenile Court

1. Convicted felon for purposes of illegal possession of firearm

2. Sentencing guidelines in a future case: prior juvenile conviction

will count in calculating sentencing guidelines in a later case

II. JUVENILES TREATED AS ADULTS

A. Juvenile's case can be moved to the Circuit Court to be treated as adult under three different scenarios as long as juvenile if 14 or older.

1. Mandatory Certification Under Virginia Code § 16.1-269.1(B): The Juvenile Court "shall conduct a preliminary hearing" if the charges are capital murder, first degree murder, second degree murder, and aggravated malicious wounding

2. Certification Under Virginia Code § 16.1- 269.1(C): The Juvenile Court "shall conduct a preliminary hearing" if the Commonwealth gives notice of its intent to proceed against the juvenile as an adult and charges are listed under 16.1-269.1 (C), including felony homicide, robbery, malicious wounding, abduction with intent to defile, rape, forcible sodomy, object sexual penetration, and PWID if prior, at least 7 days prior to court.

   i. Can still raise competency issues

3. Transfer Hearing Under Virginia Code § 16.1-269.1(A) for other charges.

   i. Requires notice, with no time requirement

   ii. Probable cause

   iii. Court finds that juvenile is not proper to remain in lower court

   iv. Should appeal transfer to Circuit Court (16.1-269.4)

4. If case is sent to Circuit, technically juvenile can be placed in jail

B. Sometimes, counsel should attempt to plea bargain to keep the case in the

Juvenile Court

C. Circuit Court Dispositions When Defendant is Being Tried as Adult

1. If juvenile is in the Circuit Court by way of a preliminary hearing, then the Circuit Court has to impose an adult sentence. However, the adult sentence can be suspended on the condition that the juvenile complete a juvenile sentence. 16.1-272(A)(1)

2. If juvenile is in the Circuit Court by way of a transfer hearing, then the Circuit may impose either a juvenile sentence or an adult sentence. 16.1-272(A)(2)

3. Judge always sentences, even with a jury

III. STANDARDS OF PRACTICE FOR JUVENILE DEFENSE COUNSEL (see attached copy of applicable IDC Standards of Practice)

A. Standards of Practice for Indigent Defense Counsel, available at the Virginia Indigent Defense Commission website (indigentdefense.virginia.gov), has a special section devoted to representing juveniles.

B. Both the general Standards of Practice and the special section on juvenile representation (pages 38-59) should be reviewed, with special focus on defense counsel's duty at the disposition hearing (pages 53-56).

C. The duties of counsel at the disposition hearing include:

1. explaining to the juvenile and parents the nature of the hearing, the issues involved, and the alternative available to the Juvenile Court

2. **explaining the process of preparing a social history**

3. **being familiar with the disposition practices of the judge**

4. **reading the social history and reviewing it with the client**

5. **informing the client of appeal rights to the circuit court and to The appellate courts.**

COMING SOON!

2nd DISTRICT

COURT SERVICE UNIT

(VIRGINIA BEACH CSU)

CURRENT

PROGRAM LIST

DESCRIPTION

CONTINUUM OF CARE...

Adolescents may be recommended for placement after completion of a comprehensive mental health/substance abuse evaluation through Child and Youth Services or other service provider. Other potential residents may be identified and referred directly by the Court. Upon entering the program, a comprehensive substance abuse evaluation will be completed and an individualized service plan will be developed. After-care / transition planning will begin immediately in order to provide a smooth transition for the youth in returning back home and into the community. Step-down to community-based treatment will be the goal..

Recommendations to the Court can be made through the Court Service Unit, involved professionals, and/or involved attorneys. Only a presiding judge can place a juvenile into the program after completion of a Post-Dispositional assessment.

LaToya Britt
Post-Dispositional Coordinator
(757) 385-1225
lbritt@vbgov.com

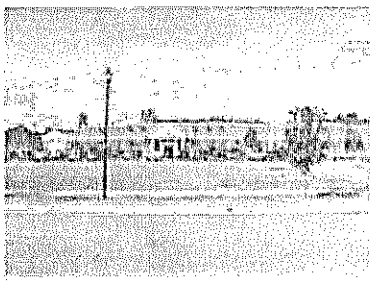
Virginia Beach
Juvenile
Detention Center

CITY OF VIRGINIA BEACH

2533 George Mason Drive
Virginia Beach, VA 23456

CITY OF VIRGINIA BEACH

THE VBJDC POST-DISPOSITIONAL (POST-D) PROGRAM



757-385-1225

WHAT IS THE POST-D PROGRAM?

Currently the Post-Dispositional Program at the Virginia Beach Juvenile Detention Center offers a long-term secure confinement and treatment program to the juveniles in our community. With the recent JDAI initiatives, we recognize the need for a secure treatment facility for adolescents within the juvenile justice system, who may have a dual diagnosis, that may need more than the available outpatient treatment options offer. Virginia created an intensive program that focuses on a wide range of treatment needs with an evidenced based model, specifically designed for adolescents and proven to be effective with teens in a detention center setting.

Evidenced-based treatment serving the needs of the adolescent, families, and community

HELPING TEENS MEET THEIR POTENTIAL

Many of the teens we've worked with over the years have had difficulty succeeding at home, school, and in the community because of their behavior. Working closely with the Juvenile CSU, the Juvenile and Domestic Relations Court and Child & Youth Services, we've developed a program to meet the needs of these adolescents. Because teens face multiple obstacles, our program will assist teens with these challenges and help them overcome the barriers that prevent them from succeeding.

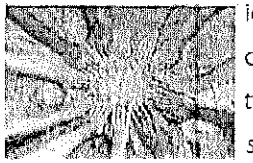
Therapy by a licensed provider

Program components include:

- Cognitive Behavioral Interventions for Substance Abuse evidenced based curriculum
- Individual and family therapy
- Anger Management
- Empathy Enhancement
- Therapeutic Skill Building
- Drug and alcohol screening
- 24-hour support and supervision
- Parent and Multi-Family Group
- Continued education with VB Public Schools and/or GED testing

WHO SHOULD BE REFERRED TO THE POST-D PROGRAM?

Adolescents between the ages of 14 and 18 who are classified as moderate or high risk, and whose criminal behaviors require secure confinement; those who have a serious history of substance abuse and/or behavior problems and need a higher level of care than an Intensive Outpatient Program or Substance Abuse Day Treatment Program; those who need stabilization and a continuum of care before consideration of a long-term commitment to DJJ or residential setting; those whose substance abuse and/or behavior prevents them from functioning successfully in the community.



Helping teens succeed

CITY OF VIRGINIA BEACH JUVENILE DETENTION CENTER

CONTINUUM OF CARE...

Adolescents may be recommended for placement after completion of a comprehensive mental health/substance abuse evaluation through Child and Youth Services or other service provider. Other potential residents may be identified and referred directly by the Court. Upon entering the program, a comprehensive substance abuse evaluation will be completed and an individualized service plan will be developed. Aftercare / transition planning will begin immediately in order to provide a smooth transition for the youth in returning back home and into the community. Step-down to community-based treatment will be the goal..

Recommendations to the Court can be made through the Court Service Unit, involved professionals, and/or involved attorneys. Only a presiding judge can place a juvenile into the program after completion of a Post-Dispositional assessment.

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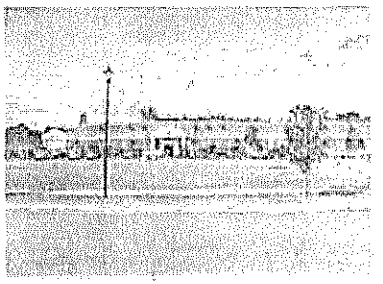
THE POST-D SECURE TREATMENT FOR ADOLESCENT RECOVERY AND TRANSITION PROGRAM



757-385-1225

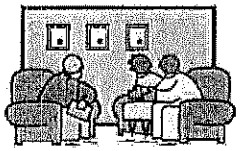
WHAT IS THE START PROGRAM?

Currently the Post-Dispositional Program at the Virginia Beach Juvenile Detention Center offers a long-term confinement and treatment program to the juveniles in our community. With the recent JDAI initiatives, we recognize the need for a secure treatment facility for adolescents within the juvenile justice system, who use and abuse substances, that may need more than the available outpatient treatment options offer. We've created a shorter, more intensive program that focuses on substance abuse treatment with an evidenced based model, specifically designed for adolescents and proven to be effective with teens in a detention center setting.

Evidenced-based treatment serving the needs of the adolescent, families, and community

HELPING TEENS MEET THEIR POTENTIAL

Many of the teens we've worked with over the years have had difficulty succeeding at home, school, and in the community because of their substance use. Working closely with the Juvenile CSU, the Juvenile and Domestic Relations Court and Child & Youth Services, we've developed a program to meet the needs of these adolescents. Because teens face multiple obstacles, our program will assist teens with these challenges and help them overcome the barriers that prevent them from succeeding.



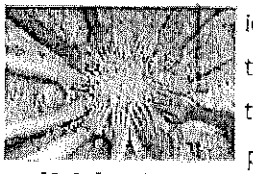
Therapy by a licensed provider

Program components include:

- Seven Challenges intensive substance abuse program
- Individual and family therapy
- Anger Management
- Empathy Enhancement
- Drug and alcohol screening
- 24-hour support and supervision
- Parent Group
- Continued education with VB Public Schools and/or GED testing

WHO SHOULD BE REFERRED TO THE START PROGRAM?

Adolescents between the ages of 14 and 18 who are classified as moderate or high risk, but whose criminal behaviors do not reach the level of traditional Post-D placement; those who have a serious history of substance abuse and/or behavior problems and need a higher level of care than an Intensive Outpatient Program or Substance Abuse Day Treatment Program; those who need stabilization and a continuum of care before consideration of a long-term detention or residential setting; those whose substance abuse and/or behavior prevents them from functioning successfully in the community.



Helping teens succeed

CITY OF VIRGINIA BEACH JUVENILE DETENTION CENTER

Code Criteria (if responses to below questions are "yes", juvenile is ineligible for the Post-Dispositional Program pursuant to 16.1-284.1 COV)	YES	NO
1. Will the juvenile be under age 14 at the time of program entry?	☐	☐
2. Has the juvenile been released from the custody of DJJ within the past 18 months?	☐	☐
3. Has the juvenile been adjudicated delinquent or found guilty of one of the following violent juvenile felonies?		
- capital murder in violation of 18.2-31	☐	☐
- first or second degree murder in violation of 18.2-32	☐	☐
- lynching in violation of 18.2-40	☐	☐
- aggravated malicious wounding in violation of 18.2-51.2	☐	☐
- felonious injury by mob in violation of 18.2-41	☐	☐
- abduction in violation of 18.2-48	☐	☐
- malicious wounding in violation of 18.2-51	☐	☐
- malicious wounding of a law enforcement officer in violation of 18.2-51.1	☐	☐
- felonious poisoning in violation of 18.2-54.1	☐	☐
- adulteration of products in violation of 18.2-54.2	☐	☐
- robbery in violation of 18.2-58	☐	☐
- carjacking in violation of 18.2-58.1	☐	☐
- rape in violation of 18.2-61	☐	☐
- forcible sodomy in violation of 18.2-67.1	☐	☐
- object sexual penetration in violation of 18.2-67.2	☐	☐
- manufacturing, selling, giving, distributing, or possessing with intent to manufacture, sell, give, or distribute a controlled substance or an imitation controlled substance in violation of 18.2-248, third offense	☐	☐
- manufacturing, selling, giving, distributing, or possessing with intent to manufacture, sell, give, or distribute methamphetamine in violation of 18.2-248.03, third offense	☐	☐
- felonious manufacturing, selling, giving, distributing, or possessing with intent to manufacture, sell, give, or distribute anabolic steroids in violation of § 18.2-248.5, third offense	☐	☐
4. Would a placement other than secure post-dispositional confinement serve the best interest of the juvenile?	☐	☐
CODE CRITERIA (If responses to below questions are "no", juvenile is ineligible for the Post-Dispositional Program pursuant to 16.1-284.1 COV)		
5. Has the juvenile committed an offense which if committed by an adult would be punishable by confinement?	☐	☐
6. Do the interests of the juvenile and the community require secure custody for services?	☐	☐
7. Is this placement for the purpose of rehabilitation?	☐	☐
Other Criteria for Consideration		
8. Have the parent(s)/guardian(s) been oriented as to the level of parental involvement required?	☐	☐
➢ Are they willing & able to fully cooperate?	☐	☐
9. Does the child require any special educational needs above that which VBJDC can provide?	☐	☐
10. Is the juvenile able to cognitively understand the program and the expectations?	☐	☐
11. Does the juvenile pose any significant risk to staff or other residents in the program?	☐	☐

12. Does the juvenile pose any significant flight risk?

13. Is the goal for the juvenile to return home following release?

☐	☐
☐	☐

VIRGINIA BEACH

POST-DISPOSITIONAL PROGRAM:

INFORMATION PACKET

FOR RESIDENT AND PARENTS

City of
Virginia Beach Virginia

This packet of information highlights the requirements, responsibilities and expectations of residents placed in the Post-Dispositional Program (Post-D Program) or the Post-Dispositional Secure Treatment for Adolescent Recovery and Transition Program (Post-D START Program), as well as the residents' parent(s)/guardian(s) requirements, responsibilities and expectations. It also summarizes the Post-D and Post-D START Program visitation policy, resident behavior management policies, phase system, and specific unit rules. More detailed and client-specific information is provided during the initial treatment team meeting.

Revised 10/24/14

POST-D PROGRAM OVERVIEW AND SERVICES

The Post-D Program is a dispositional alternative for non-violent juvenile offenders who meet the program criteria and who may benefit from local, short-term confinement and treatment while in a controlled setting. An in-house licensed clinician provides therapeutic services to the juveniles and their parents/guardians. Services are intended to increase family and community involvement, thus increasing the youth's chances for successful transition back into their home setting. Parental cooperation and involvement is imperative for successful re-entry.

The program also provides structured facility-based therapeutic groups as well as community-based services such as therapeutic recreational and educational outings. As the youth progresses through the program and meets treatment goals, he/she becomes eligible for supervised home passes. A select number of residents may also be eligible for such opportunities as obtaining outside employment.

The Post-D Program includes, but is not limited to, the following services:

- ✓ Intensive substance abuse treatment
- ✓ Individual and family therapy by a licensed provider
- ✓ Anger Management and Empathy Enhancement
- ✓ Therapeutic Skill Building
- ✓ Parent and Multifamily Group (required for parents/guardians)
- ✓ Continued education with Virginia Beach Public Schools including GED testing for eligible youth
- ✓ Community service
- ✓ Oceans of Opportunity Program with the Virginia Aquarium partnership
- ✓ Therapeutic / educational / recreational program outings
- ✓ Psycho-educational groups include character development, healthy relationships, and conflict resolution
- ✓ Journaling
- ✓ Relapse prevention
- ✓ Drug and alcohol screening
- ✓ Comprehensive substance abuse evaluation
- ✓ 24 hour support and supervision
- ✓ Case management

POST-D REFERRALS, PLACEMENTS, REMOVALS

All referrals to the Post-D Program must be approved for appropriateness by the Post-D Coordinator and, once approved, ordered by the court. If a resident scheduled to enter the Post-D Program is eligible for a suspended commitment to the Department of Juvenile Justice, they must enter under a suspended commitment order.

All residents that enter the Post-D Program under a suspended commitment can be committed to DJJ if:

(1) their behavior requires a request for Post-D Program removal (termination),
(2) they are involved in a physical fight while in Post-D, or
(3) the reviewing judge does not feel the resident is making progress with identified treatment goals

This means **non-compliance** with the Post-D Program can result in an **automatic** commitment to DJJ.

Unless otherwise court-ordered, residents enter with a six month placement term (180 days) which is subject to a recommendation for an earlier release if all identified treatment goals have been accomplished and the resident has completed all phases of the program satisfactorily. The focus of the Post-D Program is on the accomplishment of treatment goals identified during the initial treatment team meeting. **This initial treatment team meeting must be held within five business days of the resident entering the program.** Parents are required to attend and participate in the initial treatment team meeting.

POST-D START PROGRAM

The Post-D Secure Treatment for Adolescent Recovery and Transition (START) Program is specifically designed for youth NOT eligible for commitment to DJJ who may still benefit from therapeutic services in a structured and secure environment. This program is in addition to the existing Post-D Program which is dictated under the Post-D code section 16.1-284.1. A shorter length of stay and accelerated program requirements differentiates the Post-D START Program from Post-D. Candidates will be those individuals who the Court Service Unit has classified as moderate or high risk.

Utilizing a shorter length of stay, the Post-D START Program will focus on stabilizing the resident, providing in-house treatment services, and coordinating aftercare services in which the resident can seamlessly continue therapeutic and/or substance abuse services in the community. Ultimately, residents will progress at their own pace and an individual's length of stay will be determined based on program progress, risk level, and treatment needs.

An individualized service plan will be developed. Post-D START residents will benefit from the established Post-D services, which may include some or all of those as described above.

The referral process will remain the same as that for Post-D, but if the resident is not eligible for commitment to the Department of Juvenile Justice, he or she will be assessed for the Post-D START Program and placement will begin only after a court order for placement under Code Section 16.1-284.1. The presiding judge will note upon placement if the resident is being placed into the Post-D START Program.

The Post-D START Program residents will complete therapeutic assignments similar to the established Post-D Program phase tasks. Privileges will be earned based on behavior and treatment progress. Privileges such as home passes and releases into the community will be determined on a case-by-case basis in collaboration with the probation officer based on the youth's service plan. Final program release will be decided by the presiding judge once goals are met and aftercare plans are in place. The program is developed with a goal of completion within 90 days of placement. However, length of stay can be extended if the resident is not making adequate progress, the treatment goals are not met, or if the resident is displaying negative behavior.

The below policies, rules and regulations, referred to in this packet as "Post-D Program", also apply to Post-D START placements unless otherwise noted.

INITIAL TREATMENT TEAM MEETING

Parents will be informed of the scheduled treatment team meeting on or before their child's Post-D placement date. The probation officer will coordinate the scheduling of this meeting, which must occur within five business days of the resident's placement date. **It is mandatory that parents attend the treatment team meeting.** The treatment team will consist of the resident, his/her parent(s)/guardian(s), probation officer, Post-D Coordinator and Post-D Therapist.

Parents are required to bring their child's birth certificate, social security card, insurance card, immunization records, and identification card (if applicable) to the treatment team meeting. If these documents are not available, plans will be made at the meeting to secure these documents as soon as possible.

REQUIREMENTS OF POST-D RESIDENTS

The program expectations will be reviewed with the resident prior to and/or upon his/her placement into the program. During the first month of placement the focus will be on stabilization, residential group living, unit rule compliance, and building relationships with staff of the Post-D Program.

All Post-D residents are expected to learn and comply with VBJDC and Post-D unit rules. Residents will have a Resident Handbook as well as this Information Packet for their review. Residents are responsible to read this information. Post-D staff will regularly review unit rules both individually and with all residents during community group discussions. Each resident is expected at all times to display behaviors that will aid in the achievement of their service plan goals.

RESPONSIBILITIES OF PARENTS/GUARDIANS

Parental participation is required for all scheduled counseling sessions, service plan reviews, court reviews, parent groups, and emergency meetings. Parents must be available for contact at all times. When not available, parents must make arrangements to contact the Post-D Coordinator on a regular basis.

Parents are required to attend the Parent and/or Multifamily Group twice a month, meet with the Post-D Coordinator at least once a month (typically prior to court reviews), and meet with the Post-D Therapist for sessions at least twice a month in the Post-D Program and at least weekly in the Post-D START Program. More frequent family sessions may be required and/or requested. If so, that will be identified in the service plan. The Post-D Therapist may schedule family sessions that include extended family members when appropriate. However, juvenile siblings and other relatives under the age of 25 are not allowed admittance into the secure areas of the detention center, even for family sessions.

When a child enters the Post-D Program, parents remain the legal guardian and are responsible for their child's clothing, personal hygiene items, and dental/mental health/medical needs. Parental responsibilities also include scheduling and paying for all medical, mental health and dental services. When necessary, Post-D staff can assist with resident transportation. In case of a medical emergency, staff will contact parents/guardians to meet them wherever the resident is being transported. The detention center nurses will handle routine medical needs.

Whenever a Post-D resident is released to his/her parent for an appointment or a home visit, it is that parent's responsibility to ensure that the child is under direct supervision at all times. Parents will abide by all community release rules, which will be reviewed during the initial treatment team meeting. Parents are not allowed, unless approved by the Post-D Coordinator, probation officer or court, to allow their child into the community without direct parental supervision.

Parental participation is expected during meetings at Virginia Beach Juvenile Detention Center (VBJDC), with community appointments as scheduled, with transportation whenever possible, with ensuring all prescriptions/medications are available to their child, and with overall treatment goals as identified in the service plan. A lack of parental participation will be reported to the court during the monthly reviews. **Parents are required to attend all monthly court reviews. Only the presiding judge can excuse parental attendance.** The presiding judge can also take legal sanctions against any parent not complying with their child's service plan or Post-D Program requirements.

Parents may not allow their child to smoke when at home. It is against the law for a juvenile under the age of eighteen to possess, purchase or smoke cigarettes. Also, parents should not allow their child to use mouthwashes, cough syrup, or over-the-counter medications prior to returning to VBJDC. The reason for this rule is that certain items contain alcohol and may produce the odor of alcohol. Also, side effects may result even in over-the-counter medications.

RESPONSIBILITIES OF POST-D STAFF

The Post-D unit staff will (1) enforce all VBJDC and unit rules, (2) supervise and monitor residents' behavior, (3) provide appropriate sanctions for rule violations, (4) conduct community groups and psycho-educational groups within the facility, (5) transport and supervise residents during scheduled outings, and (6) assist with case management duties as needed.

The Post-D Coordinator will (1) monitor the residents' behavior directly and/or through reports from the unit counselors, (2) contact parents ~~and probation officers~~ regarding behavior problems as needed, (3) report behavioral progress during monthly court reviews and via court reports, (4) approve temporary releases and home visits, and (5) assist residents in preparation for program release.

The Post-D Coordinator and/or Post-D Therapist will (1) develop the service plan with each entering resident, (2) review treatment progress on a monthly and as needed basis, (3) complete a comprehensive substance abuse evaluation upon placement, and (4) oversee the time frames and services identified in the service plan.

The Post-D Therapist will (1) review service plan progress and conduct individual therapy sessions with the residents on a weekly basis, (2) conduct family therapy sessions at least twice a month (weekly for Post-D START families), (3) provide case management and crisis intervention as needed, (4) determine eligibility for mental health transition planning, (5) recommend treatment services while in placement and also following release, (6) facilitate therapeutic groups within the facility, and (7) facilitate JDC Parent/Multifamily Group twice a month.

VISITATION AT VBJDC

1. **Residents are permitted visits only by their parents or legal guardians.** No one else will be permitted in the building.
2. All visitors must present a picture I.D., sign the visitor log and pass through a metal detector prior to entering the secure area. A hand-held metal detector search may also be conducted. Picture ID's of visitors will be held at the reception area until the visitor exits the facility.
3. Personal items such as: purses/pocketbooks, cell phones, packages and bulky clothing/coats are not permitted in the secure areas of the detention center. Lockers are available for temporary storage of personal items.
4. Visitation times for the Post-D unit are **Tuesday evenings, 7:00 P.M. – 8:00 P.M., and Sunday afternoons, 1:00 – 2:00 P.M.**
5. Visitation may be denied for reasons of security.
6. No persons under the influence of drugs or alcohol or who are verbally or physically abusive will be admitted into the secure area.
7. No persons shall have in their possession firearms, knives or chemical weapons while in the confines of the facility.
8. All persons, clothing and personal belongings are subject to be searched.
9. All items (magazines and soft cover books only) brought in for a Resident are to be given to a staff member. Items will be screened and searched by staff. Items will be returned to the delivering person if not approved.
10. Physical contact between resident and their visitor is permitted.
11. Visitation will be monitored at all times.
12. Any property including clothing or medication brought in for a Resident or released to a visitor will be recorded.
13. No tobacco products are allowed inside the secure area of the facility.

PERSONAL ITEMS ALLOWED/ NOT ALLOWED

During the initial treatment team meeting, parents will be informed of the items allowed on the Post-D unit. Any items allowed on the unit are conditioned upon resident behavior. For example, items may be removed from the resident's room or locker and placed in VBJDC's property storage as a consequence. Also, as outlined in the behavior management system, certain items may be earned as a privilege once a resident reaches a certain level or phase. **Residents are not allowed to give, share, borrow, or loan personal items amongst other residents.** This includes items kept in the resident's property storage at intake. All personal items including radios will be labeled by staff.

Residents may have up to three changes of clothing and two pairs of shoes in the building. All personal clothing will be held at intake in the resident's personal property storage. Parents are responsible for securing and delivering appropriate court clothes that must be worn whenever the resident is not being transported by the sheriff's deputies to court (all residents are transported by the sheriff's deputies to their first court review and at times during subsequent reviews depending on program progress, risk status, and/or behavior).

Personal photographs (no polaroids), posters, softcover books, and personal magazines are allowed but must be screened by staff to ensure that they do not contain inappropriate content. Residents may have a limited number of personal hygiene items, but may not have anything in a glass or aerosol container. Any personal hygiene items that are labeled as "medicated" (such as face washes, creams) must be approved through the VBJDC clinic. Personal videotapes, DVDs, and games (including Playstation and Wii games) are not allowed.

Parents may not give candy or food to their child to keep in his/her room. Personal food purchased during a visit or outing must be consumed by the resident before they return to the building. For holidays, celebrations, or other special occasions, parents may donate food (individually wrapped and purchased from a store) to be shared by the entire unit. Any food or drink (including candy) will be accepted **only after pre-approval** by the Post-D Coordinator. All food donated will be dispersed by staff and shared with all residents.

***If a resident runs away/escapes or is otherwise released from the program prior to the scheduled release date, it is the parent's responsibility to pick up all of their child's personal items from VBJDC. Personal property that remains unclaimed 90 days after a documented attempt to return the property will be donated to a local charity or the city's Department of Human Services/Social Services Division.**

PERSONAL MAGAZINES

Residents may have personal magazines, but parents cannot give them directly to the resident. Magazines must be given to staff to approve before being given to the resident. They will be labeled with the resident's name. Magazines may not contain any pictures of nudity or women/men in revealing/provocative clothing, any sexual content, excessive violence, or illegal drug activity. If such magazines are brought into the building, they will be placed in the resident's property storage until the resident is permanently released. This policy also applies towards posters/pictures for a resident's room.

COURT DRESS CODE

Residents may be eligible to be transported to their court reviews by VBJDC staff. However, this will be requested on a case-by-case basis by the Post-Dispositional Coordinator and approved by the probation officer. Requests will be made as dictated by the Post-D Program's phase system, risk status guidelines, and behavior management system. If residents are able to attend their court reviews with VBJDC staff, it is expected that all residents will wear appropriate court clothing. During court reviews, males are required to wear collared shirts tucked into dress or dress-casual pants. Female residents are required to wear appropriate clothing such as a blouse or sweater with dress or dress-casual pants. Clothing too revealing or too tight will not be allowed. If not properly dressed, the resident will be required to wear clothing provided by VBJDC staff and may forfeit his/her pass privileges or ability to be transported by VBJDC staff in the future. It is recommended that each resident get staff approval for his/her clothing a few days prior to the court date.

COURT / GROUP OUTINGS

During court reviews or any program outings, residents may not have friends, associates, girlfriends or boyfriends meet them at court or a designated location. In addition to the dress code for court as described above, residents will not be allowed to leave the building with staff wearing hats or other headgear, jewelry, clothing with obvious gang colors or symbols, sports logos, etc.

EDUCATION

All Post-D Program residents must **ATTEND** and **PARTICIPATE** in the Virginia Beach Detention Educational Program at VBJDC. Disruptive behaviors in the classroom or refusal to do assigned school work will result in immediate consequences (warnings, 'X', cool out, room confinement). Teachers can give warnings, 'X's and request classroom removal. If room confinement is recommended by a teacher and if reviewed and deemed to be an appropriate consequence by staff, it will be implemented. If classroom behavior and academic progress are not achieved and maintained within a specific amount of time, it will be reported in the court report as a major problem and program removal **can** be implemented by the judge.

RISK STATUS

At the initial treatment team meeting, the risk status will be reviewed. A resident's risk status can be lowered or raised as needed and only as approved by both the Post-Dispositional Coordinator and probation officer. There are three risk levels: High, Medium and Low.

High Risk

Residents enter the program on high risk status. Juveniles on high risk status normally do not leave the building unless there is a required medical appointment. If approved by medical staff for a required appointment, high-risk residents may leave the building transported by VBJDC staff in full mechanical restraints. This risk status applies to juveniles who have a past history of runaway, chronic substance abuse, severe behavioral problems and extensive criminal history that may pose a threat to the community. If the resident's risk status remains at "High" over time because that resident cannot show that he/she is working towards controlling his/her behavior, that will be addressed and the resident may be recommended for program removal.

Medium Risk

If designated by their service plan, medium risk residents may be allowed to leave the detention center for treatment-related or medical appointments. This is also contingent upon the resident's behavior and progress on the behavior management system. Either VBJDC staff, parent/guardian or a court-approved person/service provider will provide transportation and must remain present during the appointment. Medium risk residents are eligible to participate in therapeutic recreational outings and temporary releases upon approval of the Post-D Coordinator. At medium risk, residents should be able to listen effectively to staff, follow directives, and not pose a flight risk.

Low Risk

Low risk residents need less supervision and maintain their behavior at a Level 4 on a consistent basis. On a case-by-case basis, low risk youth may be trusted to perform community service work, attend treatment-related groups in the community, and/or hold employment, independently, without staff or parent/guardian present. Low risk residents must demonstrate the ability to be honest and trustworthy through positive behavior.

TEMPORARY RELEASES

Temporary releases are for the purpose of treatment service appointments (as identified in the service plan), medical/dental/mental health appointments, approved home passes (under direct parental supervision) or staff supervised activities ONLY. Post-D residents become eligible to be transported by parents/guardians for treatment service and/or medical appointments only after they reach medium risk status. However, there are **NO REQUIRED RELEASES; releases are all based on the individual resident's current treatment goals, risk status, and behavior.** Home passes will only be approved for residents who are a Level Four on the behavior management system at the time of the pass.

Whenever a Post-D resident is released to his/her parent/guardian for an appointment or a home visit, it is that parent's responsibility to ensure that their child is under direct supervision at all times. It is also the parent/guardian's responsibility to contact the Post-Dispositional Coordinator directly to request all temporary releases. To ensure ample time for approval of the temporary release, the parent/guardian should call as soon as possible to request a date and time, giving at least two business days notice. Temporary releases for the weekend need to be approved by noon on the Thursday workday prior to that weekend.

Means of transportation to and from community appointments (shackles, staff transportation, parent transportation) will depend on risk status (high/medium/low) and purpose of the release.

Every Post-D resident returning to the unit from a temporary release is subject to a complete search by a same sex staff as provided by the policies and procedures of the VBJDC. Random drug screens and breathalyzers will also be administered following temporary releases.

HOME PASSES

Post-D residents on Phase Two (who are also on medium or low risk status and Level 4) *may* be eligible to visit with their parents/guardians after court for up to three hours *if* he/she is able to attend court with VBJDC staff and upon approval by the Post-D Coordinator.

Post-D residents on Phase Three/Level Four are eligible for one weekend day home pass for up to five hours. Residents on Phase Four/Level Four are eligible for one weekend day home pass for up to eight hours. Overnight home passes may be allowed two weeks prior to the final release date.

*Post-D START residents will be allowed home passes as approved by the Post-D Coordinator, probation officer, and/or Court based on their individualized service plan.

All home passes are conditioned upon unit and school behavior. Residents must be on a Level Four on the behavior management system at the time of the pass in order to earn that pass. Approval is also based on individual service plans, program progress, resident behavior, parental supervision, and release plans and will differ in duration and time frames from one resident to the next. **These passes require direct parental supervision at all times.** Residents cannot be granted permission to visit with friends or relatives without the parent/guardian present (direct supervision). Residents may not have contact with or visit with other Post-D residents during temporary releases or home passes. Any exceptions to these home visit conditions must have the Post-D Coordinator's and probation officer's approval.

Residents must call in to staff once per shift during each home pass. If a resident fails to call in during his/her home pass, two hours will be deducted from the next scheduled home pass (first offense). Subsequent violations of the check-in procedure will result in denial of the next scheduled home pass. Staff will also randomly contact residents and parents/guardians during scheduled home passes. Staff must be able to confirm that residents are with their parent(s)/guardian(s) and will therefore ask to speak with both the resident and parent/guardian. Residents and parent(s)/guardian(s) must be available for random staff check-ins at all times. Failure to respond to a random staff check-in will be considered a violation of community release rules and an appropriate consequence will be imposed.

Residents approved for 5:00 pm or later returns must eat dinner and shower prior to their return to VBJDC. All residents must return by 8:00 pm unless otherwise approved by the Post-D Coordinator due to mitigating circumstances. Residents are considered runaways if they do not return as scheduled. It is the parent/guardian's responsibility to return the child at the time scheduled. Consequences will be given for late returns. Any problems with returning to VBJDC as scheduled must be reported by the parents prior to the scheduled return time.

EMPLOYMENT

Employment is a privilege and will be approved *very selectively* as determined by age, restitution, financial obligation goals, and service plan goals only. Work sites must be approved by the Post-Dispositional Coordinator and facility administrator. The resident, parent/guardian, probation officer and Post-Dispositional Coordinator will review and sign an Employment Terms Contract. Parental assistance with transportation may be required. Residents will be required to show ongoing proof of employment (such as paycheck stubs and daily timecards). A release must be signed so that VBJDC staff can communicate with the resident's employer. If a Post-D resident is employed while physically residing at VBJDC, there is a mandatory return time of 8:00 pm and no school time can be missed (unless the resident has officially passed the GED test and given permission by VBJDC and education staff). When employed while at VBJDC, all money earned will be budgeted to pay restitution or to secure identified treatment-related needs or services.

BEHAVIOR MANAGEMENT SYSTEM

Post-D residents must follow all rules and regulations set forth by VBJDC policies and procedures. During the initial intake into VBJDC, residents are given a Resident Handbook. Residents are responsible for reading and following all guidelines set forth in the Resident Handbook. The Handbook outlines facility rules and the corresponding Level System which dictates certain resident privileges. The VBJDC Level System remains in effect for all Post-D residents. Residents entering Post-D start at a Level One, even if they are already in VBJDC. In addition, Post-D residents participate in a "Phase System" as described below. There are certain tasks assigned to each Phase. The resident will have a specified time period to complete each phase and must be promoted to the next phase. Phase promotion can be denied if the resident does not complete all assigned tasks satisfactorily, is not making treatment progress and/or if the resident's behavior is not appropriate. As residents progress through the phases, they can earn more program-specific privileges and work towards successful program completion.

Residents must be on Level 4 and complete the minimum time period for that phase in order to be eligible for promotion to the next phase. Residents must be on Level Four 4 on the VBJDC Level System to earn all phase privileges, including home passes.

*Please note there are slight differences in the Post-D and Post-D START phase requirements as outlined in the following sections.

POST-D PROGRAM PHASE SYSTEM

Orientation Phase (15 Days Minimum):

All residents are placed on Orientation Phase upon placement into the Post-D Program. On this phase, residents are expected to familiarize themselves with the rules, expectations and schedule of the program. The focus will also be on stabilization, residential living and establishing relationships with peers and staff. While on this phase, privileges are minimal so that residents may focus on becoming familiar with the program. Residents are issued a journal to use for completing assignments as well as expressing thoughts and feelings. Residents will need to have their journals available for staff review at any time as requested.

Tasks of orientation phase:

1. The resident will complete the following assessments: TCU Criminal Thinking Scales, TCU Motivation Scales, University of Rhode Island Change Assessment, Adverse Childhood Experiences Scale, and Resiliency Scale.
2. The resident will learn Post-D staff's names.
3. The resident will read the Resident Handbook and Post-D Information Packet.
4. The resident will create three questions about the Resident Handbook and/or Information Packet and present these questions for discussion at a community group.
5. The resident will complete the Orientation Phase journal entries.
6. The resident will present the journal entries to the unit.
7. The resident will write at least three goals/expectations and what motivates him/her. After staff approval, design a poster board listing the goals and motivators to hang up in room when complete. (Please include visuals)
8. The resident will pass a locker inspection.
9. The resident will meet with his/her assigned counselor for a one-on-one session to discuss goals, progress, behavior, and any concerns.
10. The resident will complete the Phase Advancement application.

Level Four Privileges:

- As dictated by the resident's level on VBJDC Level System.

Phase One (30 days minimum):
During this phase, the resident will be expected to actively participate in the program and have a good understanding of the rules. The resident is actively working on fulfilling the service plan goals.

Tasks of Phase One:

1. The resident will design a journal cover reflecting what motivates him/her.
2. The resident will identify at least five of his/her strengths and weaknesses, write a paragraph on each strength and weakness, and present the information during a unit group.
3. The resident will read "Who Moved My Cheese? For Teens" and complete questions.
4. The resident will complete the Phase One journal entries.
5. The resident will present the Phase One journal entries to the unit.
6. The resident will write a letter of intent to his/her probation officer outlining how he/she will utilize services to improve his/her behavior.
7. The resident will complete the autobiography assignment and review with the Post-D therapist.
8. The resident will pass a locker inspection.
9. The resident will meet with his/her assigned counselor for a one-on-one session to discuss goals, progress, behavior, and any concerns.
10. The resident will complete the Phase Advancement application.

Level Four / Phase One Privileges:

- All privileges of Orientation Phase
- One additional reading material
- Resident may decorate his/her room with up to five items
- Resident may begin community-based treatment services and Post-D outings (if on medium or low risk and approved by the Post-D Coordinator)

Phase Two (30 days minimum):
During this phase, residents should show a greater sense of responsibility for personal behavior and actions/reactions. Residents continue to focus on daily goals as well as treatment goals. Residents should have a better understanding of how they are responsible for their own actions. Residents should show leadership skills in groups and meetings.

Tasks of Phase Two:

1. The resident will choose a topic related to one of his/her treatment goals, research the topic, identify how he/she plans to reach the goals, and identify the benefits of achieving his/her goals. The resident will develop a PowerPoint and present the information during a unit group. The resident must meet with his/her assigned counselor for presentation approval. No inappropriate pictures/photographs can be used in this project.
2. The resident will complete the school career research project.
3. The resident will complete the personality inventory (school program).
4. The resident will complete the Phase Two journal entries.
5. The resident will present the Phase Two journal entries to the unit.
6. The resident will complete his/her empathy letter as approved by the Post-D therapist.
7. The resident will complete the home pass assignment.
8. The resident will pass a locker inspection.
9. The resident will meet with his/her assigned counselor for a one-on-one session to discuss goals, progress, behavior, and any concerns.
10. The resident will complete the Phase Advancement application.

Level Four / Phase Two Privileges:

- All privileges of Phase One
- One additional reading material
- Shower shoes with socks to be worn on the unit only
- Playstation 2 and Wii privileges
- Eligible to attend court without Sheriff's Department transporting - on a case-by-case basis as approved by the Post-Dispositional Coordinator and probation officer in advance (and if on medium or low risk)
- Eligible for up to a three hour pass after court with parent/guardian (supervised directly by parent/guardian) – only if eligible to attend court with Post-D staff

Phase Three (30 days minimum):

During this phase, it is expected that the resident serves as a role model for the program and peers. The resident should take responsibility for his/her actions and have a greater sense of self-awareness of why he/she was sentenced to the program. The resident should be able to provide assistance when peers are having difficulties and should be able to lead group meetings and discussions if called upon.

Tasks of Phase Three:

1. The resident will complete a letter of accountability to his/her victim(s).
2. The resident will develop a resume and complete a sample job application.
3. The resident will complete the Phase Three journal entries.
4. The resident will present the Phase Three journal entries to the unit.
5. The resident will select a topic (approved by the Post-D Therapist or Post-D Coordinator) and co-facilitate a therapeutic group.
6. The resident will pass a locker inspection.
7. The resident will meet with his/her assigned counselor for a one-on-one session to discuss goals, progress, behavior, and any concerns.
8. The resident will complete the Phase Advancement application.

Level Four / Phase Three Privileges:

- All privileges of Phases One and Two
- One additional phone call per week
- May have a personal am/fm radio with headphones
- Eligible for one day home pass for up to five hours each weekend (per service plan and if on medium or low risk)

Phase Four (30 days minimum):
During this phase, the resident should be familiar with his/her aftercare plan. The resident consistently demonstrates responsibility, both in the program and in the community. The resident continues to serve as a role-model for other residents and takes on a leadership role on the unit.

Tasks of Phase Four:

1. The resident will write his/her Five-Year Plan using PowerPoint to present to class.
2. The resident will complete a career portfolio.
3. The resident will complete the Phase Four journal entries.
4. The resident will present the Phase Four journal entries to the unit.
5. The resident will complete his/her relapse prevention plan.
6. The resident will pass a locker inspection.
7. The resident will meet with his/her assigned counselor for a one-on-one session to discuss goals, progress, behavior, and any concerns.
8. The resident will complete the Phase Advancement application.

Level Four / Phase Four Privileges:

- All privileges of Phases One, Two and Three
- Eligible for a day home pass for up to eight hours each week (per service plan/if on medium or low risk)

Transition Phase (15 days minimum):
During this phase, the resident is preparing to return home and/or into the community and effectively practices skills learned. Aftercare plans will begin if possible. The resident continues to show responsibility and serves as a role model to newer residents. The resident is released into the community for longer periods of time.

Tasks of Transition Phase:

1. The resident will complete an essay (minimum of three paragraphs) on what he/she has learned while in the Post-D Program and present the information to the unit. The essay needs to address the following: progression of thoughts, behaviors, and attitudes; what was learned including the most helpful information and how it will be used to continue future success.
2. The resident will update his/her letter of intent to his/her probation officer stating what he/she achieved while in the program and outlining his/her aftercare plans.
3. The resident will write a letter of self-encouragement and give to staff to be mailed to the resident approximately thirty days following release from the program.
4. The resident will complete the Transition Phase journal entries.
5. The resident will present the Transition Phase journal entries to the unit.
6. The resident will create a journal group topic, lead a journaling group, and provide constructive feedback to his/her peers.
7. The resident will meet with his/her assigned counselor for a one-on-one session to discuss goals met during placement and aftercare plans.
8. The resident will complete the following post-test assessments: TCU Criminal Thinking Scales, TCU Motivation Scales and University of Rhode Island Change Assessment.
9. Design a brick for the Freedom Wall.

Level Four / Transition Phase Privileges:

- All privileges of Phases One, Two, Three and Four
- Eligible for overnight home passes (last two weeks in the program only and as approved by the treatment team)

POST-D START PHASE REQUIREMENTS

Please refer to the previous section for a description of the Post-D phases. Building privileges remain the same. Privileges such as home passes and releases into the community will be determined on a case-by-case basis.

Post-D START Orientation Phase Tasks (15 Days Minimum):

1. The resident will complete the following assessments: TCU Criminal Thinking Scales, TCU Motivation Scales, University of Rhode Island Change Assessment, Adverse Childhood Experiences Scale, and Resiliency Scale.
2. The resident will learn Post-D staff's names.
3. The resident will read the Resident Handbook and Post-D Information Packet.
4. The resident will create three questions about the Resident Handbook and/or Information Packet and present these questions for discussion at a community group.
5. The resident will complete the Orientation Phase journal entries.
6. The resident will present the journal entries to the unit.
7. The resident will write at least three goals/expectations and what motivates him/her. After staff approval, design a poster board listing the goals and motivators to hang up in room when complete. (Please include visuals)
8. The resident will pass a locker inspection.
9. The resident will meet with his/her assigned counselor for a one-on-one session to discuss goals, progress, behavior, and any concerns.
10. The resident will complete the Phase Advancement application.

Post-D START Phase One Tasks (30 days minimum):

1. The resident will design a journal cover reflecting what motivates him/her.
2. The resident will identify at least five of his/her strengths and weaknesses, write a paragraph on each strength and weakness, and present the information during a unit group.
3. The resident will read "Who Moved My Cheese? For Teens" and complete questions.
4. The resident will complete the Phase One journal entries.
5. The resident will present the Phase One journal entries to the unit.
6. The resident will complete the home pass assignment.
7. The resident will complete the autobiography assignment and review with the Post-D therapist.
8. The resident will pass a locker inspection.
9. The resident will meet with his/her assigned counselor for a one-on-one session to discuss goals, progress, behavior, and any concerns.
10. The resident will complete the Phase Advancement application.

Post-D START Phase Two Tasks (30 days minimum):

1. The resident will choose a topic related to one of his/her treatment goals, research the topic, identify how he/she plans to reach the goals, and identify the benefits of achieving his/her goals. The resident will develop a PowerPoint and present the information during a unit group. The resident must meet with his/her assigned counselor for presentation approval. No inappropriate pictures/photographs can be used in this project.
2. The resident will select a topic (approved by the Post-D Therapist or Post-D Coordinator) and co-facilitate a therapeutic group.
3. The resident will complete his/her relapse prevention plan.
4. The resident will complete the Phase Two journal entries.
5. The resident will present the Phase Two journal entries to the unit.
6. The resident will complete his/her empathy letter as approved by the Post-D therapist.
7. The resident will pass a locker inspection.

8. The resident will meet with his/her assigned counselor for a one-on-one session to discuss goals, progress, behavior, and any concerns.
9. The resident will complete the Phase Advancement application.

Post-D START Phase Three Tasks (Tasks marked with * MUST BE COMPLETED BEFORE PROGRAM DISCHARGE):

1. The resident will write a letter of self-encouragement and give to staff to be mailed to the resident approximately thirty days following release from the program.*
2. The resident will complete the following post-test assessments: TCU Criminal Thinking Scales and University of Rhode Island Change Assessment.*
3. The resident will complete an essay (minimum of three paragraphs) on what he/she has learned while in the Post-D Program and present the information to the unit. The essay needs to address the following: progression of thoughts, behaviors, and attitudes; what was learned including the most helpful information and how it will be used to continue future success.*
4. Design a brick for the Freedom Wall.*
5. The resident will complete the Phase Three journal entries.
6. The resident will present the Phase Three journal entries to the unit.

DISCIPLINE POLICY

Post-Dispositional Program rules are designed to prevent disruptive behaviors on the unit, to provide a safe environment for all residents, and to encourage compliance with all legal and community laws. All Post-D unit rules are reviewed by staff on a regular basis and each resident has a copy of the Resident Handbook and this Information Packet. While staff can elect to give a resident a warning prior to giving a consequence, a warning is not required. It is each resident's responsibility to learn and follow the rules. Self-control is a treatment goal for each Post-D resident.

Serious rule violations will result in immediate room time. Contact will be made with the parent/guardian and probation officer to discuss serious rule violations. A formal meeting may also be held to discuss a recommendation to the court for program removal. If a parent/guardian does not attend this meeting, they will be immediately notified of the action to be taken.

The following methods of discipline are utilized in the Post-D Program:

COOL-OUT TIME: A resident can be sent to his/her room for a period of up to one hour for the following conditions:

(1) continual violations of minor rules,
(2) as a warning of a more serious consequence if a negative behavior continues, and
(3) if a resident becomes hostile or demanding when given a minor warning or consequence.

The 'cool-out' procedure is implemented to prevent more serious and/or additional consequences for a resident that appears to be highly upset or unable to get his/her emotions/behavior under immediate control.

"X": An "X" is given for violating a program rule. The Post-D unit rules are available to each Post-D resident in the Resident Handbook. Rules are also reviewed several times a week during resident community group meetings. After the first "X" of each shift, a resident will be dropped one level for each additional "X" that is given. For each level dropped, there will be fewer unit privileges.

ALTERNATIVE CONSEQUENCE: At the discretion of Post-D unit staff, residents may be given alternative consequences for inappropriate behavior and rule violations. These include, but are not limited to, writing assignments, denial of certain unit privileges (such as unit outings), removal of items allowed (such as a radio), and extra chores. Failure to cooperate with an alternative consequence is considered refusing a staff directive and will result in a more serious consequence such as room confinement.

ROOM CONFINEMENT: A resident can be sent to his/her room for a period of eight (8) to seventy-two (72) hours. During this confinement, room checks are made every thirty minutes. Room confinement rules are posted on the Post-D unit and in each Resident Handbook. Room confinement for periods of 48 to 72 hours is given for serious rule violations, and may lead to a recommendation of program removal.

***The following behaviors will result in 48 or 72 hours of room confinement. Also, contact will be made with the resident, parent(s)/guardian(s), probation officer, and Post-D Coordinator to discuss a possible PROGRAM REMOVAL recommendation. Criminal charges may also be filed for the following:**

1. **ASSAULT:** An assault is a physical altercation with another resident or staff. This includes swinging at, punching, slapping, or pushing anyone for any reason. Self-defense is not an excuse to fight or hit back at another resident.

2. **DRUG USE:** The use of illegal drugs or alcohol for any reason at any time will not be tolerated. This includes unauthorized use/abuse of over-the-counter medications or other substances. Drug screens and breathalyzers can and will be given to all residents at both random and scheduled times. Discipline will be imposed immediately upon confirmation of drug or alcohol use. Refusal to provide a urine sample or breathalyzer will also result in room confinement. Failure to provide a sample within two hours of return from the building or request from staff will be considered a refusal. If drug use is suspected, the resident will not be allowed in the community (unless approved by the Post-D Coordinator and probation officer) until the suspected use is confirmed or adequately investigated.

3. **SEXUAL MISCONDUCT:** Sexual misconduct includes, but is not limited to, forced sexual contact with another resident without their consent, masturbating or exposing oneself in public, sexual intercourse or any sexual contact with another resident. Per VBJDC resident rules, no physical contact between residents or staff is allowed unless during scheduled groups or as directed by staff.

4. **RUNAWAY OR ESCAPE:** Running away or escaping includes leaving the supervision of staff, failing to return to VBJDC as scheduled or leaving home without permission (when on a home visit). If a resident's whereabouts cannot be confirmed by staff or by his/her parents, the resident is considered to be a runaway. Once determined to be a runaway, the Post-D staff will file a runaway report and contact the court to file an escape petition and request a detention order for the resident's apprehension by the police.

5. **SERIOUS PROPERTY DAMAGE**: Any intentional damage done by a resident to the building, his/her room, or other VBJDC property that necessitates professional repairs can result in a court recommendation for Post-D removal and/or criminal charges being filed.

6. **BRINGING OR SMUGGLING IN CONTRABAND:** When returning to VBJDC, residents need to make sure there is nothing in their pockets that is not allowed on the unit. If a resident realizes he/she has something on his/her person before arriving at VBJDC, he/she must immediately give the item(s) to the VBJDC staff upon arrival. Residents who change clothes when at home must make sure to check all pockets. **If smuggled contraband is found on a resident and/or the resident has repeated in-house contraband**

violations, he/she will get 48 or 72 hours room time and a possible program removal recommendation. If caught attempting to smuggle in contraband, residents are also subject to losing all special Post-D unit privileges for a period of up to 30 days.

7. VIOLATION OF COMMUNITY RELEASE RULES: In addition to runaway/escape, residents who temporarily leave the supervision of their parents/guardians or staff (during community outings) or are otherwise in the community unsupervised are subject to room confinement and possible program removal. Additionally, residents will receive room confinement for other violations of community release rules such as smoking cigarettes, unsupervised contact with peers, or unauthorized contact with other residents during temporary releases.

8. GANG ACTIVITY: All residents are expected to focus on their own personal treatment goals during their placement without interference of gang-related influences. VBJDC has a zero tolerance policy for gang activity and communication. Any gang-related hand-signs, writings, drawings, comments, or any verbal or non-verbal gang-related communication will result in 24 hours of room confinement. Residents wearing gang-related attire during temporary releases are also subject to consequences. Repeated minor offenses or significant gang-related activity during placement will result in 48 or 72 hours of room time / room confinement and possible program removal.

IN-HOUSE CONTRABAND

Residents may not take any item other than approved school materials off of the Post-D unit (radios, games, art supplies, magazines, pictures, or anything allowed on the Post-D unit but not in the rest of the building). Residents leaving the Post-D unit with anything on their persons can get up to 72 hours of room time and be subject to losing all special Post-D unit privileges for a period of time. Additionally, residents in possession of contraband on the unit are subject to room confinement. This includes residents who are in possession of items that they are not authorized to have either per the VBJDC Resident Handbook or Post-D Phase System. For example, if a resident's level is dropped and he/she loses his/her phase privileges, "privilege" items are then considered contraband.

PROGRAM REMOVAL

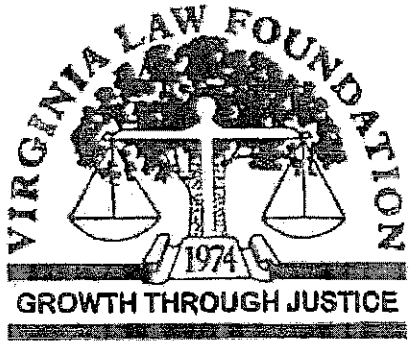
If at any time program removal (i.e., termination) is recommended by the Post-D Coordinator, contact will be made with the probation officer, parent(s)/guardian(s) and resident to discuss/review the reason for the recommendation of removal. A formal meeting may be held. If an alternative action can be agreed upon, it will be implemented and/or recommended in the next court review. However, a judge can determine if a resident is not complying with the Post-D rules and can remove him/her from the Post-D Program at any time. Positive court reports will prevent this scenario. All court reports are reviewed with parents and residents. If a resident is removed from the Post-D program, their suspended commitment will be rescinded and the resident will be committed to the Department of Juvenile Justice. This commitment is required by the Code of Virginia that governs the Post-D Program. Residents who are not eligible for commitment may face an extended detention stay and/or the Court may impose other sanctions as appropriate.

For Further Questions/Information, Please Contact:
LaToya Britt
Post-Dispositional Coordinator
(757) 385-1225

COMMONWEALTH OF VIRGINIA

STANDARDS OF PRACTICE FOR INDIGENT DEFENSE COUNSEL

The Virginia Indigent Defense Commission would like to gratefully acknowledge the financial assistance provided by the Virginia Law Foundation with this project.



Last revised March 20, 2015

a. be alert to and object to attempts to admit inadmissible evidence or testimony;

b. be prepared to cross-examine witnesses. Any cross-examination should be conducted to advance the defense's theory of the case.

12.7 At the conclusion of the prosecution's case, counsel should move to strike the prosecution's case and request the court to dismiss each count of the petition, unless there exists a good faith reason for not doing so. Counsel should be prepared to present supporting case law.

12.8 When presenting the client's case, counsel should:

a. consider whether any evidence needs to be presented;

b. discuss with your client all the implications of testifying, keeping in mind that the decision whether to testify is solely the client's. Counsel should also be aware of his or her ethical responsibilities if counsel knows that the client will testify untruthfully;

c. be prepared for direct examination and redirect of any witnesses;

d. be prepared to assert any affirmative defenses.

12.9 At the conclusion of the defense case, counsel should move to strike the prosecution's case and request the court to dismiss each count of the petition, unless there exists a good faith reason for not doing so. Counsel should be prepared to present supporting case law.

12.10 Counsel should use the closing argument to summarize and argue the evidence and testimony as it applies to the theory of the case and remind the judge of the prosecution's burden of proof.

RELATED STANDARDS

Virginia Code § 16.1-302;
Gilbert v. Commonwealth, 198 S.E.2d 633, 214 Va. 142 (Va., 1973).

Performance Standard 13: Juvenile Defense Counsel's Duty at the Disposition Hearing

The active participation of counsel at disposition is essential. In many cases, counsel's most valuable service to clients will be rendered at this stage of the proceeding. An important part of representation in a juvenile case is planning for disposition.

13.1 Preparation for Hearing:

a. Counsel should explain to the client and parent the nature of the disposition hearing, the issues involved and the alternatives open to the court. Counsel should also explain fully and candidly the nature, obligations and consequences of any proposed dispositional plan, including the meaning of conditions of probation, the characteristics of any institution to which commitment is possible, and the probable duration of the client's responsibilities under the proposed dispositional plan;

b. Counsel should advise the client and the parents that they will be contacted by a probation officer regarding preparation of the social history and that whatever information they give the probation officer likely will be provided to both the court and the prosecution;

c. Counsel should advise the client regarding the possible request by the probation officer to give the client's account of the facts and circumstances surrounding the charge to include in the social history, especially if the client intends to appeal or if the client did not testify during the adjudicatory hearing;

d. Counsel shall read and be thoroughly familiar with the social history (dispositional) report prepared by the court service unit as far in advance of the dispositional hearing as possible. Counsel should review the contents of the report with the client and discuss any findings and recommendations therein. With the consent of the client, counsel should advise the probation officer who prepared the social history report of any findings and recommendations with which the client disagrees, if it is strategically advantageous to do so;

e. Counsel should be familiar with and consider:

i. the dispositional alternatives available to the court and any community services that may be useful in the formation of a dispositional plan appropriate to the client's circumstances;

ii. the official version of the client's prior record, if any;

iii. the position of the probation department with respect to the client;

iv. the sentencing recommendation, if any, of the prosecutor;

v. using a creative interdisciplinary approach by collaborating with educational advocates, social workers, and civil legal services providers;

vi. the collateral consequences attaching to any possible disposition including, but not limited to, sex offender registry, immigration status, right to possess weapons;

vii. the disposition practices of the judge;

viii. referrals to court clinics or community agencies;

ix. any victim impact statement to be presented to the court;

x. requesting a continuance for disposition at a later date;

xi. securing the assistance of psychiatric, psychological, medical or other expert personnel needed for the purposes of evaluation, consultation or testimony with respect to the formation of a dispositional plan;

xii. preparing a letter or memorandum to the judge to assist the court in deciding the client's disposition. A thoughtfully written presentation of a disposition plan that highlights the client's strengths and the appropriateness of the disposition plan should be delivered to the judge and opposing counsel in advance of the disposition hearing. This letter is an opportunity to anticipate and address any concerns the judge may have about the client and the disposition plan. It is also an opportunity to address specific issues of punishment, deterrence, community safety, and rehabilitation as they relate to the client's case.

13.2 During the Hearing:

a. Counsel should insist that proper procedures be followed throughout the disposition stage and that orders entered be based on adequate reliable evidence and in accordance with what is permitted under Virginia law;

b. Counsel should subpoena witnesses and present evidence to support counsel's proposed disposition plan;

c. Counsel should fully cross examine adverse witnesses, and challenge the accuracy, credibility and weight of any reports, written statements or other evidence before the court;

d Counsel should consider whether the client should make a statement to the court.

13.3 When a dispositional decision has been reached, it is the lawyer's duty to explain the nature, obligations and consequences of the disposition to the client and the client's family and to urge upon the client the need for accepting and cooperating with the dispositional order. If an appeal is contemplated, the client should be advised of that possibility, but counsel must advise compliance with the court's decision during the interim, unless the disposition order is stayed.

RELATED STANDARDS
Virginia Code § 16.1-261;
Virginia Code § 16.1-273;
Virginia Code § 16.1-274;
Virginia Code § 16.1-278.8.

Performance Standard 14: Juvenile Defense Counsel's Continuing Duty to Client

14.1 Whether or not the charges against the client have been disposed of, if counsel is aware that the client or the client's family needs and desires community or other medical, psychiatric, psychological, social or legal services, he or she should render all possible assistance in arranging for such services.

14.2 If the client is committed to the Department of Juvenile Justice, counsel should attempt to ensure that the client is placed in the most appropriate, least restrictive placement available.

Performance Standard 15: Juvenile Defense Counsel's Post-dispositional Duties

15.1 Counsel should be prepared to represent and inform the client with respect to proceedings to review, reopen or modify adjudicative or dispositional orders or to pursue any affirmative remedies that may be available to the client under the law.

15.2 Counsel appointed to represent a client charged with violation of his or her probation or parole should prepare in the same way and with as much care as for an adjudicatory hearing.

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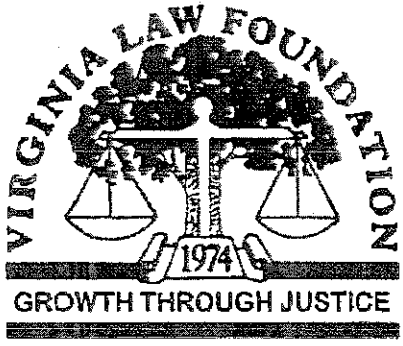

Last revised March 20, 2015

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12.7 At the conclusion of the prosecution's case, counsel should move to strike the prosecution's case and request the court to dismiss each count of the petition, unless there exists a good faith reason for not doing so. Counsel should be prepared to present supporting case law.

12.8 When presenting the client's case, counsel should:

a. consider whether any evidence needs to be presented;

b. discuss with your client all the implications of testifying, keeping in mind that the decision whether to testify is solely the client's. Counsel should also be aware of his or her ethical responsibilities if counsel knows that the client will testify untruthfully;

c. be prepared for direct examination and redirect of any witnesses;

d. be prepared to assert any affirmative defenses.

12.9 At the conclusion of the defense case, counsel should move to strike the prosecution's case and request the court to dismiss each count of the petition, unless there exists a good faith reason for not doing so. Counsel should be prepared to present supporting case law.

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a. Counsel should explain to the client and parent the nature of the disposition hearing, the issues involved and the alternatives open to the court. Counsel should also explain fully and candidly the nature, obligations and consequences of any proposed dispositional plan, including the meaning of conditions of probation, the characteristics of any institution to which commitment is possible, and the probable duration of the client's responsibilities under the proposed dispositional plan;

b. Counsel should advise the client and the parents that they will be contacted by a probation officer regarding preparation of the social history and that whatever information they give the probation officer likely will be provided to both the court and the prosecution;

c. Counsel should advise the client regarding the possible request by the probation officer to give the client's account of the facts and circumstances surrounding the charge to include in the social history, especially if the client intends to appeal or if the client did not testify during the adjudicatory hearing;

d. Counsel shall read and be thoroughly familiar with the social history (dispositional) report prepared by the court service unit as far in advance of the dispositional hearing as possible. Counsel should review the contents of the report with the client and discuss any findings and recommendations therein. With the consent of the client, counsel should advise the probation officer who prepared the social history report of any findings and recommendations with which the client disagrees, if it is strategically advantageous to do so;

e. Counsel should be familiar with and consider:

i. the dispositional alternatives available to the court and any community services that may be useful in the formation of a dispositional plan appropriate to the client's circumstances;

ii. the official version of the client's prior record, if any;

iii. the position of the probation department with respect to the client;

iv. the sentencing recommendation, if any, of the prosecutor;

v. using a creative interdisciplinary approach by collaborating with educational advocates, social workers, and civil legal services providers;

vi. the collateral consequences attaching to any possible disposition including, but not limited to, sex offender registry, immigration status, right to possess weapons;

vii. the disposition practices of the judge;

viii. referrals to court clinics or community agencies;

ix. any victim impact statement to be presented to the court;

x. requesting a continuance for disposition at a later date;

xi. securing the assistance of psychiatric, psychological, medical or other expert personnel needed for the purposes of evaluation, consultation or testimony with respect to the formation of a dispositional plan;

xii. preparing a letter or memorandum to the judge to assist the court in deciding the client's disposition. A thoughtfully written presentation of a disposition plan that highlights the client's strengths and the appropriateness of the disposition plan should be delivered to the judge and opposing counsel in advance of the disposition hearing. This letter is an opportunity to anticipate and address any concerns the judge may have about the client and the disposition plan. It is also an opportunity to address specific issues of punishment, deterrence, community safety, and rehabilitation as they relate to the client's case.

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c. Counsel should fully cross examine adverse witnesses, and challenge the accuracy, credibility and weight of any reports, written statements or other evidence before the court;

d Counsel should consider whether the client should make a statement to the court.

13.3 When a dispositional decision has been reached, it is the lawyer's duty to explain the nature, obligations and consequences of the disposition to the client and the client's family and to urge upon the client the need for accepting and cooperating with the dispositional order. If an appeal is contemplated, the client should be advised of that possibility, but counsel must advise compliance with the court's decision during the interim, unless the disposition order is stayed.

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15.1 Counsel should be prepared to represent and inform the client with respect to proceedings to review, reopen or modify adjudicative or dispositional orders or to pursue any affirmative remedies that may be available to the client under the law.

15.2 Counsel appointed to represent a client charged with violation of his or her probation or parole should prepare in the same way and with as much care as for an adjudicatory hearing.

RELATED STANDARDS
Virginia Code § 16.1-133.1;
Virginia Code § 16.1-289.

DISPOSITION AND COMMITMENT ISSUES IN JUVENILE CRIMINAL CASES

DISPOSITION AND COMMITMENT ISSUES: CONSIDERATIONS FOR DEFENSE COUNSEL

I. JUVENILES WHO ARE BEING TREATED AS JUVENILES

A. Plea Bargaining and Sentencing Discretion of Court

1. The Juvenile Court judge will still have the ultimate say in the sentence

2. Unlike in Circuit Court, the juvenile defendant cannot withdraw his guilty plea if the judge gives him a more severe sentence than that recommended by the prosecutor

2. But the juvenile can always appeal to the Circuit Court for a de novo trial. (§16.1-296) *See* Hailey v. Dorsey, 580 F.2d 112 (1978); Berger v. Harris, 2012 Va. App. Lexis 172 (2012).

B. Preparation of Social History (§16.1-273)

C. Disposition Options (§16.1-278.8)

1. Court Service Unit Programs (see attachment)

2. Probation (§16.1-278.8(A)(7))

3. First Offender-for any drug or alcohol offense (§16.1-278.8:01)

a. Not previously found delinquent of drug offense nor had a drug offense previously dismissed under this section

b. Requires substance abuse evaluation and complying with recommendations, random drug testing, suspension of OL suspended

c. 50 hours or $500 fine required for alcohol offenses (§4.1-305)

4. Deferred Findings (§16.1-278.8(A)(4))

a. Can be in conjunction with probation, community service (§16.1-278.8(A)(11)) , and payment of restitution (§16.1-278.8(A)(10))

b. The charge may be dismissed or reduced after a period of time

5. Guilty finding along with probation, community service, and Restitution

6. Sex Offense cases: Sex Offender Treatment, psychosexual evaluations, polygraphs, reviews

i. Registration (9.1-9.1(G))-must be ordered by Court

7. Detention Programs (§16.1-284.1)

a. "Post-D" Program (see attached brochure)

i. For those eligible for commitment

ii. Must be placed on a suspended commitment

b. "Post-D" START (Secure Treatment for Adolescent Recovery and Transition) (see attached brochure)

i. For those not eligible for commitment

c. Requirements (see attachments)

i. No violent felony adjudications (§16.1-228, §16.1-269.1)

ii. Has not been released from DJJ within 18 months

iii. Must be at least 14 years old when enters

iv. Must be court ordered

v. Juvenile receives no credit for time served pre-dispositionally

8. Commitment (§16.1-278.8(A)(14))

a. Indeterminate (§16.1-285)

i. Maximum length: 36 months or 21st bday

b. Serious Offender (§16.1-285.1)

i. Felony and

ii. One of the following

a. on parole for felony

b. committed for another felony within immediately proceeding 12 months

c. felony max punishment is greater than 20 years

d. previously adjudicated delinquent for an offense that has max punishment of 20 years plus and found appropriate by Court

iii. Max punishment-7 years or 21st birthday

iv. Statutory Reviews (§16.1-285.2)

D. Loss of Driving Privileges (§16.1-278.8(A)(9))

a. Drug cases-no restricted OL permitted

b. Alcohol cases

E. Significant consequences if a guilty finding in Juvenile Court

1. Convicted felon for purposes of illegal possession of firearm

2. Sentencing guidelines in a future case: prior juvenile conviction

will count in calculating sentencing guidelines in a later case

II. JUVENILES TREATED AS ADULTS

A. Juvenile's case can be moved to the Circuit Court to be treated as adult under three different scenarios as long as juvenile if 14 or older.

1. Mandatory Certification Under Virginia Code § 16.1-269.1(B): The Juvenile Court "shall conduct a preliminary hearing" if the charges are capital murder, first degree murder, second degree murder, and aggravated malicious wounding

2. Certification Under Virginia Code § 16.1- 269.1(C): The Juvenile Court "shall conduct a preliminary hearing" if the Commonwealth gives notice of its intent to proceed against the juvenile as an adult and charges are listed under 16.1-269.1 (C), including felony homicide, robbery, malicious wounding, abduction with intent to defile, rape, forcible sodomy, object sexual penetration, and PWID if prior, at least 7 days prior to court.

   i. Can still raise competency issues

3. Transfer Hearing Under Virginia Code § 16.1-269.1(A) for other charges.

   i. Requires notice, with no time requirement

   ii. Probable cause

   iii. Court finds that juvenile is not proper to remain in lower court

   iv. Should appeal transfer to Circuit Court (16.1-269.4)

4. If case is sent to Circuit, technically juvenile can be placed in jail

B. Sometimes, counsel should attempt to plea bargain to keep the case in the

Juvenile Court

C. Circuit Court Dispositions When Defendant is Being Tried as Adult

1. If juvenile is in the Circuit Court by way of a preliminary hearing, then the Circuit Court has to impose an adult sentence. However, the adult sentence can be suspended on the condition that the juvenile complete a juvenile sentence. 16.1-272(A)(1)

2. If juvenile is in the Circuit Court by way of a transfer hearing, then the Circuit may impose either a juvenile sentence or an adult sentence. 16.1-272(A)(2)

3. Judge always sentences, even with a jury

III. STANDARDS OF PRACTICE FOR JUVENILE DEFENSE COUNSEL (see attached copy of applicable IDC Standards of Practice)

A. Standards of Practice for Indigent Defense Counsel, available at the Virginia Indigent Defense Commission website (indigentdefense.virginia.gov), has a special section devoted to representing juveniles.

B. Both the general Standards of Practice and the special section on juvenile representation (pages 38-59) should be reviewed, with special focus on defense counsel's duty at the disposition hearing (pages 53-56).

C. The duties of counsel at the disposition hearing include:

1. explaining to the juvenile and parents the nature of the hearing, the issues involved, and the alternative available to the Juvenile Court

2. **explaining the process of preparing a social history**

3. **being familiar with the disposition practices of the judge**

4. **reading the social history and reviewing it with the client**

5. **informing the client of appeal rights to the circuit court and to The appellate courts.**

COMING SOON!

2nd DISTRICT

COURT SERVICE UNIT

(VIRGINIA BEACH CSU)

CURRENT

PROGRAM LIST

DESCRIPTION

CONTINUUM OF CARE...

Adolescents may be recommended for placement after completion of a comprehensive mental health/substance abuse evaluation through Child and Youth Services or other service provider. Other potential residents may be identified and referred directly by the Court. Upon entering the program, a comprehensive substance abuse evaluation will be completed and an individualized service plan will be developed. After-care / transition planning will begin immediately in order to provide a smooth transition for the youth in returning back home and into the community. Step-down to community-based treatment will be the goal..

Recommendations to the Court can be made through the Court Service Unit, involved professionals, and/or involved attorneys. Only a presiding judge can place a juvenile into the program after completion of a Post-Dispositional assessment.

LaToya Britt
Post-Dispositional Coordinator
(757) 385-1225
lbritt@vbgov.com

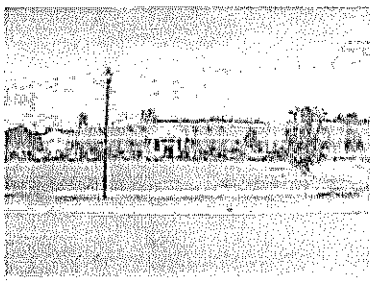
Virginia Beach
Juvenile
Detention Center

CITY OF VIRGINIA BEACH

2533 George Mason Drive
Virginia Beach, VA 23456

CITY OF VIRGINIA BEACH

THE VBJDC POST-DISPOSITIONAL (POST-D) PROGRAM



757-385-1225

WHAT IS THE POST-D PROGRAM?

Currently the Post-Dispositional Program at the Virginia Beach Juvenile Detention Center offers a long-term secure confinement and treatment program to the juveniles in our community. With the recent JDAI initiatives, we recognize the need for a secure treatment facility for adolescents within the juvenile justice system, who may have a dual diagnosis, that may need more than the available outpatient treatment options offer. Virginia created an intensive program that focuses on a wide range of treatment needs with an evidenced based model, specifically designed for adolescents and proven to be effective with teens in a detention center setting.

Evidenced-based treatment serving the needs of the adolescent, families, and community

HELPING TEENS MEET THEIR POTENTIAL

Many of the teens we've worked with over the years have had difficulty succeeding at home, school, and in the community because of their behavior. Working closely with the Juvenile CSU, the Juvenile and Domestic Relations Court and Child & Youth Services, we've developed a program to meet the needs of these adolescents. Because teens face multiple obstacles, our program will assist teens with these challenges and help them overcome the barriers that prevent them from succeeding.

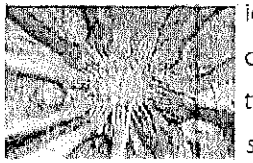
Therapy by a licensed provider

Program components include:

- Cognitive Behavioral Interventions for Substance Abuse evidenced based curriculum
- Individual and family therapy
- Anger Management
- Empathy Enhancement
- Therapeutic Skill Building
- Drug and alcohol screening
- 24-hour support and supervision
- Parent and Multi-Family Group
- Continued education with VB Public Schools and/or GED testing

WHO SHOULD BE REFERRED TO THE POST-D PROGRAM?

Adolescents between the ages of 14 and 18 who are classified as moderate or high risk, and whose criminal behaviors require secure confinement; those who have a serious history of substance abuse and/or behavior problems and need a higher level of care than an Intensive Outpatient Program or Substance Abuse Day Treatment Program; those who need stabilization and a continuum of care before consideration of a long-term commitment to DJJ or residential setting; those whose substance abuse and/or behavior prevents them from functioning successfully in the community.



Helping teens succeed

CITY OF VIRGINIA BEACH JUVENILE DETENTION CENTER

CONTINUUM OF CARE...

Adolescents may be recommended for placement after completion of a comprehensive mental health/substance abuse evaluation through Child and Youth Services or other service provider. Other potential residents may be identified and referred directly by the Court. Upon entering the program, a comprehensive substance abuse evaluation will be completed and an individualized service plan will be developed. Aftercare / transition planning will begin immediately in order to provide a smooth transition for the youth in returning back home and into the community. Step-down to community-based treatment will be the goal..

Recommendations to the Court can be made through the Court Service Unit, involved professionals, and/or involved attorneys. Only a presiding judge can place a juvenile into the program after completion of a Post-Dispositional assessment.

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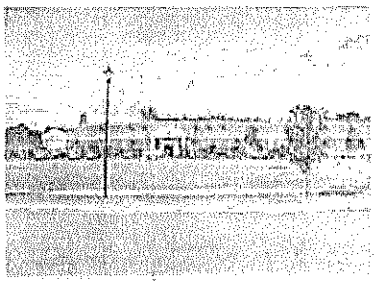
THE POST-D SECURE TREATMENT FOR ADOLESCENT RECOVERY AND TRANSITION PROGRAM



757-385-1225

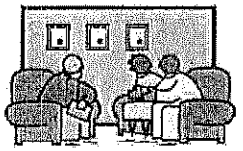
WHAT IS THE START PROGRAM?

Currently the Post-Dispositional Program at the Virginia Beach Juvenile Detention Center offers a long-term confinement and treatment program to the juveniles in our community. With the recent JDAI initiatives, we recognize the need for a secure treatment facility for adolescents within the juvenile justice system, who use and abuse substances, that may need more than the available outpatient treatment options offer. We've created a shorter, more intensive program that focuses on substance abuse treatment with an evidenced based model, specifically designed for adolescents and proven to be effective with teens in a detention center setting.

Evidenced-based treatment serving the needs of the adolescent, families, and community

HELPING TEENS MEET THEIR POTENTIAL

Many of the teens we've worked with over the years have had difficulty succeeding at home, school, and in the community because of their substance use. Working closely with the Juvenile CSU, the Juvenile and Domestic Relations Court and Child & Youth Services, we've developed a program to meet the needs of these adolescents. Because teens face multiple obstacles, our program will assist teens with these challenges and help them overcome the barriers that prevent them from succeeding.



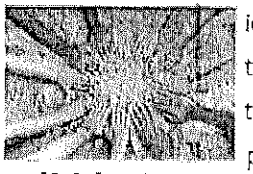
Therapy by a licensed provider

Program components include:

- Seven Challenges intensive substance abuse program
- Individual and family therapy
- Anger Management
- Empathy Enhancement
- Drug and alcohol screening
- 24-hour support and supervision
- Parent Group
- Continued education with VB Public Schools and/or GED testing

WHO SHOULD BE REFERRED TO THE START PROGRAM?

Adolescents between the ages of 14 and 18 who are classified as moderate or high risk, but whose criminal behaviors do not reach the level of traditional Post-D placement; those who have a serious history of substance abuse and/or behavior problems and need a higher level of care than an Intensive Outpatient Program or Substance Abuse Day Treatment Program; those who need stabilization and a continuum of care before consideration of a long-term detention or residential setting; those whose substance abuse and/or behavior prevents them from functioning successfully in the community.



Helping teens succeed

CITY OF VIRGINIA BEACH JUVENILE DETENTION CENTER

Code Criteria (if responses to below questions are "yes", juvenile is ineligible for the Post-Dispositional Program pursuant to 16.1-284.1 COV)	YES	NO
1. Will the juvenile be under age 14 at the time of program entry?	☐	☐
2. Has the juvenile been released from the custody of DJJ within the past 18 months?	☐	☐
3. Has the juvenile been adjudicated delinquent or found guilty of one of the following violent juvenile felonies?		
- capital murder in violation of 18.2-31	☐	☐
- first or second degree murder in violation of 18.2-32	☐	☐
- lynching in violation of 18.2-40	☐	☐
- aggravated malicious wounding in violation of 18.2-51.2	☐	☐
- felonious injury by mob in violation of 18.2-41	☐	☐
- abduction in violation of 18.2-48	☐	☐
- malicious wounding in violation of 18.2-51	☐	☐
- malicious wounding of a law enforcement officer in violation of 18.2-51.1	☐	☐
- felonious poisoning in violation of 18.2-54.1	☐	☐
- adulteration of products in violation of 18.2-54.2	☐	☐
- robbery in violation of 18.2-58	☐	☐
- carjacking in violation of 18.2-58.1	☐	☐
- rape in violation of 18.2-61	☐	☐
- forcible sodomy in violation of 18.2-67.1	☐	☐
- object sexual penetration in violation of 18.2-67.2	☐	☐
- manufacturing, selling, giving, distributing, or possessing with intent to manufacture, sell, give, or distribute a controlled substance or an imitation controlled substance in violation of 18.2-248, third offense	☐	☐
- manufacturing, selling, giving, distributing, or possessing with intent to manufacture, sell, give, or distribute methamphetamine in violation of 18.2-248.03, third offense	☐	☐
- felonious manufacturing, selling, giving, distributing, or possessing with intent to manufacture, sell, give, or distribute anabolic steroids in violation of § 18.2-248.5, third offense	☐	☐
4. Would a placement other than secure post-dispositional confinement serve the best interest of the juvenile?	☐	☐
CODE CRITERIA (If responses to below questions are "no", juvenile is ineligible for the Post-Dispositional Program pursuant to 16.1-284.1 COV)		
5. Has the juvenile committed an offense which if committed by an adult would be punishable by confinement?	☐	☐
6. Do the interests of the juvenile and the community require secure custody for services?	☐	☐
7. Is this placement for the purpose of rehabilitation?	☐	☐
Other Criteria for Consideration		
8. Have the parent(s)/guardian(s) been oriented as to the level of parental involvement required?	☐	☐
➢ Are they willing & able to fully cooperate?	☐	☐
9. Does the child require any special educational needs above that which VBJDC can provide?	☐	☐
10. Is the juvenile able to cognitively understand the program and the expectations?	☐	☐
11. Does the juvenile pose any significant risk to staff or other residents in the program?	☐	☐

12. Does the juvenile pose any significant flight risk?

13. Is the goal for the juvenile to return home following release?

☐	☐
☐	☐

VIRGINIA BEACH

POST-DISPOSITIONAL PROGRAM:

INFORMATION PACKET

FOR RESIDENT AND PARENTS

City of
Virginia Beach Virginia

This packet of information highlights the requirements, responsibilities and expectations of residents placed in the Post-Dispositional Program (Post-D Program) or the Post-Dispositional Secure Treatment for Adolescent Recovery and Transition Program (Post-D START Program), as well as the residents' parent(s)/guardian(s) requirements, responsibilities and expectations. It also summarizes the Post-D and Post-D START Program visitation policy, resident behavior management policies, phase system, and specific unit rules. More detailed and client-specific information is provided during the initial treatment team meeting.

Revised 10/24/14

POST-D PROGRAM OVERVIEW AND SERVICES

The Post-D Program is a dispositional alternative for non-violent juvenile offenders who meet the program criteria and who may benefit from local, short-term confinement and treatment while in a controlled setting. An in-house licensed clinician provides therapeutic services to the juveniles and their parents/guardians. Services are intended to increase family and community involvement, thus increasing the youth's chances for successful transition back into their home setting. Parental cooperation and involvement is imperative for successful re-entry.

The program also provides structured facility-based therapeutic groups as well as community-based services such as therapeutic recreational and educational outings. As the youth progresses through the program and meets treatment goals, he/she becomes eligible for supervised home passes. A select number of residents may also be eligible for such opportunities as obtaining outside employment.

The Post-D Program includes, but is not limited to, the following services:

- ✓ Intensive substance abuse treatment
- ✓ Individual and family therapy by a licensed provider
- ✓ Anger Management and Empathy Enhancement
- ✓ Therapeutic Skill Building
- ✓ Parent and Multifamily Group (required for parents/guardians)
- ✓ Continued education with Virginia Beach Public Schools including GED testing for eligible youth
- ✓ Community service
- ✓ Oceans of Opportunity Program with the Virginia Aquarium partnership
- ✓ Therapeutic / educational / recreational program outings
- ✓ Psycho-educational groups include character development, healthy relationships, and conflict resolution
- ✓ Journaling
- ✓ Relapse prevention
- ✓ Drug and alcohol screening
- ✓ Comprehensive substance abuse evaluation
- ✓ 24 hour support and supervision
- ✓ Case management

POST-D REFERRALS, PLACEMENTS, REMOVALS

All referrals to the Post-D Program must be approved for appropriateness by the Post-D Coordinator and, once approved, ordered by the court. If a resident scheduled to enter the Post-D Program is eligible for a suspended commitment to the Department of Juvenile Justice, they must enter under a suspended commitment order.

All residents that enter the Post-D Program under a suspended commitment can be committed to DJJ if:

(1) their behavior requires a request for Post-D Program removal (termination),
(2) they are involved in a physical fight while in Post-D, or
(3) the reviewing judge does not feel the resident is making progress with identified treatment goals

This means **non-compliance** with the Post-D Program can result in an **automatic** commitment to DJJ.

Unless otherwise court-ordered, residents enter with a six month placement term (180 days) which is subject to a recommendation for an earlier release if all identified treatment goals have been accomplished and the resident has completed all phases of the program satisfactorily. The focus of the Post-D Program is on the accomplishment of treatment goals identified during the initial treatment team meeting. **This initial treatment team meeting must be held within five business days of the resident entering the program.** Parents are required to attend and participate in the initial treatment team meeting.

POST-D START PROGRAM

The Post-D Secure Treatment for Adolescent Recovery and Transition (START) Program is specifically designed for youth NOT eligible for commitment to DJJ who may still benefit from therapeutic services in a structured and secure environment. This program is in addition to the existing Post-D Program which is dictated under the Post-D code section 16.1-284.1. A shorter length of stay and accelerated program requirements differentiates the Post-D START Program from Post-D. Candidates will be those individuals who the Court Service Unit has classified as moderate or high risk.

Utilizing a shorter length of stay, the Post-D START Program will focus on stabilizing the resident, providing in-house treatment services, and coordinating aftercare services in which the resident can seamlessly continue therapeutic and/or substance abuse services in the community. Ultimately, residents will progress at their own pace and an individual's length of stay will be determined based on program progress, risk level, and treatment needs.

An individualized service plan will be developed. Post-D START residents will benefit from the established Post-D services, which may include some or all of those as described above.

The referral process will remain the same as that for Post-D, but if the resident is not eligible for commitment to the Department of Juvenile Justice, he or she will be assessed for the Post-D START Program and placement will begin only after a court order for placement under Code Section 16.1-284.1. The presiding judge will note upon placement if the resident is being placed into the Post-D START Program.

The Post-D START Program residents will complete therapeutic assignments similar to the established Post-D Program phase tasks. Privileges will be earned based on behavior and treatment progress. Privileges such as home passes and releases into the community will be determined on a case-by-case basis in collaboration with the probation officer based on the youth's service plan. Final program release will be decided by the presiding judge once goals are met and aftercare plans are in place. The program is developed with a goal of completion within 90 days of placement. However, length of stay can be extended if the resident is not making adequate progress, the treatment goals are not met, or if the resident is displaying negative behavior.

The below policies, rules and regulations, referred to in this packet as "Post-D Program", also apply to Post-D START placements unless otherwise noted.

INITIAL TREATMENT TEAM MEETING

Parents will be informed of the scheduled treatment team meeting on or before their child's Post-D placement date. The probation officer will coordinate the scheduling of this meeting, which must occur within five business days of the resident's placement date. **It is mandatory that parents attend the treatment team meeting.** The treatment team will consist of the resident, his/her parent(s)/guardian(s), probation officer, Post-D Coordinator and Post-D Therapist.

Parents are required to bring their child's birth certificate, social security card, insurance card, immunization records, and identification card (if applicable) to the treatment team meeting. If these documents are not available, plans will be made at the meeting to secure these documents as soon as possible.

REQUIREMENTS OF POST-D RESIDENTS

The program expectations will be reviewed with the resident prior to and/or upon his/her placement into the program. During the first month of placement the focus will be on stabilization, residential group living, unit rule compliance, and building relationships with staff of the Post-D Program.

All Post-D residents are expected to learn and comply with VBJDC and Post-D unit rules. Residents will have a Resident Handbook as well as this Information Packet for their review. Residents are responsible to read this information. Post-D staff will regularly review unit rules both individually and with all residents during community group discussions. Each resident is expected at all times to display behaviors that will aid in the achievement of their service plan goals.

RESPONSIBILITIES OF PARENTS/GUARDIANS

Parental participation is required for all scheduled counseling sessions, service plan reviews, court reviews, parent groups, and emergency meetings. Parents must be available for contact at all times. When not available, parents must make arrangements to contact the Post-D Coordinator on a regular basis.

Parents are required to attend the Parent and/or Multifamily Group twice a month, meet with the Post-D Coordinator at least once a month (typically prior to court reviews), and meet with the Post-D Therapist for sessions at least twice a month in the Post-D Program and at least weekly in the Post-D START Program. More frequent family sessions may be required and/or requested. If so, that will be identified in the service plan. The Post-D Therapist may schedule family sessions that include extended family members when appropriate. However, juvenile siblings and other relatives under the age of 25 are not allowed admittance into the secure areas of the detention center, even for family sessions.

When a child enters the Post-D Program, parents remain the legal guardian and are responsible for their child's clothing, personal hygiene items, and dental/mental health/medical needs. Parental responsibilities also include scheduling and paying for all medical, mental health and dental services. When necessary, Post-D staff can assist with resident transportation. In case of a medical emergency, staff will contact parents/guardians to meet them wherever the resident is being transported. The detention center nurses will handle routine medical needs.

Whenever a Post-D resident is released to his/her parent for an appointment or a home visit, it is that parent's responsibility to ensure that the child is under direct supervision at all times. Parents will abide by all community release rules, which will be reviewed during the initial treatment team meeting. Parents are not allowed, unless approved by the Post-D Coordinator, probation officer or court, to allow their child into the community without direct parental supervision.

Parental participation is expected during meetings at Virginia Beach Juvenile Detention Center (VBJDC), with community appointments as scheduled, with transportation whenever possible, with ensuring all prescriptions/medications are available to their child, and with overall treatment goals as identified in the service plan. A lack of parental participation will be reported to the court during the monthly reviews. **Parents are required to attend all monthly court reviews. Only the presiding judge can excuse parental attendance.** The presiding judge can also take legal sanctions against any parent not complying with their child's service plan or Post-D Program requirements.

Parents may not allow their child to smoke when at home. It is against the law for a juvenile under the age of eighteen to possess, purchase or smoke cigarettes. Also, parents should not allow their child to use mouthwashes, cough syrup, or over-the-counter medications prior to returning to VBJDC. The reason for this rule is that certain items contain alcohol and may produce the odor of alcohol. Also, side effects may result even in over-the-counter medications.

RESPONSIBILITIES OF POST-D STAFF

The Post-D unit staff will (1) enforce all VBJDC and unit rules, (2) supervise and monitor residents' behavior, (3) provide appropriate sanctions for rule violations, (4) conduct community groups and psycho-educational groups within the facility, (5) transport and supervise residents during scheduled outings, and (6) assist with case management duties as needed.

The Post-D Coordinator will (1) monitor the residents' behavior directly and/or through reports from the unit counselors, (2) contact parents ~~and probation officers~~ regarding behavior problems as needed, (3) report behavioral progress during monthly court reviews and via court reports, (4) approve temporary releases and home visits, and (5) assist residents in preparation for program release.

The Post-D Coordinator and/or Post-D Therapist will (1) develop the service plan with each entering resident, (2) review treatment progress on a monthly and as needed basis, (3) complete a comprehensive substance abuse evaluation upon placement, and (4) oversee the time frames and services identified in the service plan.

The Post-D Therapist will (1) review service plan progress and conduct individual therapy sessions with the residents on a weekly basis, (2) conduct family therapy sessions at least twice a month (weekly for Post-D START families), (3) provide case management and crisis intervention as needed, (4) determine eligibility for mental health transition planning, (5) recommend treatment services while in placement and also following release, (6) facilitate therapeutic groups within the facility, and (7) facilitate JDC Parent/Multifamily Group twice a month.

VISITATION AT VBJDC

1. **Residents are permitted visits only by their parents or legal guardians.** No one else will be permitted in the building.
2. All visitors must present a picture I.D., sign the visitor log and pass through a metal detector prior to entering the secure area. A hand-held metal detector search may also be conducted. Picture ID's of visitors will be held at the reception area until the visitor exits the facility.
3. Personal items such as: purses/pocketbooks, cell phones, packages and bulky clothing/coats are not permitted in the secure areas of the detention center. Lockers are available for temporary storage of personal items.
4. Visitation times for the Post-D unit are **Tuesday evenings, 7:00 P.M. – 8:00 P.M., and Sunday afternoons, 1:00 – 2:00 P.M.**
5. Visitation may be denied for reasons of security.
6. No persons under the influence of drugs or alcohol or who are verbally or physically abusive will be admitted into the secure area.
7. No persons shall have in their possession firearms, knives or chemical weapons while in the confines of the facility.
8. All persons, clothing and personal belongings are subject to be searched.
9. All items (magazines and soft cover books only) brought in for a Resident are to be given to a staff member. Items will be screened and searched by staff. Items will be returned to the delivering person if not approved.
10. Physical contact between resident and their visitor is permitted.
11. Visitation will be monitored at all times.
12. Any property including clothing or medication brought in for a Resident or released to a visitor will be recorded.
13. No tobacco products are allowed inside the secure area of the facility.

PERSONAL ITEMS ALLOWED/ NOT ALLOWED

During the initial treatment team meeting, parents will be informed of the items allowed on the Post-D unit. Any items allowed on the unit are conditioned upon resident behavior. For example, items may be removed from the resident's room or locker and placed in VBJDC's property storage as a consequence. Also, as outlined in the behavior management system, certain items may be earned as a privilege once a resident reaches a certain level or phase. **Residents are not allowed to give, share, borrow, or loan personal items amongst other residents.** This includes items kept in the resident's property storage at intake. All personal items including radios will be labeled by staff.

Residents may have up to three changes of clothing and two pairs of shoes in the building. All personal clothing will be held at intake in the resident's personal property storage. Parents are responsible for securing and delivering appropriate court clothes that must be worn whenever the resident is not being transported by the sheriff's deputies to court (all residents are transported by the sheriff's deputies to their first court review and at times during subsequent reviews depending on program progress, risk status, and/or behavior).

Personal photographs (no polaroids), posters, softcover books, and personal magazines are allowed but must be screened by staff to ensure that they do not contain inappropriate content. Residents may have a limited number of personal hygiene items, but may not have anything in a glass or aerosol container. Any personal hygiene items that are labeled as "medicated" (such as face washes, creams) must be approved through the VBJDC clinic. Personal videotapes, DVDs, and games (including Playstation and Wii games) are not allowed.

Parents may not give candy or food to their child to keep in his/her room. Personal food purchased during a visit or outing must be consumed by the resident before they return to the building. For holidays, celebrations, or other special occasions, parents may donate food (individually wrapped and purchased from a store) to be shared by the entire unit. Any food or drink (including candy) will be accepted **only after pre-approval** by the Post-D Coordinator. All food donated will be dispersed by staff and shared with all residents.

***If a resident runs away/escapes or is otherwise released from the program prior to the scheduled release date, it is the parent's responsibility to pick up all of their child's personal items from VBJDC. Personal property that remains unclaimed 90 days after a documented attempt to return the property will be donated to a local charity or the city's Department of Human Services/Social Services Division.**

PERSONAL MAGAZINES

Residents may have personal magazines, but parents cannot give them directly to the resident. Magazines must be given to staff to approve before being given to the resident. They will be labeled with the resident's name. Magazines may not contain any pictures of nudity or women/men in revealing/provocative clothing, any sexual content, excessive violence, or illegal drug activity. If such magazines are brought into the building, they will be placed in the resident's property storage until the resident is permanently released. This policy also applies towards posters/pictures for a resident's room.

COURT DRESS CODE

Residents may be eligible to be transported to their court reviews by VBJDC staff. However, this will be requested on a case-by-case basis by the Post-Dispositional Coordinator and approved by the probation officer. Requests will be made as dictated by the Post-D Program's phase system, risk status guidelines, and behavior management system. If residents are able to attend their court reviews with VBJDC staff, it is expected that all residents will wear appropriate court clothing. During court reviews, males are required to wear collared shirts tucked into dress or dress-casual pants. Female residents are required to wear appropriate clothing such as a blouse or sweater with dress or dress-casual pants. Clothing too revealing or too tight will not be allowed. If not properly dressed, the resident will be required to wear clothing provided by VBJDC staff and may forfeit his/her pass privileges or ability to be transported by VBJDC staff in the future. It is recommended that each resident get staff approval for his/her clothing a few days prior to the court date.

COURT / GROUP OUTINGS

During court reviews or any program outings, residents may not have friends, associates, girlfriends or boyfriends meet them at court or a designated location. In addition to the dress code for court as described above, residents will not be allowed to leave the building with staff wearing hats or other headgear, jewelry, clothing with obvious gang colors or symbols, sports logos, etc.

EDUCATION

All Post-D Program residents must **ATTEND** and **PARTICIPATE** in the Virginia Beach Detention Educational Program at VBJDC. Disruptive behaviors in the classroom or refusal to do assigned school work will result in immediate consequences (warnings, 'X', cool out, room confinement). Teachers can give warnings, 'X's and request classroom removal. If room confinement is recommended by a teacher and if reviewed and deemed to be an appropriate consequence by staff, it will be implemented. If classroom behavior and academic progress are not achieved and maintained within a specific amount of time, it will be reported in the court report as a major problem and program removal **can** be implemented by the judge.

RISK STATUS

At the initial treatment team meeting, the risk status will be reviewed. A resident's risk status can be lowered or raised as needed and only as approved by both the Post-Dispositional Coordinator and probation officer. There are three risk levels: High, Medium and Low.

High Risk

Residents enter the program on high risk status. Juveniles on high risk status normally do not leave the building unless there is a required medical appointment. If approved by medical staff for a required appointment, high-risk residents may leave the building transported by VBJDC staff in full mechanical restraints. This risk status applies to juveniles who have a past history of runaway, chronic substance abuse, severe behavioral problems and extensive criminal history that may pose a threat to the community. If the resident's risk status remains at "High" over time because that resident cannot show that he/she is working towards controlling his/her behavior, that will be addressed and the resident may be recommended for program removal.

Medium Risk

If designated by their service plan, medium risk residents may be allowed to leave the detention center for treatment-related or medical appointments. This is also contingent upon the resident's behavior and progress on the behavior management system. Either VBJDC staff, parent/guardian or a court-approved person/service provider will provide transportation and must remain present during the appointment. Medium risk residents are eligible to participate in therapeutic recreational outings and temporary releases upon approval of the Post-D Coordinator. At medium risk, residents should be able to listen effectively to staff, follow directives, and not pose a flight risk.

Low Risk

Low risk residents need less supervision and maintain their behavior at a Level 4 on a consistent basis. On a case-by-case basis, low risk youth may be trusted to perform community service work, attend treatment-related groups in the community, and/or hold employment, independently, without staff or parent/guardian present. Low risk residents must demonstrate the ability to be honest and trustworthy through positive behavior.

TEMPORARY RELEASES

Temporary releases are for the purpose of treatment service appointments (as identified in the service plan), medical/dental/mental health appointments, approved home passes (under direct parental supervision) or staff supervised activities ONLY. Post-D residents become eligible to be transported by parents/guardians for treatment service and/or medical appointments only after they reach medium risk status. However, there are **NO REQUIRED RELEASES; releases are all based on the individual resident's current treatment goals, risk status, and behavior.** Home passes will only be approved for residents who are a Level Four on the behavior management system at the time of the pass.

Whenever a Post-D resident is released to his/her parent/guardian for an appointment or a home visit, it is that parent's responsibility to ensure that their child is under direct supervision at all times. It is also the parent/guardian's responsibility to contact the Post-Dispositional Coordinator directly to request all temporary releases. To ensure ample time for approval of the temporary release, the parent/guardian should call as soon as possible to request a date and time, giving at least two business days notice. Temporary releases for the weekend need to be approved by noon on the Thursday workday prior to that weekend.

Means of transportation to and from community appointments (shackles, staff transportation, parent transportation) will depend on risk status (high/medium/low) and purpose of the release.

Every Post-D resident returning to the unit from a temporary release is subject to a complete search by a same sex staff as provided by the policies and procedures of the VBJDC. Random drug screens and breathalyzers will also be administered following temporary releases.

HOME PASSES

Post-D residents on Phase Two (who are also on medium or low risk status and Level 4) *may* be eligible to visit with their parents/guardians after court for up to three hours *if* he/she is able to attend court with VBJDC staff and upon approval by the Post-D Coordinator.

Post-D residents on Phase Three/Level Four are eligible for one weekend day home pass for up to five hours. Residents on Phase Four/Level Four are eligible for one weekend day home pass for up to eight hours. Overnight home passes may be allowed two weeks prior to the final release date.

*Post-D START residents will be allowed home passes as approved by the Post-D Coordinator, probation officer, and/or Court based on their individualized service plan.

All home passes are conditioned upon unit and school behavior. Residents must be on a Level Four on the behavior management system at the time of the pass in order to earn that pass. Approval is also based on individual service plans, program progress, resident behavior, parental supervision, and release plans and will differ in duration and time frames from one resident to the next. **These passes require direct parental supervision at all times.** Residents cannot be granted permission to visit with friends or relatives without the parent/guardian present (direct supervision). Residents may not have contact with or visit with other Post-D residents during temporary releases or home passes. Any exceptions to these home visit conditions must have the Post-D Coordinator's and probation officer's approval.

Residents must call in to staff once per shift during each home pass. If a resident fails to call in during his/her home pass, two hours will be deducted from the next scheduled home pass (first offense). Subsequent violations of the check-in procedure will result in denial of the next scheduled home pass. Staff will also randomly contact residents and parents/guardians during scheduled home passes. Staff must be able to confirm that residents are with their parent(s)/guardian(s) and will therefore ask to speak with both the resident and parent/guardian. Residents and parent(s)/guardian(s) must be available for random staff check-ins at all times. Failure to respond to a random staff check-in will be considered a violation of community release rules and an appropriate consequence will be imposed.

Residents approved for 5:00 pm or later returns must eat dinner and shower prior to their return to VBJDC. All residents must return by 8:00 pm unless otherwise approved by the Post-D Coordinator due to mitigating circumstances. Residents are considered runaways if they do not return as scheduled. It is the parent/guardian's responsibility to return the child at the time scheduled. Consequences will be given for late returns. Any problems with returning to VBJDC as scheduled must be reported by the parents prior to the scheduled return time.

EMPLOYMENT

Employment is a privilege and will be approved *very selectively* as determined by age, restitution, financial obligation goals, and service plan goals only. Work sites must be approved by the Post-Dispositional Coordinator and facility administrator. The resident, parent/guardian, probation officer and Post-Dispositional Coordinator will review and sign an Employment Terms Contract. Parental assistance with transportation may be required. Residents will be required to show ongoing proof of employment (such as paycheck stubs and daily timecards). A release must be signed so that VBJDC staff can communicate with the resident's employer. If a Post-D resident is employed while physically residing at VBJDC, there is a mandatory return time of 8:00 pm and no school time can be missed (unless the resident has officially passed the GED test and given permission by VBJDC and education staff). When employed while at VBJDC, all money earned will be budgeted to pay restitution or to secure identified treatment-related needs or services.

BEHAVIOR MANAGEMENT SYSTEM

Post-D residents must follow all rules and regulations set forth by VBJDC policies and procedures. During the initial intake into VBJDC, residents are given a Resident Handbook. Residents are responsible for reading and following all guidelines set forth in the Resident Handbook. The Handbook outlines facility rules and the corresponding Level System which dictates certain resident privileges. The VBJDC Level System remains in effect for all Post-D residents. Residents entering Post-D start at a Level One, even if they are already in VBJDC. In addition, Post-D residents participate in a "Phase System" as described below. There are certain tasks assigned to each Phase. The resident will have a specified time period to complete each phase and must be promoted to the next phase. Phase promotion can be denied if the resident does not complete all assigned tasks satisfactorily, is not making treatment progress and/or if the resident's behavior is not appropriate. As residents progress through the phases, they can earn more program-specific privileges and work towards successful program completion.

Residents must be on Level 4 and complete the minimum time period for that phase in order to be eligible for promotion to the next phase. Residents must be on Level Four 4 on the VBJDC Level System to earn all phase privileges, including home passes.

*Please note there are slight differences in the Post-D and Post-D START phase requirements as outlined in the following sections.

POST-D PROGRAM PHASE SYSTEM

Orientation Phase (15 Days Minimum):

All residents are placed on Orientation Phase upon placement into the Post-D Program. On this phase, residents are expected to familiarize themselves with the rules, expectations and schedule of the program. The focus will also be on stabilization, residential living and establishing relationships with peers and staff. While on this phase, privileges are minimal so that residents may focus on becoming familiar with the program. Residents are issued a journal to use for completing assignments as well as expressing thoughts and feelings. Residents will need to have their journals available for staff review at any time as requested.

Tasks of orientation phase:

1. The resident will complete the following assessments: TCU Criminal Thinking Scales, TCU Motivation Scales, University of Rhode Island Change Assessment, Adverse Childhood Experiences Scale, and Resiliency Scale.
2. The resident will learn Post-D staff's names.
3. The resident will read the Resident Handbook and Post-D Information Packet.
4. The resident will create three questions about the Resident Handbook and/or Information Packet and present these questions for discussion at a community group.
5. The resident will complete the Orientation Phase journal entries.
6. The resident will present the journal entries to the unit.
7. The resident will write at least three goals/expectations and what motivates him/her. After staff approval, design a poster board listing the goals and motivators to hang up in room when complete. (Please include visuals)
8. The resident will pass a locker inspection.
9. The resident will meet with his/her assigned counselor for a one-on-one session to discuss goals, progress, behavior, and any concerns.
10. The resident will complete the Phase Advancement application.

Level Four Privileges:

- As dictated by the resident's level on VBJDC Level System.

Phase One (30 days minimum):
During this phase, the resident will be expected to actively participate in the program and have a good understanding of the rules. The resident is actively working on fulfilling the service plan goals.

Tasks of Phase One:

1. The resident will design a journal cover reflecting what motivates him/her.
2. The resident will identify at least five of his/her strengths and weaknesses, write a paragraph on each strength and weakness, and present the information during a unit group.
3. The resident will read "Who Moved My Cheese? For Teens" and complete questions.
4. The resident will complete the Phase One journal entries.
5. The resident will present the Phase One journal entries to the unit.
6. The resident will write a letter of intent to his/her probation officer outlining how he/she will utilize services to improve his/her behavior.
7. The resident will complete the autobiography assignment and review with the Post-D therapist.
8. The resident will pass a locker inspection.
9. The resident will meet with his/her assigned counselor for a one-on-one session to discuss goals, progress, behavior, and any concerns.
10. The resident will complete the Phase Advancement application.

Level Four / Phase One Privileges:

- All privileges of Orientation Phase
- One additional reading material
- Resident may decorate his/her room with up to five items
- Resident may begin community-based treatment services and Post-D outings (if on medium or low risk and approved by the Post-D Coordinator)

Phase Two (30 days minimum):
During this phase, residents should show a greater sense of responsibility for personal behavior and actions/reactions. Residents continue to focus on daily goals as well as treatment goals. Residents should have a better understanding of how they are responsible for their own actions. Residents should show leadership skills in groups and meetings.

Tasks of Phase Two:

1. The resident will choose a topic related to one of his/her treatment goals, research the topic, identify how he/she plans to reach the goals, and identify the benefits of achieving his/her goals. The resident will develop a PowerPoint and present the information during a unit group. The resident must meet with his/her assigned counselor for presentation approval. No inappropriate pictures/photographs can be used in this project.
2. The resident will complete the school career research project.
3. The resident will complete the personality inventory (school program).
4. The resident will complete the Phase Two journal entries.
5. The resident will present the Phase Two journal entries to the unit.
6. The resident will complete his/her empathy letter as approved by the Post-D therapist.
7. The resident will complete the home pass assignment.
8. The resident will pass a locker inspection.
9. The resident will meet with his/her assigned counselor for a one-on-one session to discuss goals, progress, behavior, and any concerns.
10. The resident will complete the Phase Advancement application.

Level Four / Phase Two Privileges:

- All privileges of Phase One
- One additional reading material
- Shower shoes with socks to be worn on the unit only
- Playstation 2 and Wii privileges
- Eligible to attend court without Sheriff's Department transporting - on a case-by-case basis as approved by the Post-Dispositional Coordinator and probation officer in advance (and if on medium or low risk)
- Eligible for up to a three hour pass after court with parent/guardian (supervised directly by parent/guardian) – only if eligible to attend court with Post-D staff

Phase Three (30 days minimum):

During this phase, it is expected that the resident serves as a role model for the program and peers. The resident should take responsibility for his/her actions and have a greater sense of self-awareness of why he/she was sentenced to the program. The resident should be able to provide assistance when peers are having difficulties and should be able to lead group meetings and discussions if called upon.

Tasks of Phase Three:

1. The resident will complete a letter of accountability to his/her victim(s).
2. The resident will develop a resume and complete a sample job application.
3. The resident will complete the Phase Three journal entries.
4. The resident will present the Phase Three journal entries to the unit.
5. The resident will select a topic (approved by the Post-D Therapist or Post-D Coordinator) and co-facilitate a therapeutic group.
6. The resident will pass a locker inspection.
7. The resident will meet with his/her assigned counselor for a one-on-one session to discuss goals, progress, behavior, and any concerns.
8. The resident will complete the Phase Advancement application.

Level Four / Phase Three Privileges:

- All privileges of Phases One and Two
- One additional phone call per week
- May have a personal am/fm radio with headphones
- Eligible for one day home pass for up to five hours each weekend (per service plan and if on medium or low risk)

Phase Four (30 days minimum):
During this phase, the resident should be familiar with his/her aftercare plan. The resident consistently demonstrates responsibility, both in the program and in the community. The resident continues to serve as a role-model for other residents and takes on a leadership role on the unit.

Tasks of Phase Four:

1. The resident will write his/her Five-Year Plan using PowerPoint to present to class.
2. The resident will complete a career portfolio.
3. The resident will complete the Phase Four journal entries.
4. The resident will present the Phase Four journal entries to the unit.
5. The resident will complete his/her relapse prevention plan.
6. The resident will pass a locker inspection.
7. The resident will meet with his/her assigned counselor for a one-on-one session to discuss goals, progress, behavior, and any concerns.
8. The resident will complete the Phase Advancement application.

Level Four / Phase Four Privileges:

- All privileges of Phases One, Two and Three
- Eligible for a day home pass for up to eight hours each week (per service plan/if on medium or low risk)

Transition Phase (15 days minimum):
During this phase, the resident is preparing to return home and/or into the community and effectively practices skills learned. Aftercare plans will begin if possible. The resident continues to show responsibility and serves as a role model to newer residents. The resident is released into the community for longer periods of time.

Tasks of Transition Phase:

1. The resident will complete an essay (minimum of three paragraphs) on what he/she has learned while in the Post-D Program and present the information to the unit. The essay needs to address the following: progression of thoughts, behaviors, and attitudes; what was learned including the most helpful information and how it will be used to continue future success.
2. The resident will update his/her letter of intent to his/her probation officer stating what he/she achieved while in the program and outlining his/her aftercare plans.
3. The resident will write a letter of self-encouragement and give to staff to be mailed to the resident approximately thirty days following release from the program.
4. The resident will complete the Transition Phase journal entries.
5. The resident will present the Transition Phase journal entries to the unit.
6. The resident will create a journal group topic, lead a journaling group, and provide constructive feedback to his/her peers.
7. The resident will meet with his/her assigned counselor for a one-on-one session to discuss goals met during placement and aftercare plans.
8. The resident will complete the following post-test assessments: TCU Criminal Thinking Scales, TCU Motivation Scales and University of Rhode Island Change Assessment.
9. Design a brick for the Freedom Wall.

Level Four / Transition Phase Privileges:

- All privileges of Phases One, Two, Three and Four
- Eligible for overnight home passes (last two weeks in the program only and as approved by the treatment team)

POST-D START PHASE REQUIREMENTS

Please refer to the previous section for a description of the Post-D phases. Building privileges remain the same. Privileges such as home passes and releases into the community will be determined on a case-by-case basis.

Post-D START Orientation Phase Tasks (15 Days Minimum):

1. The resident will complete the following assessments: TCU Criminal Thinking Scales, TCU Motivation Scales, University of Rhode Island Change Assessment, Adverse Childhood Experiences Scale, and Resiliency Scale.
2. The resident will learn Post-D staff's names.
3. The resident will read the Resident Handbook and Post-D Information Packet.
4. The resident will create three questions about the Resident Handbook and/or Information Packet and present these questions for discussion at a community group.
5. The resident will complete the Orientation Phase journal entries.
6. The resident will present the journal entries to the unit.
7. The resident will write at least three goals/expectations and what motivates him/her. After staff approval, design a poster board listing the goals and motivators to hang up in room when complete. (Please include visuals)
8. The resident will pass a locker inspection.
9. The resident will meet with his/her assigned counselor for a one-on-one session to discuss goals, progress, behavior, and any concerns.
10. The resident will complete the Phase Advancement application.

Post-D START Phase One Tasks (30 days minimum):

1. The resident will design a journal cover reflecting what motivates him/her.
2. The resident will identify at least five of his/her strengths and weaknesses, write a paragraph on each strength and weakness, and present the information during a unit group.
3. The resident will read "Who Moved My Cheese? For Teens" and complete questions.
4. The resident will complete the Phase One journal entries.
5. The resident will present the Phase One journal entries to the unit.
6. The resident will complete the home pass assignment.
7. The resident will complete the autobiography assignment and review with the Post-D therapist.
8. The resident will pass a locker inspection.
9. The resident will meet with his/her assigned counselor for a one-on-one session to discuss goals, progress, behavior, and any concerns.
10. The resident will complete the Phase Advancement application.

Post-D START Phase Two Tasks (30 days minimum):

1. The resident will choose a topic related to one of his/her treatment goals, research the topic, identify how he/she plans to reach the goals, and identify the benefits of achieving his/her goals. The resident will develop a PowerPoint and present the information during a unit group. The resident must meet with his/her assigned counselor for presentation approval. No inappropriate pictures/photographs can be used in this project.
2. The resident will select a topic (approved by the Post-D Therapist or Post-D Coordinator) and co-facilitate a therapeutic group.
3. The resident will complete his/her relapse prevention plan.
4. The resident will complete the Phase Two journal entries.
5. The resident will present the Phase Two journal entries to the unit.
6. The resident will complete his/her empathy letter as approved by the Post-D therapist.
7. The resident will pass a locker inspection.

8. The resident will meet with his/her assigned counselor for a one-on-one session to discuss goals, progress, behavior, and any concerns.
9. The resident will complete the Phase Advancement application.

Post-D START Phase Three Tasks (Tasks marked with * MUST BE COMPLETED BEFORE PROGRAM DISCHARGE):

1. The resident will write a letter of self-encouragement and give to staff to be mailed to the resident approximately thirty days following release from the program.*
2. The resident will complete the following post-test assessments: TCU Criminal Thinking Scales and University of Rhode Island Change Assessment.*
3. The resident will complete an essay (minimum of three paragraphs) on what he/she has learned while in the Post-D Program and present the information to the unit. The essay needs to address the following: progression of thoughts, behaviors, and attitudes; what was learned including the most helpful information and how it will be used to continue future success.*
4. Design a brick for the Freedom Wall.*
5. The resident will complete the Phase Three journal entries.
6. The resident will present the Phase Three journal entries to the unit.

DISCIPLINE POLICY

Post-Dispositional Program rules are designed to prevent disruptive behaviors on the unit, to provide a safe environment for all residents, and to encourage compliance with all legal and community laws. All Post-D unit rules are reviewed by staff on a regular basis and each resident has a copy of the Resident Handbook and this Information Packet. While staff can elect to give a resident a warning prior to giving a consequence, a warning is not required. It is each resident's responsibility to learn and follow the rules. Self-control is a treatment goal for each Post-D resident.

Serious rule violations will result in immediate room time. Contact will be made with the parent/guardian and probation officer to discuss serious rule violations. A formal meeting may also be held to discuss a recommendation to the court for program removal. If a parent/guardian does not attend this meeting, they will be immediately notified of the action to be taken.

The following methods of discipline are utilized in the Post-D Program:

COOL-OUT TIME: A resident can be sent to his/her room for a period of up to one hour for the following conditions:

(1) continual violations of minor rules,
(2) as a warning of a more serious consequence if a negative behavior continues, and
(3) if a resident becomes hostile or demanding when given a minor warning or consequence.

The 'cool-out' procedure is implemented to prevent more serious and/or additional consequences for a resident that appears to be highly upset or unable to get his/her emotions/behavior under immediate control.

"X": An "X" is given for violating a program rule. The Post-D unit rules are available to each Post-D resident in the Resident Handbook. Rules are also reviewed several times a week during resident community group meetings. After the first "X" of each shift, a resident will be dropped one level for each additional "X" that is given. For each level dropped, there will be fewer unit privileges.

ALTERNATIVE CONSEQUENCE: At the discretion of Post-D unit staff, residents may be given alternative consequences for inappropriate behavior and rule violations. These include, but are not limited to, writing assignments, denial of certain unit privileges (such as unit outings), removal of items allowed (such as a radio), and extra chores. Failure to cooperate with an alternative consequence is considered refusing a staff directive and will result in a more serious consequence such as room confinement.

ROOM CONFINEMENT: A resident can be sent to his/her room for a period of eight (8) to seventy-two (72) hours. During this confinement, room checks are made every thirty minutes. Room confinement rules are posted on the Post-D unit and in each Resident Handbook. Room confinement for periods of 48 to 72 hours is given for serious rule violations, and may lead to a recommendation of program removal.

***The following behaviors will result in 48 or 72 hours of room confinement. Also, contact will be made with the resident, parent(s)/guardian(s), probation officer, and Post-D Coordinator to discuss a possible PROGRAM REMOVAL recommendation. Criminal charges may also be filed for the following:**

1. **ASSAULT:** An assault is a physical altercation with another resident or staff. This includes swinging at, punching, slapping, or pushing anyone for any reason. Self-defense is not an excuse to fight or hit back at another resident.

2. **DRUG USE:** The use of illegal drugs or alcohol for any reason at any time will not be tolerated. This includes unauthorized use/abuse of over-the-counter medications or other substances. Drug screens and breathalyzers can and will be given to all residents at both random and scheduled times. Discipline will be imposed immediately upon confirmation of drug or alcohol use. Refusal to provide a urine sample or breathalyzer will also result in room confinement. Failure to provide a sample within two hours of return from the building or request from staff will be considered a refusal. If drug use is suspected, the resident will not be allowed in the community (unless approved by the Post-D Coordinator and probation officer) until the suspected use is confirmed or adequately investigated.

3. **SEXUAL MISCONDUCT:** Sexual misconduct includes, but is not limited to, forced sexual contact with another resident without their consent, masturbating or exposing oneself in public, sexual intercourse or any sexual contact with another resident. Per VBJDC resident rules, no physical contact between residents or staff is allowed unless during scheduled groups or as directed by staff.

4. **RUNAWAY OR ESCAPE:** Running away or escaping includes leaving the supervision of staff, failing to return to VBJDC as scheduled or leaving home without permission (when on a home visit). If a resident's whereabouts cannot be confirmed by staff or by his/her parents, the resident is considered to be a runaway. Once determined to be a runaway, the Post-D staff will file a runaway report and contact the court to file an escape petition and request a detention order for the resident's apprehension by the police.

5. **SERIOUS PROPERTY DAMAGE**: Any intentional damage done by a resident to the building, his/her room, or other VBJDC property that necessitates professional repairs can result in a court recommendation for Post-D removal and/or criminal charges being filed.

6. **BRINGING OR SMUGGLING IN CONTRABAND:** When returning to VBJDC, residents need to make sure there is nothing in their pockets that is not allowed on the unit. If a resident realizes he/she has something on his/her person before arriving at VBJDC, he/she must immediately give the item(s) to the VBJDC staff upon arrival. Residents who change clothes when at home must make sure to check all pockets. **If smuggled contraband is found on a resident and/or the resident has repeated in-house contraband**

violations, he/she will get 48 or 72 hours room time and a possible program removal recommendation. If caught attempting to smuggle in contraband, residents are also subject to losing all special Post-D unit privileges for a period of up to 30 days.

7. VIOLATION OF COMMUNITY RELEASE RULES: In addition to runaway/escape, residents who temporarily leave the supervision of their parents/guardians or staff (during community outings) or are otherwise in the community unsupervised are subject to room confinement and possible program removal. Additionally, residents will receive room confinement for other violations of community release rules such as smoking cigarettes, unsupervised contact with peers, or unauthorized contact with other residents during temporary releases.

8. GANG ACTIVITY: All residents are expected to focus on their own personal treatment goals during their placement without interference of gang-related influences. VBJDC has a zero tolerance policy for gang activity and communication. Any gang-related hand-signs, writings, drawings, comments, or any verbal or non-verbal gang-related communication will result in 24 hours of room confinement. Residents wearing gang-related attire during temporary releases are also subject to consequences. Repeated minor offenses or significant gang-related activity during placement will result in 48 or 72 hours of room time / room confinement and possible program removal.

IN-HOUSE CONTRABAND

Residents may not take any item other than approved school materials off of the Post-D unit (radios, games, art supplies, magazines, pictures, or anything allowed on the Post-D unit but not in the rest of the building). Residents leaving the Post-D unit with anything on their persons can get up to 72 hours of room time and be subject to losing all special Post-D unit privileges for a period of time. Additionally, residents in possession of contraband on the unit are subject to room confinement. This includes residents who are in possession of items that they are not authorized to have either per the VBJDC Resident Handbook or Post-D Phase System. For example, if a resident's level is dropped and he/she loses his/her phase privileges, "privilege" items are then considered contraband.

PROGRAM REMOVAL

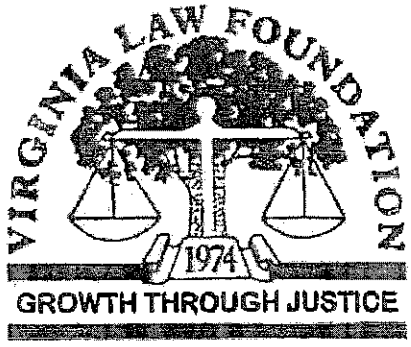
If at any time program removal (i.e., termination) is recommended by the Post-D Coordinator, contact will be made with the probation officer, parent(s)/guardian(s) and resident to discuss/review the reason for the recommendation of removal. A formal meeting may be held. If an alternative action can be agreed upon, it will be implemented and/or recommended in the next court review. However, a judge can determine if a resident is not complying with the Post-D rules and can remove him/her from the Post-D Program at any time. Positive court reports will prevent this scenario. All court reports are reviewed with parents and residents. If a resident is removed from the Post-D program, their suspended commitment will be rescinded and the resident will be committed to the Department of Juvenile Justice. This commitment is required by the Code of Virginia that governs the Post-D Program. Residents who are not eligible for commitment may face an extended detention stay and/or the Court may impose other sanctions as appropriate.

For Further Questions/Information, Please Contact:
LaToya Britt
Post-Dispositional Coordinator
(757) 385-1225

COMMONWEALTH OF VIRGINIA

STANDARDS OF PRACTICE FOR INDIGENT DEFENSE COUNSEL

The Virginia Indigent Defense Commission would like to gratefully acknowledge the financial assistance provided by the Virginia Law Foundation with this project.



Last revised March 20, 2015

a. be alert to and object to attempts to admit inadmissible evidence or testimony;

b. be prepared to cross-examine witnesses. Any cross-examination should be conducted to advance the defense's theory of the case.

12.7 At the conclusion of the prosecution's case, counsel should move to strike the prosecution's case and request the court to dismiss each count of the petition, unless there exists a good faith reason for not doing so. Counsel should be prepared to present supporting case law.

12.8 When presenting the client's case, counsel should:

a. consider whether any evidence needs to be presented;

b. discuss with your client all the implications of testifying, keeping in mind that the decision whether to testify is solely the client's. Counsel should also be aware of his or her ethical responsibilities if counsel knows that the client will testify untruthfully;

c. be prepared for direct examination and redirect of any witnesses;

d. be prepared to assert any affirmative defenses.

12.9 At the conclusion of the defense case, counsel should move to strike the prosecution's case and request the court to dismiss each count of the petition, unless there exists a good faith reason for not doing so. Counsel should be prepared to present supporting case law.

12.10 Counsel should use the closing argument to summarize and argue the evidence and testimony as it applies to the theory of the case and remind the judge of the prosecution's burden of proof.

RELATED STANDARDS

Virginia Code § 16.1-302;
Gilbert v. Commonwealth, 198 S.E.2d 633, 214 Va. 142 (Va., 1973).

Performance Standard 13: Juvenile Defense Counsel's Duty at the Disposition Hearing

The active participation of counsel at disposition is essential. In many cases, counsel's most valuable service to clients will be rendered at this stage of the proceeding. An important part of representation in a juvenile case is planning for disposition.

13.1 Preparation for Hearing:

a. Counsel should explain to the client and parent the nature of the disposition hearing, the issues involved and the alternatives open to the court. Counsel should also explain fully and candidly the nature, obligations and consequences of any proposed dispositional plan, including the meaning of conditions of probation, the characteristics of any institution to which commitment is possible, and the probable duration of the client's responsibilities under the proposed dispositional plan;

b. Counsel should advise the client and the parents that they will be contacted by a probation officer regarding preparation of the social history and that whatever information they give the probation officer likely will be provided to both the court and the prosecution;

c. Counsel should advise the client regarding the possible request by the probation officer to give the client's account of the facts and circumstances surrounding the charge to include in the social history, especially if the client intends to appeal or if the client did not testify during the adjudicatory hearing;

d. Counsel shall read and be thoroughly familiar with the social history (dispositional) report prepared by the court service unit as far in advance of the dispositional hearing as possible. Counsel should review the contents of the report with the client and discuss any findings and recommendations therein. With the consent of the client, counsel should advise the probation officer who prepared the social history report of any findings and recommendations with which the client disagrees, if it is strategically advantageous to do so;

e. Counsel should be familiar with and consider:

i. the dispositional alternatives available to the court and any community services that may be useful in the formation of a dispositional plan appropriate to the client's circumstances;

ii. the official version of the client's prior record, if any;

iii. the position of the probation department with respect to the client;

iv. the sentencing recommendation, if any, of the prosecutor;

v. using a creative interdisciplinary approach by collaborating with educational advocates, social workers, and civil legal services providers;

vi. the collateral consequences attaching to any possible disposition including, but not limited to, sex offender registry, immigration status, right to possess weapons;

vii. the disposition practices of the judge;

viii. referrals to court clinics or community agencies;

ix. any victim impact statement to be presented to the court;

x. requesting a continuance for disposition at a later date;

xi. securing the assistance of psychiatric, psychological, medical or other expert personnel needed for the purposes of evaluation, consultation or testimony with respect to the formation of a dispositional plan;

xii. preparing a letter or memorandum to the judge to assist the court in deciding the client's disposition. A thoughtfully written presentation of a disposition plan that highlights the client's strengths and the appropriateness of the disposition plan should be delivered to the judge and opposing counsel in advance of the disposition hearing. This letter is an opportunity to anticipate and address any concerns the judge may have about the client and the disposition plan. It is also an opportunity to address specific issues of punishment, deterrence, community safety, and rehabilitation as they relate to the client's case.

13.2 During the Hearing:

a. Counsel should insist that proper procedures be followed throughout the disposition stage and that orders entered be based on adequate reliable evidence and in accordance with what is permitted under Virginia law;

b. Counsel should subpoena witnesses and present evidence to support counsel's proposed disposition plan;

c. Counsel should fully cross examine adverse witnesses, and challenge the accuracy, credibility and weight of any reports, written statements or other evidence before the court;

d Counsel should consider whether the client should make a statement to the court.

13.3 When a dispositional decision has been reached, it is the lawyer's duty to explain the nature, obligations and consequences of the disposition to the client and the client's family and to urge upon the client the need for accepting and cooperating with the dispositional order. If an appeal is contemplated, the client should be advised of that possibility, but counsel must advise compliance with the court's decision during the interim, unless the disposition order is stayed.

RELATED STANDARDS
Virginia Code § 16.1-261;
Virginia Code § 16.1-273;
Virginia Code § 16.1-274;
Virginia Code § 16.1-278.8.

Performance Standard 14: Juvenile Defense Counsel's Continuing Duty to Client

14.1 Whether or not the charges against the client have been disposed of, if counsel is aware that the client or the client's family needs and desires community or other medical, psychiatric, psychological, social or legal services, he or she should render all possible assistance in arranging for such services.

14.2 If the client is committed to the Department of Juvenile Justice, counsel should attempt to ensure that the client is placed in the most appropriate, least restrictive placement available.

Performance Standard 15: Juvenile Defense Counsel's Post-dispositional Duties

15.1 Counsel should be prepared to represent and inform the client with respect to proceedings to review, reopen or modify adjudicative or dispositional orders or to pursue any affirmative remedies that may be available to the client under the law.

15.2 Counsel appointed to represent a client charged with violation of his or her probation or parole should prepare in the same way and with as much care as for an adjudicatory hearing.

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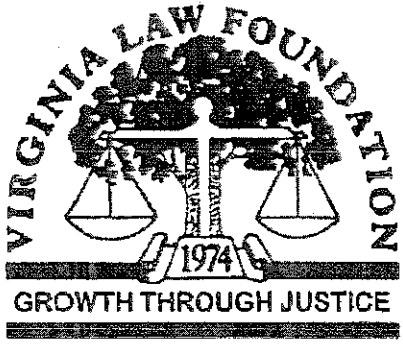

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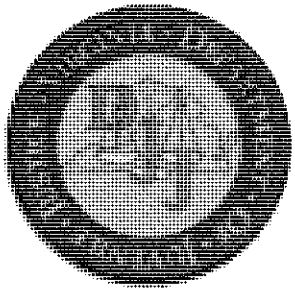
ICJ AND ICPC ????

ICPC and ICJ—- 2 compacts … many applications

Q & A Session w/ the Panel

1.) When does ICPC apply?
2.) When does ICJ apply?
3.) Is there any scenario under which both could apply?
4.) Does ICPC apply to a Child Protective Order for which the underlying basis is a petition by DHS?
5.) How can ICPC be sped up?
6.) What are the consequences of violating ICPC?
7.) What are the consequences of violating ICJ?
8.) Are there any circumstances by which the court can bypass either compact, i.e.) make a decision that goes against the recommendation of either ICPC or ICJ?
9.) What should happen if a child is discovered to be in Virginia in violation of ICPC?
10.) What is the 100A and the 100B and why should I care?



INTERSTATE COMPACT FOR JUVENILES

CONTACT INFO

Natalie Dalton
VA ICJ Commissioner
(804) 588-3904
Natalie.Dalton@djj.virginia.gov

Michelle Latter
VA Runaway Coordinator
(804) 588-3901
Michelle.Latter@djj.virginia.gov

The Interstate Commission for Juveniles is established to fulfill the objectives of the Interstate Compact, through means of joint cooperative action among the Compacting states to promote, develop and facilitate a uniform standard that provides for the welfare and protection of juveniles, victims and the public by governing the Compacting states' transfer of supervision of juveniles, temporary travel of defined offenders and return of juveniles who have absconded, escaped, fled to avoid prosecution or run away.

ICJ History

Following the initial success revising the Interstate Compact for Supervision of Parolees and Probationers (revised into the Interstate Compact for Adult Offender Supervision), the Office of Juvenile Justice and Delinquency Prevention (OJJDP) pursued a similar rewrite of the Interstate Compact on Juveniles. In 1999, OJJDP conducted a detailed survey which uncovered a number of contentious issues within the Compact's structure.

Along with the Council of State Governments (CSG), OJJDP determined that a revision of the existing compact as the only option for long-term change. In 2001, CSG worked with OJJDP and the Association of Juvenile Compact Administrators (AJCA) to develop and facilitate a drafting team of state officials to begin the design of a revised juvenile compact.

In 2002 after finalizing the Compact's language, an educational campaign began to help state's policymakers better appreciate and understand the need for a new Compact. By 2003, the new Juvenile Compact became available for introduction in the states. Throughout that year, twelve states adopted the revised Compact.

The new Compact reached its thirty-five state threshold when Tennessee and Illinois enacted in 2008, allowing for transition and operational activities to commence. Since the first Commission meeting in December of 2008, every state and two territories have joined the new Compact.

General FAQs

Q1. What is the Interstate Compact for Juveniles?

Answer: The Interstate Compact for Juveniles (ICJ) is the only legal means to transfer a juvenile's supervision from one state to another and to return runaways. A Commissioner in each member state administers the Compact and collectively forms the Interstate Commission for Juveniles.

Q2. What does "adjudicated" mean?

Answer: "Adjudicated" is a judicial finding that a juvenile is a status offender or delinquent.

Q3. Who is a "juvenile"?

Answer: "Juvenile" means any person defined as a juvenile in any member state or by the rules of the Interstate Commission. This includes:

1. Accused Delinquent – a person charged with an offense that, if committed by an adult, would be a criminal offense;

2. Adjudicated Delinquent – a person found to have committed an offense that, if committed by an adult, would be a criminal offense;

3. Accused Status Offender – a person charged with an offense that would not be a criminal offense if committee by an adult;

4. Adjudicated Status Offender –a person found to have committed an offense that would not be a criminal offense if committed by an adult; and

5. Non-Offender – a person in need of supervision who has not been accused or adjudicated as a status offender of delinquent.

6. Non-Adjudicated Juveniles: all juveniles who are under juvenile court jurisdiction as defined by the sending state, and who have been assigned terms of supervision and are eligible for services pursuant to the provisions of the Interstate Compact for Juveniles.

7. Non-Delinquent Juvenile: any person who has not been adjudged or adjudicated delinquent.

Q4. What is the difference between "probation" and "parole"?

Answer: Probation and parole refer to any kind of supervision or conditional release of juveniles authorized under the laws of the compacting states.

Q5. Who is a "runaway"?

Answer: Runaways are persons within the jurisdictional age limit established by the home state, who have voluntarily left their residence without permission of their legal guardian or custodial agency.

Q6. What is an "absconder"?

Answer: An "absconder" is a juvenile probationer or parolee who hides or conceals him/herself with the intent to avoid legal process or authorized control.

ADVISORY OPINIONS.... GOOD CASE STUDIES

Interstate Commission for Juveniles	Opinion Number: 01-2016	Page Number: 1
ICJ Advisory Opinion Issued by: Executive Director: Ashley H. Lippert Chief Legal Counsel: Richard L. Masters		
Description: Pre-adjudication Home Evaluation Requests		Dated: July 28, 2016

Background:

Pursuant to Commission Rule 9-101(3), the ICJ Rules Committee has requested an advisory opinion regarding the requirements of the Compact and ICJ Rules on the following issue:

Issues:

The ICJ Rules Committee is requesting a formal advisory opinion regarding a sending states ability to request that a receiving state conduct a home evaluation prior to a juvenile being adjudicated.

The following are the issues the Rules Committee is asking be addressed:

1. Can a state request a home evaluation for a juvenile who is pending adjudication for charges in the sending state?

2. What must the sending state provide when making such a request?

3. Is the receiving state required to provide a recommendation for acceptance or denial based on this information and the results of the home evaluation?

Applicable Compact Provisions and Rules:

"Rule 1-101 Home Evaluation:

"an evaluation and subsequent report of findings to determine if placement in a proposed and specified resource home/place is in the best interest of the juvenile and the community."

"Rule 4-101 Eligibility Requirements for Transfer of Supervision

2. No state shall permit a juvenile who is eligible for transfer under this compact to relocate to another state except as provided by the Compact and these rules. A juvenile shall be eligible for transfer under the ICJ if the following conditions are met:

b. is an adjudicated delinquent, adjudicated status offender, or has a deferred adjudication in the sending state; and . . .

"**Rule 4-102: Sending and Receiving Referrals**:

4. The receiving state shall, within forty-five (45) calendar days of receipt of the referral, forward to the sending state the home evaluation along with the final approval or disapproval of the request for supervision or provide an explanation of the delay to the sending state."

Analysis and Conclusions:

The Rules Committee asks if a state is permitted to request a home evaluation for a juvenile who is pending adjudication for charges in in the sending state and if so what must the sending state provide in making such a request and whether the receiving state is required to provide a recommendation for acceptance or denial based on this information and the results of the home evaluation?

While the existing ICJ rules don't explicitly prohibit a sending state from requesting a home evaluation for a juvenile pending adjudication, the terms home evaluation are only used in the definitions provided in ICJ Rule 1-101 and in the specified procedures for sending and receiving ICJ referrals in Rule 4-102. These specified procedures are required to be followed with respect to a referral for transfer of a juvenile supervision case in which the juvenile is eligible for transfer under ICJ Rule 4-101 which provides the eligibility requirements for ICJ transfers.

Under the provisions of ICJ Rule 4-101.2, a juvenile is eligible for transfer only if the conditions specified in sub-sections a. through f. are satisfied. These conditions include the requirement that the juvenile "is an adjudicated delinquent, adjudicated status offender, or has a deferred adjudication in the sending state. . ."

As in other cases of statutory construction, the provisions of the Compact statute and rules should be interpreted in harmony with other sections of the statute, or in this case the above referenced ICJ rules and *"plain meaning is examined by looking at the language and design of the statute as a whole."* See, *Lockhart v. Napolitano, 573 F.3d 251 (6th Cir. 2009).* As the U.S. Supreme Court has further clarified, [O]ur inquiry must cease if the statutory language is unambiguous and the statutory scheme is coherent and consistent." *Robinson v. Shell Oil Co.,* 519 *U.S. 337, 340 (1997) (internal quotation marks omitted).*

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Issued by:
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Consistent with such a "harmonious" and consistent interpretation of the ICJ Rules, the above referenced provisions providing the context within which the terms 'home evaluation' is used provide an appropriate means of determining the intent of a statute or rule. Accordingly, when read together in the context of the current ICJ Rules, it seems clear that a request for a home evaluation is intended to be used when a request for a transfer of supervision is made by a sending state on behalf of a juvenile who is "eligible for transfer under ICJ," which includes the requirement that the juvenile "is an adjudicated delinquent, adjudicated status offender, or has a deferred adjudication in the sending state." **See ICJ Rule 4-101 2. b.**

Based upon the above provisions of the ICJ rules and legal analysis, while a sending state is not explicitly prohibited from requesting a home evaluation for a juvenile pending adjudication on charges in the sending state, under the above referenced ICJ rules, a receiving state is not required to conduct such a home evaluation or report. Since the answer to this question, to which the two subsidiary questions are raised is in the negative it is unnecessary to address them.

Summary:

Based upon the above provisions of the ICJ rules and legal analysis, while a sending state is not explicitly prohibited from requesting a home evaluation for a juvenile pending adjudication on charges in the sending state, under the above referenced ICJ rules, a receiving state is not required to conduct such a home evaluation or report.

Interstate Commission for Juveniles	Opinion Number: 05-2012	Page Number: 1

ICJ Advisory Opinion
Issued by:
Executive Director: Ashley H. Lippert
Chief Legal Counsel: Richard L. Masters

Description:	Dated:
Whether minors adjudicated juvenile delinquents in Hawaii and referred to residential treatment programs in Utah and California but who do not qualify for transfer under the ICPC, may be transferred under the ICJ?	July 26, 2012

Background:

Pursuant to Commission Rule 8-101(3), the State of Hawaii and the West Region of ICJ has requested an advisory opinion regarding the requirements of the Compact and ICJ Rules on the following issue:

Issues:

Effective March 1, 2012, ICJ Rule 4-101(2)(f) prohibits the placement of minors in residential facilities through ICJ. Since its implementation, Hawaii has experienced problems with this rule and asks for guidance on how to proceed with these residential placements.

Whether minors adjudicated juvenile delinquents in Hawaii and referred to residential treatment programs in Utah and California, but who do not qualify for transfer under the ICPC, may be transferred under the ICJ?

Case #1:

Minor was referred to the Benchmark Residential Treatment Program in Utah. Case was transferred via ICPC. ICPC denied the transfer as the program was determined to be a "psychiatric hospital". In cases where ICPC denies or in cases where the minors do not qualify due to age restrictions, are the cases then eligible for transfer through ICJ?

Case #2:

Minor was adjudicated for numerous counts of Sexual Assault I, is low functioning, and deaf. Minor is being sent to a residential treatment program in California that is able to work with deaf individuals with special needs. Minor is being sent via ICPC; however, ICPC does not provide any supervision of minors. Minor is a possible danger to the community and needs supervision to ensure his safety as well as the safety of the community. In cases such as this, where supervision is necessary, but ICPC does not provide, are they eligible for supervision via ICJ.

There are liability issues if we as a state, know we are sending an individual who needs supervision, and are not providing the necessary supervision. It seems that we have mandates

ICJ Advisory Opinion
Issued by:
Executive Director: Ashley H. Lippert
Chief Legal Counsel: Richard L. Masters

Description:	Dated:
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but no appropriate vehicle to meet the mandate. Your guidance on how states are to proceed in cases where ICPC is not appropriate is appreciated.

Applicable Compact Provisions and Rules:

Rule 1-101 provides as follows:

"Juvenile: a person defined as a juvenile in any member state or by the rules of the Interstate Commission, including accused juvenile delinquents, adjudicated delinquents, accused status offenders, adjudicated status offenders, non-offenders, non-adjudicated juveniles, and non-delinquent juveniles."

ICJ Rule 4-101 (2) (f) (1) provides in relevant part as follow:
"A juvenile shall be eligible for transfer under the ICJ if the following conditions are met:

f. 1. Will reside with a parent, legal guardian, relative, non-relative or independently, excluding residential facilities;

Analysis and Conclusions:

In its request for an advisory opinion the State of Hawaii and the West Region states as follows:

Case #1:

Minor was referred to the Benchmark Residential Treatment Program in Utah. Case was transferred via ICPC. ICPC denied the transfer as the program was determined to be a "psychiatric hospital". In cases where ICPC denies or in cases where the minors do not qualify due to age restrictions, are the cases then eligible for transfer through ICJ?

The above referenced section of 4-101(2)(f)(1) explicitly excludes from eligibility for transfer under the ICJ, a juvenile who will reside in 'residential facilities.' This rule amendment was made by the Interstate Commission in the wake of Advisory Opinion 2-2011 which pointed out that under neither the provisions of the Compact nor the previous language of this rule, was there

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an exception to the application of the ICJ "based upon whether the delinquent juvenile whose supervision is transferred is placed in a public or private treatment facility."

However, at the following Annual Meeting of the Commission, this specific subsection was amended as stated above with the intent to clarify that delinquent juveniles placed in residential treatment facilities are excluded. Thus, the minor referred to in Case #1 is now not eligible for transfer through ICJ because of the referral to the residential treatment program in Utah.

Case #2:

Minor was adjudicated for numerous counts of Sexual Assault I, is low functioning, and deaf. Minor is being sent to a residential treatment program in California that is able to work with deaf individuals special needs. Minor is being sent via ICPC; however, ICPC does not provide any supervision of minors. Minor is a possible danger to the community and needs supervision to ensure his safety as well as the safety of the community. In cases such as this, where supervision is necessary but ICPC does not provide, are they eligible for supervision via ICJ.

As in Case #1, the above referenced section of 4-101(2)(f)(1) explicitly excludes from eligibility for transfer under the ICJ, a juvenile who will reside in 'residential facilities.' This rule amendment was made by the Interstate Commission in the wake of Advisory Opinion 2-2011 which pointed out that under neither the provisions of the Compact nor the previous language of this rule, was there an exception to the application of the ICJ "based upon whether the delinquent juvenile whose supervision is transferred is placed in a public or private treatment facility."[1]

However, at the following Annual Meeting of the Commission this specific subsection was amended as stated above with the intent to clarify that delinquent juveniles placed in residential

[1] ICJ Rule 4-101 §3 was amended effective April 1, 2014 to clarify that although juveniles placed in residential treatment facilities are not eligible for transfer or return of supervision under the terms of the compact and current rules, concurrent jurisdiction of both ICJ and ICPC is not precluded in other cases involving juveniles placed pursuant to ICJ who are also subject to placement and supervision under the ICPC.

ICJ Advisory Opinion
Issued by:
Executive Director: Ashley H. Lippert
Chief Legal Counsel: Richard L. Masters

Description:
Whether minors adjudicated juvenile delinquents in Hawaii and referred to residential treatment programs in Utah and California but who do not qualify for transfer under the ICPC, may be transferred under the ICJ?

Dated:
July 26, 2012

treatment facilities are excluded. Thus, the minor referred to in Case #2 is not now eligible for transfer through ICJ because of the referral to the residential treatment program in California.[2]

The Interstate Commission for Juveniles and the Association of Administrators of the Interstate Compact for the Placement of Children have entered into a Memorandum of Understanding for the purpose of 'clarifying issues and resolving confusion' in the handling of cases under both Compacts. While it is unclear whether the problems being encountered in the cases described above can be resolved under the MOU, they certainly appear to raise questions about the **"best plan of action regarding public safety and what is in the best interest and safety of the child or juvenile"** and whether it may be necessary **"to modify rules, regulations, procedures or forms"** in order to address these cases which are among the stated purposes of the MOU.

[2] See FN 1 above

INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

VDSS- ICPC

BASIC SUMMARY

ICPC is statutory uniform law in all 50 states, the District of Columbia and the U.S. Virgin Islands. It is intended to ensure the protection of children who are placed across state lines for foster care and adoption. It strives to ensure responsibility and communication among all parties involved until lawful termination. Procedures for the interstate and inter-country placement of children are intended to ensure that the proposed placement is in compliance with state laws and regulations and is not contrary to the interests of the child.

The Commissioner of the Virginia Department of Social Services, through the the Division of Family Services, is responsible for approving and monitoring interstate placements of children.
ICPC applies to four types of situations in which children may be sent to other states:

1 Placement preliminary to an adoption
2 Placement into foster care, including foster homes, group homes, residential treatment facilities, and child-caring institutions
3 Placement with parents and/or specified relatives when a parent or specified relative is not making the placement
4 Placement of adjudicated delinquents into private institutions in other states.

Virginia Code References: Sec(s). 63.2-1000, 1104, 1105

VIRGINIA'S GUIDE TO THE INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

The ICPC (Interstate Compact on the Placement of Children) is the best means we have to ensure protection and services to children who are placed across state lines for foster care, residential treatment, or adoption. The ICPC, a uniform law that has been enacted by all fifty states, the District of Columbia and the Virgin Islands, establishes orderly procedures for the interstate placement of children and fixes responsibilities for those involved in placing the child.

WHY IS A COMPACT NEEDED?

Children placed out of the state need to be assured of the same protections and services that would be provided if they had remained in their home states. They must also be assured of a return to their original jurisdictions should placements prove not to be in their best interests or should the need for out-of-state services cease.

Both the great variety of circumstances which makes interstate placement of children necessary and the types of protections needed offer compelling reasons for a mechanism which regulates those placements. An interstate compact- a contract among the states that enact it- is one such mechanism. Under a compact, the jurisdictional, administrative, and human rights obligations of all the parties in an interstate placement can be protected.

HOW THE ICPC CAME ABOUT

The need for a compact to regulate the interstate movement of children was recognized in the 1950's. At that time, a group of East Coast social service administrators joined informally to study the problems of children moved out of state for foster care, residential treatment, and adoption. Among the problems they identified was the failure of importation and exportation statutes enacted by individual states to provide protection for children. They recognized that a state's jurisdiction ends at its borders and that a state can only compel an out-of-state agency or individual to discharge its obligations toward a child through a compact. The administrators were also concerned that a state to which a child was sent did not have to provide supportive services even though it might agree to do so as a courtesy. Without a compact, the reality was that all too frequently children were placed in unstudied, unlicensed, at risk environments and that no services were provided to protect these children or to promote permanency for them.

In response to these and other problems, the Interstate Compact on the Placement of Children (ICPC) was drafted, and in 1960 New York was the first state to enact it.

WHAT THE ICPC DOES

The ICPC law contains ten articles. They define the types of placements and placers subject to the law; the procedures to be followed in making an interstate placement; and

the specific protections, services, and requirements brought by enactment of the law. In Virginia, the text of the ICPC is found in the ***Code of Virginia*, 63.2-1000.** The implementation of the ICPC is found in the ***Code of Virginia*, 63.2-1100 through 63.2-1105.** (Web site link for ICPC law is at www.dss.state.va.us/family/interstate. Click on "ICPC External Link." See "Code of Virginia, Title 63.2, Chapters 10 and 11.")

The major provisions of the law are highlighted below.

Types of Placements Covered

The ICPC applies to four types of situations in which children may be sent to other states:

- Placements preliminary to an adoption.
- Placements into foster care, including foster homes, group homes, residential treatment facilities, and institutions.
- Placements with parents and relatives when a parent or relative is not making the placement.
- Placements of adjudicated delinquents in institutions in other states.

Who Must Use the ICPC?

The ICPC clearly spells out who must use the Compact when they "send, bring, or cause a child to be sent or brought" to another party state. These persons and agencies, called "sending agencies," are the following:

- A state party to the ICPC, or any officer or employee of the party state.
- A subdivision, such as a county or a city, or any officer or employee of the subdivision.
- A court of the party state.
- Any person (including parents and relatives in some instances), corporation, association, or charitable agency of a party state.

There are some placements of children into other states that are not subject to the ICPC. These exemptions are specified in the ICPC law. The ICPC does not include placements made into medical and mental facilities or in boarding schools or "any institution primarily educational in character" (see ICPC Article II (d) and ICPC Regulation No.4). (ICPC regulations are at the end of this guide.) ICPC Article VIII (a) also specifically excludes from Compact coverage the placement of a child made by a parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or the child's non-agency guardian. This exclusion *only* applies when one of these close relatives places the child with another close relative enumerated in Article VIII. Because there are risks and penalties associated with making a placement in violation of the ICPC, the Virginia Interstate Placement Office is available to provide assistance in determining whether or not a child's proposed placement will need to be made through the Compact.

Safeguards Offered by the ICPC

In order to safeguard both the child and the parties involved in the child's placement, the ICPC:

- Provides the "sending agency" the opportunity to obtain home studies, licensing verification, or an evaluation of the proposed placement.
- Allows the prospective receiving state to obtain information sufficient to ensure that the placement is not "contrary to the interests of the child" and that its applicable laws and policies have been followed before it approves the placement.
- Guarantees the child legal and financial protection by fixing these responsibilities with the sending agency or individual.
- Ensures that the sending agency or individual does not lose jurisdiction over the child once the child moves to the receiving state.
- Provides the sending agency the opportunity to obtain supervision and regular reports on the child's adjustment and progress in placement.

These basic safeguards are routinely available when the child, the person, or responsible agency and the placement are all in a single state or jurisdiction. When the placement involves two states or jurisdictions, however, these safeguards are available only through the ICPC.

PROCEDURES FOR MAKING ICPC PLACEMENTS

When a state enacts the ICPC, it becomes law, just as any other legislation passed by a state legislature. When Virginia enacted the ICPC it agreed to follow uniform procedures when it makes or accepts interstate placements of children. As of 1990, every state, the District of Columbia and the Virgin Islands have all statutorily committed to the same requirements and procedures. Since the ICPC is also a contract among the party states as well as a statute in each of them, it must be interpreted and implemented uniformly by all of them.

Administering the ICPC

Each state appoints a Compact Administrator and one or more Deputy Compact Administrators who oversee or perform the day-to-day tasks associated with the administration of the ICPC. In every state, the Interstate Placement office and personnel are located in an office that is part of the department of public welfare or the state's equivalent agency. In Virginia, the ICPC is administered by the **Department of Social Services, 7 N. Eighth Street, Richmond, VA, 23219, Telephone: (800) 552-3431** . (See web site link for VA ICPC general information, Code, forms, publications at www.dss.state.va.us/family/interstate.) The Compact Administrator is designated to serve as the central clearing point for all referrals for interstate placements. The Administrator and his/her deputies are authorized to conduct the necessary investigation of the proposed placement and to determine whether or not the placement is contrary to the child's interests.

After the placement is approved and the child is moved into the state, the Compact Administrator is responsible for overseeing the placement as long as it continues.

[NOTE: The term "Compact Administrator" is used to designate both the person appointed pursuant to Article VII of the ICPC and those persons to whom the responsibility for day-to-day operation of the ICPC has been administratively designated.]

Recognizing a Placement Covered by the ICPC

Although the ICPC law is short, it may be confusing to persons unfamiliar with it. If you are considering placing a child into another state, the placement may be subject to the ICPC in the following general circumstances:

- If the state in which you (or your agency) reside and the state to which the child is to be sent (or from which the child is to be brought) are both party to the ICPC; and
- If you are not related to the child (or are not the child's non-agency guardian) or, if you are related, and you are sending the child to live with someone other than a close relative or non-agency guardian named in ICPC Article VIII(a) of the Compact; and
- If you are sending, bringing, or causing the child to be brought or sent into a party state, whether or not you have custody of the child, and without regard to the present location of the child (the child could even be in a foreign country); and
- If you are placing the child with someone or some agency other than a medical facility, a boarding school, or a mental health or mental retardation facility.

If the circumstances of the proposed placement fit into those described above, you should proceed according to the requirements of the ICPC. If you have any questions about whether or not the ICPC applies to your proposed placement plans or about how to comply, you may contact the ICPC office for advice.

Processing Referrals for Interstate Placements

When an interstate placement is being considered, the ICPC requires that the sending agency or individual provide written notice of the proposed placement to the Compact Administrator in the receiving state and request the receiving state's written permission to proceed prior to making the placement. This notice and supporting documents must first be submitted to the Interstate Compact office in the sending state to review for compliance with placement laws in the sending state.

This written notice is made on a standardized form ICPC-100A, "Interstate Compact Placement Request," available from all party states. This form serves as the formal contract between the sending agency and the receiving state. In Virginia, ICPC forms are available from the Virginia Interstate Compact office or your local social services agency. Forms are available at www.dss.state.va.us/family/interstate_form or at

www.dss.state.va.us/form/index. Scroll to "Foster Care." Scroll to Interstate Compact Form 100A and Form 100B.)

The precise documents required to complete an interstate placement request are dictated by the specific circumstances of the placement and the placement laws in the sending and receiving states. At a minimum, the request packet should include the child's social history; supplementary medical, psychological and educational information that will give a complete picture of the child's placement needs; court order(s) regarding the child's legal status; and a description of the placement plan for the child. In Virginia, an evaluation or home study of the proposed placement must be current- within one year- and conducted by a local social service agency or private child-placing agency licensed in Virginia.

The sending state's Interstate Compact Administrator then forwards the completed form ICPC-100A and supportive documentation to the prospective receiving state's Interstate Compact Administrator.

Upon receiving notice of the proposed placement from the Interstate Compact office in the sending state, the Interstate Compact Administrator in the receiving state will review the packet for compliance with the placement laws of the receiving state. The receiving state's Interstate Compact Administrator forwards the supportive documents to an appropriate party in the receiving state for further action. The "appropriate party" will usually be a local public agency, a private child placing agency, or the residential facility that is being asked to accept the child. The "action" needed on any particular request will vary depending upon the nature of the proposed placement, but may include a study of the prospective adoptive or foster family, confirmation of licensure, or a review by the facility to determine whether or not its program will meet the child's needs.

After the local agency has completed the necessary work, it prepares a report that includes a recommendation on whether or not the placement should be made. This report is returned to the Interstate Compact Administrator in the receiving state for review. If the local agency's recommendation is favorable and the Interstate Compact Administrator determines that all requirements of the receiving state's laws have been met, the placement will be approved. If, however, the local agency recommends against the placement or the Interstate Compact Administrator determines that the placement cannot lawfully be completed, the placement will be denied unless the problems can be remedied. In either case, the Interstate Compact Administrator notifies the sending state's Interstate Compact office and forwards copies for the sending agency.

Recommended Time Needed to Process Requests

Six weeks- 30 working days- is the recommended processing time from the date the receiving state's Interstate Compact Office receives the notice of the proposed placement until the date that the placement is approved or denied. However, referrals may take longer to process because of incomplete information or other work demands placed upon

the local agency in the receiving state or upon the Interstate Compact office. The Virginia Interstate Compact Office takes administrative action on cases in the order in which they are received. The office's goal is to respond to correspondence same day to within three business days of receipt. In the event of a child-related emergency, however, the Virginia Interstate Office will reassign priority to the case, and respond by the fastest means of communication.

Experience, especially in recent years, has shown that delays in the completion of home studies by the receiving state's local agencies are a significant problem across the nation. Sometimes the receiving state does not complete the home studies for many months. As a result, ICPC Regulation No.7, Priority Placement, was enacted in 1996 with the aim of achieving parity of treatment in fact for interstate and intrastate cases. It is also the objective to assure priority handling for hardship cases and for cases that have already suffered delay. (See Regulation 7 at the end of this guide or, see ICPC regulations at the VA ICPC web site link at www.dss.state.va.us/family/interstate_pub).

Making Arrangements for Child Placement

When the request to place a child has been approved by the receiving state, the sending agency and receiving parties work together to arrange the details of the actual placement. Final agreements (discussed at the time of referral) are entered into regarding payment for the child's care, the type of monitoring of the placement, and the frequency of supervisory reports to be provided to the sending agency.

After all plans and agreements have been completed, the child is moved to the receiving state. The sending agency notifies the receiving state of the placement by using form ICPC-100B. "Interstate Compact Report: Child Placement Status." (See web site link for VA ICPC forms at www.dss.state.va.us/family/interstate_form or at www.dss.state.va.us/form/index. Scroll to "Foster Care." See Interstate Form 100A or 100B)

The Sending Agency's Responsibilities

While the child remains in the out-of-state placement, the sending agency retains legal and financial responsibility for the child. This means that the sending agency has both the authority and the responsibility to determine all matters in relation to the "custody, supervision, care, treatment, and disposition of the child", just as the sending agency would have "if the child had remained in the home state." (See ICPC law, Article V(a) at www.dss.state.va.us/family/icpclinks. Click on "ICPC External Link." See "Code of Virginia, Title 63.2, Chapter 10, Interstate Compact on the Placement of Children.")

The sending agency's responsibilities for the child continue until it legally terminates the interstate placement. Legal termination of an interstate placement may only occur when the child is returned to the home state, the child is legally adopted, the child reaches the

age of majority or becomes self-supporting, or for other reasons with the prior concurrence of the receiving state's Compact Administrator. (ICPC law, Article V (a)).

The sending agency must notify the receiving state's Compact Administrator of any change in the child's status, again using the ICPC-100B. Changes of status may include a termination of the interstate placement, a change in the placement of the child in the receiving state, or the completion of an approved transfer of legal custody.

PENALTIES FOR ILLEGAL PLACEMENTS

Interstate placements made in violation of the law constitute a violation of the "laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state" (ICPC law, Article IV). Violators are subject to punishment or penalties in both jurisdictions in accordance with their laws. Legal imposition of penalties has been rare, but since 1980 there have been several court decisions in which children placed illegally were ordered returned to the sending state. Some of these cases have involved the dissolution of adoptive placements. Since Virginia agencies are required to inform the Court as to whether or not an interstate placement for the purpose of adoption has been made in compliance with the ICPC and since the requirements of the ICPC can be met in most cases, the wisest course of action is compliance.

RELATED COMPACTS

Three other compacts regulate certain types of interstate placements of children:

The **ICAMA Interstate Compact on Adoption and Medical Assistance)** ensures that adoptive parents of children with special needs receive the services and benefits provided for in their adoption assistance agreement, particularly medical assistance in interstate cases. It facilitates the delivery of benefits and services when families move during the continuance of the adoption assistance agreement or in cases when the child is initially placed for adoption across state lines. The Compact was developed in response to the mandate of the Adoption Assistance and Child Welfare Act of 1980 that directs states to protect the interstate interests of adopted children with special needs. ICAMA has been enacted by most states. Virginia is a member state. In Virginia, the text of the ICAMA is found in the ***Code of Virginia*, 63.2-1401 through 63.2-1405. The Department of Social Services administers the ICAMA in Virginia. For more information on the Virginia ICAMA, call (804) 692-1274 or 692-1279.**

The **ICJ (Interstate Compact on Juveniles)** permits interstate supervision of adjudicated delinquents on probation or parole and provides for the placement of certain juvenile delinquents in out-of-state public institutions. his Compact also authorizes the return of juvenile escapees and absconders to their home states, and is used to arrange the return of non-delinquent runaways to their homes. All 50 states and other jurisdictions, except

for Puerto Rico and the Virgin Islands, have enacted this Compact. In Virginia, the text of the Compact is found in the ***Code of Virginia*, 16.1-323 to 16.1-330. The Virginia ICJ is administered by the Department of Juvenile Justice. For more information on the Virginia ICJ, call (804) 692-0167.**

The **ICMH (Interstate Compact on Mental Health)** permits the transfer of mentally ill and mentally retarded children and adults from a public institution in one state to a public institution in another state. It may also be used to secure publicly provided aftercare services in another state. A patient transferred through this Compact becomes the full responsibility of the receiving state. The ICMH has been enacted by most states and jurisdictions. While Virginia is not formally a member of the ICMH, we participate in the transfer of patients into and out of the Commonwealth. In Virginia, the related Code of Virginia section is 37.1-91, Disposition of nonresidents. For additional information, contact the **Virginia Department of Mental Health, Mental Retardation & Substance Abuse Services at (804) 786-0040.**

ADDITIONAL INFORMATION:

For more information on the ICPC contact:

ICPC Secretariat
Interstate Compact on the Placement of Children
American Public Human Services Association
810 First Street, NE, Suite 500
Washington, DC 20002
Telephone: (202) 682-0100 Fax: (202) 289-6555
http://icpc.aphsa.org

This document has been adapted from the "Guide to the Interstate Compact on the Placement of Children 2002," prepared by the Secretariat to the AAICPC (Association of Administrators of the Interstate Compact on the Placement of Children).

ICPC REGULATIONS

ICPC REGULATIONS

ICPC Regulations

Regulation No. 0.01.

Forms

1. To promote efficiency in processing placements pursuant to the Interstate Compact on the Placement of Children (ICPC) and to facilitate communication among sending agencies, states and other concerned persons, the forms promulgated by the compact administrators, acting jointly, shall be used by all sending agencies, sending and receiving states, and others participating in the arranging, making, processing and supervision of placements.

2. ICPC forms shall be uniform as to format and substance, and each state shall make available a reference to where its forms may be obtained by the public.

3. The mandatory forms currently in effect are described below. These forms shall be reproduced in sufficient supply by each of the states to meet its needs and the needs of persons and agencies required to use them. Forms referenced in the preceding sentence, above, currently in effect are the following:

ICPC-100A "Interstate Compact Placement Request;"

ICPC-100B "Interstate Compact Report on Child's Placement Status;"

ICPC-100C "Quarterly Statistical Report: Placements Into An ICPC State;"

ICPC-100D "Quarterly Statistical Report: Placements Out Of An ICPC State;" and

ICPC-101 "Sending State's Priority Home Study Request."

4. Form ICPC-102 "Receiving State's Priority Home Study Request" is an optional form that is available for use.

5. Words and phrases used in this regulation have the same meanings as in the Compact, unless the context clearly requires another meaning.

6. This regulation is adopted pursuant to Article VII of the Interstate Compact on the Placement of Children by action of the Association of Administrators of the Interstate Compact on the Placement of Children at its annual meeting of April 29 through May 2, 2001; the regulation, as amended, was approved May 2, 2001, and is effective as of July 2, 2001.

Regulation No. 1

Conversion of Intrastate Placement into Interstate Placement;

Relocation of Family Units

Regulation No. 1 as first effective May 1, 1973, amended April 1999, is repealed and is replaced by the following:

The following regulation was amended by the Association of Administrators of the Interstate Compact on the Placement of Children on April 18, 2010, and is declared to be effective as amended as of October 1, 2010.

1. A placement initially intrastate in character becomes an interstate placement subject to the Interstate Compact on the Placement of Children (ICPC) if the child's principal place of abode is moved to another state, except as set forth herein.

2. Intent: This Regulation addresses the request for approval for placement of a child in an approved placement resource in the receiving state where the sending state has already approved the placement in the sending state and the resource now desires to move to the receiving state. The intent of Regulation 1 is to ensure that an already safe and stable placement made by a sending agency in the sending state will continue if the child is relocated to the receiving state. Additionally, it is the intent of this Regulation for supervision of the placement to be uninterrupted, for the family to comply with the requirements of the receiving state, and for both states to comply with all applicable state and federal laws, rules and regulations.

3. Applicability to Relocation: This Regulation shall apply to relocation of a child and the placement resource where supervision is ongoing. A request for a home study solely for the purpose of a periodic assessment of the placement where there is no on-going supervision shall not be governed by this regulation and shall be a matter of courtesy between the states. Nothing shall prohibit a sending state from contracting privately for a periodic assessment of the placement.

4. Applicability to Temporary Relocation: If a child is brought into the receiving state by an approved placement resource for a period of ninety (90) days or less and remains with the approved placement resource, approval of the receiving state is not required. Either the sending or receiving state may request approval of the placement, and, if the request is made, the sending and receiving states shall take the necessary action to process the request if the sending and receiving states agree to do so.

Supervision by the receiving state is not required for a temporary relocation of ninety (90) days or fewer; however, pursuant to section 422(b)(17) of the Social Security Act 422 U.S.C. 622, supervision by the sending agency is required. Supervision may be provided as a courtesy to the sending state. If supervision is requested, the sending state shall provide a Form 100B and the information required in Section 5(b) below.

If a child is brought into the receiving state by an approved placement resource for a temporary placement in excess of ninety (90) days or if the temporary relocation will recur, full compliance with this regulation is required.

The public child placing agency in the sending state is responsible to take action to ensure the ongoing safety of a child placed in a receiving state pursuant to an approved placement under Article III(d) of the ICPC, including return of the child to the sending state as soon as possible when return is requested by the receiving state.

5. Provisional Approval:

(a) In any instance where the decision to relocate into another state is made or it is intended to send or bring the child to the receiving state, or the child and existing family unit have already been sent or brought into the receiving state, an ICPC-100A and its supporting documentation shall be prepared immediately upon the making of the decision, processed within five (5) business days by the sending agency's state compact administrator and transmitted to the receiving state compact administrator with notice of the intended placement date. The sending agency's state compact administrator shall request that the receiving state respond to the case within five (5) business days of receipt of the request and with due regard for the desired time for the child to be sent or brought to the receiving state. If the family unit and child are already present in the receiving state, the receiving state's compact administrator shall determine within five (5) business days of receipt of the 100A and complete home study request packet whether provisional approval shall be granted and provide the decision in writing to the sending state compact administrator by facsimile, mail, overnight mail or electronic transmission, if acceptable.

(b) The documentation provided with a request for prompt handling shall include:

1. A form ICPC-100A fully completed.
2. A form 100B if the child is already present in the receiving state
3. A copy of the court order pursuant to which the sending agency has authority to place the child or, if authority does not derive from a court order, a statement of the basis on which the sending agency has authority to place the child and documentation that supervision is on-going.
4. A case history for the child, including custodial and social history, chronology of court involvement, social dynamics and a description of any special needs of the child.
5. In any instance where the sending state has required licensure, certification or approval, a copy of the most recent license, certificate or approval of the qualification of the placement resource(s) and/or their home showing the status of the placement resource(s), as qualified placement resource(s).
6. A copy of the most recent home study of the placement resource(s) and any updates thereof.
7. Copies of the progress reports on the family unit for the last six months and the most recent judicial review court report and court order completed in the sending state.
8. A copy of the child's case/services/permanency plan and any supplements to that plan, if the child has been in care long enough for such a plan to be required.
9. An explanation of the current status of the child's Title IV-E eligibility under the Federal Social Security Act.

(c) Requests for prompt handling shall be as provided in paragraph 5(a) hereof. Some or all documents may be communicated by express mail or any other recognized method for expedited communication, including electronic transmission, if acceptable. The receiving state shall recognize and give effect to any such expedited transmission of an ICPC-100A and/or supporting documentation, provided that it is legible and appears to be a complete representation of the original. However, the receiving state may request and shall be entitled to receive originals or duly certified copies if it considers them necessary for a legally sufficient record under its laws.

(d) In an instance where a placement resource(s) holds a current license, certificate or approval from the sending state evidencing qualification as a foster parent or other placement resource, the receiving state shall give effect to such license, certificate or approval as sufficient to support a determination of qualification pursuant to Article III(d) of the ICPC, unless the receiving state compact administrator has substantial evidence that the license, certificate, or approval is expired or otherwise not valid. If the receiving state requires licensure as a condition of placement approval, or the receiving state compact administrator determines that the license, certificate, or approval from the sending state has expired or otherwise is not valid, both the sending state and the placement resource shall state in writing that the placement resource will become licensed in the receiving state.

(e) The receiving state shall recognize and give effect to evidence that the placement resource has satisfactorily completed required training for foster parents or other parent training. Such recognition and effect shall be given if:

1. the training program is shown to be substantially equivalent to training offered for the same purpose in the receiving state; and
2. the evidence submitted is in the form of an official certificate or document identifying the training.

6. Initial Home Study Report:

(a) Pursuant to the Safe and Timely Interstate Placement of Foster Children Act of 2006, within sixty (60) days after receiving a home study request, the receiving state shall directly or by contract conduct, complete, and return a report to the sending state on the results of the study of the home environment for purposes of assessing the safety and suitability of the child remaining in the home. The report shall address the extent to which placement in the home would meet the needs of the child. In the event the parts of the home study involving the education and training of the placement resource remain incomplete, the report shall reference such items by including a prospective date of completion.

(b) Approval of the request may be conditioned upon compliance by the placement resource with any licensing or education requirement in the receiving state. If such condition is placed upon approval, a reasonable date for compliance with the education or licensing requirement shall be set forth in the documentation granting approval.

7. Final Approval or Denial:

(a) Pursuant to Article III(d), final approval or denial of the placement resource request shall be provided by the receiving state compact administrator as soon as practical but no later than one-hundred and eighty days (180) days from receipt of the initial home study request.

(b) If necessary or helpful to meet time requirements, the receiving state may communicate its determination pursuant to Article III(d) to the sending agency and the sending agency's state compact administrator by "FAX" or other means of facsimile transmission or electronic transmission, if acceptable. However, this may not be done before the receiving state compact administrator has actually recorded the determination on the ICPC-100A. The written notice (the completed ICPC-100A) shall be mailed, sent electronically, if acceptable, or otherwise sent promptly to meet Article III(d) written notice requirements.

8. Nothing in this regulation shall be construed to alter the obligation of a receiving state to supervise and report on the placement; nor to alter the requirement that the placement resource(s) comply with the licensing and other applicable laws of the receiving state after arrival therein.

9. A favorable determination made by a receiving state pursuant to Article III(d) of the ICPC and this regulation means that the receiving state is making such determination on the basis of the best evidence available to it in accordance with the requirements of paragraph 5(a) of this regulation and does not relieve any placement resource or other entity of the obligation to comply with the laws of the receiving state as promptly as possible after arrival of the child in the receiving state.

10. The receiving state may decline to provide a favorable determination pursuant to Article III(d) of the Compact if the receiving state compact administrator finds that the child's needs cannot be met under the circumstances of the proposed relocation or until the compact administrator has the documentation identified in subparagraph 5(b) hereof.

11. If it is subsequently determined by the receiving state Compact Administrator that the placement in the receiving state appears to be contrary to the best interest of the child, the receiving state shall notify the sending agency that approval is no longer given and the sending state shall arrange to return the child or make an alternative placement as provided in Article V(a) of the ICPC.

12. Supervision:

Within thirty (30) days of the receiving state compact administrator being notified by the sending state compact administrator or by the placement resource that the placement resource and the child have arrived in the receiving state, the appropriate personnel of the receiving state shall visit the child and the placement resource in the home to ascertain conditions and progress toward compliance with applicable federal and state laws and requirements of the receiving state. Subsequent supervision must include face-to-face visits with the child at least once each month. A majority of visits must occur in the child's home. Face-to-face visits must be performed by a Child Welfare Caseworker in the receiving state. Such supervision visits shall continue until supervision is terminated by the sending state. Concurrence of the receiving state compact administrator for termination of supervision should be sought by the sending state prior to termination. Reports of supervision visits shall be provided to the sending state in accordance with applicable federal laws and as set forth elsewhere in these regulations.

The public child placing agency in the sending state is responsible to take action to ensure the ongoing safety of a child placed in a receiving state pursuant to an approved placement under Article III(d) of the ICPC, including return of the child to the sending state as soon as possible when return is requested by the receiving state.

13. Words and phrases used in this regulation have the same meanings as in the Compact, unless the context clearly requires another meaning.

14. This regulation is adopted pursuant to Article VII of the Interstate Compact on the Placement of Children by action of the Association of Administrators of the Interstate Compact on the Placement of Children at its annual meeting of April 2010.

Regulation No. 2

Public Court Jurisdiction Cases: Placements for Public Adoption or Foster Care in Family Settings and/or with Parents, Relatives

Regulation No. 2, as adopted on May 25, 1977 by the Association of Administrators of the Interstate Compact on the Placement of Children, was repealed April 1999 and is replaced by the following:

The following regulation, adopted by the Association of Administrators of the Interstate Compact on the Placement of Children, is declared to be in effect on and after October 1, 2011. Words and phrases used in this regulation have the same meanings as in the Compact, unless the context clearly requires another meaning. If a court or other competent authority invokes the Compact, the court or other competent authority is obligated to comply with Article V (Retention of Jurisdiction) of the Compact.

1. Intent of Regulation No. 2: The intent of this regulation is to provide at the request of a sending agency, a home study and placement decision by a receiving state for the proposed placement of a child with a proposed caregiver who falls into the category of: placement for public adoption, or foster care and/or with parents, or relatives.

2. Regulation No. 2 does apply to cases involving children who are under the jurisdiction of a court for abuse, neglect or dependency, as a result of action taken by a child welfare agency: The court has the authority to determine supervision, custody and placement of the child or has delegated said authority to the child welfare agency, and the child is being considered for placement in another state.

(a) Children not yet placed with prospective placement resource: This Regulation covers consideration of a placement resource where the child has not yet been placed in the home. ICPC Regulation No. 7 Expedited Home Study can be used instead of Regulation No. 2 for this category when requirements are met for an expedited home study request.

(b) Change of status for children who have already been placed with ICPC approval: This regulation is used when requesting a new home study on the current approved placement resource. This might include an upgrade from unlicensed relative to licensed foster home or to adoption home placement category (see Regulation No. 3 section 2(a) Types of Placement Categories).

(c) Child already placed without ICPC approval, except when the child has relocated with the caregiver to the receiving state pursuant to Regulation 1: When a child has been placed in a receiving state prior to ICPC approval, the case is considered a violation of ICPC and the placement is made with the sending state bearing full liability and responsibility for the safety of the child. The receiving state may request immediate removal of the child until the receiving state has made a decision per ICPC. The receiving state is permitted to proceed, but not required to proceed with the home study/ICPC decision process, as long as the child is placed in violation of ICPC. The receiving state may choose to open the case for ICPC courtesy supervision but is not required to do so, as is required under ICPC Regulation No. 1 Relocation of Family Unit Cases.

3. Placements made without ICPC protection: Regulation No. 2 does not apply to:

(a) A placement with a parent from whom the child was not removed: When the court places the child with a parent from whom the child was not removed, and the court has no evidence that the parent is unfit, does not seek any evidence from the receiving state that the parent is either fit or unfit, and the court relinquishes jurisdiction over the child immediately upon placement with the parent, the receiving state shall have no responsibility for supervision or monitoring for the court having made the placement.

(b) Sending court makes parent placement with courtesy check: When a sending court/agency seeks an independent (not ICPC-related) courtesy check for placement with a parent from whom the child was not removed, the responsibility for credentials and quality of the courtesy check rests directly with the sending court/agency and the person or party in the receiving state who agree to conduct the courtesy check without invoking the protection of the ICPC home study process. This would not prohibit a sending state from requesting an ICPC.

4. Definitions and placement categories: (See Regulation No. 3)

5. Sending state case documentation required with ICPC-100A request: The documentation provided with a request for prompt handling shall be current and shall include:

(a) A Form ICPC-100A fully completed.

(b) A Form ICPC-100B if the child is already placed without prior approval in the receiving state. The receiving state is not obligated to provide supervision until the placement has been approved with an ICPC-100A signed by the receiving state ICPC office, unless provisional approval has been granted.

(c) A copy of the current court order pursuant to which the sending agency has authority to place the child or, if authority does not derive from a court order, a statement of the basis on which the sending agency has authority to place the child and documentation that supervision is on-going.

(d) Signed statement required from assigned sending agency case manager:

1. confirming the potential placement resource is interested in being a placement resource for the child and is willing to cooperate with the ICPC process.
2. including the name and correct physical and mailing address of the placement resource and all available telephone numbers and other contact information for the potential placement resource.
3. describing the number and type of bedrooms in the home of the placement resource to accommodate the child under consideration and the number of people, including children, who will be residing in the home.
4. confirming the potential placement resource acknowledges that he/she has sufficient financial resources or will access financial resources to feed, clothe, and care for the child, including child care, if needed.
5. that the placement resource acknowledges that a criminal records and child abuse history check will be completed for any persons residing in the home required to be screened under the law of the receiving state.

(e) A current case history for the child, including custodial and social history, chronology of court involvement, social dynamics and a description of any special needs of the child.

(f) Any child previously placed with placement resource in sending state: If the placement resource had any child placed with them in the sending state previously, the sending agency shall provide all relevant information regarding said placement to the receiving state, if available.

(g) Service (case) Plan: A copy of the child's case/service/permanency plan and any supplements to that plan, if the child has been in care long enough for a permanency plan to be required.

(h) Title IV-E Eligibility verification: An explanation of the current status of the child's Title IV-E eligibility under the Federal Social Security Act and Title IV-E documentation, if available. Documentation must be provided before placement is approved.

(i) Financial/Medical Plan: A detailed plan of the proposed method for support of the child and provision of medical services.

(j) A copy of the child's Social Security card or official document verifying correct Social Security Number, if available, and a copy of the child's birth certificate, if available.

6. Methods for transmission of documents: Some or all documents may be communicated by express mail or any other recognized method for expedited communication, including FAX and/or electronic transmission, if acceptable by both sending and receiving state. The receiving state shall recognize and give effect to any such expedited transmission of an ICPC-100A and/or supporting documentation, provided that it is legible and appears to be a complete representation of the original. However, the receiving state may request and shall be entitled to receive originals or duly certified copies of any legal documents if it considers them necessary for a legally sufficient record under its laws. All such transmissions must be sent in compliance with state laws and/or regulations related to the protection of confidentiality.

7. Safe and Timely Interstate Home Study Report to be completed within sixty (60) calendar days. This report is not equivalent to a placement decision.

(a) Timeframe for completion of Safe and Timely Interstate Home Study Report: As quickly as possible, but not more than sixty (60) calendar days after receiving a home study request, the receiving state shall, directly or by contract, complete a study of the home environment for purposes of assessing the safety and suitability of the child being placed in the home. The receiving state shall return to the sending state a report on the results of the home study that shall address the extent to which placement in the home would meet the needs of the child. This report may, or may not, include a decision approving or denying permission to place the child. In the event the parts of the home study involving the education and training of the placement resource remain incomplete, the report shall reference such items by including an anticipated date of completion.

(b) Receiving state placement decision may be postponed: If the receiving state cannot provide a decision regarding approval or denial of the placement at the time of the safe and timely home study report, the receiving state should provide the reason for delay and an anticipated date for a decision regarding the request. Reasons for delay may be such factors as receiving state requires all relatives to be licensed as a foster home therefore ICPC office cannot approve an unlicensed relative placement request until the family has met licensing requirements. If such condition must be met before approval, a reasonable date for compliance shall be set forth in the receiving state transmittal accompanying the initial home study, if possible.

8. Decision by receiving state to approve or deny placement resource (100A).

(a) Timeframe for final decision: Final approval or denial of the placement resource request shall be provided by receiving state Compact Administrator in the form of a signed ICPC-100A, as soon as practical but no later than one hundred and eighty (180) calendar days from receipt of the initial home study request. This six (6)-month window is to accommodate licensure and/or other receiving state requirements applicable to foster or adoption home study requests.

(b) Expedited communication of decision: If necessary or helpful to meet time requirements, the receiving state ICPC office may communicate its determination pursuant to Article III(d) to the sending agency's state Compact Administrator by FAX or other means of facsimile transmission or electronic transmission, if acceptable to both receiving and sending state. However, this may not be done before the receiving state Compact Administrator has actually recorded the determination on the ICPC-100A. The written notice (the completed ICPC-100A) shall be mailed, sent electronically, if acceptable, or otherwise sent promptly to meet Article III(d) written notice requirements. The receiving state home study local agency shall not send the home study and/or recommendation directly to the sending state local agency without approval from the sending and receiving state ICPC offices.

(c) Authority of receiving state to make final decision: The authority of the receiving state is limited to the approval or denial of the placement resource. The receiving state may decline to provide a favorable determination pursuant to Article III(d) of the Compact if the receiving state Compact Administrator finds that based on the home study, the proposed caregiver would be unable to meet the individual needs of the child, including the child's safety, permanency, health, well-being, and mental, emotional and physical development.

(d) Authority of sending court/placing agency: When the receiving state has approved a placement resource, the sending court/placing agency has the final authority to determine whether to use the approved placement resource in the receiving state. The receiving state ICPC-100A approval expires six months from the date the 100A was signed by receiving state.

9. Reconsideration of an ICPC denial: (requested by the sending ICPC Office)

(a) Sending state may request reconsideration of the denial within 90 days from the date 100A denying placement is signed by receiving state. The request can be with or without a new home study, see items 9(a)(1) and 9(a)(2) below. After 90 days there is nothing that precludes the sending state from requesting a new home study.

1. Request reconsideration without a new home study: The sending ICPC office can request that the receiving state ICPC office reconsider the denial of placement of the child with the placement resource. If the receiving state ICPC office chooses to overturn the denial it can be based on review of the evidence presented by the sending ICPC office and any other new information deemed appropriate. A new 100A giving an approval without a new home study will be signed.
2. Request new home study re-examining reasons for original denial: A sending ICPC office may send a new ICPC home study request if the reason for denial has been corrected; i.e., move to new residence with adequate bedrooms. The receiving state ICPC office is not obligated to activate the new home study request, but it may agree to proceed with a new home study to reconsider the denial decision if it believes the reasons for denial have been corrected. This regulation shall not conflict with any appeal process otherwise available in the receiving state.

(b) Receiving state decision to reverse a prior denied placement: The receiving state ICPC office has 60 days from the date formal request to reconsider denial has been received from the sending state ICPC office. If the receiving state ICPC administrator decides to change the prior decision denying the placement, an ICPC transmittal letter and the new 100A shall be signed reflecting the new decision.

10. Return of child to sending state/Receiving state requests to return child to sending state:

(a) Request to return child to sending state at time of ICPC denial of placement: If the child is already residing in the receiving state with the proposed caregiver at the time of the above decision, and the receiving state Compact Administrator has denied the placement based on 8(c) then the receiving state Compact Administrator may request the sending state to arrange for the return of the child as soon as possible or propose an alternative placement in the receiving state as provided in Article V(a) of the ICPC. That alternative placement resource must be approved by the receiving state before placement is made. Return of the child shall occur within five (5) working days from the date of notice for removal unless otherwise agreed upon between the sending and receiving state ICPC offices.

(b) Request to return child to sending state after receiving state ICPC had previously approved placement: Following approval and placement of the child, if the receiving state Compact Administrator determines that the placement no longer meets the individual needs of the child, including the child's safety, permanency, health, well-being, and mental, emotional, and physical development, then the receiving state Compact Administrator may request that the sending state arrange for the return of the child as soon as possible or propose an alternative placement in the receiving state as provided in Article V(a) of the ICPC. That alternative placement resource must be approved by the receiving state before placement is made. Return of the child shall occur within five (5) working days from the date of notice for removal unless otherwise agreed upon between the sending and receiving state ICPC offices.

The receiving state request for removal may be withdrawn if the sending state arranges services to resolve the reason for the requested removal and the receiving and the sending state Compact Administrators mutually agree to the plan.

11. Supervision for approved placement should be conducted in accordance with ICPC Regulation No. 11.

12. Words and phrases used in this regulation have the same meanings as in the Compact, unless the context clearly requires another meaning.

13. This regulation is adopted pursuant to Article VII of the Interstate Compact on the Placement of Children by action of the Association of Administrators of the Interstate Compact on the Placement of Children at its annual meeting, April 30–May 1, 2011.

Regulation No. 3

Definitions and Placement Categories:
Applicability and Exemptions

This Regulation No. 3 is adopted pursuant to Article VII of the Interstate Compact on the Placement of Children.

This Regulation No. 3 as first effective July 2, 2001, was amended by the Association of Administrators of the Interstate Compact on the Placement of children on May 1, 2011 and is declared to be effective as of October 1, 2011.

1. Intent of Regulation No. 3: To provide guidance in navigating the ICPC regulations and to assist its users in understanding which interstate placements are governed by, and which are exempt from, the ICPC.

(a) Nothing in this regulation shall be construed to alter the obligation of a receiving state to supervise and report on the placement; nor to alter the requirement that the placement resource(s) comply with the licensing and other applicable laws of the receiving state after placement of the child in the receiving state.

(b) Age restrictions: The ICPC Articles and Regulations do not specify an age restriction at time of placement, but rather use the broad definition of "child." The sending state law may permit the extension of juvenile court jurisdiction and foster care maintenance payments to eligible youth up to age 21. Consistent with Article V, such youth should be served under ICPC if requested by the sending agency and with concurrence of the receiving state.

2. Placement categories requiring compliance with ICPC: Placement of a child requires compliance with the Compact if such placement is made under one of the following four types of placement categories:

(a) Four types of placement categories:

1. Adoptions: Placement preliminary to an adoption (independent, private or public adoptions)
2. Licensed or approved foster homes (placement with related or unrelated caregivers)
3. Placements with parents and relatives when a parent or relative is not making the placement as defined in Article VIII (a) "Limitations"
4. Group homes/residential placement of all children, including adjudicated delinquents in institutions in other states as defined in Article VI and Regulation No. 4.

(b) Court involvement and court jurisdiction legal status: The above placement categories may involve placement by persons and/or agencies that at the time of placement may not have any court involvement (i.e., private/independent adoptions and residential placements). Where there is court jurisdiction with an open court case for dependency, abandonment, abuse and/or neglect, the case is considered a public court jurisdiction case, which requires compliance with ICPC Article III (see Regulations No. 1, No. 2, No. 7 and No. 11) note exemption for selected "parent" cases as described below in Section 3, "cases that are exempt from ICPC regulations. In most public court jurisdiction cases the court has taken guardianship and legal custody away from the "offending" caregiver and has given it to a third party at the time placement of the child is made with an alternative caregiver. However, in select cases identified below, the sending court may not have taken guardianship or legal custody away from the parent/guardian, when the ICPC-100A requesting permission to place is sent to the receiving state. Those cases are identified on the ICPC-100A with the legal status of "court jurisdiction only" as explained below.

(c) Court jurisdiction only: The sending court has an open abuse, neglect or dependency case that establishes court jurisdiction with the authority to supervise, remove and/or place the child. Although the child is not in the guardianship/custody of an agency or the court at the time of completing ICPC-100A, the agency or the court may choose to exert legal authority to supervise and or remove and place the child and therefore is the sending agency. As the sending agency/court it would have specified legal responsibilities per ICPC Article V, including the possible removal of the child if placement in the receiving state disrupts or the receiving state requests

removal of the child. There are several possible situations where "court jurisdiction only" might be checked as the "legal status" on the ICPC-100A:

1. Residential placement (Regulation No. 4): The court has jurisdiction, but in some situations, such as with some probation (delinquent) cases, guardianship remains with the parent/relative, but the court/sending agency is seeking approval to place in a receiving state residential treatment program, and has authority to order placement and removal.
2. Contingency/concurrent request in cases where removal may become necessary (Regulations No. 2 or No. 7): The child may be in the custody of the offending parent or relative while the public agency tries to bring the family into compliance with court orders and or agency service (case) plan. (Some states call this an order of "protective supervision" or "show cause.") The court may have requested an ICPC home study on a possible alternative caregiver in a receiving state. It is understood at time of placement the court would have guardianship/legal custody and Article V would be binding.
3. Parent/relative relocated to receiving state (Regulation No. 1): If the sending court selects to invoke ICPC Article V and to retain court jurisdiction even though the family/relative has legal guardianship/custody and has moved to the receiving state, then the sending court may request a home study on the parent/relative who has moved with the child to the receiving state. By invoking ICPC the sending court is bound under Article V. If the receiving state determines the placement to be contrary to the interests of the child, the sending court must order removal of the child and their return to the sending state or utilize an alternative approved placement resource in the receiving state. The ICPC-100A must be signed by the sending judge or authorized agent of the public agency on behalf of the sending court in keeping with ICPC Article V.

3. Placements made without ICPC protection:

(a) A placement with a parent from whom the child was not removed: When the court places the child with a parent from whom the child was not removed, and the court has no evidence that the parent is unfit, does not seek any evidence from the receiving state that the parent is either fit or unfit, and the court relinquishes jurisdiction over the child immediately upon placement with the parent. Receiving state shall have no responsibility for supervision or monitoring for the court having made the placement.

(b) Sending court makes parent placement with courtesy check: When a sending court/agency seeks an independent (not ICPC related) courtesy check for placement with a parent from whom the child was not removed, the responsibility for credentials and quality of the "courtesy check" rests directly with the sending court/agency and the person or party in the receiving state who agree to conduct the "courtesy" check without invoking the protection of the ICPC home study process. This would not prohibit a sending state from requesting an ICPC.

(c) Placements made by private individuals with legal rights to place: Pursuant to Article VIII (a), this Compact does not apply to the sending or bringing of a child into a receiving state by the child's parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or the child's non-agency guardian and leaving the child with any such parent, relative or non-agency guardian in the receiving state, provided that such person who brings, sends, or causes a child to be sent or brought to a receiving state is a person whose full legal right to plan for the child: (1) has been established by law at a time prior to initiation of the placement arrangement, and (2) has not been voluntarily terminated, or diminished or severed by the action or order of any court.

(d) Placements handled in divorce, paternity or probate courts: The compact does not apply in court cases of paternity, divorce, custody, and probate pursuant to which or in situations where children are being placed with parents or relatives or non-relatives.

(e) Placement of children pursuant to any other Compact: Pursuant to Article VIII (b), the Compact does not apply to any placement, sending or bringing of a child into a receiving state pursuant to any other interstate Compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law.

4. Definitions: The purpose of this section is to provide clarification of commonly used terms in ICPC. Some of these words and definitions can also be found in the Interstate Compact on the Placement of Children, ICPC Regulations, Interstate Compact on Juveniles, and federal statutes and regulations.

(Note: source of definition is identified right after the word prior to the actual definition.)

1. Adoption: the method provided by state law that establishes the legal relationship of parent and child between persons who are not so related by birth or some other legal determination, with the same mutual rights and obligations that exist between children and their birth parents. This relationship can only be termed adoption after the legal process is complete (see categories or types of ICPC adoptions below).
2. Adoption categories:

   (a) Independent adoption: adoptions arranged by a birth parent, attorney, other intermediary, adoption facilitator or other person or entity as defined by state law.

   (b) Private agency adoption: an adoption arranged by a licensed agency whether domestic or international that has been given legal custody or responsibility for the child including the right to place the child for adoption.

   (c) Public adoption: Adoptions for public court jurisdiction cases.

3. Adoption home study: (definition listed under "home studies")
4. Adjudicated delinquent: a person found to have committed an offense that, if committed by an adult, would be a criminal offense.
5. Adjudicated status offender: a person found to have committed an offense that would not be a criminal offense if committed by an adult.
6. Age of majority: the legally defined age at which a person is considered an adult with all the attendant rights and responsibilities of adulthood. The age of majority is defined by state laws, which vary by state and is used in Article V, "...reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state" (see definition below of "child" as it appears in Article II).
7. Approved placement: the receiving state Compact Administrator has determined that "the proposed placement does not appear to be contrary to the interests of the child."
8. Boarding home: as used in Article II (d) of the ICPC, means the home of a relative or unrelated individual whether or not the placement recipient receives compensation for care or maintenance of the child, foster care payments, or any other payments or reimbursements on account of the child's being in the home of the placement recipient (has same meaning as family free).
9. Case history: an organized record concerning an individual, their family and environment that includes social, medical, psychological and educational history and any other additional information that may be useful in determining appropriate placement.
10. Case plan: (see "service plan" definition)
11. Central Compact office: the office that receives ICPC placement referrals from sending states and sends ICPC placement referrals to receiving states. In states that have one central Compact office that services the entire state, the term "central Compact office" has the same meaning as "central state Compact office" as described in Regulation No. 5 of the ICPC. In states in which ICPC placement referrals are sent directly to receiving states and received directly from sending states by more than one county or other regional area within the state, the "central Compact office" is the office within each separate county or other region that sends and receives ICPC placement referrals.
12. Certification: to attest, declare or swear to before a judge or notary public.
13. Child: a person, who by reason of minority, is legally subject to parental guardianship or similar control.
14. Child welfare caseworker: a person assigned to manage the cases of dependency children who are in the custody of a public child welfare agency and may include private contract providers of the responsible state agency.

15. Concurrence to discharge: is when the receiving ICPC office gives the sending agency written permission to terminate supervision and relinquish jurisdiction of its case pursuant to Article V leaving the custody, supervision and care of the child with the placement resource.
16. Concurrence: is when the receiving and sending Compact Administrator agree to a specific action pursuant to ICPC, i.e., decision as to providers.
17. Conditions for placement: as established by Article III apply to any placement as defined in Article II(d) and regulations adopted by action of the Association of Administrators of the Interstate Compact on the Placement of Children.
18. Courtesy: consent or agreement between states to provide a service that is not required by ICPC.
19. Courtesy check: Process that does not involve the ICPC, used by a sending court to check the home of a parent from whom the child was not removed.
20. Court jurisdiction only cases: The sending court has an open abuse, neglect or dependency case that establishes court jurisdiction with the authority to supervise and/or remove and place the child for whom the court has not taken guardianship or legal custody.
21. Custody: (see physical custody, see legal custody)
22. Emancipation: the point at which a minor becomes self-supporting, assumes adult responsibility for his or her welfare, and is no longer under the care of his or her parents or child placing agency, by operation of law or court order.
23. Emergency placement: a temporary placement of 30 days or less in duration.
24. Family free: as used in Article II (d) of the ICPC means the home of a relative or unrelated individual whether or not the placement recipient receives compensation for care or maintenance of the child, foster care payments, or any other payments or reimbursements on account of the child's being in the home of the placement recipient (has same meaning as boarding home).
25. Family unit: a group of individuals living in one household.
26. Foster care: If 24-hour-a-day care is provided by the child's parent(s) by reason of a court-ordered placement (and not by virtue of the parent-child relationship), the care is foster care. In addition to the federal definition (45 C.F.R. § 1355.20 "Definitions") this includes 24-hour substitute care for children placed away from their parents or guardians and for whom the state agency has placement and care responsibility. This includes, but is not limited to, placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions and pre-adoptive homes. A child is in foster care in accordance with this definition regardless of whether the foster care facility is licensed and payments are made by the state or local agency for the care of the child, whether adoption subsidy payments are being made prior to the finalization of an adoption, or whether there is federal matching of any payments that are made.
27. Foster home study: (see definition under home studies)
28. Foster parent: a person, including a relative or non-relative, licensed to provide a home for orphaned, abused, neglected, delinquent or disabled children, usually with the approval of the government or a social service agency.
29. Guardian [see ICPC Regulation No. 10 section 1(a)]: a public or private agency, organization or institution that holds a valid and effective permanent appointment from a court of competent jurisdiction to have custody and control of a child, to plan for the child, and to do all other things for or on behalf of a child for which a parent would have authority and responsibility for doing so by virtue of an unrestricted parent-child relationship. An appointment is permanent for the purposes of this paragraph if the appointment would allow the guardianship to endure until the child's age of majority without any court review, subsequent to the appointment, of the care that the guardian provides or the status of other permanency planning that the guardian has a professional obligation to carry out.
30. Home Study (see Safe and Timely Interstate Placement of Foster Children Act of 2006): an evaluation of a home environment conducted in accordance with applicable requirements of the state in which the home is located, to determine whether a proposed placement of a child would meet the individual needs of the child, including the child's safety, permanency, health, well-being, and mental, emotional and physical development.

    (a) Adoption home study: a home study conducted for the purpose of placing a child for adoption with a placement resource. The adoption home study is the assessment and evaluation of a prospective adoptive

parent(s).

(b) Foster home study: a home study conducted for the purpose of placing a child with a placement resource who is required to be licensed or approved in accordance with federal and/or receiving state law.

(c) Interstate home study (see Federal Safe and Timely Act): a home study conducted by a state at the request of another state, to facilitate an adoptive or foster care placement in the state of a child in foster care under the responsibility of the state [see foster care definition(s)].

(d) Parent home study: applies to the home study conducted by the receiving state to determine whether a parent placement meets the standards as set forth by the requirements of the receiving state.

(e) Relative home study: a home study conducted for the purpose of placing a child with a relative. Such a home study may or may not require the same level of screening as required for a foster home study or an adoptive home study depending upon the applicable law and/or requirements of the receiving state.

(f) Non-relative home study: a home study conducted for the purpose of placing a child with a non-relative of the child. Such a home study may or may not require the same level of screening as required for a foster home study or an adoptive home study depending upon the applicable law and/or requirements of the receiving state.

(g) Safe and Timely Interstate Home Study Report (see Federal Safe and Timely Act): an interstate home study report completed by a state if the state provides to the state that requested the study, within 60 days after receipt of the request, a report on the results of the study. The preceding sentence shall not be construed to require the state to have completed, within the 60-day period, the parts of the home study involving the education and training of the prospective foster or adoptive parents.

31. ICPC: The Interstate Compact on the Placement of Children is a Compact between states and parties pursuant to law, to ensure protection and services to children who are placed across state lines.
32. Independent adoption entity: any individual authorized in the sending state to place children for adoption other than a state, county or licensed private agency. This could include courts, private attorneys and birth parents.
33. Intrastate: existing or occurring within a state.
34. Interstate: involving, connecting or existing between two or more states.
35. Interstate home study: (see definition under Home studies)
36. Jurisdiction: the established authority of a court to determine all matters in relation to the custody, supervision, care and disposition of a child.
37. Legal custody: court-ordered or statutory right and responsibility to care for a child either temporarily or permanently.
38. Legal guardianship (see 45 C.F.R. § 1355.20 "Definitions"): a judicially created relationship between child and caretaker that is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decision-making. The term legal guardian means the caretaker in such a relationship.
39. Legal risk placement (legal risk adoption): a placement made preliminarily to an adoption where the prospective adoptive parents acknowledge in writing that a child can be ordered returned to the sending state or the birth mother's state of residence, if different from the sending state, and a final decree of adoption shall not be entered in any jurisdiction until all required consents or termination of parental rights are obtained or are dispensed with in accordance with applicable law.
40. Member state: a state that has enacted this Compact (see also definition of state).
41. Non-agency guardian [see ICPC Regulation No. 10 section 1(b)]: an individual holding a currently valid appointment from a court of competent jurisdiction to have all of the authority and responsibility of a guardian as defined in ICPC Regulation No. 10 section 1(a).

42. Non-custodial parent: a person who, at the time of the commencement of court proceedings in the sending state, does not have sole legal custody of the child or physical custody of a child.
43. Non-offending parent: the parent who is not the subject of allegations or findings of child abuse or neglect.
44. Non-relative: a person not connected to the child by blood, marriage or adoption, or otherwise defined by the sending or receiving state.
45. Parent: a biological, adoptive parent or legal guardian as determined by applicable state law and is responsible for the care, custody and control of a child or upon whom there is legal duty for such care.
46. Parent home study: (see definition under home studies)
47. Physical custody: Person or entity with whom the child is placed on a day-to-day basis.
48. Placement (see ICPC Article II (d) "Definitions"): the arrangement for the care of a child in a family free, in a 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.
49. Placement resource: the person(s) or facility with whom the child has been or may be placed by a parent or legal custodian; or, placed by the court of jurisdiction in the sending state; or, for whom placement is sought in the receiving state.
50. Progress report: (see "supervision report" definition)
51. Provisional approval: an initial decision by the receiving state that the placement is approved subject to receipt of required additional information before final approval is granted.
52. Provisional denial: the receiving state cannot approve a provisional placement pending a more comprehensive home study or assessment process due to issues that need to be resolved.
53. Provisional placement: a determination made in the receiving state that the proposed placement is safe and suitable and, to the extent allowable, the receiving state has temporarily waived its standards or requirements otherwise applicable to prospective foster or adoptive parents so as to not delay the placement. Completion of the receiving state requirements regarding training for prospective foster or adoptive parents shall not delay an otherwise safe and suitable placement.
54. Public child-placing agency: any government child welfare agency or child protection agency or a private entity under contract with such an agency, regardless of whether they act on behalf of a state, county, municipality or other governmental unit and which facilitates, causes or is involved in the placement of a child from one state to another.
55. Receiving state (see ICPC Article II (c) "Defmitions"): the state to which a child is sent, brought or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.
56. Relative: a birth or adoptive brother, sister, stepparent, stepbrother, stepsister, uncle, aunt, first cousin, niece, nephew, as well as relatives of half blood or marriage and those denoted by the prefixes of grand and great, including grandparent or great grandparent, or as defined in state statute for the purpose of foster and or adoptive placements.
57. Non-relative: a person not connected to the child by blood, marriage or adoption.
58. Relative home study: (see definition under home studies)
59. Relocation: the movement of a child or family from one state to another.
60. Residential facility or residential treatment center or group home: a facility providing a level of 24-hour, supervised care that is beyond what is needed for assessment or treatment of an acute condition. For purposes of the Compact, residential facilities do not include institutions primarily educational in character, hospitals or other medical facilities (as used in Regulation 4, they are defined by the receiving state).
61. Return: the bringing or sending back of a child to the state from which they came.
62. Sending agency: (see ICPC Article II (b) "Definitions"): a party state, officer or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency or other entity having legal authority over a child who sends, brings, or causes to be sent or brought any child to another party state.
63. Sending state: the state where the sending agency is located, or the state in which the court holds exclusive jurisdiction over a child, which causes, permits or enables the child to be sent to another state.

64. Service (case) plan: a comprehensive individualized program of action for a child and his/her family establishing specific goals and objectives and deadlines for meeting these goals and objectives.
65. State: a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Marianas Islands, and any other territory of the United States.
66. State court: a judicial body of a state that is vested by law with responsibility for adjudicating cases involving abuse, neglect, deprivation, delinquency or status offenses of individuals who have not attained the age of eighteen (18) or as otherwise defined by state law.
67. Stepparent: a man or woman married to a parent of a child at the time of the intended placement or as otherwise defined by the sending and/or receiving state laws, rules and/or regulations.
68. Supervision: monitoring of the child and the child's living situation by the receiving state after a child has been placed in a receiving state pursuant to a provisional approval or an approved placement under Article III(d) of the ICPC or pursuant to a child's relocation to a receiving state in accordance with Regulation No. 1 of the ICPC.
69. Supervision report: provided by the supervising case worker in the receiving state; a written assessment of a child's current placement, school performance and health and medical status, a description of any unmet needs and a recommendation regarding continuation of the placement.
70. Timely Interstate Home Study: (see definition under home studies)
71. Visit: as defined in Regulation No. 9.

Regulation No. 4

Residential Placement

Regulation No. 4, as adopted by the Association of Administrators of the Interstate Compact on the Placement of Children on April 20, 1983, was readopted in 1999 and amended in 2001, and is replaced by the following:

The following regulation, adopted by the Association of Administrators of the Interstate Compact on the Placement of Children, is declared to be in effect on and after October 1, 2012. Words and phrases used in this regulation have the same meaning as in the Compact, unless the context clearly requires another meaning. If a court or other competent authority invokes the Compact, the court or other competent authority is obligated to comply with Article V (Retention of Jurisdiction) of the Compact.

1. Intent of this Regulation: It is the intent of Regulation No. 4 to provide for the protection and safety of children being placed in a residential facility in another state. Residential facility is further defined in Section 3 below.

(a) Approval by receiving state prior to placement: Approval prior to placement is required for the protection of the child and the sending agency making the placement. Sending agency includes the parent, guardian, court, or agency ultimately responsible for the planning, financing, and placement of the child as designated in section I of the form 100A. (See Article II(b) or Regulation 3, Section 4. (62) for full definition of sending agency.)

(b) Monitoring residential facility while child is placed: While children are placed in the receiving state, the receiving state ICPC office shall keep a record of all children currently placed at the residential facility through the ICPC process. The receiving state ICPC office shall notify the sending state ICPC office of any significant change of status at the residential facility that may be "contrary to the interests of the child" (Article III(d) or may place the safety of the child at risk of which the receiving state ICPC office becomes aware.

(c) Prevent children from being abandoned in receiving state: Once the sending agency makes a residential facility placement, the sending agency remains obligated under Article V to retain jurisdiction and responsibility for the child while the child remains in the receiving state until the child becomes independent, self-supporting, or the case is closed in concurrence with both the receiving and sending state ICPC offices. The role of the

sending and receiving state ICPC offices is to promote compliance with Article V that children are not physically or financially abandoned in a receiving state.

2. Categories of children: This regulation applies to cases involving children who are being placed in a residential facility by the sending agency, regardless of whether the child is under the jurisdiction of a court for delinquency, abuse, neglect, or dependency, or as a result of action taken by a child welfare agency.

Age restrictions: (Regulation No. 3 Section 1(b)) The ICPC articles and regulations do not specify an age restriction at time of placement, but rather use the broad definition of "child." The sending state law may permit the extension of juvenile court jurisdiction and foster care maintenance payments to eligible youth up to age 21. Consistent with Article V, such youth should be served under ICPC if requested by the sending agency and with concurrence of the receiving state.

(a) Delinquent Child: Placement by a sending agency involving a delinquent child must comply with Article VI, Institutional Care of Delinquent Children, which reads as follows: "A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with the opportunity to be heard prior to his being sent to such other party jurisdiction for institutional care and the court finds that:

(1) Equivalent facilities for the child are not available in the sending agency's jurisdiction; and

(2) Institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship." (Hardship may apply to the child and his/her family.)

(b) A child not yet placed in a residential facility in another state: The primary application of this regulation is to request approval to place prior to placement at the residential facility.

(c) Change of status for a child: A new ICPC 100A and documents listed in Section 5 are required for a child who has been placed with prior ICPC approval, but now needs to move to a residential facility in this or another state, other than the child's state of origin.

(d) Child already placed without ICPC approval: For the safety and protection of all involved, placement in a residential facility should not occur until after the receiving state has approved the placement pursuant to Article III (d). When a child has been placed in a receiving state prior to ICPC approval, the case is considered a violation of ICPC, and the placement is made with the sending agency and residential facility remaining liable and responsible for the safety of the child. The receiving state may request immediate removal of the child until the receiving state has made a decision per ICPC, in addition to any other remedies available under Article IV. The receiving state is permitted to proceed with the residential facility request for approval, but is not required to proceed as long as the child is placed in violation of ICPC.

3. Definition of "Residential Facility" covered by this regulation:

(a) Definition in ICPC Regulation No. 3 Section 4.(60) Residential facility or residential treatment center or group home: a facility providing a level of 24-hour, supervised care that is beyond what is needed for assessment or treatment of an acute condition. For purposes of the compact, residential facilities do not include institutions primarily educational in character, hospitals, or other medical facilities (as used in Regulation 4, they are defined by the receiving state). Residential facilities may also be called by other names in the receiving state, such as those listed under "Type of Care Requested on the ICPC 100A: Group Home Care, Residential Treatment Center, Child Caring Institution, and Institutional Care (Article VI), Adjudicated Delinquent."

(b) The type of license, if any, held by an institution is evidence of its character but does not determine the need for compliance with ICPC. Whether an institution is either generally exempt from the need to comply with the Interstate Compact on the Placement of Children or exempt in a particular instance is to be determined by the services it actually provides or offers to provide. In making any such determinations, the criteria set forth in this regulation shall be applied.

(c) The type of funding source or sources used to defray the costs of treatment or other services does not determine whether the Interstate Compact on the Placement of Children applies.

4. Definition of institutional facilities not covered by this regulation: In determining whether the sending or bringing of a child to another state is exempt from the provisions of the Interstate Compact on the Placement of Children by reason of the exemption for various classes of institutions in Article II(d), the following concepts and terms shall have the following meanings:

(a) "Primarily educational institution" means an institution that operates one or more programs that can be offered in satisfaction of compulsory school attendance laws, in which the primary purpose of accepting children is to meet their educational needs; and the educational institution does not do one or more of the following. (Conditions below would require compliance with this Regulation.)

(1) accepts responsibility for children during the entire year;

(2) provide or hold itself out as providing child care constituting nurture sufficient to substitute for parental supervision and control or foster care;

(3) provide any other services to children, except for those customarily regarded as extracurricular or co-curricular school activities, pupil support services, and those services necessary to make it possible for the children to be maintained on a 24-hour residential basis in the aforementioned school program or programs.

(b) "Hospital or other medical facility" means an institution for the acutely ill that discharges its patients when they are no longer acutely ill, which does not provide or hold itself out as providing child care in substitution for parental care or foster care, and in which a child is placed for the primary purpose of treating an acute medical problem.

(c) "Institution for the mentally ill or mentally defective" minors means a facility that is responsible for treatment of acute conditions, both psychiatric and medical, as well as such custodial care as is necessary for the treatment of such acute conditions of the minors who are either voluntarily committed or involuntarily committed by a court of competent jurisdiction to reside in it. Developmentally disabled has the same meaning as the phrase "mentally defective."

(d) Outpatient Services: If the treatment and care and other services are entirely out-patient in character, an institution for the mentally ill or developmentally disabled may accept a child for treatment and care without complying with ICPC.

5. Sending state case documentation for Residential Facility Request: The documentation provided with a request for prompt handling shall be current and shall include:

(a) Form ICPC-100A fully completed (required for all residential facility requests).

(b) Form ICPC-100B required for all residential facility requests, if the child is already placed without prior approval in the receiving state.

(c) Court or other authority to place the child:

(1) Delinquent child—a copy of the court order indicating the child has been adjudicated delinquent stating that equivalent facilities are not available in the sending agency's jurisdiction and that institutional care in the receiving state is in the best interest of the child and will not produce undue hardship. (See Article VI or Section 2.A above.)

(2) Public agency child—For public court jurisdiction cases, the current court order is required indicating the sending agency has authority to place the child or, if authority does not derive from a court order, a written legal document executed in accordance with the laws of the sending state that provides the basis for which the sending agency has authority to place the child and documentation that supervision is on-going or a copy of the

voluntary placement agreement, as defined in Section 472(f)(2) of the Social Security Act executed by the sending agency and the child's parent or guardian.

(3) Child in the custody of a relative or legal guardian—a current court order or legal document is required indicating the sending agency has the authority to place the child.

(4) Parent placement (no court involvement)—The 100A is required and must be signed by the sending agency with the box checked under legal status indicating the parent has custody or guardianship and any additional documents required by the sending or receiving state.

(d) Letter of acceptance from the residential facility: For some receiving states this is a mandatory document for all placement requests, including those submitted by a parent or guardian. It provides the receiving state ICPC office with indication that the residential facility has screened the child as an appropriate placement for their facility.

(e) A current case history for the child: (optional for placements requested under 5. (c) (3) and (4)), including custodial and social history, chronology of court involvement, social dynamics and a description of any special needs of the child.

(f) Service (case) plan: (optional for placements requested under 5.C(3) and (4))—A copy of the child's case or service or permanency plan and any supplements to that plan, if the child has been in care long enough for a permanency plan to be required.

(g) Financial and medical plan: A written description of the responsibility for payment of the cost of placement of the child in the facility, including the name and address of the person or entity that will be making the payment and the person or entity who will be otherwise financially responsible for the child. It is expected that the medical coverage will be arranged and confirmed between the sending agency and the residential facility prior to the placement.

(h) Title IV-E eligibility verification: (not required for parent placements)—An explanation of the current status of the child's Title IV-E eligibility under the Federal Social Security Act and Title IV-E documentation, if available. Documentation must be provided before placement is approved.

(i) Placement Disruption Agreement: Some states may require a signed Placement Disruption Agreement indicating who will be responsible for the return of the child to the sending state if the child disrupts or a request is made for the child's removal and return to the sending state.

6. Methods for transmission of documents: Some or all documents may be communicated by express mail or any other recognized method for expedited communication, including FAX and electronic transmission, if acceptable by both the sending and the receiving state. The receiving state shall recognize and give effect to any such expedited transmission of an ICPC-100A and supporting documentation, provided that it is legible and appears to be a complete representation of the original. However, the receiving state may request and shall be entitled to receive originals or duly certified copies of any legal documents if it considers them necessary for a legally sufficient record under its laws. All such transmissions must be sent in compliance with state laws and regulations related to the protection of confidentiality.

7. Decision by receiving state to approve or deny placement resource (100A).

(a) Receiving state decision process: The receiving state ICPC office reviews the child specific information and the current status of the residential facility. The receiving state ICPC office approves or denies the placement based on a determination that "the proposed placement does not appear to be contrary to the interests of the child" (ICPC Article III(d)). The ICPC office may as part of its review process verify that the residential facility is properly licensed and not under an investigation by law enforcement, child protection, or licensing staff for unfit conditions or illegal activities that might place the child at risk of harm.

(1) Receiving state ICPC office may check to make sure the child is an appropriate match for the category of residential facility program.

(2) Receiving state ICPC office may check with the residential facility program to ensure that the request to place the child has been fully reviewed and officially accepted before ICPC approval is granted.

(b) Time frame for final decision: Final approval or denial of the placement resource request shall be provided by the receiving state compact administrator in the form of a signed ICPC 100A as soon as practical, but no later than three (3) business days from receipt of the complete request by the receiving state ICPC office. It is recognized that some state ICPC offices must obtain clearances from child protection, residential facility licensing and law enforcement before giving approval for a residential facility placement.

(c) Expedited communication of decision: If necessary or helpful to meet time requirements, the receiving state ICPC office may communicate its determination pursuant to Article III(d) to the sending agency's state Compact Administrator by FAX or other means of electronic transmission, if acceptable to both receiving and sending state. However, this may not be done before the receiving state Compact Administrator has actually recorded the determination on the ICPC 100A. The written notice (the completed ICPC100A) shall be mailed, sent electronically, if acceptable, or otherwise sent promptly to meet Article III(d) written notice requirements.

(d) Authority of receiving state to make final decision: The authority of the receiving state is limited to the approval or denial of the placement resource. The receiving state may approve or deny the placement resource if the receiving state Compact Administrator finds based upon the review of the child specific information and on the review of the current status of the residential facility, "the proposed placement does not appear to be contrary to the interests of the child." (ICPC Article III.(d))

(e) Emergency Residential Facility Placement Temporary Decision: Occasionally residential facility placements need to be made on an emergency basis. In those limited cases, sending and receiving state offices may, with mutual agreement, proceed to authorize emergency placement approval. Such emergency placement decision must be made within one business day or other mutually agreed timeframe, based upon receipt by the receiving state of the ICPC-100A request and any other document required by the receiving state to consider such emergency placement; e.g., a financial medical plan and a copy of a court order or other authority to make the placement. If emergency placement approval is temporarily granted, the formal ICPC placement approval will not be final until there has been full compliance with Sections 5 and 7 of this regulation.

8. Authority of sending agency: When the receiving state has approved a placement resource, the sending agency has the final authority to determine whether to use the approved placement resource in the receiving state. The receiving state ICPC-100A approval for placement in a residential facility expires thirty calendar days from the date the 100A was signed by the receiving state. The thirty (30) calendar day timeframe can be extended upon mutual agreement between the sending and receiving state ICPC offices.

9. Submission of ICPC-100B: Upon determination by the sending agency to use the approved resource, the sending agency is responsible for filing an ICPC-100B Notice of Placement with the Sending State ICPC office within three (3) business days of the actual placement. That notice is to be submitted to the receiving state ICPC office, who is to forward the ICPC-100B to the residential facility within five (5) business days of receipt of the ICPC-100B.

10. Supervision Expectations:

(a) Residential Facility: The residential facility is viewed as the agency responsible for the 24-hour care of a child away from the child's parental home. In that capacity the residential facility is responsible for the supervision, protection, safety, and well-being of the child. The sending agency making the placement is expected to enter into an agreement with the residential facility as to the program plan or expected level of supervision and treatment and the frequency and nature of any written progress or treatment reports.

(b) Receiving state local child welfare workers and probation staff are not expected to provide any monitoring or supervision of children placed in residential facility programs. The one exception are those children who may become involved in an incident or allegation occurring in the receiving state that may involve the receiving state law enforcement, probation, child protection or, ultimately, the receiving state court.

(c) "Sending" agency making placement: The frequency and nature of monitoring visits by the sending agency or individual making the placement are determined by the sending agency in accordance with applicable laws.

11. Return of child to sending state at the request of receiving state:

(a) Request to return child to sending state at time of ICPC denial of placement: If the child is already placed in the receiving state residential facility at the time of the decision, and the receiving state Compact Administrator has denied the placement, then the receiving state Compact Administrator may request the sending state ICPC office to facilitate with the sending agency for the return of the child as soon as possible or propose an alternative placement in the receiving state as provided in Article V(a) of the ICPC. The alternative placement resource must be approved by the receiving state before placement is made. Return of the child shall occur within five (5) business days from the date of notice for removal unless otherwise agreed upon between the sending and receiving state ICPC offices.

(b) Request to return child to sending state after receiving state ICPC had previously approved placement: Following approval and placement of the child in the residential facility, if the receiving state Compact Administrator determines that the placement "appears to be contrary to the interests of the child," then the receiving state Compact Administrator may request that the sending state ICPC office facilitate with the sending agency for the return of the child as soon as possible or propose an alternative placement in the receiving state as provided in Article V(a) of the ICPC. That alternative placement resource must be approved by the receiving state before placement is made. Return of the child shall occur within five (5) business days from the date of notice for removal, unless otherwise agreed upon between the sending and receiving state ICPC offices.

The receiving state ICPC office's request for removal may be withdrawn if the sending agency arranges services to resolve the reason for the requested removal and the receiving and the sending state Compact Administrators mutually agree to the plan.

12. Words and phrases used in this regulation have the same meanings as in the Compact, unless the context clearly requires another meaning.

13. This regulation was amended pursuant to Article VII of the Interstate Compact on the Placement of Children by action of the Association of Administrators of the Interstate Compact on the Placement of Children at its annual meeting May 4 through 7, 2012; such amendment was approved on May 5, 2012 and is effective as of October 1, 2012.

Regulation No. 5

Central State Compact Office

Regulation No. 5, ("Central State Compact Office"), as first effective April 20, 1982, amended as of April 1999 and April 2002, is amended to read as follows:

1. It shall be the responsibility of each state party to the Interstate Compact on the Placement of Children to establish a procedure by which all Compact referrals from and to the state shall be made through a central state compact office. For those states that have decentralized specific activities regarding Compact referrals from the central state compact office to a county, local office, or designated agency, the county, local office, or designated agency shall have the same authority and responsibility with respect to those specific activities regarding Compact referrals as if it were the central state compact office. The Compact office shall also be a resource for inquiries into requirements for placements into the state for children who come under the purview

of this Compact.

2. The Association of Administrators of the Interstate Compact on the Placement of Children deems certain appointments of officers who are general coordinators of activities under the Compact in the party states to have been made by the executive heads of states in each instance wherein such an appointment is made by a state official who has authority delegated by the executive head of the state to make such an appointment. Delegated authority to make the appointments described above in this paragraph will be sufficient if it is either: specifically described in the applicable state's documents that establish or control the appointment or employment of the state's officers or employees; a responsibility of the official who has the delegated authority that is customary and accepted in the applicable state; or consistent with the personnel policies or practices of the applicable state. Any general coordinator of activities under the Compact who is or was appointed in compliance with this paragraph is deemed to be appointed by the executive head of the applicable jurisdiction regardless of whether the appointment preceded or followed the adoption of this paragraph. No person within an agency so designated by the appropriate authority in a state to make recommendations for or against placement of a child, as evidenced by signing Form 100A, shall also conduct the home study upon which such recommendation is made.

3. Words and phrases used in this regulation have the same meaning as in the Compact, unless the context clearly requires another meaning.

4. This regulation was amended pursuant to Article VII of the Interstate Compact on the Placement of Children by action of the Association of Administrators of the Interstate Compact on the Placement of Children at its annual meeting May 4 through 7, 2012; such amendment was approved on May 5, 2012 and is effective as of July 1, 2012.

Regulation No. 6

Permission to Place Child: Time Limitations, Reapplication

The following regulation, originally adopted in 1991 by the Association of Administrators of the Interstate Compact on the Placement of Children, is amended in 2001 and declared to be in effect, as amended, on and after July 2, 2001.

1. Permission to place a child given pursuant to Article III (d) of the Interstate Compact on the Placement of Children shall be valid and sufficient to authorize the making of the placement identified in the written document ICPC-100A, by which the permission is given for a period of six (6) months commencing on the date when the receiving state compact administrator or his duly authorized representative signs the aforesaid ICPC-100A.

2. If the placement authorized to be made as described in Paragraph 1. of this Regulation is not made within the six (6) months allowed therein, the sending agency may reapply. Upon such reapplication, the receiving state may require the updating of documents submitted on the previous application, but shall not require a new home study unless the laws of the receiving state provide that the previously submitted home study is too old to be currently valid.

3. If a foster care license, institutional license or other license, permit or certificate held by the proposed placement recipient is still valid and in force, or if the proposed placement recipient continues to hold an appropriate license, permit or certificate, the receiving state shall not require that a new license, permit or certificate be obtained in order to qualify the proposed placement recipient to receive the child in placement.

4. Upon a reapplication by the sending agency, the receiving state shall determine whether the needs or condition of the child have changed since it initially authorized the placement to be made. The receiving state may deny the placement if it finds that the proposed placement is contrary to the interests of the child.

5. Words and phrases used in this regulation have the same meanings as in the Compact, unless the context clearly requires another meaning.

6. This regulation was readopted pursuant to Article VII of the Interstate Compact on the Placement of Children by action of the Association of Administrators of the Interstate Compact on the Placement of Children at its annual meeting of April 1999; it is amended pursuant to Article VII of the Interstate Compact on the Placement of Children by action of the Association of Administrators of the Interstate Compact on the Placement of Children at its annual meeting of April 29 through May 2, 2001, was approved May 2, 2001, and is effective in such amended form as of July 2, 2001.

Regulation No. 7
Expedited Placement Decision

The following regulation adopted by the Association of Administrators of the Interstate Compact on the Placement of Children as Regulation No. 7, Priority Placement, as first adopted in 1996, is amended to read as follows:

1. Words and phrases used in this regulation shall have the same meanings as those ascribed to them in the Interstate Compact on the Placement of Children (ICPC). A word or phrase not appearing in ICPC shall have the meaning ascribed to it by special definition in this regulation or, where not so defined, the meaning properly ascribed to it in common usage.

2. This regulation shall hereafter be denoted as Regulation No. 7 for Expedited Placement Decision.

3. Intent of Regulation No. 7: The intent of this regulation is to expedite ICPC approval or denial by a receiving state for the placement of a child with a parent, stepparent, grandparent, adult uncle or aunt, adult brother or sister, or the child's guardian, and to:

(a) Help protect the safety of children while mimimizing the potential trauma to children caused by interim or multiple placements while ICPC approval to place with a parent or relative is being sought through a more comprehensive home study process.

(b) Provide the sending state court and/or sending agency with expedited approval or denial. An expedited denial would underscore the urgency for the sending state to explore alternative placement resources.

4. This regulation shall not apply if:

(a) the child has already been placed in violation of the ICPC in the receiving state, unless a visit has been approved in writing by the receiving state Compact Administrator and a subsequent order entered by the sending state court authorizing the visit with a fixed return date in accordance with Regulation No. 9.

(b) the intention of the sending state is for licensed or approved foster care or adoption. In the event the intended placement [must be parent, stepparent, grandparent, adult aunt or uncle, adult brother or sister, or guardian as per Article VIII(a)] is already licensed or approved in the receiving state at the time of the request, such licensing or approval would not preclude application of this regulation.

(c) the court places the child with a parent from whom the child was not removed, the court has no evidence the parent is unfit, does not seek any evidence from the receiving state the parent is either fit or unfit, and the court relinquishes jurisdiction over the child immediately upon placement with the parent.

5. Criteria required before Regulation No. 7 can be requested: Cases involving a child who is under the jurisdiction of a court as a result of action taken by a child welfare agency, the court has the authority to determine custody and placement of the child or has delegated said authority to the child welfare agency, the child is no longer in the home of the parent from whom the child was removed, and the child is being considered

for placement in another state with a parent, stepparent, grandparent, adult uncle or aunt, adult brother or sister, or the child's guardian, must meet at least one of the following criteria in order to be considered a Regulation No. 7 case:

(a) unexpected dependency due to a sudden or recent incarceration, incapacitation or death of a parent or guardian. Incapacitation means a parent or guardian is unable to care for a child due to a medical, mental or physical condition of a parent or guardian, or

(b) the child sought to be placed is four years of age or younger, including older siblings sought to be placed with the same proposed placement resource; or

(c) the court finds that any child in the sibling group sought to be placed has a substantial relationship with the proposed placement resource. Substantial relationship means the proposed placement has a familial or mentoring role with the child, has spent more than cursory time with the child, and has established more than a minimal bond with the child; or

(d) the child is currently in an emergency placement.

6. Provisional approval or denial:

(a) Upon request of the sending agency and agreement of the receiving state to make a provisional determination, the receiving state may, but is not required to, provide provisional approval or denial for the child to be placed with a parent or relative, including a request for licensed placement if the receiving state has a separate licensing process available to relatives that includes waiver of non-safety issues.

Upon receipt of the documentation set forth in Section 7 below, the receiving state shall expedite provisional determination of the appropriateness of the proposed placement resource by:

1. performing a physical "walk through" by the receiving state's caseworker of the prospective placement's home to assess the residence for risks and appropriateness for placement of the child,
2. searching the receiving state's child protective services data base for prior reports/investigations on the prospective placement as required by the receiving state for emergency placement of a child in its custody,
3. performing a local criminal background check on the prospective placement,
4. undertaking other determinations as agreed upon by the sending and receiving state Compact Administrators, and
5. providing a provisional written report to the receiving state Compact Administrator as to the appropriateness of the proposed placement.

(b) A request by a sending state for a determination for provisional approval or denial shall be made by execution of an Order of Compliance by the sending state court that includes the required findings for a Regulation No. 7 request and a request for provisional approval or denial.

(c) Determination made under a request for provisional approval or denial shall be completed within seven (7) calendar days of receipt of the completed request packet by the receiving state Compact Administrator. A provisional approval or denial shall be communicated to the sending state Compact Administrator by the receiving state Compact Administrator in writing. This communication shall not include the signed Form 100A until the final decision is made pursuant to Section 9 below.

(d) Provisional placement, if approved, shall continue pending a final approval or denial of the placement by the receiving state or until the receiving state requires the return of the child to the sending state pursuant to paragraph 12 of this regulation.

(e) If provisional approval is given for placement with a parent from whom the child was not removed, the court

in the sending state may direct its agency to request concurrence from the sending and receiving state Compact Administrators to place the child with the parent and relinquish jurisdiction over the child after final approval is given. If such concurrence is not given, the sending agency shall retain jurisdiction over the child as otherwise provided under Article V of the ICPC.

(f) A provisional denial means that the receiving state cannot approve a provisional placement pending the more comprehensive home study or assessment process due to issues that need to be resolved.

7. Sending agency steps before sending court enters Regulation No. 7 Order of Compliance: In order for a placement resource to be considered for an ICPC expedited placement decision by a receiving state, the sending agency shall take the following minimum steps prior to submitting a request for an ICPC expedited placement decision:

(a) Obtain either a signed statement of interest from the potential placement resource or a written statement from the assigned case manager in the sending state that following a conversation with the potential placement resource, the potential placement resource confirms appropriateness for the ICPC expedited placement decision process. Such statement shall include the following regarding the potential placement resource:

1. s/he is interested in being a placement resource for the child and is willing to cooperate with the ICPC process.
2. s/he fits the definition of parent, stepparent, grandparent, adult brother or sister, adult aunt or uncle, or his or her guardian, under Article VIII(a) of the ICPC.
3. the name and correct address of the placement resource, all available telephone numbers and other contact information for the potential placement resource, and the date of birth and social security number of all adults in the home.
4. a detail of the number and type of rooms in the residence of the placement resource to accommodate the child under consideration and the number of people, including children, who will be residing in the home.
5. s/he has financial resources or will access financial resources to feed, clothe and care for the child.
6. if required due to age and/or needs of the child, the plan for child care, and how it will be paid for.
7. s/he acknowledges that a criminal records and child abuse history check will be completed on any persons residing in the home required to be screened under the law of the receiving state and that, to the best knowledge of the placement resource, no one residing in the home has a criminal history or child abuse history that would prohibit the placement.
8. whether a request is being made for concurrence to relinquish jurisdiction if placement is sought with a parent from whom the child was not removed.

(b) The sending agency shall submit to the sending state court:

1. the signed written statement noted in 7a, above, and
2. a statement that based upon current information known to the sending agency, that it is unaware of any fact that would prohibit the child being placed with the placement resource and that it has completed and is prepared to send all required paperwork to the sending state ICPC office, including the ICPC-100A and ICPC Form 101.

8. Sending state court orders: The sending state court shall enter an order consistent with the Form Order for Expedited Placement Decision adopted with this modification of Regulation No. 7 subject to any additions or deletions required by federal law or the law of the sending state. The order shall set forth the factual basis for a finding that Regulation No. 7 applies to the child in question, whether the request includes a request for a provisional approval of the prospective placement and a factual basis for the request. The order must also require completion by the sending agency of ICPC Form 101 for the expedited request.

9. Time frames and methods for processing of ICPC expedited placement decision:

(a) Expedited transmissions: The transmission of any documentation, request for information under paragraph 10, or decisions made under this regulation shall be by overnight mail, facsimile transmission, or any other recognized method for expedited communication, including electronic transmission, if acceptable. The receiving state shall recognize and give effect to any such expedited transmission of an ICPC-100A and/or supporting documentation provided it is legible and appears to be a complete representation of the original. However, the receiving state may request and shall be entitled to receive originals or duly certified copies if it considers them necessary for a legally sufficient record under its laws. Any state Compact Administrator may waive any requirement for the form of transmission of original documents in the event he or she is confident in the authenticity of the forms and documents provided.

(b) Sending state court orders to the sending state agency: The sending state court shall send a copy of its signed order of compliance to the sending state agency within two (2) business days of the hearing or consideration of the request. The order shall include the name, mailing address, e-mail address, telephone number and FAX number of the clerk of court or a designated court administrator of the sending state court exercising jurisdiction over the child.

(c) Sending agency sends ICPC request to sending state ICPC office: The sending state court shall direct the sending agency to transmit to the sending state Compact Administrator within three (3) business days of receipt of the signed Order of Compliance, a completed ICPC-100A and Form 101, the statement required under Paragraph 7 above and supporting documentation pursuant to ICPC Article III.

(d) Sending State ICPC office sends ICPC Request to Receiving State ICPC office: Within two (2) business days after receipt of a complete Regulation 7 request, the sending state Compact Administrator shall transmit the complete request for the assessment and for any provisional placement to the receiving state Compact Administrator. The request shall include a copy of the Order of Compliance rendered in the sending state.

(e) Timeframe for receiving state ICPC office to render expedited placement decision: no later than twenty (20) business days from the date that the forms and materials are received by the receiving state Compact Administrator, the receiving state Compact Administrator shall make his or her determination pursuant to Article III(d) of the ICPC and shall send the completed 100-A to the sending state Compact Administrator by expedited transmission.

(f) Timeframe for receiving state ICPC office to send request packet to receiving local agency: The receiving state Compact Administrator shall send the request packet to the local agency in the receiving state for completion within two (2) business days of receipt of the completed packet from the sending state Compact Administrator.

(g) Timeframe for receiving state local agency to return completed home study to central office: The local agency in the receiving state shall return the completed home study to the receiving state Compact Administrator within fifteen (15) business days (including date of receipt) of receipt of the packet from the receiving state Compact Administrator.

(h) Timeframe for receiving state ICPC Compact Administrator to return completed home study to sending state: Upon completion of the decision process under the timeframes in this regulation, the receiving state Compact Administrator shall provide a written report, a 100A approving or denying the placement, and a transmittal of that determination to the sending state Compact Administrator as soon as possible, but no later than three (3) business days after receipt of the packet from the receiving state local agency and no more than twenty (20) business days from the initial date that the complete documentation and forms were received by the receiving state Compact Administrator from the sending state Compact Administrator.

10. Recourse if sending or receiving state determines documentation is insufficient:

(a) In the event the sending state Compact Administrator finds that the ICPC request documentation is substantially insufficient, s/he shall specify to the sending agency what additional information is needed and

request such information from the sending agency.

(b) In the event the receiving state Compact Administrator finds that the ICPC request documentation is substantially insufficient, he or she shall specify what additional information is needed and request such information from the sending state Compact Administrator. Until receipt of the requested information from the sending state Compact Administrator, the receiving state is not required to continue with the assessment process.

(c) In the event the receiving state Compact Administrator finds that the ICPC request documentation is lacking needed information but is otherwise sufficient, s/he she shall specify what additional information is needed and request such information from the sending state Compact Administrator. If a provisional placement is being pursued, the provisional placement evaluation process shall continue while the requested information is located and provided.

(d) Failure by a Compact Administrator in either the sending state or the receiving state to make a request for additional documentation or information under this paragraph within two (2) business days of receipt of the ICPC request and accompanying documentation by him or her shall raise a presumption that the sending agency has met its requirements under the ICPC and this regulation.

11. Failure of receiving state ICPC office or local agency to comply with ICPC Regulation No. 7: Upon receipt of the Regulation No. 7 request, if the receiving state Compact Administrator determines that it will not be possible to meet the timeframes for the Regulation No. 7 request, whether or not a provisional request is made, the receiving state Compact Administrator shall notify the sending state Compact Administrator as soon as practical and set forth the receiving state's intentions in completing the request, including an estimated time for completion or consideration of the request as a regular ICPC request. Such information shall also be transmitted to the sending agency by the sending state Compact Administrator for it to consider other possible alternatives available to it.

If the receiving state Compact Administrator and/or local state agency in the receiving state fail(s) to complete action for the expedited placement request as prescribed in this regulation within the time period allowed, the receiving state shall be deemed to be out of compliance with this regulation and the ICPC. If there appears to be a lack of compliance, the sending state court that sought the provisional placement and expedited placement decision may so inform an appropriate court in the receiving state, provide that court with copies of relevant documentation and court orders entered in the case, and request assistance. Within its jurisdiction and authority, the requested court may render such assistance, including the holding of hearings, taking of evidence, and the making of appropriate orders, for the purpose of obtaining compliance with this regulation and the ICPC.

12. Removal of a child: Following any approval and placement of the child, if the receiving state Compact Administrator determines that the placement no longer meets the individual needs of the child, including the child's safety, permanency, health, well-being, and mental, emotional, and physical development, then the receiving state Compact Administrator may request the sending state Compact Administrator arrange for the immediate return of the child or make alternative placement as provided in Article V (a) of the ICPC. The receiving state request for removal may be withdrawn if the sending state arranges services to resolve the reason for the requested removal and the receiving and sending state Compact Administrators mutually agree to the plan. If no agreement is reached, the sending state shall expedite return of the child to the sending state within five (5) business days unless otherwise agreed in writing between the sending and receiving state Compact Administrators.

13. This regulation as first effective October 1, 1996, and readopted pursuant to Article VII of the Interstate Compact on the Placement of Children by action of the Association of Administrators of the Interstate Compact on the Placement of Children at its annual meeting of April 1999, is amended pursuant to Article VII of the Interstate Compact on the Placement of Children by action of the Association of Administrators of the Interstate Compact on the Placement of Children at its annual meeting of May 1, 2011; the regulation, as amended was approved on May 1, 2011 and is effective as of October 1, 2011.

Regulation No. 8

Change of Placement Purpose

1. An ICPC-100B should be prepared and sent in accordance with its accompanying instructions whenever there is a change of purpose in an existing placement, e.g., from foster care to preadoption even though the placement recipient remains the same. However, when a receiving state or a sending state requests a new ICPC-100A in such a case, it should be provided by the sending agency and transmitted in accordance with usual procedures for processing of ICPC-100As.

2. Words and phrases used in this regulation have the same meanings as in the Compact, unless the context clearly requires another meaning.

3. This regulation is effective on and after April 30, 2000, pursuant to Article VII of the Interstate Compact on the Placement of Children by action of the Association of Administrators of the Interstate Compact on the Placement of Children at its annual meeting of April 30–May 3, 2000.

Regulation No. 9

Definition of a Visit

Regulation No. 9 ("Definition of a Visit"), as first adopted in 1999, is amended to read as follows:

1. A visit is not a placement within the meaning of the Interstate Compact on the Placement of Children (ICPC). Visits and placements are distinguished on the basis of purpose, duration, and the intention of the person or agency with responsibility for planning for the child as to the child's place of abode.

2. The purpose of a visit is to provide the child with a social or cultural experience of short duration, such as a stay in a camp or with a friend or relative who has not assumed legal responsibility for providing child care services.

3. It is understood that a visit for twenty-four (24) hours or longer will necessarily involve the provision of some services in the nature of child care by the person or persons with whom the child is staying. The provision of these services will not, of itself, alter the character of the stay as a visit.

4. If the child's stay is intended to be for no longer than thirty (30) days and if the purpose is as described in Paragraph 2, it will be presumed that the circumstances constitute a visit rather than a placement.

5. A stay or proposed stay of longer than thirty (30) days is a placement or proposed placement, except that a stay of longer duration may be considered a visit if it begins and ends within the period of a child's vacation from school as ascertained from the academic calendar of the school. A visit may not be extended or renewed in a manner which causes or will cause it to exceed thirty (30) days or the school vacation period, as the case may be. If a stay does not from the outset have an express terminal date, or if its duration is not clear from the circumstances, it shall be considered a placement or proposed placement and not a visit.

6. A request for a home study or supervision made by the person or agency which sends or proposes to send 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.

7. A visit as defined in this regulation is not subject to the Interstate Compact on the Placement of Children.

8. Words and phrases used in this regulation have the same meanings as in the Compact, unless the context clearly requires another meaning.

9. This regulation was first adopted as a resolution effective April 26, 1983; was promulgated as a regulation as of April 1999; and is amended by the Compact Administrators, acting jointly and pursuant to Article VII of the Interstate Compact on the Placement of Children, at their annual meeting of April 2002, with such amendments effective after June 27, 2002.

Regulation No. 10

Guardians

Regulation No. 10 ("Guardians"), as first adopted in 1999, is amended to read as follows:

1. Guardian Defined.

As used in the Interstate Compact on the Placement of Children (ICPC) and in this Regulation:

(a) "Guardian" means a public or private agency, organization or institution which holds a valid and effective permanent appointment from a court of competent jurisdiction to have custody and control of a child, to plan for the child, and to do all other things for or on behalf of a child which a parent would have authority and responsibility for doing by virtue of an unrestricted parent-child relationship. An appointment is permanent for the purposes of this paragraph if the appointment would allow the guardianship to endure until the child's age of majority without any court review, subsequent to the appointment, of the care that the guardian provides or the status of other permanency planning which the guardian has a professional obligation to carry out. Guardian also means an individual who is a non-agency guardian as defined in subparagraph (b) hereof.

(b) "Nonagency guardian" means an individual holding a currently valid appointment from a court of competent jurisdiction to have all of the authority and responsibility of a guardian as defined in subparagraph (a) hereof.

2. Prospective Adoptive Parents Not Guardians.

An individual with whom a child is placed as a preliminary to a possible adoption cannot be considered a non-agency guardian of the child, for the purpose of determining applicability of ICPC to the placement, unless the individual would qualify as a lawful recipient of a placement of the child without having to comply with ICPC as provided in Article VIII (a) thereof.

3. Effect of Guardianship on ICPC Placements.

(a) An interstate placement of a child with a nonagency guardian, whose appointment to the guardianship existed prior to consideration of the making of the placement, is not subject to ICPC if the sending agency is the child's parent, stepparent, grandparent, adult brother or sister, or adult uncle or aunt.

(b) An appropriate court of the sending agency's state must continue its jurisdiction over a non-exempt placement until applicability of ICPC to the placement is terminated in accordance with Article V (a) of ICPC.

4. Permanency Status of Guardianship.

(a) A state agency may pursue a guardianship to achieve a permanent placement for a child in the child welfare system, as required by federal or state law. In the case of a child who is already placed in a receiving state in compliance with ICPC, appointment of the placement recipient as guardian by the sending state court is grounds to terminate the applicability of the ICPC when the sending and receiving state compact administrators concur on the termination pursuant to Article V (a). In such an instance, the court which appointed the guardian may continue its jurisdiction if it is maintainable under another applicable law.

(b) If, subsequent to the making of an interstate placement pursuant to ICPC, a court of the receiving state appoints a non-agency guardian for the child, such appointment shall be construed as a request that the sending agency and the receiving state concur in the discontinuance of the application of ICPC to the placement. Upon concurrence of the sending and receiving states, the sending agency and an appropriate court of the sending state shall close the ICPC aspects of the case and the jurisdiction of the sending agency pursuant to Article V (a) of ICPC shall be dismissed.

5. Guardian Appointed by Parent.

If the statutes of a jurisdiction so provide, a parent who is chronically ill or near death may appoint a guardian for his or her children, which guardianship shall take effect on the death or mental incapacitation of the parent. A nonagency guardian so appointed shall be deemed a nonagency guardian as that term is used in Article VIII (a) of ICPC, provided that such nonagency guardian has all of the powers and responsibilities that a parent would have by virtue of an unrestricted parent-child relationship. A placement with a nonagency guardian as described in this paragraph shall be effective for the purposes of ICPC without court appointment or confirmation unless the statute pursuant to which it is made otherwise provides and if there is compliance with procedures required by the statute. However, the parent must be physically present in the jurisdiction having the statute at the time that he or she makes the appointment or expressly submits to the jurisdiction of the appointing court.

6. Other Definitions of Guardianship Unaffected.

The definitions of "guardian" and "nonagency guardian" contained in this regulation shall not be construed to affect the meaning or applicability of any other definitions of "guardian" or "nonagency guardian" when employed for purposes or to circumstances not having a bearing on placements proposed to be made or made pursuant to ICPC.

7. Words and phrases used in this regulation have the same meanings as in the Compact, unless the context clearly requires another meaning.

8. This regulation was first promulgated in April 1999; it is amended by the Compact Administrators, acting jointly and pursuant to Article VII of the Interstate Compact on the Placement of Children, at their annual meeting of April 2002, with such amendments effective after June 27, 2002.

Regulation No. 11

Responsibility of States to Supervise Children

The following regulation was adopted by the Association of Administrators of the Interstate Compact on the Placement of Children on April 18, 2010 and is declared to be in effect on and after October 1, 2010.

1. Words and phrases used in this regulation have the same meanings as those ascribed to them in the Interstate Compact on the Placement of Children (ICPC). A word or phrase not defined in the ICPC shall have the same meaning ascribed to it in common usage.

2. Definitions:

(a) "Central Compact Office" means the office that receives ICPC placement referrals from sending states and sends ICPC placement referrals to receiving states. In states that have one central compact office that services the entire state, the term "central compact office" has the same meaning as "central state compact office" as described in Regulation 5 of the ICPC. In states in which ICPC placement referrals are sent directly to receiving states and received directly from sending states by more than one county or other regional area within the state,

the "central compact office" is the office within each separate county or other region that sends and receives ICPC placement referrals.

(b) "Child Welfare Caseworker" means a person assigned to manage the cases of dependency children who are in the custody or under the supervision of a public child welfare agency.

(c) "Public Child Placing Agency" means any government child welfare agency or child protection agency or a private entity under contract with such an agency, regardless of whether they act on behalf of a state, county, municipality or other governmental unit and which facilitates, causes or is involved in the placement of a child from one state to another.

(d) "Supervision" means monitoring of the child and the child's living situation by the receiving state after a child has been placed in a receiving state pursuant to an approved placement under Article III(d) of the ICPC or pursuant to a child's relocation to a receiving state in accordance with Regulation 1 of the ICPC.

3. A receiving state must supervise a child placed pursuant to an approved placement under Article III(d) of the Interstate Compact on the Placement of Children (ICPC) if supervision is requested by the sending state, and;

(a)the sending agency is a public child placing agency, and

(b)the agency that completed the home study for placement of the child in the receiving state is a public child placing agency, and

(c)the child's placement is not in a residential treatment center or a group home.

4. Supervision must begin when the child is placed in the receiving state pursuant to an approved placement under Article III(d) of the ICPC and the receiving state has received a form 100B from the sending state indicating the date of the child's placement. Supervision can and should begin prior to receipt of the form 100B if the receiving state has been informed by other means that the child has been placed pursuant to an approved placement under Article III(d) of the ICPC.

5. (a) Supervision must continue until:

1. the child reaches the age of majority or is legally emancipated; or
2. the child's adoption is finalized; or
3. legal custody of the child is granted to a caregiver or a parent and jurisdiction is terminated by the sending state; or
4. the child no longer resides at the home approved for placement of the child pursuant to Article III(d) of the ICPC; or
5. jurisdiction over the child is terminated by the sending state; or
6. legal guardianship of the child is granted to the child's caregiver in the receiving state; or
7. the sending state requests in writing that supervision be discontinued, and the receiving state concurs.

(b)Supervision of a child in a receiving state may continue, notwithstanding the occurrence of one of the events listed above in 5(a)(1–7), by mutual agreement of the sending and receiving state's central compact offices.

6. Supervision must include face-to-face visits with the child at least once each month and beginning no later than 30 days from the date on which the child is placed, or 30 days from the date on which the receiving state is notified of the child's placement, if notification occurs after placement. A majority of visits must occur in the child's home. Face-to-face visits must be performed by a Child Welfare Caseworker in the receiving state. The purpose of face-to-face visits is to help ensure the on-going safety and well being of the child and to gather relevant information to include in written reports back to the Public Child Placing Agency in the sending state. If significant issues of concern are identified during a face-to-face visit or at any time during a child's placement, the receiving state shall promptly notify the central compact office in the sending state in writing.

7. The Child Welfare Caseworker assigned to supervise a child placed in the receiving state shall complete a written supervision report at least once every ninety (90) days following the date of the receipt of the form 100B by the receiving state's central compact office notifying the receiving state of the child's placement in the receiving state. Completed reports shall be sent to the central compact office in the sending state from the central compact office in the receiving state. At a minimum such reports shall include the following:

(a) Date and location of each face-to-face contact with the child since the last supervision report was completed.

(b) A summary of the child's current circumstances, including a statement regarding the on-going safety and well-being of the child.

(c) If the child is attending school, a summary of the child's academic performance along with copies of any available report cards, education-related evaluations or Individual Education Program (IEP) documents.

(d) A summary of the child's current health status, including mental health, the dates of any health-related appointments that have occurred since the last supervision report was completed, the identity of any health providers seen, and copies of any available health-related evaluations, reports or other pertinent records.

(e) An assessment of the current placement and caretakers (e.g., physical condition of the home, caretaker's commitment to child, current status of caretaker and family, any changes in family composition, health, financial situation, work, legal involvement, social relationships; child care arrangements).

(f) A description of any unmet needs and any recommendations for meeting identified needs.

(g) If applicable, the supervising caseworker's recommendation regarding continuation of the placement, return of legal custody to a parent or parents with whom the child is residing and termination of the sending state's jurisdiction, finalization of adoption by the child's current caretakers or the granting of legal guardianship to the child's current caretakers.

8.

(a) The receiving state shall respond to any report of abuse or neglect of a child placed in the receiving state pursuant to an approved placement under Article III(d) of the ICPC and will respond in the same manner as it would to a report of abuse or neglect of any other child residing in the receiving state.

(b) If the receiving state determines that a child must be removed from his or her home in order to be safe, and it is not possible for the child placing agency in the sending state to move the child at the time that the receiving state makes this determination, the receiving state shall place the child in a safe and appropriate setting in the receiving state. The receiving state shall promptly notify the sending state if a child is moved to another home or other substitute care facility.

(c) The receiving state shall notify the central compact office in the sending state of any report of child abuse or neglect of a child placed in the receiving state pursuant to an approved placement under Article III(d) of the ICPC, regardless of whether or not the report is substantiated. Notification of the central compact office in the sending state will occur as soon as possible after such a report is received.

(d) It is the responsibility of the public child placing agency in the sending state to take action to ensure the ongoing safety of a child placed in a receiving state pursuant to an approved placement under Article III(d) of the ICPC, including return of the child to the sending state as soon as possible when return is requested by the receiving state.

(e) Pursuant to Article V of the ICPC, it is the responsibility of the public child placing agency in the sending state to take timely action to relieve the receiving state of any financial burden the receiving state has incurred as a result of placing a child into substitute care after removing the child from an unsafe home in which the child

was previously placed by the public child placing agency in the sending state pursuant to Article III(d) of the ICPC.

9.

(a) The child placing agency in the sending state is responsible for case planning for any child placed in a receiving state by the child placing agency in the sending state pursuant to an approved placement under Article III(d) of the ICPC.

(b) The child placing agency in the sending state is responsible for the ongoing safety and well-being of any child placed in a receiving state by the child placing agency in the sending state pursuant to an approved placement under Article III(d) of the ICPC and is responsible for meeting any identified needs of the child that are not being met by other available means.

(c) The receiving state shall be responsible to assist the sending state in locating appropriate resources for the child and/or the placement resource.

(d) The receiving state shall notify the central compact office in the sending state in writing of any unmet needs of a child placed in the receiving state pursuant to an approved placement under Article III(d) of the ICPC.

(e) If the child's needs continue to be unmet after the notification described in (d) above has occurred, the receiving state may require the child placing agency in the sending state to return the child to the sending state. Before requiring the return of the child to the sending state, the receiving state shall take into consideration the negative impact on the child that may result from being removed from his or her home in the receiving state and shall weigh the potential for such negative impact against the potential benefits to the child of being returned to the sending state. Notwithstanding the requirement to consider the potential for such negative impact, the receiving state has sole discretion in determining whether or not to require return of a child to the sending state.

Regulation No. 12

Private/Independent Adoptions

The following regulation, as adopted by the Association of Administrators of the Interstate Compact on the Placement of Children, is declared to be in effect on and after October 1, 2012. Words and phrases used in this regulation have the same meanings as in the Compact, unless the context clearly requires another meaning. If a court or other competent authority invokes the Compact, the court or other competent authority is obligated to comply with Article V (Retention of Jurisdiction) of the Compact.

1. Definitions:

(a) "Adoption" is the method provided by state law that establishes the legal relationship of parent and child between persons who are not so related by birth or some other legal determination, with the same mutual rights and obligations that exist between children and their birth parents. This relationship can only be termed "adoption" after the legal process for adoption finalization is complete.

(b) "Adoption Home Study" is a home study conducted for the purpose of placing a child for adoption with a placement resource. The adoption home study is the assessment and evaluation of a potential adoptive parent.

(c) "Adoption Facilitator" is an individual that is not licensed or approved by a state as an adoption agency, child-placing agency, or attorney, and who is engaged in the matching of birth parents with adoptive parents.

(d) "Independent Adoption" is an adoption arranged by a birth parent or other person or entity as designated, defined, and authorized by the laws of the applicable state or states, to take custody of and to place children for

adoption.

(e) "Independent Adoption Entity" is any individual or entity authorized by the law of the applicable state or states to take custody of and to place children for adoption and to place children for adoption other than a state, county, or licensed private agency.

(f) "Intermediary" is any person or entity who is not an Independent Adoption Entity as defined above, but who acts for or between any parent and any prospective parent, or acts on behalf of either, in connection with the placement of the parent's child born in one state, for adoption by a prospective parent in a different state.

(g) "Legal Risk Placement" means a placement made preliminary to an adoption where the prospective adoptive parents acknowledge in writing that a child can be ordered returned to the sending state or the birth mother's state of residence, if different from the sending state, and a final decree of adoption shall not be entered in any jurisdiction until all required consents or termination of parental rights are obtained or are dispensed with in accordance with applicable law.

(h) "Legal Risk Medical Statement" is an acknowledgment by the prospective adoptive parents that known physical, emotional, or other relevant history of the child has been disclosed.

(i) "Private Agency" is a licensed or state approved agency whether domestic or international that has been given legal authority to place a child for adoption.

(j) "Private Agency Adoption" is an adoption arranged by a licensed or approved agency whether domestic or international that has been given legal custody or responsibility for the child including the right to place the child for adoption.

2. Intent of Regulation No. 12: The intent of this regulation is to provide guidance and ICPC requirements for the processing of private agency or independent adoptions. The ICPC process exists to ensure protection and services to children and families involved in executing adoptions across state lines and to ensure that the placement is in compliance with all applicable requirements. It is further the intent of Regulation No. 12 for the sending agency to comply with each and every requirement set forth in Article III of the ICPC that governs the placement of children therein.

3. Application of Regulation No. 12: This regulation applies to children being placed for private adoption or independent adoption whether being placed by a private agency or by an Independent Adoption Entity, as defined herein, or with the assistance of an Intermediary, as defined herein, and as in compliance with the other articles and regulations.

4. Conditions for placement as stated in ICPC Article III: Prior to sending, bringing, or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

(a) The name, date, and place of birth of the child.

(b) The identity and address or addresses of the parents or legal guardian. If the identity or address of a birth parent and/or legal parent is not provided, an explanation as to why it has not been provided shall be included to the extent that it is consistent with the laws of the applicable state.

(c) The name and address of the person, agency, or institution to or with which the sending agency proposes to send, bring, or place the child.

(d) A full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

Compliance with this requirement may be met by submission of the documentation required under Section 6 below.

5. Legal and financial responsibility during placement: For placement of a child by a private agency for independent adoption, the private agency shall be:

(a) Legally responsible for the child, including return of the child to the sending state if the adoption does not occur during the period of placement.

(b) Financially responsible for the child absent a contractual agreement to the contrary or a statement by the prospective adoptive parent or parents that they will assume financial responsibility.

6. Sending agency or party case documentation required with ICPC-100A private agency/independent adoption request:

(a) For placement by a private agency or independent entity, the required content to accompany a request packet for approval shall include all of the following:

(1) ICPC-100A: Form requesting ICPC approval to make placement;

(2) Cover letter: A request for approval signed by the person requesting approval identifying the child, birth parent(s), the prospective adoptive parent(s), a statement as to how the match was made, name of the intermediary, if any, and the name of the supervising agency and address;

(3) Consent or relinquishment: signed by the parents in accordance with the law of the sending state, and, if requested by the receiving state, in accordance with the laws of the receiving state. If a parent is permitted and elects to follow the laws of a state other than his or her state of residence, then he or she should specifically waive, in writing, the laws of his or her state of residence and acknowledge that he or she has a right to sign a consent under the law of his or her state of residence. The packet shall contain a statement detailing how the rights of all parents shall be legally addressed;

(4) Certification by a licensed attorney or authorized agent of a private adoption agency or independent entity that the consent or relinquishment is in compliance with the applicable laws of the sending state, or where requested, the laws of the receiving state;

(5) Verification of compliance with Indian Child Welfare Act (25 U.S.C. 1901, et. seq.);

(6) Legal risk acknowledgement signed by the prospective adoptive parents, if applicable in either the sending or receiving state;

(7) Statement of authority: A copy of the current court order pursuant to which the sending agency has authority to place the child or, if the authority does not derive from a court order, a statement of the basis on which the sending agency has authority to place the child and documentation that supervision is on-going;

(8) Current case history for the child, including custodial and social history, chronology of court involvement, social dynamics, education information (if applicable), and a description of any special needs of the child. If an infant, at a minimum, a copy of the medical records of the birth and hospital discharge summary for the child, if the child has been discharged;

(9) Foster home license: If the receiving state placement resource previously lived in the sending state and that state has required licensure, certification, or approval, a copy of the most recent license, certificate, or approval of the qualification of the placement resource(s) and/or their home showing the status of the placement resource as a qualified placement resource, if available. If the receiving state placement resource was previously licensed, certified, or approved as a foster or adoptive parent in the sending state and such license, certificate, or approval was involuntarily revoked, a statement of when such revocation occurred and the reasons for such revocation;

(10) Adoptive home study or approval: A copy of the most recent adoption home study or approval of the prospective adoptive family must be provided, including, in accordance with the law of the receiving state, verification of compliance with federal and state background clearances, including FBI fingerprint and Child Abuse/Neglect clearances and Sex Offender Registry clearance, a copy of any court order approving the adoptive home (if entered), and a statement by the person or entity that the home is approved or a revised current home study update if the home study is more than 12 months old;

(11) A copy of the Order of Appointment of Legal Guardian, if applicable;

(12) Affidavit of Expenses, if applicable; and

(13) Copy of sending agency's license or certification, if applicable;

(14) Biological parents' information—social history, medical history, ethnic background, reasons for adoption plan, and circumstances of proposed placement. If the child was previously adopted, the adoptive parents shall provide the information set forth in this section for the biological parents, if available;

(15) A written statement from the person or entity that will be providing post-placement supervision (may be included in adoption home study) acknowledging the obligation to provide post-placement supervision; and

(16) Authority for the prospective adoptive parents to provide medical care, if applicable.

(b) If a home study is completed by a licensed private agency in the receiving state, the sending state shall not impose any additional requirements to complete the home study that are not required by the receiving state unless the adoption is finalized in the sending state.

7. Authorization to travel: Additional documents may be requested

(a) Except as set forth herein, the child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child. Art. III(d).

(b) The sending and receiving state ICPC office may request additional information or documents prior to finalization of an approved placement. Travel by the prospective adoptive parents into the receiving state with the child shall not occur until the required content of the request packet for approval has been submitted, received and reviewed by the sending and receiving ICPC offices and approval to travel has been given, provided, however, a receiving state may, at its sole discretion, approve travel while awaiting provision of additional documentation requested.

8. Approval by the receiving state ICPC office: A provisional or final approval for placement must be obtained in writing from the receiving state ICPC office in accordance with the Interstate Compact on the Placement of Children. A signed Form 100A must be provided by the receiving state if the writing was in any other form. In any event, approval or denial must be given within three (3) business days of the receipt of the completed packet by the receiving state Compact Administrator.

9. Upon placement of a child by the sending agency following approval by the receiving state Compact Administrator, the sending agency shall, within five (5) business days of placement of the child, submit a completed 100B form confirming placement to the sending state Compact Administrator. Upon finalization of the adoption, if the sending agency is a private adoption agency, the private adoption agency shall provide to the sending state Compact Administrator a copy of the final judgment of adoption together with a 100B form for closure, which shall then be sent to the receiving state Compact Administrator within thirty (30) business days of entry of judgment. Upon finalization of an independent adoption, the sending agency or entity shall provide a

copy of the final judgment of adoption together with a 100B form for closure within thirty (30) business days of entry of judgment to the sending state Compact Administrator who shall then send it to the receiving state Compact Administrator.

10. Notification if child placed in violation of Article III: A child placed into the receiving state prior to a decision for placement constitutes a violation of Article III and the laws respecting the placement of children of both states; subject to liability cited in Article IV. Penalty for Illegal Placement. All parties to the placement arrangements, including prospective resource parents, the sending agency, private licensed child-placing agency or legal counsel are responsible for notifying the appropriate ICPC authorities in both states of the circumstances and to coordinate action to provide for the safety and well-being of the child pending further action. If a child has been placed in the receiving state in violation of Article III, a Form 100B indicating the date the child was placed in the prospective adoptive home, together with items listed in Section 6 above, shall then be filed with the sending state Compact Administrator who shall forward them to the receiving state's Compact Administrator. If all required documents are provided, the sending state and the receiving state shall give due and appropriate consideration to placement as permitted under the sending and receiving state laws.

11. This regulation is adopted pursuant to Article VII of the Interstate Compact on the Placement of Children by action of the Association of Administrators of the Interstate Compact on the Placement of Children at its annual meeting May 4 through 7, 2012; such adoption was approved on May 6, 2012 and is effective as of October 1, 2012.

INDIAN CHILD WELFARE ACT

Indian Child Welfare Glossary and Flowchart

NICWA

National Indian Child Welfare Association

Protecting our children • Preserving our culture

ICWA/Child Protective Services (CPS) Flow Chart

Flow Chart Key

Hearings

* may involve *termination of parental rights* prior to placement

Italicized words=terms defined in the companion

STEP 1: Intake
Child abuse or neglect report comes in to CPS or law enforcement

Enough information to warrant investigation

CPS worker or law enforcement contacts family and conducts **investigation** at the family's home

Allegations of abuse and/or neglect are founded

CPS case opened

Not enough information to substantiate report

Screened Out: case is closed

Allegations of abuse and/or neglect are unfounded

Case closed

Child is removed from the home

If *child* is determined to be *Indian*:
- *Active efforts* begin
- *Placement* preferences apply

ICWA: *Notice to tribe* required; *tribal intervention*/transfer of jurisdiction possible

OR

Child stays in home and services are offered to the family

If *child* is determined to be *Indian*:
- *Notice to tribe* required
- *Active efforts* provision applies

Case reviewed every six months or sooner

Concurrent Planning

Child placed in *temporary care*

Develop *service plan* for *reunification*

Begin *permanency plan* for *child*

Child may return home

Alternate Care *Placement* (may include returning home, foster care, *kinship care*, *guardianship**, residential care, or *adoption**)

1) ***Emergency Hearing/Shelter Hearing/Detention Hearing:*** Occurs within 24-72 hours

2) ***Disposition Hearing/Placement Hearing***

3) ***Pre-Trial Conference/Pre-Trial Hearing***

4) ***Jurisdictional Hearing/Adjudication***

5) ***Review Hearing/Status Hearing***

6) ***Permanency Hearing/Implementation Hearing***

7) ***Termination Hearing***

For more information on each specific hearing, please see NICWA's *Indian Child Welfare Glossary*

NICWA
National Indian Child Welfare Association

The Indian Child Welfare glossary is compiled to accompany the ICWA/Child Protective Services (CPS) Flow Chart. The glossary represents words that are commonly used in Indian child welfare and in situations where the Indian Child Welfare Act is applied.

This material was developed by the National Indian Child Welfare Association.

Authors
Chey Clifford-Stoltenberg, Rachel Kupcho, Phoebe A. Mills, and David Simmons

Acknowledgements
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For more information, please contact the National Indian Child Welfare Association

5100 SW Macadam Avenue, Suite 300 Portland, OR 97239
T: 503.222.4044 **F:** 503.222.4007 **E:** info@nicwa.org **W:** www.nicwa.org

A

- **Active efforts**: "Active efforts" is an action that is required of the state in caring for an *Indian child*, mandated under the *Indian Child Welfare Act (ICWA)*. While active efforts is undefined in ICWA, it refers to an effort more intense than the legal term "reasonable efforts." Active efforts applies to providing *remedial and rehabilitative services* to the family prior to the removal of an Indian child from his or her parent or *Indian custodian*, and/or an intensive effort to reunify an Indian child with his or her parent or *Indian custodian*.

- **Adoption**: Adoption is the legal transfer of parental *custody* for a *child* to adoptive parent(s). There are different forms of adoption, and it does not always include *termination of parental rights*. The new kinship network that is formed upon adoption may include birth parents and relatives, past foster families, and other persons significant to the child.

- **Adoption & Safe Families Act (ASFA)**: The Adoption & Safe Families Act (ASFA) is a federal law enacted in1997 that sets timelines and requirements for finding a permanent home for a *child* in temporary *custody*. It is important to note, however, that ASFA does not supercede the *Indian Child Welfare Act (ICWA)* and that ICWA requirements must still be met.

- **ASFA**: Please see "Adoption & Safe Families Act."

C

- **CASA**: Please see "Court Appointed Special Advocate."

- **Case plan**: Please see "service plan."

- **Child**: A child is any person under 18 years of age or any person under 21 years of age who is under state *custody* in the child welfare system. Please see also "Indian child."

- **Child abuse and neglect**: Child abuse and neglect is defined differently by individual tribes and states. However, the U.S. federal government provides a foundation definition under the federal Child Abuse Prevention and Treatment Act (CAPTA) (42 U.S.C.A. §5106g), as amended by the Keeping Children and Families Safe Act of 2003: child abuse and neglect is "at a minimum, any recent act or failure to act on the part of a parent or caretaker, which results in death, serious physical or emotional harm, sexual abuse or exploitation, or an act or failure to act which presents an imminent risk of serious harm." Types of child abuse can include physical abuse, sexual abuse and exploitation, and emotional abuse or maltreatment. Types of child neglect can include physical, medical, educational, emotional, and moral neglect.

- **Child Protective Services (CPS) / Protective Services**: Child protective services (CPS) are services that the state provides to look after the safety of children. They are often associated with the involuntary removal of a *child* from an unsafe home; however, CPS also provides services to strengthen and support families.

Words that are *italicized* in a definition are defined in a separate entry in this glossary.

- **Concurrent planning**: Concurrent planning is a practice technique used by social workers that takes place when the worker and the family simultaneously plan for *reunification* and an alternate permanent *placement* if reunification is not possible.

- **Court Appointed Special Advocate / CASA**: A CASA volunteer is a trained community volunteer appointed by a judge to speak for the best interests of an abused and neglected child.

- **CPS**: Please see "Child protective services."

- **Custodian**: A custodian is a person who has legal *custody* of a *child* under tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such *child*. See also the definition of "Indian custodian."

- **Custody**: There are 2 kinds of custody: legal and physical.

    1. Legal custody: Legal custody gives a parent the authority to make the decisions about the children's health, education and welfare. Joint legal custody allows both parents equal responsibility for such decisions in the children's lives.

    2. Physical custody: Physical custody refers to the time the *child* spends with each parent on a regular basis. Joint physical custody can occur when parents can agree on a plan on their own or with a mediator's help.

  Sometimes, a judge gives both parents joint legal custody, but not joint physical custody. This means both parents have equal responsibility for important decisions in the children's lives, but, the *child* lives with one parent most of the time and usually has scheduled time with the other parent.

- **Customary adoption:** A customary adoption is a practice, ceremony, or process conducted in a manner that is long-established, continued, reasonable, and certain; considered by the people of a tribe to be binding or found by the tribal court to be authentic, which gives a child a legally recognized permanent parent-child relationship with a person other than the child's biological parent without a requirement for termination of parental rights (TPR).

D

- **Deposition**: A deposition is a *proceeding* that typically occurs outside of the courtroom. It is a collection of statements of parties involved, and these statements are given under oath. A court reporter may use audio or video-recording equipment to collect the information. The deposition is a way for the opposing attorney to learn about the facts and opinions before a *trial* begins, and it may be used at the time of trial.

E

- **Enrollment in a tribe**: Enrollment in a tribe is registration with a tribe that verifies membership with that tribe. See also "member of a tribe."

- **Expert witness**: Under *ICWA*, an "expert witness" is someone who can

provide the court with knowledge of the social and cultural aspects of Indian life to diminish the risk of any cultural bias. The testimony of a qualified expert witness is required in the case of an *Indian child* in order to make a *foster care placement* or *termination of parental rights*. A qualified expert witness can be identified with help from the tribe of the *child*, the BIA, or *Indian* organizations and is meant to be a person with more knowledge than the average social worker or anthropologist.

F

- **Family Group Conferencing:** Family group conferencing is a family-centered, strengths-based, and culturally relevant technique used by social workers to gather a family and other significant people for the purpose of establishing a care plan for a *child*. The meeting is often structured into three phases: information sharing, family alone time, and presentation of the plan. Follow-up conferences may occur if needed.

- **Family preservation**: "Family preservation" often refers to a program that provides services specifically identified for families in crisis whose children are at risk of out-of-home placement. Family preservation actively seeks to obtain or directly provide the critical services needed to enable the family to remain together in a safe and stable environment.

- **Foster care**: Foster care is the provision of temporary parental care and supervision to a *child* typically not related through legal or blood ties. For more information on foster care placements, see also "placement."

G

- **Guardian ad litum**: A guardian ad litem is an advocate for a child whose welfare is a matter of concern for the court. In legal terms, it means "guardian for the lawsuit."

- **Guardianship**: Guardianship is an out-of-home *placement* designated by a court between a *child* and caretaker which, in most cases, is intended to be permanent. (The child is no longer a ward of the court.)

H

- **Hearing**: A hearing is a *proceeding* to review procedural issues or other matters before a magistrate, such as a judge, without a jury. While some hearings may follow the same process of a *trial*, other hearings may not have as much formal testimony as a trial and may be more brief. There are seven (7) types of hearings that are often associated with child welfare cases. It is important for parent(s)/*custodian*(s) to be present at each of these hearings, as absence could be taken as a lack of interest in the *child*.

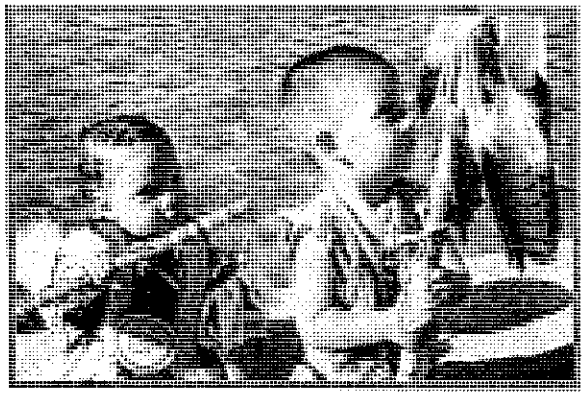
    1. Emergency hearing / Shelter hearing / Detention hearing: An emergency hearing occurs within 24-72 hours that the state has taken emergency physical *custody* of a *child* suspected to be a victim of abuse or neglect. The purpose of this hearing is for the court to give official *notice* to the parents about what is happening and to determine what steps the state will follow next with regard to the custody of the child: return to parent(s) or live somewhere else for now. If the court decides the child needs to live

somewhere else, it can make visitation orders so the parent can see the child. The court will also tell the parents where they can get help so the child can come back to them. The court also decides if the state's social services made an "*active effort*" or "reasonable effort" to keep the child with the parents.

2. Disposition hearing / Placement hearing: In a disposition hearing the court names the specific place where the *child* will go. This hearing can sometimes be combined with another hearing, to confirm *placement* with a specific family or agency. The initial disposition hearing typically occurs within 14 days after removal of the child.

3. Pre-trial conference / Pre-trial hearing: At the pretrial conference, the court may consider efforts to locate and serve all parties, try to simplify the issues, resolve legal questions, resolve questions about and mark evidence, discuss settlement and mediation, decide whether the *child* will testify at adjudication and under what conditions, establish a reasonable time limit for presenting evidence, consider any other matters that may help resolve the case, and have the parties submit list of witnesses.

4. Jurisdictional hearing / Adjudication: A jurisdictional hearing is one in which the state or the tribe has to establish sufficient grounds under state or tribal law for the state or tribe to take legal *custody* of the *child*. There are a 3 grounds under which the state can take custody of the child: dependency, neglect, abuse (sexual or physical), and hearings that are on the grounds of dependency are often called "dependency hearings."



   a. Dependency hearing: In a dependency hearing, the state is required to establish that the *child* is dependent instead of abused or neglected. Every state has its own grounds for establishing dependency, however the general meaning of dependency is that through no fault of the parents, the parents are unable to take care of the child, and the child is on his/her own and needs assistance.

5. Review hearing / Status hearing: In a review hearing the state reviews its need to continue jurisdiction over the *child*. It also allows the court to decide whether to continue with family *reunification* services, order additional services, set a date for a permanency hearing, and/or dismiss the case.

6. Permanency hearing / Implementation hearing: A permanency hearing is required under the *Adoption & Safe Families Act of 1997 (ASFA)* and decides a permanent *placement* for the *child* and the future direction of the case. At this hearing, the court makes a permanent plan for the child. The plans can be to place the child with a relative, foster parent, or in a group home; name a legal guardian for the child; or *termination of parental rights* so the child can be adopted. *Reunification* with the original caretakers is not an option by the time this hearing occurs.

7. Termination hearing: In a termination hearing the state court proceeds with the *termination of parental rights (TPR)*. This is like a regular *trial* and may sometimes occur before a jurisdictional hearing or any full-blown trial to develop procedural matters.

Words that are *italicized* in a definition are defined in a separate entry in this glossary.

I

- **ICWA**: Please see "Indian Child Welfare Act."

- **Indian**: "Indian" is a term used in U.S. federal language, including the *Indian Child Welfare Act (ICWA)*, to refer to any person who is a member of a federally recognized American Indian tribe or Alaska Native village, or who is an Alaska Native and a member of a Regional Corporation. See http://www.indians.org/ for a list of federally recognized tribes.

- **Indian child**: As defined in the *Indian Child Welfare Act (ICWA)*, an Indian child is "any unmarried person who is under age 18 and is either (a) a member of an *Indian* tribe or (b) is eligible for membership in an Indian tribe and is the biological *child* of a member of an Indian tribe" (U.S.C. Title 25).

- **Indian Child Welfare Act / ICWA**: The Indian Child Welfare Act (*ICWA*) is a federal law passed in 1978 that guides states in their process for *placement* of an *Indian child* that is in their *custody.* This act was passed in response to the alarmingly high rate of Indian children being removed from their homes unnecessarily. It requires that states seek placement for the *child* with that child's family, tribe, and other American *Indian* homes before looking elsewhere. It generally does not apply to divorce *proceedings*, intrafamily disputes, *juvenile delinquency* cases, or cases under tribal court jurisdiction.

- **Indian custodian**: As defined in the *Indian Child Welfare Act (ICWA)*, an Indian custodian is "any *Indian* person who has legal *custody* of an *Indian child* under tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such *child* [italics added]" (U.S.C. Title 25).

- **Involuntary**: In Indian child welfare, this refers to the process by which a parent loses *custody* of a *child* to a state agency and the child is placed in foster care due to *child abuse and/or neglect.* In order to regain custody, the parent and social worker together develop a *service plan* outlining *remedial or rehabilitative services* for *reunification* with the child.

J

- **Juvenile delinquency**: Juvenile delinquency occurs when a person under the age of 18 years commits a violation of the federal or state laws which would have been a crime if committed by an adult; or when noncriminal acts are committed by a juvenile for which supervision or treatment by juvenile authorities is authorized. There are narrow exceptions where the *Indian Child Welfare Act (ICWA)* may apply in juvenile delinquency cases.

K

- **Kinship care**: Kinship care is when a non-parent relative provides parental care and supervision to a *child.*

Words that are *italicized* in a definition are defined in a separate entry in this glossary.

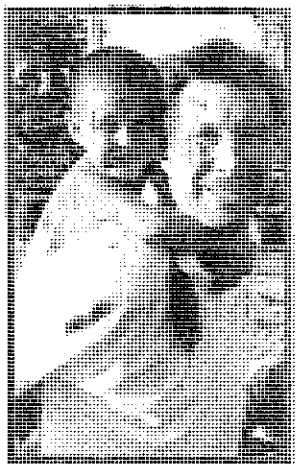
M

- **Member of a tribe**: The definition of what constitutes membership in a tribe varies from tribe to tribe, and final determination of membership lies with the tribe. Membership can be more inclusive than *enrollment in a tribe.*

N

- **Notice to parent/custodian**: Under the *Indian Child Welfare Act (ICWA)*, states are required to ensure that a parent/*custodian* is notified when their *Indian child* is involved in any involuntary *proceeding* that could lead to a *foster care placement* or *termination of parental rights (TPR).* The party seeking the foster care placement or TPR is required to notify the parent/*custodian* and the Indian child's tribe by registered mail with return receipt requested of the pending proceedings and of their right to intervene. Additionally, "if the identity or location of the parent or *Indian custodian* and the tribe cannot be determined, such notice shall be given to the Secretary in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe [italics added]" (U.S.C. Title 25).

- **Notice to tribe**: Under the *Indian Child Welfare Act (ICWA)*, once the state receives *custody* of an *Indian child*, it is required to notify that *child*'s tribe(s) by registered mail with return receipt requested that the child is in their custody so that the tribe may decide if it wishes to intervene. Please see also "tribal intervention."



O

- **Out-of-home Placement**: Please see "placement."

P

- **Permanency planning**: In Indian child welfare practice, permanency planning is planning for maintenance of an *Indian child*'s sense of belonging to their extended family, their tribe, and their caretakers in a permanent and stable home. This planning includes carrying out a set of goal-directed activities designed to help the *child* live in such a home, offering the child the opportunity to establish life-long relationships with the placement family, extended family, and their tribe. Examples of permanent *placements* include *kinship care*, *guardianship*, *adoption*, *reunification*, conventional or *customary adoption*, and long-term *foster care.*

- **Permanent placement:** Please see "placement."

- **Placement**: A placement occurs when a *child* is brought to live in a home other than his or her original home. The placement of the child may be temporary or long-term in out-of-home care or *foster care*, or it may be permanent. Under the *Indian Child Welfare Act*, placement preferences exist for an *Indian child.* They are in order of preference as follows:
  1. A member of the Indian child's extended family (*Indian* or non-Indian);
  2. A foster home licensed, approved, or specified by the Indian child's tribe;
  3. An Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
  4. An institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs.

Words that are *italicized* in a definition are defined in a separate entry in this glossary.

Out-of-home/ Foster Care Placements: Placement preferences apply to both voluntary and involuntary *foster care* placements. See definitions for *involuntary* and *voluntary*.

Permanent placement: In Indian child welfare practice, a permanent placement is a permanent and stable home that maintains an *Indian child*'s sense of belonging to their extended family, their tribe, and their caretakers.

- **Proceeding**: A proceeding is a process by which legal judgments are administered. Types of proceedings include a *deposition*, a *hearing*, and a *trial*. Child protection proceedings usually take place in a hearing.

- **Protective services**: Please see "child protective services (CPS)."

R

- **Relinquishment of child custody**: Please see "termination of parental rights."

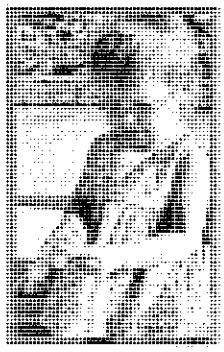
- **Remedial and rehabilitative services**: Remedial and rehabilitative services are services provided by the state to give support to families to help them become safe *placements* for a *child*. These services are required in the *Indian Child Welfare Act (ICWA)*. The intention of these services is to provide supports to a family to prevent the removal of a child by "rehabilitating" or strengthening the family in their parenting and other related skills, and/or to provide support that assists in "remediating" or correcting the situation in a home that led to the removal of a *child*. These services can include *family group conferencing*, parent counseling, substance abuse counseling, job-skill training, and many other types of services.

- **Residential care**: Residential care is the provision of parental care and supervision to a *child* by a public or private agency in a facility where the *child* lives.

- **Reunification**: Reunification is the *active efforts* of state services to help bring the *child* and family back together after a child has been removed from a home.

S

- **Service plan**: A service plan is an arrangement of services identified by a social worker and family to meet the needs of the *child* and/or parents. Services for the child can include counseling, cultural practices for healing, medical treatment, protective day care, and out-of-home *placement*. Services for both the parents and the child can include *concurrent planning*, *family group conferencing*, counseling, cultural practices for healing, and other *rehabilitative and remedial services*. The service plan may include informal sources of support, like extended family, church, and the tribe. Social workers will have a certain number of face-to-face contacts and home visits with the family, but the level of service varies by family needs, the proximity of services, and the services provided by other agencies. The service plan is time-limited, meaning that goals and objectives must be met within a limited time or the social worker will look at other permanent *placements*.



Words that are *italicized* in a definition are defined in a separate entry in this glossary.

T

- **Temporary care**: Temporary care is a temporary, safe place that a *child* may be staying at while a permanent *placement* is being sought after. This can include *kinship care*, relative placement, *foster care*, and placement in a care facility.

- **Termination of parental rights (TPR)**: Termination of parental rights is a decision by which a parent loses all rights to their *child*. There are two ways a parent's rights to a child may be terminated:

  - Voluntary TPR: In a voluntary TPR, the decision to end parental rights is agreed upon by both parents. A child is removed, placed in alternative care, and can be returned upon the parents' request.

  - Involuntary TPR: In an involuntary TPR, the decision to end parental rights is made by a court of law and may occur without either parent's consent. A petition must first be filed in a court before it can be ordered. A child is removed, placed in alternative care, and cannot be returned upon the parents' request. Under a *customary adoption*, a modification of parental rights may occur instead of TPR.

- **TPR**: Please see "Termination of parental rights."

- **Transfer of jurisdiction**: Please see "tribal intervention."

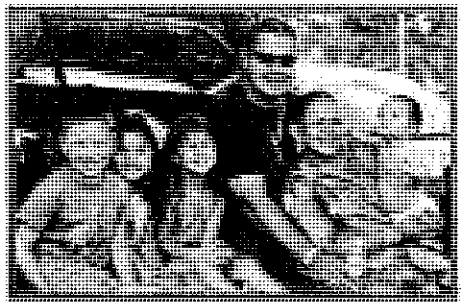
- **Trial**: A trial is a *proceeding* to examine disputed questions about facts and law that is presided over by a magistrate, such as a judge, with or without a jury. A trial is usually more formal than a *hearing*. Formal procedures in a trial include opening statements limited to a specific outline, presentation of evidence in a certain order, final arguments, and a final verdict or judgment that usually concludes the trial. A trial can be open to the public. There are several types of trials but they can generally be grouped as "civil trials" or "criminal trials":
  1. Civil trials: In civil trials addressing child *custody* cases, allegations of *child abuse and neglect* are not as severe as they are in a criminal trial. The majority of court processes in child abuse and neglect cases are handled in civil trials or hearings. There can be multiple parties in the case.
  2. Criminal trials: In criminal trials addressing child *custody* cases, allegations of *child abuse and neglect* are more serious than in civil trials. The seriousness of allegations determines if the state will file it as a criminal case, and the state must be able to prove such allegations. Civil child abuse and neglect cases may proceed simultaneously with a criminal case. Criminal trials have only two parties: the state and the defendant, though there will be similar players as in a civil trial. In most criminal cases the exact punishment will be determined by the judge at a hearing held after the trial.

- **Tribal intervention**: Tribal intervention in a child *custody* case occurs when a tribe acts on its right to participate in a child custody *proceeding*. The *Indian Child Welfare Act (ICWA)* states that "in any State court proceeding for the *foster care placement* of, or *termination of parental rights* to, an *Indian child*, the *Indian custodian* of the *child* and the *Indian child's* tribe shall have a right to intervene at any point in the proceeding [italics added]" (USC Title 25, 1911.C.). This intervention can be wide in its interpretation: the tribe may request to transfer the case to tribal court (a "transfer of jurisdiction") or the tribe may choose to only monitor the case through court records. Transfer of jurisdiction can be requested by either the parent or the tribe. A tribe may intervene at any point in an Indian child custody proceeding.

Words that are *italicized* in a definition are defined in a separate entry in this glossary.

V

- **Voluntary:** In Indian child welfare, this term refers to the process by which a parent consents to *relinquish custody* of a *child* over to a state or private agency. A child may be returned to the parent at her/his request, as long as there is no risk of imminent harm or danger presented. Valid consent of a voluntary placement must be given in writing, recorded before a judge, and executed after the child is ten days old.



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SO --- it's only on the DHS Docket that I have to worry about ICWA, Right???.....WRONG!!

A little history....Passed in 1978, the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.) (ICWA, or the Act) formalizes federal policy relating to the placement of Indian children outside the family home. State courts presiding over adoption, guardianship, and dependency matters have become familiar with the many requirements of this federal law.

Historically, however, ICWA provisions have not been applied in the juvenile delinquency context because ICWA includes an express exemption for placements "based upon an act which, if committed by an adult, would be deemed a crime." (25 U.S.C. § 1903(1).)

However, there remains a question as to whether state legislation has expanded ICWA to certain delinquency type proceedings where the states have granted the courts the authority to make a placement outside the home, and even to make a foster care placement in the context of certain criminal or quasi criminal proceedings.

Virginia law is sparse on ICWA... so let's look across the land.

For example- under California law, the court is required to inquire about a child's Indian status at the outset of all juvenile proceedings, but ICWA's additional procedures are not required in most delinquency cases. A delinquency court must ensure that notice is given and other ICWA procedures are complied with only when (1) exercising "dual status" jurisdiction over an Indian child; (2) placing an Indian child outside the family home for committing a "status offense" ; or (3) placing an Indian child initially detained for "criminal conduct" outside the family home for reasons based entirely on harmful conditions in the home. *In this narrow third category, ICWA notice is required when the delinquency court sets a permanency planning hearing to terminate parental rights, or when the court contemplates ordering the ward placed in foster care and announces on the record that the placement is based entirely on abuse or neglect in the family home and not on the ward"s delinquent conduct.* Without a clear announcement from the court to the contrary, it will be presumed that a placement of the ward is based on the ward's delinquent conduct, rather than conditions in the home, and thus not subject to ICWA. *See In Re: W.B.* Ca. Sup Ct. 2012.

What are the exceptions to ICWA's application?

ICWA shall not apply to any placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents. 25 U.S.C. 1903(1). Thus, ICWA expressly provides for only two exceptions to its applicability: certain juvenile criminal and divorce cases. **There are no other exceptions.**

However- the law continues to be construed in different ways by different courts. For example, a Montana court excluded an intra-family custody dispute finding that it was not a child custody

proceeding because the Act is not directed at disputes between Indian families regarding custody of Indian children; rather, its intent is to preserve Indian cultural values under circumstances in which an Indian child is placed in a foster home or other protective institution. *In re Bertelson*, 617 P.2d 121 (Mont. 1980). *See also In re Sengstock*, 477 N.W.2d 310 (Wis. Ct. App. 1991); *Comanche Nation v. Fox*, 128 S.W.3d 745 (Tex. App. 2004). Other courts have expressly rejected the *Bertelson* analysis as contrary to the express provision of the Act enumerating which proceedings are excluded; that is, certain juvenile crimes and divorce cases. All other proceedings involving the custody of an Indian child fall within the ambit of the Act. *Comanche Indian Tribe of Okla. v. Hovis (Hovis I)*, 847 F. Supp. 871 (W.D. Okla. 1994); *D.J. v. P.C.*, 36 P.3d 663 (Alaska 2001); *J.W. v. R.J.*, 951 P.2d 1206 (Alaska 1998); *In re D.A.C.*, 933 P.2d 993 (Utah Ct. App. 1997); *In re Q.G.M.*, 808 P.2d 684 (Okla. 1991); *In re A.K.H.*, 502 N.W.2d 790 (Minn. Ct. App. 1993); *In re S.B.R.*, 719 P.2d 154 (Wash. Ct. App. 1986); *In re Jennifer A.*, 127 Cal. Rptr. 2d 54 (Ct. App. 2002); *In re Lindsay C.*, 280 Cal. Rptr. 194 (Ct. App. 1991); *In re Crystal K.*, 276 Cal. Rptr. 619 (Ct. App. 1990). Another court applied ICWA without deciding the intra-family issue because of the parties implicit assumption that ICWA applied to the situation. *In re Anderson*, 31 P.3d 510 (Or. Ct. App. 2001).

Practice Tip: Counsel should be aware that although a case may start as a delinquency proceeding, ICWA may apply to subsequent child placements (i.e. foster care) based upon a determination that a return to the child's home would be inappropriate.

So..... a Virginia Hypothetical.....

A Virginia GAL is appointed for a juvenile who is currently charged with a status offense and some other delinquency/misdemeanor offense. In the course of the proceedings, based upon the child's horrible home life, truancy, and failure to comply with treatment, the GAL files a CHINS petition under Virginia Code §16.1-287.4. The Court easily finds the child to be in need of services and thus can make any one of the dispositions under the Code, including but not limited to, transferring custody to the local department of social services, which it does.

QUESTIONS:

1. Does ICWA apply to the delinquency proceedings?
2. Does ICWA apply to the status offense?
3. Does ICWA apply to the CHINS proceeding?

ANALYSIS

1. ICWA will likely not apply to a Virginia delinquency proceeding under Virginia Code §16.1-278.8, where the court makes it clear that the child's delinquent conduct, rather than conditions in the home are the reason for the out of home placement.

2. ICWA will likely apply to a status offense under Virginia Code §16.1-278.6 where the Court makes a disposition under Virginia Code §16.1-278.4 to place the child out of the home and in the custody of the LDSS primary based upon conditions in the home.

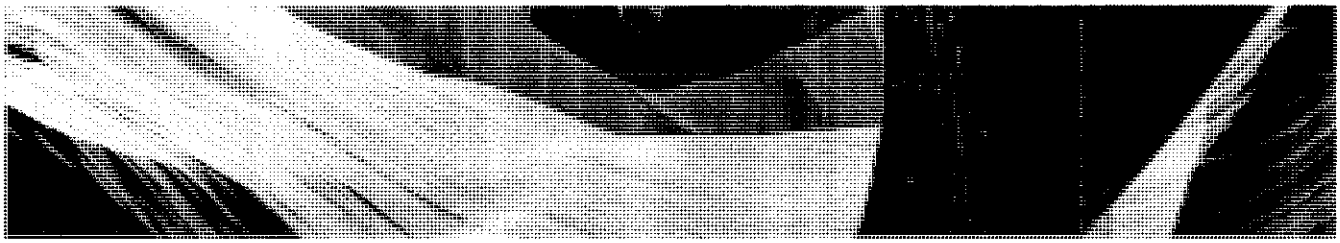
3. ICWA will likely apply to a CHINS proceeding under Virginia Code §16.1-278.4 where placement is made outside the home and custody awarded to the LDSS primary based upon the conditions in the home.

SO rules of thumb..... **When does ICWA NOT apply?**

1- Divorce cases or other custody cases between parents (if custody is awarded to one of the parents)
2- Cases of minors charged with delinquent acts that would be considered criminal if done by an adult.
3- However, ICWA may apply to a criminal or delinquency case if an out-of-home placement continues for a long time due to problems in the child's home.

Tuesday August 9, 2016

BIA Website



Frequently Asked Questions

I. Why Tribes Exist Today in the United States

What are Indian treaty rights?
From 1778 to 1871, the United States' relations with individual American Indian nations indigenous to what is now the U.S. were defined and conducted largely through the treaty-making process. These "contracts among nations" recognized and established unique sets of rights, benefits, and conditions for the treaty-making tribes who agreed to cede of millions of acres of their homelands to the United States and accept its protection. Like other treaty obligations of the United States, Indian treaties are considered to be "the supreme law of the land," and they are the foundation upon which federal Indian law and the federal Indian trust relationship is based.

What is the legal status of American Indian and Alaska Native tribes?
Article 1, Section 8 of the United States Constitution vests Congress, and by extension the Executive and Judicial branches of our government, with the authority to engage in relations with the tribes, thereby firmly placing tribes within the constitutional fabric of our nation. When the governmental authority of tribes was first challenged in the 1830's, U. S. Supreme Court Chief Justice John Marshall articulated the fundamental principle that has guided the evolution of federal Indian law to the present: *That tribes possess a nationhood status and retain inherent powers of self-government.*

What is the federal Indian trust responsibility?
The **federal Indian trust responsibility** is a legal obligation under which the United States "has charged itself with moral obligations of the highest responsibility and trust" toward Indian tribes (Seminole Nation v. United States, 1942). This obligation was first discussed by Chief Justice John Marshall in Cherokee Nation v. Georgia (1831). Over the years, the trust doctrine has been at the center of numerous other Supreme Court cases, thus making it one of the most important principles in federal Indian law.

The federal Indian trust responsibility is also a legally enforceable fiduciary obligation on the part of the United States to protect tribal treaty rights, lands, assets, and resources, as well as a duty to carry out the mandates of federal law with respect to American Indian and Alaska Native tribes and villages. In several cases discussing the trust responsibility, the Supreme Court has used language suggesting that it entails legal duties, moral obligations, and the fulfillment of understandings and expectations that have arisen over the entire course of the relationship between the United States and the federally recognized tribes.

What is a federally recognized tribe?
A **federally recognized tribe** is an American Indian or Alaska Native tribal entity that is recognized as having a government-to-government relationship with the United States, with the responsibilities, powers, limitations, and obligations attached to that designation, and is eligible for funding and services from the Bureau of Indian Affairs.

Furthermore, federally recognized tribes are recognized as possessing certain inherent rights of self-government (i.e., tribal sovereignty) and are entitled to receive certain federal benefits, services, and protections because of their special relationship with the United States. At present, there are 567 federally recognized American Indian and Alaska Native tribes and villages.

How is federal recognition status conferred?
Historically, most of today's federally recognized tribes received federal recognition status through treaties, acts of Congress, presidential executive orders or other federal administrative actions, or federal court decisions.

In 1978, the Interior Department issued regulations governing the Federal Acknowledgment Process (FAP) to handle requests for federal recognition from Indian groups whose character and history varied widely in a uniform manner. These regulations – 25 C.F.R. Part 83 – were revised in 1994 and are still in effect.

Also in 1994, Congress enacted Public Law 103-454, the Federally Recognized Indian Tribe List Act (108 Stat. 4791, 4792), which formally established three ways in which an Indian group may become federally recognized:

- By Act of Congress,
- By the administrative procedures under 25 C.F.R. Part 83, *or*
- By decision of a United States court.

However, a tribe whose relationship with the United States has been expressly terminated by Congress may not use the Federal Acknowledgment Process. Only Congress can restore federal recognition to a "terminated" tribe.

The Federally Recognized Indian Tribe List Act also requires the Secretary of the Interior to publish annually a list of the federally recognized tribes in the Federal Register.

What does tribal sovereignty mean to American Indians and Alaska Natives?
When tribes first encountered Europeans, they were a power to be reckoned with because the combined American Indian and Alaska Native population dominated the North American continent. Their strength in numbers, the control they exerted over the natural resources within and between their territories, and the European practice of establishing relations with countries other than themselves and the recognition of tribal property rights led to tribes being seen by exploring foreign powers as sovereign nations, who treatied with them accordingly.

However, as the foreign powers' presence expanded and with the establishment and growth of the United States, tribal populations dropped dramatically and tribal sovereignty gradually eroded. While tribal sovereignty is limited today by the United States under treaties, acts of Congress, Executive Orders, federal administrative agreements and court decisions, what remains is nevertheless protected and maintained by the federally recognized tribes against further encroachment by other sovereigns, such as the states. Tribal sovereignty ensures that any decisions about the tribes with regard to their property and citizens are made with their participation and consent.

What is a federal Indian reservation?
In the United States there are three types of reserved federal lands: military, public, and Indian. A federal Indian reservation is an area of land reserved for a tribe or tribes under treaty or other agreement with the United States, executive order, or federal statute or administrative action as permanent tribal homelands, and where the federal government holds title to the land in trust on behalf of the tribe.

Approximately 56.2 million acres are held in trust by the United States for various Indian tribes and individuals. There are approximately 326 Indian land areas in the U.S. administered as federal Indian reservations (i.e., reservations, pueblos, rancherias, missions, villages, communities, etc.). The largest is the 16 million-acre Navajo Nation Reservation located in Arizona, New Mexico, and Utah. The smallest is a 1.32-acre parcel in California where the Pit River Tribe's cemetery is located. Many of the smaller reservations are less than 1,000 acres.

Some reservations are the remnants of a tribe's original land base. Others were created by the federal government for the resettling of Indian people forcibly relocated from their homelands. Not every federally recognized tribe has a reservation. Federal Indian reservations are generally exempt from state jurisdiction, including taxation, except when Congress specifically authorizes such jurisdiction.

Are there any federal Indian reservations in Alaska?
Yes, one. It is the Metlakatla Indian Community of the Annette Island Reserve in southeastern Alaska.

Are there other types of "Indian lands"?
Yes. Other types of Indian lands are:

- **Allotted lands,** which are remnants of reservations broken up during the federal allotment period of the late nineteenth and early twentieth centuries. Although the practice of allotting lands had begun in the eighteenth century, it was put to greater use after the Civil War. By 1885, over 11,000 patents had been issued to individual Indians under various treaties and laws. Starting with the General Allotment Act in 1887 (also known as the Dawes Act) until the Indian Reorganization Act of 1934, allotments were conveyed to members of affected tribes and held in trust by the federal government. As allotments were taken out of trust, they became subject to state and local taxation, which resulted in thousands of acres passing out of Indian hands. Today, 10,059,290.74 million acres of individually owned lands are still held in trust for allotees and their heirs.

- **Restricted status,** also known as restricted fee, where title to the land is held by an individual Indian person or a tribe and which can only be alienated or encumbered by the owner with the approval of the Secretary of the Interior because of limitations contained in the conveyance instrument pursuant to federal law.

- **State Indian reservations,** which are lands held in trust by a state for an Indian tribe. With state trust lands title is held by the state on behalf of the tribe and the lands are not subject to state property tax. They are subject to state law, however. State trust lands stem from treaties or other agreements between a tribal group and the state government or the colonial goverument(s) that preceded it.

American Indian and Alaska Native tribes, businesses, and individuals may also own land as private property. In such cases, they are subject to state and local laws, regulations, codes, and taxation.

Does the United States still make treaties with Indian tribes?
No. Congress ended treaty-making with Indian tribes in 1871. Since then, relations with Indian groups have been formalized and/or codified by Congressional acts, Executive Orders, and Executive Agreements. Between 1778, when the first treaty was made with the Delawares, to 1871, when Congress ended the treaty-making period, the United States Senate ratified 370 treaties. At least 45 others were negotiated with tribes but were never ratified by the Senate.
The treaties that were made often contain commitments that have either been fulfilled or subsequently superseded by Congressional legislation.

In addition, American Indians and Alaska Natives can access education, health, welfare, and other social service programs available to all citizens, if they are eligible. Even if a tribe does not have a treaty with the United States, or has treaties that were negotiated but not ratified, its members may still receive services from the BIA or other federal programs, if eligible.

The specifics of particular treaties signed by government negotiators with Indian tribes are contained in one volume (Vol. II) of the publication, Indian Affairs, Laws and Treaties: 1778-1883, compiled, annotated, and edited by Charles J. Kappler. Published by the United States Government Printing Office in 1904, it is now out of print, but can be found in most large law libraries and on the Interuet at http://digital.library.okstate.edu/Kappler. The treaty volume has also been published privately under the title, "Indian Treaties: 1778-1883."

Originals of all the treaties are maintained by the National Archives and Records Administration of the General Services Administration. For more information on how to obtain copies or for more information about the treaties visit NARA's website at www.nara.gov .

II. The Nature of Federal-Tribal and State-Tribal Relations

What is the relationship between the tribes and the United States?
The relationship between federally recognized tribes and the United States is one between sovereigns, i.e., between a government and a government. This "government-to-government" principle, which is grounded in the United States Constitution, has helped to shape the long history of relations between the federal government and these tribal nations.

What is the relationship between the tribes and the individual states?
Because the Constitution vested the Legislative Branch with plenary power over Indian Affairs, states have no authority over tribal governments unless expressly authorized by Congress. While federally recognized tribes generally are not subordinate to states, they can have a government-to-government relationship with these other sovereigns, as well.

Furthermore, federally recognized tribes possess both the right and the authority to regulate activities on their lands independently from state government control. They can enact and enforce stricter or more lenient laws and regulations than those of the surrounding or neighboring state(s) wherein they are located. Yet, tribes frequently collaborate and cooperate with states through compacts or other agreements on matters of mutual concern such as environmental protection and law enforcement.

What is Public Law 280 and where does it apply?
In 1953, Congress enacted Public Law 83-280 (67 Stat. 588) to grant certain states criminal jurisdiction over American Indians on reservations and to allow civil litigation that had come under tribal or federal court jurisdiction to be handled by state courts. However, the law did not grant states regulatory power over tribes or lands held in trust by the United States; federally guaranteed tribal hunting, trapping, and fishing rights; basic tribal governmental functions such as enrollment and domestic relations; nor the power to impose state taxes. These states also may not regulate matters such as environmental control, land use, gambling, and licenses on federal Indian reservations.

The states required by Public Law 280 to assume civil and criminal jurisdiction over federal Indian lands were Alaska (except the Metlakatla Indian Community on the Annette Island Reserve, which maintains criminal jurisdiction), California, Minnesota (except the Red Lake Reservation), Nebraska, Oregon (except the Warm Springs Reservation), and Wisconsin. In addition, the federal government gave up all special criminal jurisdiction in these states over Indian offenders and victims. The states that elected to assume full or partial jurisdiction were Arizona (1967), Florida (1961), Idaho (1963, subject to tribal consent), Iowa (1967), Montana (1963), Nevada (1955), North Dakota (1963, subject to tribal consent), South Dakota (1957-1961), Utah (1971), and Washington (1957-1963).

Subsequent acts of Congress, court decisions, and state actions to retrocede jurisdiction back to the Federal Government have muted some of the effects of the 1953 law, and strengthened the tribes' jurisdiction over civil and criminal matters on their reservations.

III. Tribal Government: Powers, Rights, and Authorities

What are inherent powers of tribal self-government?
Tribes possess all powers of self-government except those relinquished under treaty with the United States, those that Congress has expressly extinguished, and those that federal courts have ruled are subject to existing federal law or are inconsistent with overriding national policies. Tribes, therefore, possess the right to form their own governments; to make and enforce laws, both civil and criminal; to tax; to establish and determine membership (i.e., tribal citizenship); to license and regulate activities within their jurisdiction; to zone; and to exclude persons from tribal lands.

Limitations on inherent tribal powers of self-government are few, but do include the same limitations applicable to states, e.g., neither tribes nor states have the power to make war, engage in foreign relations, or print and issue currency.

How do tribal members govern themselves?
For thousands of years, American Indians and Alaska Natives governed themselves through tribal laws, cultural traditions, religious customs, and

kinship systems, such as clans and societies. Today, most modern tribal governments are organized democratically, that is, with an elected leadership.

Through their tribal governments, tribal members generally define conditions of membership, regulate domestic relations of members, prescribe rules of inheritance for reservation property not in trust status, levy taxes, regulate property under tribal jurisdiction, control the conduct of members by tribal ordinances, and administer justice. They also continue to utilize their traditional systems of self-government whenever and wherever possible.

How are tribal governments organized?
Most federally recognized tribes are organized under the Indian Reorganization Act (IRA) of 1934 (25 U.S.C. 461 et seq.), including a number of Alaska Native villages, which adopted formal governing documents under the provisions of a 1936 amendment to the IRA. The passage in 1971 of the Alaska Native Claims Settlement Act (43 U.S.C. 1601), however, provided for the creation of regional and village corporations under state law to manage the money and lands granted to Alaska Natives by the act. The Oklahoma Indian Welfare Act of 1936 provided for the organization of Indian tribes within the State of Oklahoma.

Many tribes have constitutions, others operate under articles of association or other bodies of law, and some have found a way to combine their traditional systems of government within a modern governmental framework. Some do not operate under any of these acts, but are nevertheless organized under documents approved by the Secretary of the Interior. Contemporary tribal governments are usually, but not always, modeled upon the federal system of the three branches: Legislative, Executive, and Judicial.

The chief executive of a tribe is usually called a chairman, chairwoman or chairperson, but may also be called a principal chief, governor, president, mayor, spokesperson, or representative. The chief executive presides over the tribe's legislative body and executive branch. In modern tribal government, the chief executive and members of the tribal council or business committee are almost always elected.

A tribe's legislative body is usually called a tribal council, a village council, or a tribal business committee. It is comprised of tribal members who are elected by eligible tribal voters. In some tribes, the council is comprised of all eligible adult tribal members. Although some tribes require a referendum by their members to enact laws, a tribal council generally acts as any other legislative body in creating laws, authorizing expenditures, appropriating funds, and conducting oversight of activities carried out by the chief executive and tribal government employees. An elected tribal council and chief executive, recognized as such by the Secretary of the Interior, have authority to speak and act for the tribe as a whole, and to represent it in negotiations with federal, state, and local governments.

Furthermore, many tribes have established, or are building, their judicial branch – the tribal court system – to interpret tribal laws and administer justice.

What is the jurisdiction of tribal courts?
Generally, tribal courts have **civil** jurisdiction over Indians and non-Indians who either reside or do business on federal Indian reservations. They also have **criminal** jurisdiction over violations of tribal laws committed by tribal members residing or doing business on the reservation.

Under 25 C.F.R. Part 115, tribal courts are responsible for appointing guardians, determining competency, awarding child support from Individual Indian Money (IIM) accounts, determining paternity, sanctioning adoptions, marriages, and divorces, making presumptions of death, and adjudicating claims involving trust assets. There are approximately 225 tribes that contract or compact with the BIA to perform the Secretary's adjudicatory function and 23 Courts of Indian Offenses (also known as CFR courts) which exercise federal authority. The Indian Tribal Justice Act of 1993 (P.L. 103-176, 107 Stat. 2005) supports tribal courts in becoming, along with federal and state courts, well-established dispensers of justice in Indian Country.

What is meant by tribal self-determination and self-governance?
Congress has recognized the right of tribes to have a greater say over the development and implementation of federal programs and policies that directly impact on them and their tribal members. It did so by enacting two major pieces of legislation that together embody the important concepts of tribal self-determination and self-governance: The Indian Self-determination and Education Assistance Act of 1975, as amended (25 U.S.C. 450 et seq.) and the Tribal Self-Governance Act of 1994 (25 U.S.C. 458aa et seq.). Through these laws, Congress accorded tribal governments the authority to administer themselves the programs and services usually administered by the BIA for their tribal members. It also upheld the principle of tribal consultation, whereby the federal government consults with tribes on federal actions, policies, rules or regulations that will directly affect them.

IV. Our Nation's American Indian and Alaska Native Citizens

Who is an American Indian or Alaska Native?
As a general rule, an American Indian or Alaska Native person is someone who has blood degree from and is recognized as such by a federally recognized tribe or village (as an enrolled tribal member) and/or the United States. Of course, blood quantum (the degree of American Indian or Alaska Native blood from a federally recognized tribe or village that a person possesses) is not the only means by which a person is considered to be an American Indian or Alaska Native. Other factors, such as a person's knowledge of his or her tribe's culture, history, language, religion, familial kinships, and how strongly a person identifies himself or herself as American Indian or Alaska Native, are also important. In fact, there is no single federal or tribal criterion or standard that establishes a person's identity as American Indian or Alaska Native.

There are major differences, however, when the term "American Indian" is used in an ethnological sense versus its use in a political/legal sense. The rights, protections, and services provided by the United States to individual American Indians and Alaska Natives flow not from a person's identity as such in an ethnological sense, but because he or she is a member of a federally recognized tribe. That is, a tribe that has a **government-to-government relationship** and a **special trust relationship** with the United States. These special trust and government-to-government relationships entail certain legally enforceable obligations and responsibilities on the part of the United States to persons who are enrolled members of such tribes. Eligibility requirements for federal services will differ from program to program. Likewise, the eligibility criteria for enrollment (or membership) in a tribe will differ from tribe to tribe.

How large is the national American Indian and Alaska Native population?
According to the U.S. Bureau of the Census, the estimated population of American Indians and Alaska Natives, including those of more than one

race, as of July 1, 2007, was 4.5 million, or 1.5 per cent of the total U.S. population. In the BIA's 2005 American Indian Population and Labor Force Report, the latest available, the total number of enrolled members of the (then) 561 federally recognized tribes was shown to be less than half the Census number, or 1,978,099.

Why are American Indians and Alaska Natives also referred to as Native Americans?
When referring to American Indian or Alaska Native persons, it is still appropriate to use the terms "American Indian" and "Alaska Native." These terms denote the cultural and historical distinctions between persons belonging to the indigenous tribes of the continental United States (American Indians) and the indigenous tribes and villages of Alaska (Alaska Natives, i.e., Eskimos, Aleuts, and Indians). They also refer specifically to persons eligible for benefits and services funded or directly provided by the BIA.

The term "Native American" came into broad usage in the 1970's as an alternative to "American Indian." Since that time, however, it has been gradually expanded within the public lexicon to include *all* Native peoples of the United States and its trust territories, i.e., American Indians, Alaska Natives, Native Hawaiians, Chamorros, and American Samoans, as well as persons from Canada First Nations and indigenous communities in Mexico and Central and South America who are U.S. residents.

Are American Indians and Alaska Natives wards of the Federal Government?
No. The Federal Government is a trustee of Indian property, not a guardian of all American Indians and Alaska Natives. Although the Secretary of the Interior is authorized by law to protect, where necessary, the interests of minors and adult persons deemed incompetent to handle their affairs, this protection does not confer a guardian-ward relationship.

Are American Indians and Alaska Natives citizens of the United States?
Yes. As early as 1817, U.S. citizenship had been conferred by special treaty upon specific groups of Indian people. American citizenship was also conveyed by statutes, naturalization proceedings, and by service in the Armed Forces with an honorable discharge in World War I. In 1924, Congress extended American citizenship to all other American Indians born within the territorial limits of the United States. American Indians and Alaska Natives are citizens of the United States and of the individnal states, counties, cities, and towns where they reside. They can also become citizens of their tribes or villages as enrolled tribal members.

Do American Indians and Alaska Natives have the right to vote?
Yes. American Indians and Alaska Natives have the right to vote just as all other U.S. citizens do. They can vote in presidential, congressional, state and local, and tribal elections, if eligible. And, just as the federal government and state and local governments have the sovereign right to establish voter eligibility criteria, so do tribal governments.

Do American Indians and Alaska Natives have the right to hold public office?
Yes. American Indians and Alaska Natives have the same rights as other citizens to hold public office. Over the years, American Indian and Alaska Native men and women have held elected and appointed offices at all levels of federal, state, and local government. Charles Curtis, a member of the Kaw Tribe of Kansas, served in both houses of Congress before holding the second highest elected office in the nation – that of Vice President of the United States under President Herbert Hoover. American Indians and Alaska Natives also serve in state legislatures, state judicial systems, county and city governments, and on local school boards.

Do American Indians and Alaska Natives have special rights different from other citizens?
Any "special" rights held by federally recognized tribes and their members are generally based on treaties or other agreements between the tribes and the United States. The heavy price American Indians and Alaska Natives paid to retain certain rights of self-government was to relinquish much of their land and resources to the United States. U.S. law protects the inherent rights they did not relinquish. Among those may be hunting and fishing rights and access to sacred sites.

Do American Indians and Alaska Natives pay taxes?
Yes. They pay the same taxes as other citizens with the following exceptions:

- Federal income taxes are not levied on income from trust lands held for them by the U.S.
- State income taxes are not paid on income earned on a federal Indian reservation.
- State sales taxes are not paid by Indians on transactions made on a federal Indian reservation.
- Local property taxes are not paid on reservation or trust land.

Do laws that apply to non-Indians also apply to Indians?
Yes. As U.S. citizens, American Indians and Alaska Natives are generally subject to federal, state, and local laws. On federal Indian reservations, however, only federal and tribal laws apply to members of the tribe, unless Congress provides otherwise. In federal law, the Assimilative Crimes Act makes any violation of state criminal law a federal offense on reservations. Most tribes now maintain tribal court systems and facilities to detain tribal members convicted of certain offenses within the boundaries of the reservation.

Do all American Indians and Alaska Natives speak a single traditional language?
No. American Indians and Alaska Natives come from a multitude of different cultures with diverse languages, and for thousands of years used oral tradition to pass down familial and cultural information among generations of tribal members. Some tribes, even if widely scattered, belong to the same linguistic families. Common means of communicating between tribes allowed trade routes and political alliances to flourish. As contact between Indians and non-Indians grew, so did the necessity of learning of new languages. Even into the 20th century, many American Indians and Alaska Natives were bi- or multilingual from learning to speak their own language and English, French, Russian, or Spanish, or even another tribal language.

It has been reported that at the end of the 15th century over 300 American Indian and Alaska Native languages were spoken. Today, fewer than 200 tribal languages are still viable, with some having been translated into written form. English, however, has become the predominant language in the home, school, and workplace. Those tribes who can still do so are working to preserve their languages and create new speakers from among their tribal populations.

Must all American Indians and Alaska Natives live on reservations?

No. American Indians and Alaska Natives live and work anywhere in the United States (and the world) just as other citizens do. Many leave their reservations, communities or villages for the same reasons as do other Americans who move to urban centers: to seek education and employment. Over one-half of the total U.S. American Indian and Alaska Native population now live away from their tribal lands. However, most return home to visit relatives; attend family gatherings and celebrations; participate in religious, cultural, or community activities; work for their tribal governments; operate businesses; vote in tribal elections or run for tribal office; retire; or to be buried.

Do American Indians and Alaska Natives serve in the Armed Forces?
Yes. American Indians and Alaska Natives have a long and distinguished history of serving in our nation's Armed Forces.

During the Civil War, American Indians served on both sides of the conflict. Among the most well-known are Brigadier General Ely S. Parker (Seneca), an aide to Union General Ulysses S. Grant who recorded the terms of Confederate General Robert E. Lee's surrender at Appomattox Courthouse in Virginia that ended the war, and Brigadier General Stand Watie (Cherokee), the last of the Confederate generals to cease fighting after the surrender was concluded. American Indians also fought with Theodore Roosevelt in the Spanish-American War.

During World War I over 8,000 American Indian soldiers, of whom 6,000 were volunteers, served. Their patriotism moved Congress to pass the Indian Citizenship Act of 1924. In World War II, 25,000 American Indian and Alaska Native men and women fought on all fronts in Europe and the South Pacific earning, collectively, at least 71 Air Medals, 51 Silver Stars, 47 Bronze Stars, 34 Distinguished Flying Crosses, and two Congressional Medals of Honor. Alaska Natives also served in the Alaska Territorial Guard.

Starting in World War I and again in World War II, the U.S. military employed a number of American Indian servicemen to use their tribal languages as a military code that could not be broken by the enemy. These "code talkers" came from many different tribes, including Chippewa, Choctaw, Creek, Crow, Comanche, Hopi, Navajo, Seminole, and Sioux. During World War II, the Navajos constituted the largest component within that elite group.

In the Korean Conflict, one Congressional Medal of Honor was awarded to an American Indian serviceman. In the Vietnam War, 41,500 Indian service personnel served. In 1990, prior to Operation Desert Storm, some 24,000 Indian men and women were in the military. Approximately 3,000 served in the Persian Gulf with three among those killed in action. American Indian service personnel have also served in Afghanistan (Operation Enduring Freedom) and in Iraq (Operation Iraqi Freedom).

While American Indians and Alaska Natives have the same obligations for military service as other U.S. citizens, many tribes have a strong military tradition within their cultures, and veterans are considered to be among their most honored members.

V. The Assistant Secretary - Indian Affairs, the BIA, and the BIE

Who is the Assistant Secretary – Indian Affairs?
The Assistant Secretary - Indian Affairs (AS-IA) has responsibility for fulfilling the Interior Department's trust responsibilities to American Indian and Alaska Native tribes and individuals, as well as promoting the self-determination and economic well-being of the tribes and their members. The Assistant Secretary together with the Principal Deputy Assistant Secretary – Indian Affairs oversee the Bureau of Indian Affairs (BIA); the Bureau of Indian Education (BIE); the Office of External Affairs; the Office of Federal Acknowledgment; the Office of Regulatory Management, as well as the Deputy Assistant Secretary for Policy and Economic Development; and the Deputy Assistant Secretary – Management.

There have been 12 assistant secretaries since the Office of the Assistant Secretary – Indian Affairs was established by DOI Secretarial order in 1977. The current Assistant Secretary - Indian Affairs is Larry Echo Hawk, an enrolled member of the Pawnee Nation of Oklahoma, who was confirmed by the United States Senate on May 19, 2009. The assistant secretaries for Indian Affairs are:

Forrest J. Gerard, *Blackfeet* (1977-1980)
Thomas W. Fredericks, *Mandan-Hidatsa* (1980-1981)
Kenneth L. Smith, *Wasco* (1981-1984)
Ross O. Swimmer, *Cherokee* (1985-1989)
Dr. Eddie F. Brown, *Tohono O'odham-Yaqui* (1989-1993)
Ada E. Deer, *Menominee* (1993-1997)
Kevin Gover, *Pawnee* (1997-2001)
Neal McCaleb, *Chickasaw* (2001-2002)
David W. Anderson, *Lac Courte Oreilles Chippewa-Choctaw* (2003-2005)
Carl J. Artman, *Oneida Tribe of Wisconsin* (2007-2008)
Larry Echo Hawk, *Pawnee Nation of Oklahoma* (2009-2012)
Kevin K. Washburn, *Chickasaw Nation* (2012-2016)

What is the Bureau of Indian Affairs?
The Bureau of Indian Affairs (BIA) is the primary federal agency charged with carrying out the United States' trust responsibility to American Indian and Alaska Native people, maintaining the federal government-to-government relationship with the federally recognized Indian tribes, and promoting and supporting tribal self-determination. The bureau implements federal laws and policies and administers programs established for American Indians and Alaska Natives under the trust responsibility and the government-to-government relationship.

What is the BIA's history?
The Continental Congress governed Indian affairs during the first years of the United States – in 1775 it established a Committee on Indian Affairs headed by Benjamin Franklin. At the end of the eighteenth century, Congress transferred the responsibility for managing trade relations with the tribes to the Secretary of War by its act of August 20, 1789 (1 Stat. 54). An Office of Indian Trade was established in the War Department by an act of April 21, 1806 (2 Stat. 402) specifically to handle this responsibility below the secretarial level. It was later abolished by an act of May 6, 1822 (3 Stat. 679) which handed responsibility for all Indian matters back to the Secretary of War.

Secretary of War John C. Calhoun administratively established the BIA within the his department on March 11, 1824. Congress later legislatively established the bureau and the Commissioner of Indian Affairs post via the act of July 9, 1832 (4 Stat. 564). In 1849, the BIA was transferred to the

newly created Interior Department. In the years that followed, the Bureau was known variously as the Indian office, the Indian bureau, the Indian department, and the Indian service. The name "Bureau of Indian Affairs" was formally adopted by the Interior Department on September 17, 1947.

Since 1824 there have been 45 Commissioners of Indian Affairs of which six have been American Indian or Alaska Native: Ely S. Parker, *Seneca* (1869-1871); Robert L. Bennett, *Oneida* (1966-1969); Louis R. Bruce, *Mohawk-Oglala Sioux* (1969-1973); Morris Thompson, *Athabascan* (1973-1976); Benjamin Reifel, *Sioux* (1976-1977); and William E. Hallett, *Red Lake Chippewa* (1979-1981).

For almost 200 years—beginning with treaty agreements negotiated by the United States and tribes in the late 18th and 19th centuries, through the General Allotment Act of 1887, which opened tribal lands west of the Mississippi to non-Indian settlers, the Indian Citizenship Act of 1924 when American Indians and Alaska Natives were granted U.S. citizenship and the right to vote, the New Deal and the Indian Reorganization Act of 1934, which established modern tribal governments, the World War II period of relocation and the post-War termination era of the 1950s, the activism of the 1960s and 1970s that saw the takeover of the BIA's headquarters in Washington, D.C., to the passage of landmark legislation such as the Indian Self-Determination and Education Assistance Act of 1975 and the Tribal Self-Governance Act of 1994, which have fundamentally changed how the BIA and the tribes conduct business with each other—the BIA has embodied the trust and government-to-goverument relationships between the U.S. and the tribal nations that bear the designation "federally recognized."

What is the BIA's relationship today with American Indians and Alaska Natives?
The Bureau of Indian Affairs is a rarity among federal agencies. With roots reaching back to the the earliest days of the republic, the BIA is almost as old as the United States itself. For most of its existence, the BIA has mirrored the public's ambivalence towards the nation's indigenous people. But, as federal policy has evolved from seeking the subjugation of American Indians and Alaska Natives into one that respects tribal self-determination, so, too, has the BIA's mission evolved into one that is based on service to and partnership with the tribes.

The BIA Mission Statement, which is based on principles embodied in federal treaties, laws and policies, and in judicial decisions, clearly describes the bureau's relationship today with the American Indian and Alaska Native people:

"The BIA's mission is to enhance the quality of life, to promote economic opportunity, and to carry out the responsibility to protect and improve the trust assets of American Indians, Indian tribes and Alaska Natives. We will accomplish this through the delivery of quality services, maintaining government-to-government relationships within the spirit of self-determination."

How does the BIA carry out its mission?
Today, in keeping with their authorities and responsibilities under the Snyder Act of 1921 and other federal laws, regulations, and treaties, BIA employees across the country work with tribal governments in the administration of employment and joh training assistance; law enforcement and justice; agricultural and economic development; tribal governance; and natural resources management programs to enhance the quality of life in tribal communities. The following are just some examples of what we do:

- We provide funding to and administer government program services for the federally recognized American Indian and Alaska Native tribes located in 34 states, and through them to their approximately 1.9 million members.
- We work with tribes in the administration of approximately 56 million acres of trust land, and the natural resources therein, for the use and benefit of the tribes and individual Indians.
- We maintain five law enforcement district offices nationwide to provide police protection and investigative services for both Indian and non-Indians living in Indian Country. We also directly operate or fund tribally operated law enforcement programs, courts, and detention facilities in tribal communities across the U.S.
- We build and maintain thousands of miles of roads, as well as bridges, dams, and other physical infrastructure throughout Indian Country which benefit both Indians and non-Indians alike.
- We work with other federal, tribal, state, and local emergency personnel in responses to wildland fires and other natural disasters.
- We administer the Guaranteed Indian Loan Program to stimulate, increase, and sustain Indian entrepreneurship and business development in tribal communities.
- We assist tribes in administering federal economic development and employment and training programs.
- We administer BIA programs for tribes unable or who choose not to operate those programs.
- We directly serve thousands of individual Indian trust beneficiaries by providing assistance in the probating of Indian trust estates, administering leases approved by the Secretary of the Interior, and performing other fiduciary duties.

Until 1955, the BIA's responsibilities included providing health care services to American Indians and Alaska Natives. That year, the function was legislatively transferred as the Indian Health Service to the U.S. Public Health Service within the Department of Health, Education and Welfare, known now as the U.S. Department of Health and Human Services (DHHS), where it has remained to this day.

What is the Bureau of Indian Education?
The Bureau of Indian Education (BIE), formerly known as the Office of Indian Education Programs (OIEP), is under the Assistant Secretary – Indian Affairs. It is responsible for the line direction and management of all BIE education functions, including the formation of policies and procedures, the supervision of all program activities, and the approval of the expenditure of funds appropriated for BIE education functions.

The BIE mission, which can be found in 25 C.F.R. Part 32.3, states that the BIE is to provide quality education opportunities from early childhood through life in accordance with the tribe's needs for cultural and economic well-being in keeping with the wide diversity of Indian tribes and Alaska Native villages as distinct cultural and governmental entities. The BIE also shall manifest consideration of the whole person by taking into account the spiritual, mental, physical, and cultural aspects of the person within his or her family and tribal or village context.

The BIE school system has 184 elementary and secondary schools and dormitories located on 63 reservations in 23 states, including seven off-reservation boarding schools and 122 schools directly controlled by tribes and tribal school boards under contracts or grants with the BIE. The bureau also funds 66 residential programs for students at 52 boarding schools and at 14 dormitories housing those attending nearby tribal or public schools. The school system employs approximately 5,000 teachers, administrators, and support personnel, while an estimated 6,600 work in tribal school systems. In School Year 2006-07, the schools served almost 48,000 students.

In the area of postsecondary education, the BIE provides support to 24 tribal colleges and universities across the U.S. serving over 25,000 students, and directly operates two institutions of higher learning: the Haskell Indian Nations University (HINU) in Lawrence, Kansas, and the Southwest Indian Polytechnic Institute (SIPI) in Albuquerque, New Mexico. It also operates higher education scholarship programs for American Indians and Alaska Natives.

There have been three major legislative actions that restructured the Bureau of Indian Affairs with regard to education since the Snyder Act of 1921. The Indian Reorganization Act of 1934 introduced the teaching of Indian history and culture in BIA schools, which contrasted with the federal policy at the time of acculturating and assimilating Indian people through the BIA boarding school system. The Indian Self-Determination and Education Assistance Act of 1975 (P.L. 90-638) gave authority to the tribes to contract with the BIA for the operation of local schools and to determine education programs suitable for their children. The Education Amendments Act of 1978 (P.L. 95-561) and further technical amendments (P.L. 98-511, 99-89, and 100-297) provided funds directly to tribal schools, empowered Indian school boards, permitted local hiring of teachers and staff, and established a direct line of authority between the OIEP Director and the Assistant Secretary – Indian Affairs.

In 2001, Congress passed the No Child Left Behind Act (P.L. 107-110) to bring additional requirements of accountability and academic achievement for supplemental program funds provided by the U.S. Department of Education through the OIEP to the schools. In 2006, the OIEP was formally elevated to bureau status by secretarial action and renamed the Bureau of Indian Education.

For additional information
To obtain contact information for the Federally recognized tribes, click on the "Tribal Leaders Directory" link. For information about tracing American Indian or Alaska Native ancestry to any of the federally recognized tribes, click on the "Trace Indian Ancestry" link. For information about the U.S. Indian Health Service, visit www.ihs.gov or call the IHS Public Affairs Office at (301) 443-3593.

Choose A Category

- - Click To Change Category - -

Regions

Click the map to view our regions and their office contact information and the tribes served by that region

Mailing Address:
Office of Public Affairs
Indian Affairs
MS-3658 MIB
1849 C Street, N.W.
Washington, D.C. 20240

Telephone: (202) 208-3710
Telefax: (202) 501-1516

BIA Website

- USA.gov
- |
- USAJobs.gov
- |
- DOI.gov

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Top 10 ICWA Myths
Fact Sheet

Dispelling Myths About the Indian Child Welfare Act of 1978 (ICWA)

Myth 1: ICWA was overturned by the U.S. Supreme Court in *Adoptive Couple v. Baby Girl.*

False. *This decision did not overturn ICWA.* ICWA still remains law and still applies to private adoptions and child welfare cases. However, the decision limited ICWA's protections for *unwed fathers without custody* when their children are *voluntarily placed for adoption* and changed how ICWA's placement preferences are applied in *voluntary adoptions.*

Myth 2: ICWA is a race-based law.

False. ICWA, like other federal Indian legislation, is based on the **unique political status of tribes and Indian people**, not race. This status—established by Congress, the Constitution, statutes, and treaties—has been affirmed and reaffirmed by U.S. Supreme Court decisions for 200 years.

Myth 3: ICWA applies in divorce proceedings and custody battles between two biological parents.

False. ICWA only applies in **child welfare proceedings** and **adoption proceedings**.

Myth 4: ICWA applies to all children who identify as Native American.

False. ICWA covers any child who is either a **member** of a federally recognized tribe/Alaska Native village or is **eligible for membership** in a federally recognized tribe/Alaska Native village and is the biological child of a member of a federally recognized tribe/Alaska Native village.

Myth 5: ICWA ignores the best interests of Indian children.

False. ICWA is designed to promote the best interest and unique needs of the Indian child. ICWA is not just considered good practice for Native children by experts and practitioners, but the principles and processes ICWA embodies were recently described by 18 national child welfare agencies as **the "gold standard" for child welfare practice for all children**.

Myth 6: ICWA favors Indian family members over non-Indian family members.

False. Nowhere in ICWA does it indicate placement preferences favor placement with a Native relative over placement with a non-Native relative.

Myth 7: ICWA only requires efforts to protect Indian children after they are removed from their home.

False. ICWA requires something called "**active efforts**". This means that the state must work closely with the family to ensure they receive any services necessary **before a child is removed** to prevent removal from the home, or—if removal was necessary—they receive services and support so that the child can be safely returned.

Myth 8: ICWA applies only to involuntary proceedings.

False. ICWA was designed to also protect Indian children in voluntary proceedings. While some of the provisions of ICWA do not apply in voluntary proceedings, **many important provisions still apply, including those provisions that speak specifically to procedures for voluntary adoptions and foster care placement.**

Top 10 ICWA Myths
Fact Sheet

A fact sheet for the National Indian Child Welfare Association

Myth 9: ICWA funnels Indian children into placements on reservations that are bad places for children.

False. ICWA has no such requirements regarding reservations. Unfortunately, issues of child abuse and neglect—and the need to place children into foster care that result—are a nationwide problem, and not relegated to any specific community. In fact, NPR recently reported that when it comes to child maltreatment, "**statistically, tribes are no different from many other communities nationwide.**"

Myth 10: ICWA was important in the 1970s but it's no longer needed now.

False. ICWA still provides much-needed protections for Indian children and families. Statistics tell us that Indian children today face many of the same issues as when ICWA was enacted.

The Indian Child Welfare Act of 1978: Then & Now

ICWA Then	ICWA Now
• Congress passed ICWA in response to the fact that nearly one in three Indian children were removed from their homes by both public and private agencies.	• Native children are removed from their homes at 2–3 times the rate of their white counterparts and often are not placed with relatives or other Indian families, even when their placements are available and appropriate.
• When children were removed, they almost always were placed outside of their culture and tribal community, with devastating consequences.	• In private adoption systems around the country, Native children are being placed in homes who focus on financial incentives or are operating from narrow understandings of what the law requires.
	• Native families are the most likely to have children removed from their homes as a first resort, and the least likely to be offered family support interventions intended to keep children safe in the home.

These abusive practices have decreased since the passage of ICWA, but are still widespread today.

NICWA

National Indian Child Welfare Association

Protecting Our Children • Preserving Our Culture

NICWA works to support the safety, health, and spiritual strength of Native children along the broad continuum of their lives. We promote building tribal capacity to prevent child abuse and neglect through positive systems change at the state, federal, and tribal level.

Our Vision — Every Indian child must have access to community-based, culturally appropriate services that help them grow up safe, healthy, and spiritually strong—free from abuse, neglect, sexual exploitation, and the damaging effects of substance abuse.

Our Mission — NICWA is dedicated to the well-being of American Indian and Alaska Native children and families.

To learn more about NICWA, visit www.nicwa.org.

Adoptive Couple v. Baby Girl, 404 S.C. 483

Copy Citation

Supreme Court of South Carolina

July 17, 2013, Decided

No Number in Original

Reporter

404 S.C. 483 | 746 S.E.2d 51 | 2013 S.C. LEXIS 176 | 2013 WL 3752641

Adoptive Couple, Appellants, v. Baby Girl, a minor child under the age of fourteen years, Birth Father, and the Cherokee Nation, Respondents.

Subsequent History: Rehearing denied by, Petition denied by **Adoptive Couple v. Baby Girl**, 404 S.C. 490, 746 S.E.2d 346, 2013 S.C. LEXIS 178 (S.C., 2013)
Stay denied by, Motion granted by Birth Father v. Adoptive Couple, 134 S. Ct. 32, 186 L. Ed. 2d 946, 2013 U.S. LEXIS 5016 (U.S., Aug. 2, 2013)

Prior History: Appellate Case No. 2011-205166
Adoptive Couple v. Baby Girl, 133 S. Ct. 2552, 186 L. Ed. 2d 729, 2013 U.S. LEXIS 4916 (U.S., 2013)

Core Terms

Girl, Birth, terminated, parental rights, custody, family court, proceedings, state law, preferences, placement

Case Summary

Overview

HOLDINGS: [1]-A birth father's (BF) motion to remand a case involving adoption of his baby girl to the family court to address the matter de novo was denied because the court was able to resolve the issues of law without a remand and it would cause further delay and emotional distress; [2]-25 U.S.C.S. § 1912(f) and (d) of the federal Indian Child Welfare Act, 25 U.S.C.S. §§ 1901-1923, did not apply because the BF had abandoned the baby before her birth and never had custody of her; [3]-25 U.S.C.S. § 1915(a) did not bar adoption of the Indian baby girl by a non-Indian adoptive couple because there were no other eligible candidates who sought to adopt her; [4]-As the BF's consent was not required under S.C. Code Ann. § 63-9-310(A)(5) (2010), the parental termination provision of S.C. Code Ann. § 63-7-2570 was not necessary to terminate his rights pursuant to S.C. Code Ann. § 63-9-760.

Outcome

BF's motion to remand to family court denied; matter remanded with instructions to enter order approving adoption and terminating BF's parental rights.

LexisNexis® Headnotes

Family Law > Child Custody > Jurisdiction > Continuing Jurisdiction
Family Law > Child Custody > Jurisdiction > Exclusive Jurisdiction

HN1 Once a custody decree has been entered, the continuing jurisdiction of the decree state is exclusive and exclusive continuing jurisdiction is not affected by the child's residence in another state. *Shepardize - Narrow by this Headnote*

Family Law > ... > Termination of Rights > Involuntary Termination > Burdens of Proof
Family Law > ... > Termination of Rights > Involuntary Termination > Procedure
Governments > Native Americans > Indian Child Welfare Act

HN2 25 U.S.C.S. § 1912(f), which bars involuntary termination of a parent's rights in the absence of a heightened showing that serious harm to the Indian child is likely to result from the parent's "continued custody" of the child, does not apply when the relevant parent never had custody of the child. Section 1912(d), which conditions involuntary termination of parental rights with respect to an Indian child on a showing that remedial efforts have been made to prevent the "breakup of the Indian family," is inapplicable when the parent abandoned the Indian child before birth and never had custody of the child. *Shepardize* - Narrow by this Headnote

Family Law > Adoption > Indian Child Welfare Act
Family Law > Adoption > Adoption Procedures > General Overview
Governments > Native Americans > Indian Child Welfare Act

HN3 25 U.S.C.S. § 1915(a), which provides placement preferences for the adoption of Indian children, does not bar a non-Indian family from adopting an Indian child when no other eligible candidates have sought to adopt the child. *Shepardize* - Narrow by this Headnote

Family Law > Adoption > Indian Child Welfare Act
Family Law > Adoption > Adoption Procedures > General Overview
Governments > Native Americans > Indian Child Welfare Act

HN4 The United States Supreme Court unequivocally states that 25 U.S.C.S. § 1915(a)'s preferences are inapplicable in cases where no alternative party has formally sought to adopt the child. *Shepardize* - Narrow by this Headnote

Family Law > Adoption > Indian Child Welfare Act
Family Law > Adoption > Adoption Procedures > General Overview
Governments > Native Americans > Indian Child Welfare Act

HN5 The clear import of the United States Supreme Court is to foreclose successive 25 U.S.C.S. § 1915 petitions, for litigation must have finality, and it is the role of a state court to ensure "the sanctity of the adoption process" under state law is "jealously guarded." *Shepardize* - Narrow by this Headnote

Family Law > Adoption > Consent > Biological Parents

HN6 S.C. Code Ann. § 63-9-310(A)(5) (2010) provides consent is required of an unwed father of a child placed with the prospective adoptive parents six months or less after the child's birth only if: (a) the father openly lived with the child or the child's mother for a continuous period of six months immediately preceding the placement of the child for adoption, and the father openly held himself out to be the father of the child during the six months period; or (b) the father paid a fair and reasonable sum, based on the father's financial ability, for the support of the child or for expenses incurred in connection with the mother's pregnancy or with the birth of the child, including, but not limited to, medical, hospital, and nursing expenses. *Shepardize* - Narrow by this Headnote

Family Law > Adoption > Adoption Procedures > General Overview
Family Law > ... > Termination of Rights > Involuntary Termination > General Overview

HN7 S.C. Code Ann. § 63-9-760 states the effect of an adoption is, in part, that the biological parents of the adoptee are relieved of all parental responsibilities and have no rights over the adoptee. Once a final adoption decree is entered, therefore, the relationship of parent and child and all the rights, duties, and other legal consequences of the natural relationship of parent and child will exist between the adoptees and the adopted child. § 63-9-760(A). *Shepardize* - Narrow by this Headnote

Judges: Jean H. Toal, C.J., John W. Kittredge, J., Kaye G. Hearn, J., Costa M. Pleicones, J., Donald W. Beatty, J.

Opinion

[484] ORDER

This case reaches this Court again from the decision of the Supreme Court of the United States, reversing our prior decision, ***Adoptive Couple v. Baby Girl***, 398 S.C. 625, 731 S.E.2d 550 (2012), and remanding the case for further proceedings "not inconsistent with" its opinion. ***Adoptive Couple v. Baby Girl***, 570 U.S. at ___, 133 S. Ct. 2552, 186 L. Ed. 2d 729, 744 (U.S. 2013). On June 28, 2013, the Supreme Court expedited the issuance of the mandate, which transferred jurisdiction to this Court on July 5, 2013. [1] *See* **Adoptive Couple v. Baby Girl**, No. 12-399 (U.S. June 28, 2013) (order expediting mandate issuance). On July 3, 2013, the Respondent Birth Father (Birth Father) filed a Motion to Remand this case to the Family Court to address the matter *de novo* with explicit instructions regarding how to proceed. An Emergency Motion for Final Order Following Remand with this Court filed by Appellants (Adoptive Couple) followed, along with a petition to appear as amica curiae filed by Birth Mother. [2] On July 8, 2013, Adoptive Couple filed a Return to **[485]** Birth Father's Motion to Remand. [3] On July 12, 2013, Respondent Cherokee Nation notified this Court via letter that it was joining Birth Father's request to remand this case to the Family Court. [4]

In his Motion to Remand, Birth Father raises a number of "new" issues he claims should be resolved by the Family Court in this case, in particular: "(1) [whether] the case should be transferred to Oklahoma where Baby Girl has lived for 18 months, where the relevant witnesses are all located, and where competing adoption petitions are pending; (2) whether, on the current record, [Birth] Father's parental rights may be terminated, or whether it is in Baby Girl's best interest[s] for her to remain with the natural parent who has cared for her and with whom she has bonded over those 18 months; and (3) whether, in light of the competing adoption petitions, the ICWA placement preferences preclude adoption of Baby Girl by the self-styled Adoptive Couple." We deny Birth Father's motion in its entirety. Because we can resolve the issues of law here, nothing would be accomplished by a *de novo* hearing in the Family Court, except further delay and heartache for all involved—especially Baby Girl.

A majority of the Supreme Court has cleared the way for this Court to finalize Adoptive Couple's adoption of Baby Girl. In denying Adoptive Couple's petition for adoption and awarding custody to Birth Father, we held that Birth Father's parental rights could not be terminated under the federal Indian Child Welfare Act, 25 U.S.C. §§ 1901-23 (the

ICWA). *See* ***Adoptive Couple v. Baby Girl***, 398 S.C. at 644, 731 S.E.2d at 560. The Supreme Court has unequivocally found that the ICWA does not mandate custody be awarded to Birth Father, thereby reversing our previous holding:

Contrary to the State Supreme Court's ruling, we hold that ***HN2*** 25 U.S.C. § 1912(f)—which bars involuntary termination of a parent's rights in the absence of a heightened showing that serious harm to the Indian child is likely to result from **[486]** the parent's "continued custody" of the child—does not apply when, as here, the relevant parent never had custody of the child. We further hold that § 1912(d)—which conditions involuntary termination of parental rights with respect to an Indian child on a showing that remedial efforts have been made to prevent the "breakup of the Indian family"—is inapplicable when, as here, the parent abandoned the Indian child before birth and never had custody of the child. Finally, we clarify that ***HN3*** § 1915(a), which provides placement preferences for the adoption of Indian children, does not bar a non-Indian family like Adoptive Couple from adopting an Indian child when no other eligible candidates have sought to adopt the child.

570 U.S. ___, slip op. at 1-2.

The Supreme Court has articulated the federal standard, and its application to this case is clear: the ICWA does not authorize Birth Father's retention of custody. Therefore, we reject Birth Father's argument that § 1915(a)'s placement preferences could be an alternative basis for denying the Adoptive Couple's adoption petition. ***HN4*** The Supreme Court majority opinion unequivocally states:

> § 1915(a)'s preferences are inapplicable in cases where no alternative party has formally sought to adopt the child . . . .

In this case, Adoptive Couple was the only party that sought to adopt Baby Girl in the Family Court or the South Carolina Supreme Court. [Birth] Father is not covered by § 1915(a) because he did not seek to *adopt* Baby Girl; instead, he argued that his parental rights should not be terminated in the first place. Moreover, Baby Girl's paternal **[487]** grandparents never sought custody of Baby Girl. Nor did other members of the Cherokee Nation or "other Indian families" seek to adopt Baby Girl, even though the Cherokee Nation had notice of—and intervened in—the adoption proceedings.

570 U.S. ___, slip op. at 15-16 (emphasis in original) (internal citations and footnotes omitted) (alteration added). As the opinion suggests, at the time Adoptive Couple sought to institute adoption proceedings, they were the only party interested in adopting her. Because no other party has sought adoptive placement in this action, § 1915 has no application in concluding this matter, nor may that section be invoked at the midnight hour to further delay the resolution of this case. We find ***HN5*** the clear import of the Supreme Court's majority opinion to foreclose successive § 1915 petitions, for litigation must have finality, and it is the role of this court to ensure "the sanctity of the adoption process" under state law is "jealously guarded." *Gardner v. "Baby Edward"*, 288 S.C. 332, 334, 342 S.E.2d 601, 603 (1986).

With the removal of the perceived federal impediment to Adoptive Couple's adoption of Baby Girl, we turn to our state law. In our previous decision, we held that, under state law, Birth Father's consent to the adoption was not required under section 63-9-310(A)(5) of the South Carolina Code. *See* ***Adoptive Couple v. Baby Girl***, 398 S.C. at 643 n. 19, 731 S.E.2d at 560 n. 19 ("Under state law, Father's consent to the adoption would not have been required."). ***HN6*** That section provides consent is required of an unwed father of a child placed with the prospective adoptive parents six months or less after the child's birth only if:

(a) the father openly lived with the child or the child's mother for a continuous period of six months immediately preceding the placement of the child for adoption, and the father openly held himself out to be the father of the child during the six months period; or

(b) the father paid a fair and reasonable sum, based on the father's financial ability, for the support of the child or for expenses incurred in connection with the mother's pregnancy or with the birth of the child, including, but not limited to, medical, hospital, and nursing expenses.

[488] S.C. Code Ann. § 63-9-310(A)(5) (2010). ***6*** Because Birth Father's consent is not required under the statute, we need not turn to our parental termination provision, section 63-7-2570 of the South Carolina Code, to terminate Birth Father's parental rights, as the effect of a final adoption decree will be to automatically terminate any legal or parental right he has with respect to Baby Girl. *See* ***HN7*** S.C. Code Ann. § 63-9-760 (stating the effect of an adoption is, in part, that "the biological parents of the adoptee are relieved of all parental responsibilities and have no rights over the adoptee"); *S.C. Dep't of Soc. Servs. v. Parker*, 275 S.C. 176, 179, 268 S.E.2d 282, 284 (1980) (noting a father who has no right to object to the adoption is not permitted to "block a termination of his purported parental rights"). Once the final adoption decree is entered, therefore, "the relationship of parent and child and all the rights, duties, and other legal consequences of the natural relationship of parent and child" will exist between Adoptive Couple and Baby Girl. S.C. Code Ann. § 63-9-760(A).

We think the Supreme Court plainly contemplated an expeditious resolution of this case, and we believe the facts of this case require it. There is absolutely no need to compound any suffering that Baby Girl may experience through continued litigation. As it stands, Adoptive Couple is the only party who has a petition pending for the adoption of Baby Girl, and thus, theirs is the only application that should be considered at this stage.

For these reasons, we remand this case to the Family Court for the prompt entry of an order approving and finalizing Adoptive Couple's adoption of Baby Girl, and thereby terminating Birth Father's parental rights, in accordance with section 63-9-750 of the South Carolina Code. Upon the entry of the Family Court's order, custody of Baby Girl shall be transferred to Adoptive Couple. If additional motions are pending or are filed prior to the entry of the order finalizing the adoption, the family court shall promptly dispose of all **[489]** such motions and matters so as not to delay the entry of the adoption and the return of Baby Girl to the Adoptive Couple. Further, if any petition for rehearing is to be filed regarding this Order, it shall be served and filed within five (5) days of the date of this Order.

/s/ Jean H. Toal C.J.

/s/ John W. Kittredge J.

/s/ Kaye G. Hearn J.

I agree that we should remand this matter to the family court for further proceedings consistent with the United States Supreme Court's ruling. As I understand that decision, the Court held that we erred when we held that two provisions of the Indian Child Welfare Act (ICWA) ***7*** barred the termination of Father's parental rights. ***Adoptive Couple v. Baby Girl***, 570 U.S. ___, 133 S. Ct. 2552, 186 L. Ed. 2d 729, 741, 743 (U.S. 2013). Further, the majority indicated we erred when we suggested that the adoptive preference provisions of ICWA ***8*** would have been applicable if Father's parental rights had been terminated because, as the Court explained, no person entitled to invoke these statutory preferences was then seeking to adopt the child in the South Carolina proceedings. Nothing in the majority opinion suggests, much less mandates, that this Court is authorized to reject the jurisdiction of other courts based upon a 1989 case deciding jurisdiction under the Uniform Child Custody Jurisdiction Act (UCCJA), ***9*** nor obligated to order that the adoption of this child by Adoptive Parents be immediately approved and finalized. Further, the majority orders the immediate transfer of the child, no longer an infant or toddler, upon the filing of the family court's **[490]** adoption order, without regard to whether such an abrupt transfer would be in the child's best interest.

Much time has passed, and circumstances have changed. I have no doubt that all interested parties wish to have this matter settled as quickly as possible, keeping in mind that what is ultimately at stake is the welfare of a little girl, and that of all who love her. I would remand but I would not order any specific relief at this juncture, as I believe this is a situation where the decisions that are in the best interests of this child, given all that has happened in her short life, must be sorted out in the lower court(s).

/s/ Costa M. Pleicones J.

/s/ Donald W. Beatty J.

Columbia, South Carolina

July 17, 2013

Footnotes

[1] Despite our understanding that numerous petitions for adoption have been filed in Oklahoma and the Cherokee Tribal Court, we retain jurisdiction to finally resolve Baby Girl's adoption in the courts of South Carolina by virtue of the Supreme Court's transfer of jurisdiction to this Court. We note further that an Oklahoma court already declined to exercise jurisdiction in this case. *See* ***Adoptive Couple v. Baby Girl***, 398 S.C. at 643-44, 731 S.E.2d at 559. Moreover, the adoption has been pending in South Carolina since Adoptive Couple instituted the proceedings. *See* *Knoth v. Knoth*, 297 S.C. 460, 464, 377 S.E.2d 340, 342-43 (1989) (stating ***HN1*** "once a custody decree has been entered, the continuing jurisdiction of the decree state is exclusive" and "[e]xclusive continuing jurisdiction is not affected by the child's residence in another state" (citations omitted)).

[2] We granted Birth Mother's request on July 8.

[3] Likewise, counsel for the Guardian *ad litem* filed a responsive brief on July 8.

[4] On July 15, 2013, Birth Father filed a Return to Adoptive Couple's Emergency Motion for Final Order and a Reply to Adoptive Couple's Return to Motion to Remand.

[5] In making this argument, Birth Father relies on the following language in Justice Sotomayor's dissent:

> [T]he majority does not and cannot foreclose the possibility that on remand, Baby Girl's paternal grandparents or other members of the Cherokee Nation may formally petition for adoption of Baby Girl. If these parties do so, and if on remand . . . [Birth] Father's parental rights are terminated so that an adoption becomes possible, they will then be entitled to consideration under the order of preference established in § 1915. The majority cannot rule prospectively that the § 1915 would not apply to an adoption petition that has not yet been filed.
>
> 570 U.S. ___, slip op. at 25 (Sotomayor, J., dissenting) (alterations added).

[6] Thus, Birth Mother's consent is the only consent required under the statute, and she gave her consent in accord with the requirements of our adoption provisions. *See* S.C. Code Ann. §§ 63-9-310(A)(3); 63-9-330; 63-9-340. In fact, in her amica curiae brief, she avers that she will revoke her consent to the adoption of Baby Girl by any other prospective adoptive parents.

[7] 25 U.S.C. §§ 1912(d) and 1912(f).

[8] 25 U.S.C. § 1915(a).

[9] *Knoth v. Knoth*, 297 S.C. 460, 377 S.E.2d 340 (1989) cited in footnote 1, *supra*. I note that in 2008, the UCCJA was replaced by the Uniform Child Custody Jurisdiction and Enforcement Act, S.C. Code Ann. §§63-15-300 *et seq.*, which specifically provides that it "does not govern an adoption proceeding. . . ." § 63-15-304; *see also* § 63-15-306(A)(ICWA trumps state law concerning custody of an Indian child).

Thompson v. Fairfax County Dep't of Family Servs., 2014 Va. LEXIS 73

Copy Citation

Supreme Court of Virginia

April 21, 2014, Decided

Record Number 131577

Reporter
2014 Va. LEXIS 73

, ET AL. v. FAIRFAX COUNTY DEPARTMENT OF FAMILY SERVICES, ET AL.

Prior History: **[1]** From the Court of Appeals of Virginia.
Thompson v. Fairfax County Dep't of Family Servs., 62 Va. App. 350, 747 S.E.2d 838, 2013 Va. App. LEXIS 244 (2013)

Core Terms

good cause, termination of parental rights, circuit court, juvenile, advanced stage, receive notice, best interest, Violations, Aggrieved, days

Counsel: Tyrus H. Thompson; Mark D. Fiddler (Fiddler Law Office, P.A.); Robert H. Klima for Appellants.

Daniel B. Schy (Richmond Schy, PLLC) and Constantinos D. DePountis (Standing Tock Sioux Tribe) for Appellee.

Opinion

Assignment of Error

1. Constitutional Violations. The Court of Appeals erred in: (a) failing to interpret and apply 25 U.S.C. Sec. 1911(b) in a manner that avoids violating the Equal Protection Clause and (b) rejecting the Existing Indian Family Exception.

2. Best Interests. The Court of Appeals erred in holding that: (a) an Indian child's "traditional best interest" may not be considered in determining whether "good cause" exists to deny transfer under 25 U.S.C. Sec. 1911(b); (b) "good cause" exists to deny transfer under 25 U.S.C. Sec. 1911(b) only if the transfer causes, or presents a substantial risk of causing, immediate and serious emotional or physical damage to the Indian child; (c) a transfer under 25 U.S.C. Sec. 1911(b) may effectively bifurcate jurisdiction and custody; and (d) "good cause" did not exist to deny transfer under 25 U.S.C. Sec. 1911(b).

3. Advanced Stage. The Court of Appeals erred in holding that: (a) a termination of parental **[2]** rights proceeding preceded by a foster care placement proceeding is a separate proceeding under 25 U.S.C. Sec. 1911(b); (b) a circuit court appeal of a final juvenile court termination of parental rights order is a "termination of parental rights" proceeding under 25 U.S.C. Sec. 1903(1)(ii); (c) despite receiving notice of a juvenile court hearing, skipping the hearing and moving to transfer the proceeding approximately three months after receiving notice of a circuit court appeal, and two days before the appeal, is acting without "undue delay;" (d) two days before a circuit court appeal of a juvenile court order is not an "advanced stage" of the proceeding; and (e) "good cause" did not exist to deny transfer under 25 U.S.C. Sec. 1911(b).

4. Standard of Review and Burden of Proof. The Court of Appeals erred in holding that: (a) a transfer decision under U.S.C. Sec. 1911(b) is reviewed under an abuse of discretion standard and (b) a party opposing transfer under 25 U.S.C. Sec. 1911(b) must prove by "clear and convincing evidence" that "good cause" exists to deny the transfer.

5. Jurisdiction. The Court of Appeals erred in holding that: (a) the tribal court has jurisdiction over all parties, **[3]** including the non-Indian biological father; (b) the Tribe did not effectively decline jurisdiction; and (c) "good cause" did not exist to deny transfer under 25 U.S.C. Sec. 1911(b) .

6. Aggrieved Party. The Court of Appeals erred in assuming that Foster-Adoptive Parents are not aggrieved parites for purposes of appeal.

Date Granted

04-21-2014

Dinwiddie Dep't of Soc. Servs. v. Nunnally, 288 Va. 214

Copy Citation

Supreme Court of Virginia

October 31, 2014, Decided

Record No. 131584

Reporter
288 Va. 214 | 764 S.E.2d 526 | 2014 Va. LEXIS 160

Dinwiddie Department of Social Services, Appellant, against Renee Bagley Nunnally, et al., Appellees.

Prior History: Upon an appeal from a judgment rendered by the Court of Appeals of Virginia. Court of Appeals Nos. 1947-12-2, 1948-12-2, and 1949-12-2.
Nunnally v. Dinwiddie Dep't of Soc. Servs., 2013 Va. App. LEXIS 253 (Va. Ct. App., Sept. 10, 2013)

Core Terms

best interest, tribal court, good cause, Appeals, Tribe, parental rights, transferred, terminate, trial court, majority opinion, tribal, state court, jurisdictional, proceedings, best interests of the child, post-transfer, serious emotional, circuit court, foster care, approving, issues

Judges: JUSTICE MILLETTE, with whom CHIEF JUSTICE KINSER and JUSTICE POWELL join, concurring in part and dissenting in part.

Opinion

[214] Upon consideration of the record, briefs, and argument of counsel, the Court is of the opinion that for the reasons stated in the unpublished memorandum opinion of the Court of Appeals (Renee Bagley Nunnally, et al. v. Dinwiddie Department of Social Services, Record Nos. 1947-12-2, 1948-12-1, 1949-12-2) in this matter dated September 10, 2013, the judgment of the Court of Appeals will be affirmed.

Renee Bagley Nunnally ("mother") and Timothy B. Nunnally ("father") are the parents of young twin girls. The mother is a member of the Citizen Potawatomi Nation ("Tribe"), a federally recognized Indian Tribe that is located in Shawnee, Oklahoma. The father is not of Indian descent and is not a member of any tribe. The children are either members of, or eligible to be members of, the Tribe.

The children were removed from their parents' home and placed in the temporary custody of a relative in November 2010, while services were offered to their parents. However, the parents failed to comply with the requirements set by the Juvenile and Domestic Relations District Court for Dinwiddie County ("J&DR court"), and custody of the children was transferred to the Dinwiddie Department of Social Services ("DDSS") in April 2011.

In June 2011, DDSS filed petitions for foster care plans with the goal of adoption and to terminate the Nunnallys' parental rights. The Tribe then filed a motion to intervene, which was granted on September 16, 2011. The Tribe also filed a motion to transfer jurisdiction to tribal court **[215]** under **the Indian Child Welfare Act of 1978** (**"ICWA"**), which the J&DR court considered on October 14, 2011, along with DDSS' petitions to terminate the mother and father's parental rights. The J&DR court denied the petitions to terminate parental rights, apparently due to the unavailability of a required expert witness.

DDSS and the guardian ad litem appointed to represent the children filed timely appeals in the Circuit Court of Dinwiddie County ("trial court") on November 1, 2011. The Tribe filed a notice of intervention and a motion to transfer the case to tribal court on December 12, 2011. Both parents also filed separate motions seeking to transfer the matter to tribal court.

The trial court held a hearing on the motion to transfer, during which DDSS and the guardian ad litem both objected to transferring the case to tribal court. On August 29, 2012, the trial court held that good cause existed not to transfer the proceeding to tribal court. The trial court determined that the case was at an advanced stage when the transfer petition was received. The trial court also found that the case could not adequately be presented in tribal court without undue hardship to the parties or witnesses, and that to remove the children from their current foster home would be extremely harmful to them. The trial court subsequently terminated the mother and father's parental rights.

The mother and father filed separate appeals to the Court of Appeals of Virginia challenging the trial court's holding that good cause existed not to transfer and the trial court's decision to terminate their parental rights.

The Court of Appeals issued an unpublished memorandum opinion in which it reversed the judgment of the trial court on the motion to transfer, vacated the order terminating the parental rights of the mother and father, and remanded for further proceedings consistent with the published opinion it simultaneously released in the case of Thompson v. Fairfax County Dep't of Family Servs., 62 Va. App. 350, 747 S.E.2d 838 (2013). In Thompson, the Court of Appeals rejected the traditional "best interests of

the child test" in favor of the more limited test involving an immediate serious emotional or physical harm, or a substantial risk of such harm, to a child arising from the transfer to a tribal court. Id. at 374-75, 747 S.E.2d at 850.

We affirm the Court of Appeals' decision to reverse and remand this matter to the trial court in light of the standards articulated in Thompson.

This order shall be certified to the Court of Appeals of Virginia and to the Circuit Court of Dinwiddie County, and shall be published in the Virginia Reports.

Concur by: MILLETTE (In Part)

Dissent by: MILLETTE (In Part)

Dissent

[216] JUSTICE MILLETTE, with whom CHIEF JUSTICE KINSER and JUSTICE POWELL join, concurring in part and dissenting in part.

The majority opinion disregards precedent from the Supreme Court of the United States, substitutes its judgment for that of Congress, and embraces an entirely novel analysis that is, upon inspection, indistinguishable from a standard that the majority opinion concedes is inappropriate. While I join in that portion of the majority opinion directing remand of this matter to the trial court, for the reasons explained below, I respectfully dissent from that portion approving the incorporation of a modified "best interests of the child" consideration into the purely jurisdictional "good cause" analysis in considering whether a matter should be transferred to a tribal court.

I. Discussion

A. **The Indian Child Welfare Act**

At issue is **the Indian Child Welfare Act of 1978** (the "**ICWA**"), 25 U.S.C. § 1901 et seq., passed by the United States Congress over 35 years ago. The **ICWA** is designed to "protect the best interests of Indian children." 25 U.S.C. § 1902. As relevant to this appeal, the **ICWA** accomplishes this goal by providing for tribal court jurisdiction over child custody proceedings involving an Indian child pursuant to a "dual jurisdictional scheme" set forth in 25 U.S.C. § 1911. Mississippi Band of Choctaw Indians v. Holyfield, 490 U.S. 30, 36, 109 S. Ct. 1597, 104 L. Ed. 2d 29 (1989).

Section 1911(a) "establishes exclusive jurisdiction in the tribal courts for proceedings concerning an Indian child who resides or is domiciled within the reservation of such tribe, as well as for wards of tribal courts regardless of domicile." Holyfield, 490 U.S. at 36 (emphasis added) (internal quotation marks omitted). Section 1911(a) does not apply to this case.

Section 1911(b) "creates concurrent but presumptively tribal jurisdiction in the case of [Indian] children not domiciled on the reservation" for proceedings involving foster care placement and termination of parental rights. Holyfield, 490 U.S. at 36 (emphasis added). Section 1911(b) applies to this case.

Section 1911(b) permits "any [s]tate court proceeding for the foster care placement of, or termination of parental rights to, an Indian child" to be "transfer[red] to the jurisdiction of the tribe." Four statutory requirements must be met for such a transfer to occur: (1) "either parent[,] or **[217]** the Indian custodian[,] or the Indian child's tribe" must petition for a transfer; (2) neither parent can object to the transfer; (3) the tribal court to which the case would be transferred must not decline the transfer; and (4) there must be an "absence of good cause to the contrary." 25 U.S.C. § 1911(b). Only this fourth requirement is at issue in this appeal, and the majority opinion errs in approving the Court of Appeals' determination of what considerations are appropriate for the "good cause" analysis.

B. The Majority Opinion Errs by Incorporating a "Best Interests of the Child" Consideration into the "Good Cause" Analysis

Today, the majority opinion summarily approves of the Court of Appeals' explanation of what a court should consider in the "good cause" analysis, as set forth in Thompson v. Fairfax County Department of Family Services, 62 Va. App. 350, 747 S.E.2d 838 (2013). I disagree with one significant aspect of the Thompson decision. The Court of Appeals incorporated a modified "best interests of the child" consideration into the purely jurisdictional "good cause" analysis. Id. at 373-77, 747 S.E.2d at 850-52. In particular, the majority opinion approves of a court's consideration of whether "clear and convincing evidence [establishes] that transferring the case to a tribal court would cause, or would present a substantial risk of causing, immediate serious emotional or physical damage to the child." Id. at 376, 747 S.E.2d at 851.

Incorporating this consideration into the Section 1911(b) "good cause" analysis is error for the following reasons.

1. A "Best Interests" Consideration Contravenes United States Supreme Court Precedent

The Supreme Court of the United States has noted that 25 U.S.C. § 1911 is a jurisdictional statute. Holyfield, 490 U.S. at 36 n.14. As such, Section 1911(b) only allows a state court to determine "who should make the [foster care or parental rights] determination concerning [Indian] children." Id. at 53. Notably, a state court cannot use Section 1911(b) to decide substantive issues, such as "what the outcome of [the foster care or parental rights] determination should be." Id. Instead, a state court "must defer to the experience, wisdom, and compassion of the" **[218]** tribal court, because it is the tribal court that must rule on the substantive issues once jurisdiction is transferred. Id. at 53-54 (internal quotation marks omitted); see also Duncan Energy Co. v. Three Affiliated Tribes of the Fort Berthold Reservation, 27 F.3d 1294, 1301 (8th Cir. 1994) ("Absent any indication of bias, we will not presume the Tribal Court to be anything other than competent and impartial.").

The "best interests" consideration contravenes this direction by allowing a state court to second guess a tribal court's determination of substantive issues. This is because the actual act of transferring jurisdiction is not, in and of itself, something that can cause "serious emotional or physical damage to the child." Thompson, 62 Va. App. at 376, 747 S.E.2d at 851. Jurisdiction, being a "court's power to decide a case or issue a decree," is an abstract concept, and the real world consequences of transferring jurisdiction require only that parties argue in front of, and papers be filed with, a different tribunal. Black's Law Dictionary 980 (10th ed. 2014); see Kern Oil & Refining Co. v. Tenneco Oil Co., 840 F.2d 730, 734 (9th Cir. 1988) (discussing the effects of jurisdiction being transferred between federal district and appellate courts).

The act of transferring jurisdiction, then, cannot harm a child. Instead, only substantive decisions subsequent to the transfer of jurisdiction - such as a tribal court's determination that the Indian child should be moved to a new adoptive family before ultimate resolution of the proceedings -fall within the scope of a "best interests" consideration. The Court of Appeals recognized this fact when it held that the focus "must remain on the immediate serious emotional or physical damage flowing from the transfer itself." Thompson, 62 Va. App. at 376, 747 S.E.2d at 851. However, the Court of Appeals then compounded its error when it considered as relevant to this determination "whether the Tribe is willing to allow the child to stay in her current environment, pending adjudication of the case on the merits of termination and/or placement." Id. These post-transfer, substantive decisions are the very tribal court determinations that a state court cannot second guess. See Holyfield, 490 U.S. at 53-54.

2. Congress Has Already Spoken to an Indian Child's "Best Interests" in the Jurisdictional Scheme

To the extent a "best interests" consideration is relevant, it has already been decided by Congress in enacting the **ICWA**. Congress made clear its reasons for enacting the **ICWA** in its "Congressional findings," stating specifically: "the States, [when] exercising their recognized jurisdiction **[219]** over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families." 25 U.S.C. § 1901(5). The **ICWA** thus protect[s] the rights of [an] Indian child as an Indian . . . . by making sure that Indian child welfare determinations are not based on a white, middle-class standard which, in many cases, forecloses placement with an Indian family." Holyfield, 490 U.S. at 37 (internal quotation marks and alterations omitted).

To protect Indian children from these dangers, Congress found it to be in the best interests of Indian children for foster care and parental right proceedings to be presumptive[ly]" under the jurisdiction of a tribal, rather than state, court. Holyfield, 490 U.S. at 36; see 25 U.S.C. § 1902. That is, the presumption of tribal jurisdiction is in and of itself in the best interests of Indian children because tribal courts have "the experience, wisdom, and compassion . . . to fashion an appropriate remedy" in these cases. Holyfield, 490 U.S. at 54; see 25 U.S.C. §§ 1901(3)-(5); 1902; 1911(b). There is no further "best interests" consideration to be made. Whether post-transfer actions have a negative impact on Indian children was a risk Congress believed appropriate because it is tribal courts that are most familiar with, and responsive to, the needs of their Indian community and Indian children. 25 U.S.C. § 1901(4), (5).

Additionally, because the **ICWA** "precludes the imposition of Anglo standards by creating a broad presumption of jurisdiction" in tribal courts, allowing a "best interests" consideration under Section 1911(b) "defeats the very purpose for which the **ICWA** was enacted [by allowing] Anglo cultural biases into the analysis." Yavapai-Apache Tribe v. Mejia, 906 S.W.2d 152, 169-70 (Tex. App. 1995).

3. The Court Adopts a Minority Position, One That Is Indistinguishable From a Position It Recognizes As Incorrect

Most states that have confronted the issue we face today have held that a "best interests" consideration is inappropriate under the "good cause" analysis in Section 1911(b). Eight states have conclusively adopted this position, including Colorado, Illinois, Minnesota, Missouri, Nebraska, New Mexico, North Dakota, and Texas.[2] People ex rel. J.L.P., 870 P.2d 1252, 1258 (Colo. Ct. App. 1994); In re Armell, 194 Ill. App. 3d 31, 550 N.E.2d **[220]** 1060, 1065-66, 141 Ill. Dec. 14 (Ill. App. Ct. 1990); In re Child of R.L.Z., 2009 Minn. App. Unpub. LEXIS 1015, at *14-16 (Minn. Ct. App. 2009) (unpublished); C.E.H. v. R.H., 837 S.W.2d 947, 954 (Mo. Ct. App. 1992); In re Interest of Zylena R. v. Elise M., 284 Neb. 834, 825 N.W.2d 173, 184-86 (Neb. 2012) (overruling its decision to allow a "best interests" consideration in In re Interest of C.W., 239 Neb. 817, 479 N.W.2d 105 (Neb. 1992)); In re Guardianship of Ashley Elizabeth R., 1993-NMCA-129, 116 N.M. 416, 863 P.2d 451, 456 (N.M. Ct. App. 1993); In re Interest of A.B., 2003 ND 98, 663 N.W.2d 625, 633-34 (N.D. 2003); Yavapai-Apache Tribe, 906 S.W.2d at 169-71.

Only a minority of six states allow a "best interests" consideration in the Section 1911(b) "good cause" analysis, including Arizona, California, Indiana, Montana, Oklahoma, and South Dakota.[3] In re Appeal in Maricopa County Juvenile Action, 171 Ariz. 104, 828 P.2d 1245, 1251 (Ariz. Ct. App. 1991); In re Alexandria P., 228 Cal. App. 4th 1322, 1355-56, 176 Cal. Rptr. 3d 468 (Cal. Ct. App. 2014); In re Adoption of T.R.M., 525 N.E.2d 298, 308 (Ind. 1988); In re T.S., 245 Mont. 242, 801 P.2d 77, 79-80 (Mont. 1990); Carney v. Moore (In re N.L.), 1988 OK 39, 754 P.2d 863, 869 (Okla. 1988); In re Guardianship of J.C.D., 2004 SD 96, 686 N.W.2d 647, 650 (S.D. 2004).

Four other state courts have acknowledged the issue, but avoided resolving it because the issue was not properly before the court. Ex parte C.L.J., 946 So.2d 880, 893-94 (Ala. Civ. App. 2006); In re C.R.H., 29 P.3d 849, 854 n.24 (Alaska 2001); In re J.L.A., 2007 Kan. App. Unpub. LEXIS 1154, at *2-6 (Kan. Ct. App. 2007) (unpublished); In re Guardianship **[221]** of J.O., 327 N.J. Super. 304, 743 A.2d 341, 348-49 (N.J. Super. Ct. App. Div. 2000).

The Court of Appeals rejected the position of all these other courts, and instead fashioned a wholly novel, and supposedly narrow, "best interests" consideration. Thompson, 62 Va. App. at 373-76, 747 S.E.2d at 850-51. Today, by approving the Court of Appeals' Thompson decision, the majority opinion embraces a position that is a minority of one.

Moreover, upon closer scrutiny, it is clear that this supposedly limited "best interests" consideration is actually indistinguishable from the general "best interests" standard. The Court of Appeals acknowledged that "the traditional best interest of the child analysis is too broad a consideration in deciding whether good cause exists to retain jurisdiction" under Section 1911(b). Thompson, 62 Va. App. at 374, 747 S.E.2d at 850. But the majority opinion's limited "best interests" consideration is identical to the general "best interest" standard's scope and type of review of post-transfer tribal court rulings.

First, the limited "best interests" consideration affords the same scope of review of post-transfer tribal court rulings as the general "best interests" standard. The Court of Appeals created an "immediate serious emotional or physical damage flowing from the transfer itself" standard as the basis to determine what tribal court determinations are subject to a state court's "best interests" review. Id. at 376, 747 S.E.2d at 851. Putting to the side the fact that all post-transfer determinations are immune from a state court's second guessing, see Holyfield, 490 U.S. at 53-54, this standard does not actually operate to segregate reviewable from unreviewable tribal court rulings. The transfer of jurisdiction itself is, essentially, the proximate cause of the tribal court's ability to make any ruling in the proceeding. Thus, all tribal court rulings occurring after a Section 1911(b) transfer of jurisdiction "flow[] from the transfer," Thompson, 62 Va. App. at 376, 747 S.E.2d at 851, and are subject to a state court's review under the majority opinion's "best interests" consideration.

Second, the limited "best interests" consideration affords the same type of review of post-transfer tribal court rulings as the general "best interests" standard. That is, both allow a circuit court to focus on the same legal factors, including the emotional and physical impact that a **[222]** ruling would have on a child. Compare Bailes v. Sours, 231 Va. 96, 101, 340 S.E.2d 824, 827-28 (1986) (holding that a ruling which has a substantial "likelihood of inflicting serious harm" to the child "is repugnant to the child's best interest"), with Thompson, 62 Va. App. at 376, 747 S.E.2d at 851. Further, the factual context which informs the weighing of such factors is likely to be the same for all tribal court rulings. For example, questions of a child's mental and physical well being in light of the child's attachments to his current home, and the potential for danger in a new home, are equally present in a non-final ruling of whether a child should be moved to a new foster home before final disposition, and a ruling on the ultimate issue of whether the child should be placed in foster care or the parent's rights should be terminated. Simply put, the majority opinion's limited "best interests" consideration and the general "best interests" standard apply the same law to the same types of facts.

II. Conclusion

For the aforementioned reasons, while I join that portion of the majority opinion's disposition of this action that directs remand of the present appeal to the trial court for consideration of the issues, I cannot join the majority opinion's decision to inject the Section 1911(b) jurisdictional "good cause" analysis with a mechanism for a state court to preemptively second guess a tribal court's substantive decisions. I would overrule the decision of the Court of Appeals in Thompson in part, to the extent it directed circuit courts to evaluate a "best interests" consideration, and reverse the Court of Appeals' disposition in the present case on that issue, and affirm the Court of Appeals decision in the present case in part, to the extent it directed the circuit court to evaluate the other "good cause" considerations set forth in Thompson, 62 Va. App. at 377-83, 747 S.E.2d at 851-55.

Footnotes

1 Holyfield resolved legal issues pertaining to Section 1911(a). See 490 U.S. at 42-54. Nevertheless, the Supreme Court's general discussion of 25 U.S.C. § 1911 applies with equal force to Section 1911(b).

2 Additionally, three other states have not expressly held that the "good cause" analysis of Section 1911(b) precludes a "best interests" consideration, but their opinions imply such a position.

First, Iowa has adopted its own, state version of the **ICWA**. See Iowa Code §§ 232B.1 et seq. Because that state law provides more than the minimum standards of the federal **ICWA**, the state **ICWA** governs transfer of jurisdiction for cases involving Indian children within Iowa. See In the Interest of N.V., 744 N.W.2d 634, 637-38 (Iowa 2008). Relevant to our purposes, the Iowa Supreme Court noted that Iowa courts never approved of a "best interests" consideration under the federal **ICWA** when it was the governing law. Id.

Second, the Utah Supreme Court held that Utah's state abandonment law cannot allow a minor's parent to change that minor's domicile to frustrate the exclusive jurisdiction provision of Section 1911(a). In re Adoption of Halloway, 732 P.2d 962, 968-70 (Utah 1986). In ruling on the **ICWA**'s jurisdictional provisions preempting state law, the Utah Supreme Court refused to weigh typical "best interests" considerations, including "the bonding that [took] place between [the adoptive parents] and [the minor]." Id. at 971-72.

Third, the Wisconsin Court of Appeals held that a trial court did not err when considering a minor's "best interests" as it related to a Section 1911(b) "good cause" analysis, because that "best interests" consideration was tied solely "to the timeliness of the tribe's attempt to take jurisdiction of [the] case." State v. Debra F., 2005 Wisc. App. 254, 281 Wis. 2d 274, 695 N.W.2d 905 (Wis. Ct. App. 2005). Timeliness is an appropriate consideration under the "good cause" analysis, and is not synonymous with a typical "best interests" consideration.

3 The South Carolina Court of Appeals sanctioned a "best interests" consideration for Section 1911(b) purposes. Chester Cnty. Dep't of Social Servs. v. Coleman, 296 S.C. 355, 372 S.E.2d 912, 915 (S.C. Ct. App. 1988). However, when the South Carolina Supreme Court reviewed that decision, it remained notably silent on the "best interests" issue and held that the "good cause" analysis of Section 1911(b) is, essentially, a modified forum non conveniens analysis. See Chester Cnty. Dep't of Social Servs. v. Coleman, 303 S.C. 226, 399 S.E.2d 773, 775-77 (S.C. 1990). It is therefore unclear whether the South Carolina Court of Appeals' approval of the "best interests" consideration remains good law.

B.N. v. Fairfax County Dep't of Family Servs., 2014 Va. LEXIS 70

Copy Citation

Supreme Court of Virginia

April 21, 2014, Decided

Record Number 131578

Reporter
2014 Va. LEXIS 70

B.N., A MINOR CHILD v. FAIRFAX COUNTY DEPARTMENT OF FAMILY SERVICES, ET AL.

Prior History: **[1]** From the Court of Appeals of Virginia.

Core Terms

good cause, tribe, parties

Counsel: Nancy J. Branigan Martin for Appellant.

Daniel B. Schy (Richmond Schy) and Constantinos D. DePourtis (Sstanding Rock Sioux Tribe) for Appellees.

Opinion

Assignment of Error

1. The Court of Appeals erred when it held that a finding of "serious good cause to deny a transfer" by the state court could be negated by a tribe agreeing to maintain the status quo until that tribe has adjudicated the case.

2. The Court of Appeals erred in holding that the child's best interest may not be considered in determining whether "good cause" exists to deny transfer under **ICWA**, and, that "good cause" only exists if the transfer causes, or presents a substantial risk of causing, immediate and serious emotional or physical damage to the child.

3. The Court of Appeals erred in the application of **ICWA** to this case violating the due process and equal protection clauses of the Fifth, Tenth and Fourteenth Amendments.

4. The Court of Appeals erred in not applying the Existing Indian Family Doctrine.

5. The Court of Appeals erred in not finding good cause to deny transfer under **ICWA** due to the fact that the proceedings were at an advanced stage.

6. The Court of Appeals erred in not finding **[2]** good cause existed not to transfer the case to the Tribe due to the evidence necessary to decide the case cannot be adequately presented in the tribal court without undue hardship to the parties or the witnesses, and, in relying on representations of a counsel in this matter, and not evidence, in making their determination on this issue of the "forum non conveniens" **ICWA** exception to transfer.

7. The Court of Appeals erred in not finding the foster-to-adopt parents to be parties in this matter.

Date Granted

04-21-2014

Federal Guidelines: Overview

On February 25, 2015, the Bureau of Indian Affairs released revised ICWA Guidelines for state courts and agencies effective immediately. These supersede and replace the 1979 Guidelines and expand their application from just state courts to state courts and child welfare agencies. The Guidelines can be found at http://www.bia.gov/cs/groups/public/documents/text/idc1-029637.pdf. Unlike regulations, guidelines are advisory only and not binding.

The Guidelines include all of the elements summarized in the overview of the Proposed Federal ICWA regulations provided with this overview of the Guidelines. They also include the following additional provisions of note:

1. The Guidelines define what constitutes acknowledgment or establishment of paternity for the purpose of being recognized as a parent under ICWA. Under the Guidelines, an unwed father need only take "reasonable steps" to acknowledge or establish paternity which may include acknowledging paternity during the child custody proceeding or DNA testing.
2. Agencies are instructed to make an inquiry as to whether a child is Indian even when the child is not removed from the home, such as when the agency opens an investigation or utilizes a diversion, differential or alternative response to the agency referral.
3. The Guidelines specifically recognize that all parties to an emergency removal case can provide information relevant to the agency's decision which should be evaluated by the Court at its initial hearing on the emergency removal.
4. The Guidelines specifically state that there is a presumption in favor of transferring a case to tribal court as the Act is intended to protect the rights of Indian communities and tribes to retain their children, in addition to protecting the rights of the Indian child.
5. The Guidelines explain that courts should not be making an independent determination of the best interests of the Indian child in determining whether there is good cause to deviate from the placement preferences in the Act because the placement preference provisions in ICWA reflect the best interests of an Indian child as that has been defined in the Act.
6. The Guidelines recognize that the "active efforts to prevent breakup of an Indian family" requirement is not limited by the exceptions to the "reasonable efforts to preserve and reunify families" requirement applicable to all children in the Adoption and Safe Families Act.

the public to submit comments; the comment period as set in the NPR ends March 16, 2015. The Commission is extending the comment period until April 15, 2015.

DATES: Submit comments by April 15, 2015.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2014–0033, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments. The Commission does not accept comments submitted by electronic mail (email), except through: *http://www.regulations.gov.* The Commission encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Written Submissions

Submit written submissions in the following way:

Mail/Hand delivery/Courier to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Betbesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must inclnde the agency name and docket nnmber for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to: *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to: *http://www.regulations.gov* and insert the Docket No. CPSC–2014–0033 into the "Search" box and follow the prompts.

SUPPLEMENTARY INFORMATION: On December 30, 2014, the Commission published an NPR in the **Federal Register** proposing to prohibit children's toys and child care articles containing specified phthalates. (79 FR 78324). The Commission issued the proposed rule under the authority of section 108 of the Consumer Product Safety Improvement Act of 2008 (CPSIA). The Commission is extending the comment period nntil April 15, 2015 to allow additional time for public comment on the NPR.

Alberta E. Mills,

Acting Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2015–06389 Filed 3–19–15; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR 23

[K00103 12/13 A3A10; 134D0102DR–DS5A300000–DR.5A311.IA000113]

RIN 1076–AF25

Regulations for State Courts and Agencies in Indian Child Custody Proceedings

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule wonld add a new subpart to the Department of the Interior's (Department) regulations implementing the Indian Cbild Welfare Act (ICWA), to improve ICWA implementation by State courts and child welfare agencies. These regulations complement recently published *Guidelines for State Courts and Agencies in Indian Child Custody Proceedings,* reflect recommendations made by the Attorney General's Advisory Committee on American Indian/Alaska Native Children Exposed to Violence, and address significant developments in jnrisprudence since ICWA's inception. This publication also announces the dates and locations for tribal consultation sessions and public meetings to receive comment on this proposed rule.

DATES: Comments must be received on or before May 19, 2015. *Comments on the information collections contained in this proposed regulation are separate from those on the substance of the proposed rule.* Comments on the information collection burden should be received by April 20, 2015 to ensnre consideration, but must be received no later than May 19, 2015. See the **SUPPLEMENTARY INFORMATION** section of this document for dates of public meetings and tribal consultation sessions.

ADDRESSES: You may submit comments by any of the following methods:

—*Federal rulemaking portal: www.regulations.gov.* The rule is listed under the agency name "Bureau of Indian Affairs" or "BIA." The rule has been assigned Docket ID: BIA–2015–0001.

—*Email: comments@bia.gov.* Include "ICWA" in the subject line of the message.

—*Mail or hand-delivery:* Ms. Elizabeth Appel, Office of Regulatory Affairs & Collaborative Action—Indian Affairs, U.S. Department of the Interior, 1849 C Street NW., MS 3642, Washington, DC 20240, (202) 273–4680.

Comments on tbe Paperwork Reduction Act information collections contained in this rule are separate from comments on the substance of the rule. Submit comments on the information collection requirements in this rule to the Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov* or by facsimile at (202) 395–5806. Please also send a copy of your comments to *comments@bia.gov.*

See the **SUPPLEMENTARY INFORMATION** section of this document for locations of pnblic meetings and tribal consnltation sessions.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Appel, Office of Regnlatory Affairs & Collaborative Action—Indian Affairs, U.S. Department of the Interior, 1849 C Street NW., MS 3642, Washington, DC 20240, (202) 273–4680; *elizabeth.appel@bia.gov.* Yon may review the information collection request online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

Since ICWA was enacted by Congress in 1978, it has improved child welfare practices regarding Indian children. Commentators have asserted, however, that it has not reached its full potential due largely to ineffective or inconsistent implementation in some case. This proposed rule wonld establish a new subpart to regulations implementing ICWA at 25 CFR 23 to address Indian child welfare proceedings in State courts. Tbis proposed rule is publisbed in response to comments received during several listening sessions, written comments submitted throughout 2014, and recommendations tbat regulations are needed to fully implement ICWA. *See, e.g.,* Attorney General's Advisory Committee on American Indian and Alaska Native Children Exposed to Violence: Ending Violence So Children Can Thrive (November 2014), p. 77. This proposed rule would also respond to significant developments in jurisprudence since

the regulations were established in 1979 and last substantively updated in 1994.

This proposed rule would incorporate many of the changes made to the recently revised guidelines into regulations, establishing the Department's interpretation of ICWA as a binding interpretation to ensure consistency in implementation of ICWA across all States. This consistency is necessary to ensnre that the goals of ICWA are carried out with each Indian child custody proceeding, regardless of the child welfare worker, judge, and State involved. The proposed rule would establish the following procedures to ensure compliance with ICWA: Determining whether ICWA applies to any child custody proceeding, providing notice to the parents or Indian custodian and Indian tribe(s), requesting and responding to requests to transfer proceedings to tribal court, adjudication of involuntary placemeuts, adoptions, and terminations of parental rights, nndertaking voluntary proceedings, identifying and applying placement preferences, and post-proceediug actions.

The Department requests comment on this proposed rule.

II. Background

Congress enacted ICWA in 1978 to address the Federal, State, and private agency policies and practices that resulted in the "wholesale separation of Indian children from their families." H. Rep. 95–1386 (July 24, 1978), at 9. Congress found "that an alarmingly high percentage of Indian families are broken up by the removal, often nnwarranted, of their children from them by uontribal pnblic and private agencies and that an alarmingly high percentage of snch childreu are placed in non-Indian foster and adoptive homes and iustitntions . . . ." 25 U.S.C. 1901(4). Congress determined that cnltural ignorance and biases within the child welfare system were significant causes of this problem and that state administrative and judicial bodies "have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian commnnities and families." 25 U.S.C. 1901(5); H. Rep. 95–1386, at 10. Congress enacted ICWA to "protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by establishing minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes or institntions which will reflect the uniqne values of Indian culture." H. Rep. 95–1386, at 8. The ICWA thus articulates a strong "federal policy that, where possible, an Indian child should remain in the Indian community." *Mississippi Band of Choctaw Indians* v. *Holyfield,* 490 U.S. 30, 37 (1989) (citing H. Rep. 95–1386 at 24).

Following ICWA's enactment, in July 1979, the Department issned regulations addressing notice procedures for involuntary child custody proceedings involving Indian children, as well as governing the provision of funding for and administration of Indian child and family service programs as authorized by ICWA. *See* 25 CFR part 23. Those regulations did not address the specific requirements and standards that ICWA imposes upon State court child custody proceedings, beyond the requirements for contents of the notice. Also, in 1979, BIA published guidelines for State courts to use in interpreting many of ICWA's requirements in Indian child custody proceedings. 44 FR 67584 (Nov. 26, 1979).

In 2014, the Department invited comments to determine whether to update its guidelines and if so, what changes should be made. The Department held several listening sessions, includiug sessions with representatives of federally recognized Indian tribes, State court represeutatives (*e.g.,* the National Council of Juvenile and Family Conrt Judges and the National Center for State Courts' Conference of Chief Justices Tribal Relations Committee), the National Indian Child Welfare Association, and the National Congress of American Indians. The Department received comments from those at the listening sessions and also received written commeuts, including commeuts from iudividuals and additional organizations. An overwhelming proportion of the commenters requested not only that the Department update its ICWA guidelines but that the Department also issue regnlations addressing the reqnirements and standards that ICWA imposes upon State court child custody proceedings. The Department reviewed and considered each comment in developing this proposed rule.

The Department has examiued its authority to interpret and implement ICWA, including throngh a rulemaking, and has concluded that it possesses authority to implement the statute throngh rulemaking. ICWA instructs that "[w]ithin [180] days after November 8, 1978, the Secretary shall promulgate such rules and regnlations as may be necessary to carry out the provisions of this chapter." 25 U.S.C. 1952. This is a broad grant of authority to the Secretary of the Interior (Secretary) to issue rules in order to ensure that the statute is fully and properly implemented. In addition to this express authority in ICWA, the Secretary is charged with "the management of all Indian affairs and of all matters arising out of Indian relations," 25 U.S.C. 2, and may "prescribe such regulations as [s]he may think fit for carrying into effect the various provisions of any act relating to Indian affairs." 25 U.S.C. 9. Finally, the United States has long been understood to have a special relationship with Indian nations, which includes the duty and power to protect them. Congress referred to this inherent authority in the opening language of ICWA, which explains that the "United States has a direct interest, as trustee, in protecting Indian children." 25 U.S.C. 1901(3). These regulations, which are intended to improve the implementation of ICWA, uphold this Federal interest.

The Department has concluded that these regulations are now uecessary to effectively carry out the provisious of ICWA. In issning the guidelines in 1979, the Department found that primary responsibility for iuterpreting many of ICWA's provisions rests with the State courts that decide Indian child custody cases. *See, e.g.,* 44 FR 67,584 (November 26, 1979). At the time, the Department opined that the promulgation of regulations was not necessary to carry out ICWA. Since that time, it has become clear that a uniform interpretation of key provisions is necessary to ensure compliance with ICWA. These regnlations will provide a stronger measure of consistency in the implementation of ICWA, which has been interpreted in different, and sometimes conflicting, ways by varions State courts and agencies and has resulted in different minimnm standards being applied across the United States, contrary to Congress' intent. Moreover, conflicting interpretatious can lead to arbitrary outcomes, and certain interpretations and applications threaten the rights that ICWA was intended to protect. *See, e.g., Holyfield,* 490 U.S. at 45–46 (describing the need for uniformity in defining "domicile" nnder ICWA).

III. Overview of the Proposed Rule

This proposed rule addresses ICWA implementation by State courts and child welfare agencies, including npdating definitions, and replacing current notice provisions at 25 CFR 23.11 with a proposed new subpart I to 25 CFR part 23. The proposed new subpart also addresses other aspects of ICWA compliance by State courts and child welfare agencies including, but

not limited to, other pretrial requirements, procedures for requesting transfer of an Indian child custody proceeding to tribal court, adjudications of involuntary placements, adoptions, and termination of parental rights, voluntary proceedings, dispositions, and post-trial rights. For example, the proposed rule clarifies ICWA applicability and codifies that there is no "Existing Indian Family Exception (EIF)" to ICWA. Since first identification of the EIF in 1982, the majority of State appellate courts that have considered the EIF have rejected it as contrary to the plain language of ICWA. Some State legislatures have also explicitly rejected the EIF within their State ICWA statutes. When Congress enacted ICWA, it intended that an "Indian child" was the threshold for application of ICWA. The Department agrees with the States that have concluded that there is no existing Indian family exception to application of ICWA. The proposed rule also promotes the early identification of ICWA applicability. Such identifications will promote proper implementation of ICWA at an early stage, to prevent—as much as possible—delayed discoveries that ICWA applies.

We welcome comments on all aspects of this rule. We are particularly interested in the nse of "should" versus "must." The proposed rule makes several of the provisions issued in the recently published *Guidelines for State Courts and Agencies in Indian Child Custody Proceedings,* 80 FR 10146 (February 25, 2015), binding as regulation. These proposed mandatory provisions (indicating an action "must" be taken, for example) are authorized by ICWA. Some proposed provisions indicate that certain actions "should" be taken. We welcome comment on whether mandatory language is authorized by ICWA in those instances and any appropriate revisions to further promote compliance with ICWA.

IV. Public Meetings & Tribal Consultation Sessions

The Department will host both public meetings and tribal consultation sessions on this proposed rule.

A. Public Meetings

All are invited to the public meetings. Dates and locations for the public meetings are as follows:

Date	Time	Location	Venue
Wednesday, April 22, 2015	9 a.m.–noon Local Time	Portland, Oregon	BIA Regional Office, 911 NE 11th Ave, Portland, OR 97232*.
Thursday, April 23, 2015	1–4 p.m. Local Time	Rapid City, South Dakota	Best Western Ramkota Hotel, 2111 N Lacrosse St., Rapid City, SD 57701.
Tuesday, May 5, 2015	1–4 p.m. Local Time	Albuquerque, New Mexico	National Indian Programs Training Center, 1011 Indian School Road NW., Suite 254 Albuquerque, NM 87104*.
Thursday, May 7, 2015	1–4 p.m. Local Time	Prior Lake, Minnesota	Mystic Lake Casino Hotel, 2400 Mystic Lake Blvd., Prior Lake, MN 55372.
Tuesday, May 12, 2015	1 p.m.–4 p.m. Eastern Time	Via teleconference	888–730–9138, Passcode: INTERIOR.
Thursday, May 14, 2015	1–4 p.m. Local Time	Tulsa, Oklahoma	Tulsa Marriott Southern Hills, 1902 East 71st, Tulsa, OK 74136.

*Please RSVP for the Portland and Albuquerque meetings to *consultation@bia.gov,* bring photo identification, and arrive early to allow for time to get through security, as these are Federal buildings. No RSVP is necessary for the other locations.

B. Tribal Consultation Sessions

Tribal consultation sessions are for representatives of currently federally recognized tribes only, to discnss the rule on a government-to-government basis with the Department. These sessions may be closed to the public. The dates and locations for the tribal consultations are as follows:

Date	Time	Location	Venue
Monday, April 20, 2015	3:30 p.m.–5:30 p.m. Local Time	Portland, Oregon	Hilton Portland & Executive Towers, 921 SW. Sixth Avenue, Portland, OR 97204, (at the same location as NICWA conference).
Thursday, April 23, 2015	9 a.m.–12 p.m. Local Time	Rapid City, South Dakota	Best Western Ramkota Hotel, 2111 N Lacrosse St, Rapid City, SD 57701.
Tuesday, May 5, 2015	9 a.m.–12 p.m. Local Time	Albuquerque, New Mexico	National Indian Programs Training Center, 1011 Indian School Road, NW., Suite 254, Albuquerque, NM 87104*.
Thursday, May 7, 2015	9 a.m.–12 p.m. Local Time	Prior Lake, Minnesota	Mystic Lake Casino Hotel, 2400 Mystic Lake Blvd., Prior Lake, MN 55372.
Monday, May 11, 2015	1 p.m.–4 p.m. Eastern Time	Via teleconference	Call-in number: 888–730–9138 Passcode: INTERIOR =.

Date	Time	Location	Venue
Thursday, May 14, 2015	9 a.m.–12 p.m. Local Time	Tulsa, Oklahoma	Tulsa Marriott Southern Hills, 1902 East 71st, Tulsa, OK 74136.

V. Statutory Authority

The Department is issuing this proposed rule pursuant to ICWA, 25 U.S.C. 1901 *et seq.,* and its authority over the management of all Indian affairs under 25 U.S.C. 2, 9.

VI. Procedural Requirements

1. Regulatory Planning and Review (E.O. 12866 and 13563)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regnlatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches tbat reduce burdens and maintain flexibility and freedom of choice for the public where these approacbes are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. The Department has developed this rule in a manner consistent with these requirements.

2. Regulatory Flexibility Act

The Department certifies that this rule will not bave a significant economic effect on a substantial number of small entities nnder the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

3. Small Business Regulatory Enforcement Fairness Act

This rnle is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. It will not result in the expenditnre by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year. The rnle's requirements will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Nor will this rule have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the U.S.-based enterprises to compete with foreign-based enterprises.

4. Unfunded Mandates Reform Act

This rule does not impose au unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or uniqne effect on State, local, or tribal governments or tbe private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

5. Takings (E.O. 12630)

Under the criteria in Execntive Order 12630, this rule does not affect individual property rights protected by the Fifth Amendment nor does it involve a compensable "taking." A takings implication assessment is therefore not required.

6. Federalism (E.O. 13132)

Under the criteria in Executive Order 13132, tbis rule has no substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The Department has determined that this rule complies with the fundamental Federalism principles and policymaking criteria established in EO 13132. Congress determined that the issue of Indian child welfare is snfficiently national in scope and significance to justify a statute that applies uniformly across States. This rule invokes the United States' special relationship with Indian tribes and children by establishing a regnlatory baseline for implementation to further the goals of ICWA. Such goals include protecting the best interests of Indian children and promoting the stability and secnrity of Indian tribes and families by establishing minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes that reflect the unique values of Indian culture. States are required to comply with ICWA even in the absence of this rule, and that requirement has existed since ICWA's passage in 1978. In the spirit of EO 13132, the Department specifically solicits comment on this proposed rule from State officials, including suggestions for how the rule could be made more flexible for State implementation.

7. Civil Justice Reform (E.O. 12988)

Tbis rule complies with the requirements of Executive Order 12988. Specifically, this rule has been reviewed to eliminate errors and ambiguity and written to minimize litigation; and is written in clear language and contains clear legal standards.

8. Consultation With Indian Tribes (E.O. 13175)

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments," Executive Order 13175 (59 FR 22951, November 6, 2000), and 512 DM 2, we have evaluated the potential effects on federally recognized Indian tribes and Indian trust assets. The Department hosted several listening sessions on the ICWA guidelines and notified each federally recognized tribal leader of the sessions. Several federally recognized Indian tribes submitted written comments and many suggested developing regulations. The Department considered each tribe's comments and concerns and have addressed them, where possible, in the proposed rule. The Department will be continuing to consult with tribes during the public comment period on this rule. The dates and locations of consnltation sessions are listed in section IV, above.

9. Paperwork Reduction Act

OMB Control Number: 1076–NEW
Title: Indian Child Welfare Act (ICWA) Proceedings in State Court
Brief Description of Collection: This collection addresses the reporting, third-party disclosure, and recordkeeping requirements of ICWA, which requires State courts and agencies to provide notice to tribes and parents/custodians of any child custody proceeding that may involve an "Indian child," and

requires State courts and agencies to document certain actions and maintain certain records regarding the removal and placement of an "Indian child."

Type of Review: Existing collection in use without OMB control number.

Respondents: State governments and individuals.

Number of Respondents: 5,500 on average (each year).

Number of Responses: 116,100 on average (each year).*

Frequency of Response: On occasion.

Estimated Time per Response: Ranges from 15 minutes to 12 hours.

Estimated Total Annual Hour Burden: 277,276 hours.

Estimated Total Annual Non-Hour Cost: $868,400.**

Sec.	Information collection	Annual number of respondents	Frequency of responses	Annual number of responses	Completion time per response	Total annual burden hours
23.107	Obtain information on whether child is "Indian child".	50	260	13,000	12	156,000
23.109(c)(3)	Notify of tribal membership where more than 1 tribe.	50	130	6,500	1	6,500
23.111, 23.113	Notify tribe, parents, Indian custodian of child custody proceeding.	50	260	13,000	6	78,000
23.113	Document basis for emergency removal/placement.	50	260	13,000	0.5	6,500
23.113	Maintain records detailing steps to provide notice.	50	260	13,000	0.5	6,500
23.113	Petition for court order authorizing emergency removal/placement (with required contents).	50	260	13,000	0.5	6,500
23.118	Notify tribal court of transfer, provide records.	50	5	250	0.25	63
23.120	Document "active efforts"	50	130	6,500	0.5	3,250
23.125	Parental consent to termination or adoption (with required contents).	5,000	1	5,000	0.5	2,500
23.126, 127	Notify placement of withdrawal of consent.	50	2	100	0.25	25
23.128	Document each placement (including required documents).	50	130	6,500	0.5	3,250
23.128	Maintain records of placements	50	130	6,500	0.5	3,250
23.132	Notify of petition to vacate	50	5	250	0.25	63
23.135	Notify of change in status quo	50	130	6,500	0.25	1,625
23.136	Notify of final adoption decree/order.	50	130	6,500	0.25	1,625
23.137	Maintain records in a single location and respond to inquiries.	50	130	6,500	0.25	1,625
				116,100	6.75	277,276

10. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment because it is of an administrative, technical, and procedural nature. *See,* 43 CFR 46.210(i). No extraordinary circumstances exist that would require greater review under the National Environmental Policy Act.

11. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

12. Clarity of This Regulation

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you believe that we have not met these requirements, send us comments by one of the methods listed in the "COMMENTS" section. To better help revise the rule, your comments should be as specific as possible. For example, include the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where lists or tables would be useful, etc.

13. Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying

* The following table shows estimates of the hour burden above what a State court or agency would do in a child custody proceeding that does not involve ICWA requirements:

** In many cases, there are no start-up costs associated with these information collections because State courts are agencies are already implementing child custody actions. However, it is possible that some States may not yet have a single location, or electronic database accessible from anywhere, housing all placement records. For this reason, we are estimating a start-up cost of $487,500 (or just under $10,000 per state on average, with the understanding that there will be no start-up costs in some states and up to $20,000 or more in others). The annual cost burden to respondents associated with providing notice by registered mail is $11.95 and the cost of a return receipt green card is $2.70. For each Indian child custody proceeding, at least two notices must be sent—one to the parent and one to the tribe, totaling $29.30. At an annual estimated 13,000 child welfare proceedings that may involve an "Indian child," this totals: $380,900. Together with the start-up cost, the total non-hour cost burden for all 50 States is $868,400.

information from public review, we cannot guarantee that we will be able to do so.

The Department cannot ensure that comments received after the close of the comment period (see **DATES**) will be included in the docket for this rulemaking and considered. Comments sent to an address other than those listed above will not be included in the docket for this rulemaking.

List of Subjects in 25 CFR Part 23

Administrative practice and procedure, Child welfare, Indians, Reporting and recordkeeping requirements.

For the reasons stated in tbe preamble, the Department of the Interior, Bureau of Indian Affairs, proposes to amend part 23 in Title 25 of the Code of Federal Regnlations as follows:

PART 23—INDIAN CHILD WELFARE ACT

■ 1. The authority citation for part 23 continues to read as follows:

Authority: 5 U.S.C. 301; 25 U.S.C. 2, 9, 1901–1952.

■ 2. In § 23.2:
■ a. Add a definition for "active efforts";
■ b. Revise the definition of "child custody proceeding";
■ c. Add definitions for "continued custody", "cnstody", and "domicile";
■ d. Revise the definition of "extended family member";
■ e. Add a definition for "imminent physical danger or harm";
■ f. Revise the definition of "Indian child's tribe", "Indian custodian", "parent", "reservation", and "Secretary";
■ g. Add a definition for "statns offenses";
■ b. Revise the definition of "tribal court"; and
■ i. Add definitions for "upon demand" and "voluntary placement".

The additions and revisions read as follows:

Revise the following definitions to read as follows:

§ 23.2 Definitions.

* * * * *

Active efforts means actions intended primarily to maintain and reunite an Indian child with his or her family or tribal community and constitute more than reasonable efforts as required by Title IV–E of the Social Security Act (42 U.S.C. 671(a)(15)). Active efforts include, for example:

(1) Engaging the Indian child, the Indian child's parents, the Indian child's extended family members, and the Indian child's custodian(s);

(2) Taking steps necessary to keep siblings together;

(3) Identifying appropriate services and helping the parents to overcome barriers, including actively assisting the parents in obtaining such services;

(4) Identifying, notifying, and inviting representatives of the Indian child's tribe to participate;

(5) Conducting or causing to be conducted a diligent search for the Indian child's extended family members for assistance and possible placement;

(6) Taking into account the Indian child's tribe's prevailing social and cultural conditions and way of life, and requesting the assistance of representatives designated by the Indian child's tribe with substantial knowledge of the prevailing social and cultural standards;

(7) Offering and employing all available and cnltnrally appropriate family preservation strategies;

(8) Completing a comprehensive assessment of the circumstances of the Indian child's family, with a focns on safe rennification as the most desirable goal;

(9) Notifying and consnlting with extended family members of the Indian child to provide family structure and support for the Indian child, to assure cnltnral connections, and to serve as placement resources for the Indian child;

(10) Making arrangements to provide family interaction in the most natural setting that can ensure the Indian child's safety during any necessary removal;

(11) Identifying community resources including housing, financial, transportation, mental health, snbstance abuse, and peer support services and actively assisting the Indian child's parents or extended family in utilizing and accessing those resources;

(12) Monitoring progress and participation in services;

(13) Providing consideration of alternative ways of addressing the needs of the Indian child's parents and extended family, if services do not exist or if existing services are not available;

(14) Supporting regular visits and trial home visits of the Indian child during any period of removal, consistent with the need to ensure the safety of the child; and

(15) Providing post-reunification services and monitoring.

* * * * *

Child custody proceeding means and includes any proceeding or action that involves:

(1) *Foster care placement,* which is any action removing an Indian child from his or her parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, although parental rights have not been terminated;

(2) *Termination of parental rights,* which is any action resulting in the termination of the parent-child relationship;

(3) *Preadoptive placement,* which is the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; or

(4) *Adoptive placement,* which is the permanent placement of an Indian child for adoption, including any action resultiug in a final decree of adoption.

* * * * *

Continued custody means physical and/or legal custody that a parent already has or had at any point in the past. The biological mother of a child has had cnstody of a child.

Custody means physical and/or legal cnstody under any applicable tribal law or tribal custom or State law. A party may demonstrate the existence of cnstody by looking to tribal law or tribal custom or State law.

Domicile means:

(1) For a parent or any person over the age of eighteen, physical presence in a place and intent to remain there;

(2) For an Indian child, the domicile of the Indian child's parents. In the case of an Indian child whose parents are not married to each other, the domicile of the Indian child's mother.

Extended family member is defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, is a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or nncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent.

* * * * *

Imminent physical damage or harm means present or impending risk of serious bodily injury or deatb.

* * * * *

Indian child's tribe means:

(1) The Indian tribe in which an Indian child is a member or eligible for membership; or

(2) In the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has more significant contacts.

Indian custodian means any Indian person who has legal custody of an Indian child under tribal law or custom or under State law, or to whom temporary physical care, custody, and control has been transferred by the parent of such child. An Indian person may demonstrate that he or she is an Indian custodian by looking to tribal law or tribal custom or State law.

* * * * *

Parent means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not inclnde an unwed father where paternity has not been acknowledged or established.

Reservation means Indian country as defined in 18 U.S.C. 1151, including any lands, title to which is held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individnal snbject to a restriction by the United States against alienation.

Secretary means the Secretary of the Interior or the Secretary's anthorized representative acting under delegated anthority.

* * * * *

Status offenses mean offenses that would not be considered criminal if committed by an adult; they are acts prohibited only because of a person's status as a minor (*e.g.*, trnancy, incorrigibility).

* * * * *

Tribal court means a court with jurisdiction over child cnstody proceedings, including a Court of Indian Offenses, a court established and operated nnder the code or cnstom of an Indian tribe, or any other administrative body of a tribe vested with anthority over child custody proceedings.

* * * * *

Upon demand means that the parent or Indian custodians can regain custody simply upon request, without any contingencies such as repaying the child's expenses.

* * * * *

Voluntary placement means a placement that either parent has, of his or her free will, chosen for the Indian child, including private adoptions.

■ 3. In § 23.11, revise paragraph (d) and remove paragraphs (e), (f), and (g).

The revision reads as follows:

§ 23.11 Notice.

* * * * *

(d) Notice to the appropriate BIA Area Director pursuant to paragraph (b) of this section must be sent by registered mail with return receipt reqnested and must include the information required by § 23.111 of these regulations.

* * * * *

■ 4. Add subpart I to read as follows:

Subpart I—Indian Child Welfare Act Proceedings

General Provisions

Sec.

General Provisions

§ 23.101 What is the purpose of this subpart?

These regnlations clarify the minimnm Federal standards governing implementation of the Indian Child Welfare Act (ICWA) to ensure that ICWA is applied in all States consistent with tbe Act's express language, Congress' intent in enacting the statute, and the canon of construction that statntes enacted for the benefit of Indians are to be liberally constrned to their benefit. In order to fully implement ICWA, these regulations apply in all proceedings and stages of a proceeding in which ICWA is or becomes applicable.

§ 23.102 What terms do I need to know?

The following terms and their definitions apply to this subpart. All other terms have the meanings assigned in § 23.2.

Agency means a private State-licensed agency or public agency and their employees, agents or officials involved in and/or seeking to place a child in a child custody proceeding.

Indian organization means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians or a tribe, or a majority of whose members are Indians.

§ 23.103 When does ICWA apply?

(a) ICWA applies whenever an Indian child is the subject of a State child custody proceeding as defined hy the Act. ICWA also applies to proceedings involving status offenses or juvenile delinquency proceedings if any part of

those proceedings results in the need for placement of the child in a foster care, preadoptive or adoptive placement, or termination of parental rights.

(b) There is no exception to application of ICWA based on the so-called "existing Indian family doctrine" and, the following non-exhaustive list of factors that have been used by courts in applying the existing Indian family doctrine may not be considered in determining whether ICWA is applicable:

(1) The extent to which the parent or Indian child

(i) Participates in or observes tribal customs,

(ii) Votes in tribal elections or otherwise participates in tribal community affairs,

(iii) Contributes to tribal or Indian charities, subscribes to tribal newsletters or other periodicals of special interest in Indians,

(iv) Participates in Indian religious, social, cultural, or political events, or maintains social contacts with other members of the tribe;

(2) The relationship between the Indian child and his/her Indian parents;

(3) The extent of current ties either parent has to the tribe;

(4) Whether the Indian pareut ever had custody of the child;

(5) The level of involvement of the tribe in the State court proceedings; and/or

(6) Blood quantum.

(c) Agencies and State courts, in every child custody proceeding, must ask whether the child is or could be an Indian child and conduct an investigation into whether the cbild is an Indian child.

(d) If there is any reason to believe the child is an Indian child, the agency and State court must treat the child as an Indian child, nnless and until it is determined that the child is not a member or is not eligible for membership in an Indian tribe.

(e) ICWA and these regulations or any associated Federal guidelines do not apply to:

(1) Tribal court proceedings;

(2) Placements based upon an act by the Indian child which, if committed by an adult, would be deemed a criminal offense; or

(3) An award, in a divorce proceeding, of custody of the Indian child to one of tbe parents.

(f) Voluntary placements that do not operate to probibit the child's parent or Indian custodian from regaining custody of the child upon demand are not covered by ICWA. Such placements should be made pursuant to a written agreement, and the agreement should state explicitly the right of the parent or Indian custodian to regain custody of the child upon demand.

(g) Voluntary placements in which a parent consents to a foster care placement or seeks to permanently terminate his or her rights or to place the child in a preadoptive or adoptive placement are covered by ICWA.

§ 23.104 How do I contact a tribe under the regulations in this subpart?

To contact a tribe to provide notice or obtain information or verification under these regulations, you should direct the notice or inqniry as follows:

(a) Many tribes desiguate an agent for receipt of ICWA notices. The BIA publishes a list of tribes' designated tribal agents for service of ICWA notice in the **Federal Register** each year and makes the list available on its Web site at *www.bia.gov.*

(b) For tribes without a designated tribal agent for service of ICWA notice, contact the tribe(s) to be directed to the appropriate individual or office.

(c) If you do not have accurate contact information for the tribe(s) or the tribe(s) contacted fail(s) to respond to written inquiries, you may seek assistance in contacting the Indian tribe(s) from the BIA Regional Office and/or Central Office in Washington, DC (see *www.bia.gov*).

§ 23.105 How does this subpart interact with State laws?

(a) These regulations provide minimum Federal standards to ensure compliance with ICWA and are applicable in all child cnstody proceedings in which ICWA applies.

(b) In any child custody proceeding where applicable State or other Federal law provides a higher standard of protection to the rights of the parent or Indian custodian than the protection accorded under the Act, ICWA requires that the State court must apply the higher standard.

Pretrial Requirements

§ 23.106 When does the requirement for active efforts begin?

(a) The requirement to engage in "active efforts" begins from the moment the possibility arises that an agency case or investigation may result in tbe need for the Indian child to be placed outside the custody of either parent or Indian custodian in order to prevent removal.

(b) Active efforts to prevent removal of the child must be conducted while investigating whether the child is a member of the tribe, is eligible for membership in the tribe, or whether a biological parent of the child is or is not a member of a tribe.

§ 23.107 What actions must an agency and State court undertake in order to determine whether a child is an Indian child?

(a) Agencies must ask whether there is reason to believe a child that is subject to a child cnstody proceeding is an Indian child. If there is reason to believe that the child is an Indian child, the agency mnst obtain verification, in writing, from all tribes in which it is believed that the child is a member or eligible for membership, as to whether the child is an Indian child.

(b) State courts must ask, as a threshold question at the start of any State court child custody proceeding, whether there is reason to believe the child who is the subject of the proceeding is an Indian child by asking each party to the case, including the guardian ad litem and the agency representative, to certify on the record whether they have discovered or know of any information that suggests or indicates the child is an Indian child.

(1) In requiring this certification, courts may wish to consider requiring the agency to provide:

(i) Genograms or ancestry charts for both parents, including all names known (maiden, married and former names or aliases); current and former addresses of the child's parents, maternal and paternal grandparents and great grandparents or Indian custodians; birthdates; places of birth and death; tribal affiliation including all known Indian ancestry for individuals listed on the charts, and/or other identifying information; and/or

(ii) The addresses for the domicile and residence of the child, his or her parents, or the Indian custodian and whether either parent or Indian custodian is domiciled on or a resident of an Indian reservation or in a predominantly Indian community.

(2) If there is reason to believe the child is an Indian child, the court must confirm that the ageucy used active efforts to work with all tribes of which the child may be a member to verify whether the child is in fact a member or eligible for membership in any tribe, under paragraph (a) of this section.

(c) An agency or court has reason to believe that a child involved in a child custody proceeding is an Indian child if:

(1) Any party to the proceeding, Indian tribe, Indian organization or public or private agency informs the agency or court that the child is an Indian child;

(2) Any agency involved in child protection services or family support has discovered information suggesting that the child is an Indian child;

(3) The child who is the subject of the proceeding gives the agency or conrt

reason to believe he or she is an Indian child;

(4) The domicile or residence of the child, parents, or the Indian custodian is known by the agency or court to be, or is shown to be, on an Indian reservation or in a predominantly Indian community; or

(5) An employee of the agency or officer of the court involved in the proceeding has knowledge that the child may be an Indian child.

(d) In seeking verification of the child's status, in a voluntary placement proceeding where a consenting parent evidences a desire for anonymity, the agency or court must keep relevant documents confidential and under seal. A request for anonymity does not relieve the obligation to obtain verification from the tribe(s) or to provide notice.

§ 23.108 Who makes the determination as to whether a child is a member of a tribe?

(a) Only the Indian tribe(s) of which it is believed a biological parent or the child is a member or eligible for membership may make the determination whether the child is a member of the tribe(s), is eligible for membership in the tribe(s), or whether a biological parent of the child is a member of the tribe(s).

(b) The determination by a tribe of whether a child is a member, is eligible for membership, or whether a biological parent is or is not a member, is solely within the jurisdiction and authority of the tribe.

(c) No other entity or person may authoritatively make the determination of whether a child is a member of the tribe or is eligible for membership in the tribe.

(d) The State court may not substitute its own determination regarding a child's membership or eligibility for membership in a tribe or tribes.

§ 23.109 What is the procedure for determining an Indian child's tribe when the child is a member or eligible for membership in more than one tribe?

(a) Agencies must notify all tribes, of which the child may be a member or eligible for membership, that the child is involved in a child custody proceeding. The notice should specify the other tribe or tribes of which the child may be a member or eligible for membership.

(b) If the Indian child is a member or eligible for membership in only one tribe, that tribe should be designated as the Indian child's tribe.

(c) If an Indian child is a member or eligible for membership in more than one tribe, ICWA requires that the Indian tribe with which the Indian child has the more significant contacts be designated as the Indian child's tribe.

(1) In determining significant contacts, the following may be considered:

(i) Preference of the parents for membership of the child;

(ii) Length of past domicile or residence on or near the reservation of each tribe;

(iii) Tribal membership of custodial parent or Indian custodian; and

(iv) Interest asserted by each tribe in response to the notice that the child is involved in a child custody proceeding;

(2) When an Indian child is already a member of a tribe, but is also eligible for membership in another tribe, deference should be given to the tribe in which the Indian child is a member, unless otherwise agreed to by the tribes. However, if the Indian child is not a member of any tribe, an opportunity should be provided to allow the tribes to determine which of them should be designated as the Indian child's tribe.

(i) If the tribes are able to reach an agreement, the agreed upon tribe should be designated as the Indian child's tribe.

(ii) If the tribes do not agree, the following factors should be considered in designating the Indian child's tribe:

(A) The preference of the parents or extended family members who are likely to become foster care or adoptive placements; and/or

(B) Tribal membership of custodial parent or Indian custodian; and/or

(C) If applicable, length of past domicile or residence on or near the reservation of each tribe; and/or

(D) Whether there has been a previous adjudication with respect to the child by a court of one of the tribes; and/or

(E) Self-identification by the child; and/or

(F) Availability of placements.

(3) Once an Indian tribe is designated as the child's Indian tribe, all tribes which received notice of the child custody proceeding must be notified in writing of the determination and a copy of that document must be filed with the court and sent to each party to the proceeding and to each person or governmental agency that received notice of the proceeding.

(4) A determination of the Indian child's tribe for purposes of ICWA and these regulations does not constitute a determination for any other purpose or situation.

(d) The tribe designated as the Indian child's tribe may authorize another tribe to act as a representative for the tribe in a child custody case.

§ 23.110 When must a State court dismiss an action?

Subject to § 23.113 (emergency procedures), the following limitations on a State court's jurisdiction apply:

(a) The court must dismiss any child custody proceeding as soon as the court determines that it lacks jurisdiction.

(b) The court must make a determination of the residence and domicile of the Indian child. If either the residence or domicile is on a reservation where the tribe exercises exclusive jurisdiction over child custody proceedings, the State court must dismiss the State court proceedings, the agency must notify the tribe of the dismissal based on the tribe's exclusive jurisdiction, and the agency must transmit all available information regarding the Indian child custody proceeding to the tribal court.

(c) If the Indian child has been domiciled or previously resided on an Indian reservation, the State court must contact the tribal court to determine whether the child is a ward of the tribal court. If the child is a ward of a tribal court, the State court must dismiss the State court proceedings, the agency must notify the tribe of the dismissal, and the agency must transmit all available information regarding the Indian child custody proceeding to the tribal court.

§ 23.111 What are the notice requirements for a child custody proceeding involving an Indian child?

(a) When an agency or court knows or has reason to believe that the subject of a voluntary or involuntary child custody proceeding is an Indian child, the agency or court must send notice of each such proceeding (including but not limited to a temporary custody proceeding, any removal or foster care placement, any adoptive placement, or any termination of parental or custodial rights) by registered mail with return receipt requested to:

(1) Each tribe where the child may be a member or eligible for membership;

(2) The child's parents; and

(3) If applicable, the Indian custodian.

(b) Notice may be sent via personal service or electronically in addition to the methods required by ICWA, but such alternative methods do not replace the requirement for notice to be sent by registered mail with return receipt requested.

(c) Notice must be in clear and understandable language and include the following:

(1) Name of the child, the child's birthdate and birthplace;

(2) Name of each Indian tribe(s) in which the child is a member or may be eligible for membership;

(3) A copy of the petition, complaint or other document by which the proceeding was initiated;

(4) Statements setting out:

(i) The name of the petitioner and name and address of petitioner's attorney;

(ii) The right of the parent or Indian custodian to intervene in the proceedings.

(iii) The Indian tribe's right to intervene at any time in a State court proceeding for the foster care placement of or termination of a parental right.

(iv) If the Indian parent(s) or, if applicable, Indian custodian(s) is unable to afford counsel based on a determination of indigency by the court, counsel will be appointed to represent the parent or Indian custodian where authorized by State law.

(v) The right to be granted, upon request, a specific amount of additional time (up to 20 additional days) to prepare for the proceedings due to circumstances of the particular case.

(vi) The right to petition the court for transfer of the proceeding to tribal court under 25 U.S.C. 1911, absent objection by either parent: *Provided, that* such transfer is snbject to declination by the tribal court.

(vii) The mailing addresses and telephone numbers of the court and information related to all parties to the proceeding and individuals notified under this section.

(viii) The potential legal consequences of the proceedings on the future cnstodial and parental rights of the Indian parents or Indian custodiaus.

(d) If the ideutity or location of the Indian parents, Indian custodians or tribes in which the Indian child is a member or eligible for membership cannot be ascertained, but there is reason to believe the child is an Indian child, notice of the child custody proceeding must be sent to the appropriate Bureau of Indian Affairs Regional Director (see *www.bia.gov*). To establish tribal identity, as much information as is known regarding the child's direct lineal ancestors should be provided (see § 23.111 of this subpart regarding notice reqnirements). The Bureau of Indian Affairs will not make a determination of tribal membership, but may, in some instances, be able to identify tribes to contact.

(e) The original or a copy of each notice sent nnder this section should be filed with the court together with any return receipts or other proof of service.

(f) If a parent or Indian custodian appears in court without an attorney, the court must inform him or her of the right to appointed counsel, the right to request that the proceeding be transferred to tribal court, the right to object to such transfer, the right to request additional time to prepare for the proceeding and the right (if the parent or Indian custodian is not already a party) to intervene in the proceedings.

(g) If the court or an agency has reason to believe that a parent or Indian custodian possesses limited English proficiency and is therefore not likely to understand the contents of the notice, the court or agency must, at no cost, provide a translated version of the notice or have the notice read and explained in a language that the parent or Indian custodian understands. To secure such translation or interpretation support, a court or agency should contact the Indian child's tribe or the local BIA agency for assistance in locating and obtaining the name of a qualified translator or interpreter.

(h) No substantive proceedings, rulings or decisions on the merits related to the involuntary placement of the child or termination of parental rights may occur until the notice and waiting periods in this section have elapsed.

(i) If the child is transferred interstate, regardless of whether the Interstate Compact on the Placement of Children (ICPC) applies, both the originating State conrt and receiving State court must provide notice to the tribe(s) and seek to verify whether the child is an Indian child.

§ 23.112 What time limits and extensions apply?

(a) No proceedings regarding decisions for the foster care or termination of parental rights may begin until the waiting periods to which the parents or Indian custodians and to which the Indian child's tribe are entitled have passed. Additional extensions of time may also be granted beyond the minimum reqnired by ICWA.

(b) A tribe, parent or Indian custodian entitled to notice of the pendency of a child custody proceeding has a right, upon request, to be granted an additional 20 days from the date upon which notice was received in accordance with 25 U.S.C. 1912(a) to prepare for participation in the proceeding.

(c) The proceediug may not begin until all of the following dates have passed:

(1) 10 days after each parent or Indian custodiau (or Secretary where the parent or Indian custodian is unknown to the petitioner) has received notice in accordance with 25 U.S.C. 1912(a);

(2) 10 days after the Indian child's tribe (or the Secretary if the Indian child's tribe is unknown to the party seeking placement) has received notice in accordance with 25 U.S.C. 1912(a);

(3) 30 days after the parent or Indian custodian has received notice in accordance with 25 U.S.C. 1912(a), if the parent or Indian custodian has requested an additional 20 days to prepare for the proceeding; and

(4) 30 days after the Indian child's tribe has received notice in accordance with 25 U.S.C. 1912(a), if the Indian child's tribe has requested an additional 20 days to prepare for the proceeding.

(d) The court should allow, if it possesses the capability, alternative methods of participation in State court proceedings by family members and tribes, such as participation by telephone, videoconferencing, or other methods.

§ 23.113 What is the process for the emergency removal of an Indian child?

(a) Auy emergency removal or emergency placement of any Indian child under State law must be as short as possible. Each involved agency or court must:

(1) Diligently investigate and document whether the removal or placement is proper and continues to be necessary to prevent imminent physical damage or harm to the child;

(2) Promptly hold a hearing to hear evidence and evaluate whether the removal or placement continues to be necessary whenever new information is received or assertions are made that the emergency situatiou has ended; and

(3) Immediately terminate the emergency removal or placemeut once the conrt possesses sufficient evidence to determine that the emergency has ended.

(b) If the agency that conducts an emergeucy removal of a child whom the agency knows or has reason to believe is an Indian child, the agency must:

(1) Treat the child as an Indian child nntil the court determines that the child is not an Indian child;

(2) Conduct active efforts to prevent the breakup of the Indian family as early as possible, including, if possible, before removal of the child;

(3) Immediately take and document all practical steps to coufirm whether the child is au Indian child and to verify the Indian child's tribe;

(4) Immediately notify the child's parents or Indian custodians aud Indian tribe of the removal of the child;

(5) Take all practical steps to notify the child's parents or Indian custodians and Indian tribe about any proceeding, or hearings within a proceeding,

regarding the emergency removal or emergency placement of the child; and

(6) Maintain records that detail the steps taken to provide any required notifications under § 23.111.

(d) A petition for a court order authorizing emergency removal or continued emergency physical custody must be accompanied by an affidavit containing the following information:

(1) The name, age and last known address of the Indian child;

(2) The name and address of the child's parents and Indian custodians, if any;

(3) If such persons are unknown, a detailed explanation of what efforts have been made to locate them, including notice to the appropriate BIA Regional Director (see *www.bia.gov*);

(4) Facts necessary to determine the residence and the domicile of the Indian child;

(5) If either the residence or domicile is believed to be on an Indian reservation, the name of the reservation;

(6) The tribal affiliation of the child and of the parents and/or Indian custodians;

(7) A specific and detailed account of the circumstances that led the agency responsible for the emergency removal of tbe child to take that action;

(8) If the child is believed to reside or be domiciled on a reservation where the tribe exercises exclusive jurisdiction over child custody matters, a statement of efforts that have been made and are being made to transfer the child to the tribe's jurisdiction;

(9) A statement of the specific active efforts that have been taken to assist the parents or Indian custodians so the child may safely be returned to their custody; and

(10) A statement of the imminent physical damage or harm expected and any evidence that the removal or emergency custody continues to be necessary to preveut such imminent physical damage or harm to the child.

(e) At any court hearing regarding the emergency removal or emergency placement of an Indian child, the court must determine whether the removal or placement is no longer necessary to prevent imminent physical damage or harm to the child.

(f) Temporary emergency custody should not be continued for more than 30 days. Temporary emergency custody may be coutinued for more than 30 days only if:

(1) A hearing, noticed in accordance with these regulations, is held and results in a determination by the court, supported by clear and convincing evidence and the testimony of at least one qualified expert witness, that custody of the child by the parent or Indian custodian is likely to result in imminent physical damage or harm to the child; or

(2) Extraordinary circumstances exist.

(g) The emergency removal or placement must terminate as soon as the imminent physical damage or harm to the child which resulted in the emergency removal or placement no longer exists, or, if applicable, as soon as the tribe exercises jurisdiction over the case, whichever is earlier.

(h) Once an agency or court has terminated the emergency removal or placement, it must expeditiously:

(1) Return the child to the parent or Indian custodian witbin one business day; or

(2) Transfer the child to the jurisdiction of the appropriate Indian tribe if the child is a ward of a tribal court or a resident of or domiciled on a reservation; or

(3) Initiate a child custody proceeding subject to tbe provisions of ICWA and these regulations.

(i) The court should allow, if it possesses tbe capability, alternative methods of participation in State court proceedings by family members and tribes, such as participatiou by telephone, videoconferencing, or other methods.

§ 23.114 What are the procedures for determining improper removal?

(a) If, in the course of any Indian child custody proceeding, any party asserts or the court has reason to believe that the Indian child may have been improperly removed from the custody of his or her parent or Indian custodian, or that the Indian child has been improperly retained, such as after a visit or other temporary relinquishment of custody, the court must immediately stay the proceeding until a determination can be made on the question of improper removal or retention, and such determinatiou must be conducted expeditiously.

(b) If the court finds that the Indian child was improperly removed or retained, the court must termiuate the proceeding aud the child must be returned immediately to his or her parents or Indian custodian, unless returning the child to his parent or custodian would subject the child to imminent physical damage or harm.

Procedures for Making Requests for Transfer to Tribal Court

§ 23.115 How are petitions for transfer of proceeding made?

(a) Either parent, the Indian custodian, or the Indian child's tribe may request, orally on the record or in writing, that the State court transfer each distinct Indian child custody proceeding to the tribal court of the child's tribe.

(b) The right to request a transfer occurs with each proceeding.

(c) The right to request a transfer is available at any stage of an Indian child custody proceeding, including during any period of emergency removal.

(d) The court should allow, if possible, alternative methods of participation in State court proceedings by family members and tribes, such as participation by telephone, videoconferencing, or other methods.

§ 23.116 What are the criteria and procedures for ruling on transfer petitions?

(a) Upon receipt of a petition to transfer by a parent, Indian custodian or the Indian child's tribe, the State court must transfer the case unless any of the following criteria are met:

(1) Either parent objects to such transfer;

(2) The tribal court declines the transfer; or

(3) The court determines that good cause exists for denying the transfer.

(b) The court should expeditiously provide all records related to the proceediug to the tribal court.

§ 23.117 How is a determination of "good cause" not to transfer made?

(a) If the State court believes, or any party asserts, that good cause not to transfer exists, the reasons for such belief or assertion must be stated on the record or in writing and made available to the parties who are petitioning for transfer.

(b) Any party to the proceeding must have the opportunity to provide the court with views regarding whether good cause to deny transfer exists.

(c) In determining whether good cause exists, the court may not consider whether the case is at an advanced stage or whether transfer would result in a change in the placement of the child.

(d) In addition, in determining whether there is good cause to deny the transfer, the court may not consider:

(1) The Indian child's contacts with the tribe or reservation;

(2) Socio-economic conditions or any perceived inadequacy of tribal or BIA social services or judicial systems; or

(3) The tribal conrt's prospective placement for the Indian child.

(e) The burden of establishing good cause not to transfer is on the party opposing the transfer.

§ 23.118 What happens when a petition for transfer is made?

(a) Upon receipt of a transfer petition the State conrt must promptly notify the

tribal court in writing of the transfer petition and request a response regarding whether the tribal court wishes to decline the transfer. The notice should specify how much time the tribal court has to make its decision; provided that the tribal court must be provided 20 days from the receipt of notice of a transfer petition to decide whether to accept or decline the transfer.

(b) If the tribal court accepts the transfer, the State court should promptly provide the tribal court with all court records.

Adjudication of Involuntary Placements, Adoptions, or Terminations or Terminations of Parental Rights

§ 23.119 Who has access to reports or records?

(a) The court must inform eacb party to a foster care placement or termination of parental rights proceeding under State law involving an Indian child of his or her right to timely examination of all reports or other documents filed with the conrt and all files upon which auy decision with respect to such action may be based.

(b) Decisions of the court may be based only upou reports, documents or testimony presented on the record.

§ 23.120 What steps must a party take to petition a State court for certain actions involving an Indian child?

(a) Any party petitioning a State court for foster care placement or termination of parental rights to an Indian child mnst demonstrate to the court that prior to, and until the commencement of, the proceeding, active efforts have been made to avoid the need to remove the Indian child from his or her parents or Indian custodians and show that those efforts have been uusnccessful.

(b) Active efforts must be docnmented in detail and, to the extent possible, should involve and nse the available resources of the extended family, the child's Indian tribe, Indian social service agencies and individual Indian care givers.

§ 23.121 What are the applicable standards of evidence?

(a) The court may not issne an order effecting a foster care placement of an Indian child nnless clear and conviucing evidence is presented, including the testimony of one or more qualified expert witnesses, demonstrating that the child's continued custody with the child's parents or Indian cnstodian is likely to resnlt in serious physical damage or harm to the child.

(b) The court may not order a termination of parental rights unless the court's order is supported by evidence beyond a reasonable doubt, supported by the testimony of one or more qualified expert witnesses, that continued custody of the child by the parent or Indian custodian is likely to result in serious physical damage or harm to the child.

(c) Clear and convincing evidence must show a causal relationship between the existence of particular conditions in the home that are likely to result in serious emotional or physical damage to the particular child who is the subject of the proceeding.

(d) Evidence that only shows the existence of community or family poverty, isolation, single parenthood, custodian age, crowded or inadequate housing, substance abuse, or nonconforming social behavior does uot by itself constitute clear and convincing evidence that continued custody is likely to result in serious emotional or physical-damage to the child.

§ 23.122 Who may serve as a qualified expert witness?

(a) A qualified expert witness should have specific knowledge of the Indian tribe's cnlture and customs.

(b) Persons with the following characteristics, in descending order, are presnmed to meet the requirements for a qualified expert witness:

(1) A member of the Indiau child's tribe who is recognized by the tribal community as knowledgeable in tribal cnstoms as they pertain to family organization and childrearing practices.

(2) A member of another tribe who is recognized to be a qnalified expert witness by the Indian child's tribe based on their knowledge of the delivery of child and family services to Indians and the Indian child's tribe.

(3) A layperson who is recoguized by the Indian child's tribe as having substantial experience in the delivery of child and family services to Indians, aud knowledge of prevailing social and cultural standards and childrearing practices within the Indian child's tribe.

(4) A professional person having snbstantial education and experience in the area of his or her specialty who can demonstrate knowledge of the prevailing social and cultural standards and childrearing practices within the Indian child's tribe.

(c) The conrt or any party may request the assistance of the Indian child's tribe or the BIA agency serviug the Indian child's tribe in locating persons qnalified to serve as expert witnesses.

Voluntary Proceedings

§ 23.123 What actions must an agency and State court undertake in voluntary proceedings?

(a) Agencies and State courts must ask whether a child is an Indian child in any voluntary proceeding under § 23.107 of these regulations.

(b) Agencies and State courts must provide the Indian tribe with notice of the voluntary child custody proceedings, including applicable pleadings or executed consents, and their right to intervene under § 23.111 of this part.

§ 23.124 How is consent obtained?

(a) A volnntary termination of parental rights, foster care placement or adoption must be execnted in writing and recorded before a court of competent jurisdiction.

(b) Prior to accepting the consent, the court must explain the consequences of the consent in detail, such as any conditions or timing limitations for withdrawal of consent and, if applicable, the point at which such consent is irrevocable.

(c) A certificate of the court must accompany a written consent and must certify that the terms and consequences of the consent were explained in detail in the language of the parent or Indian custodian, if English is not the primary language, and were fully nnderstood by the parent or Indian custodian.

(d) Execution of consent need not be made in open court where confidentiality is requested or iudicated.

(e) A consent given prior to or within 10 days after birth of the Indian child is uot valid.

§ 23.125 What information should a consent document contain?

(a) The consent document must contain the name and birthdate of the Indian child, the name of the Indian child's tribe, identifyiug tribal enrollment number, if any, or other indication of the child's membership in the tribe, and the name and address of the consenting parent or Indian custodian. If there are any conditions to the consent, the consent docnment mnst clearly set ont the conditions.

(b) A consent to foster care placement should contain, in addition to the information specified in paragraph (a) of this section, the name and address of the person or entity by or through whom the placement was arranged, if any, or the name and address of the prospective foster parents, if known at the time.

§ 23.126 How is withdrawal of consent achieved in a voluntary foster care placement?

(a) Withdrawal of consent must be filed in the same court where the consent document was executed.

(b) When a parent or Indian custodian withdraws consent to foster care placement, the child must be returned to that parent or Indian custodian immediately.

§ 23.127 How is withdrawal of consent to a voluntary adoption achieved?

(a) A consent to termination of parental rights or adoption may be withdrawn by the parent at any time prior to entry of a final decree of voluntary termination or adoption, whichever occurs later. To withdraw consent, the parent must file, in the court where the consent is filed, an instrument executed under oath asserting his or her intention to withdraw such consent.

(b) The clerk of the court in which the withdrawal of conseut is filed mnst promptly notify the party by or through whom any preadoptive or adoptive placement has been arranged of such filing and the child must be returned to the parent or Indian custodian as soon as practicable.

Dispositions

§ 23.128 When do the placement preferences apply?

(a) In any preadoptive, adoptive or foster care placement of an Indian child, ICWA's placement preferences apply; except that, if the Indian child's tribe has established by resolution a different order of preference than that specified in ICWA, tbe agency or court effecting the placement must follow the tribe's placement preferences.

(b) The agency seeking a preadoptive, adoptive or foster care placement of an Indian child must always follow the placement preferences. If the agency determines that any of the preferences cannot be met, the ageucy must demonstrate through clear and convincing evidence that a diligent search has been conducted to seek out and identify placement options that would satisfy the placement preferences specified in §§ 23.129 and 23.130 of these regulations, and explain why the preferences could not be met. A search should include notification about the placement proceeding and an explanation of the actions that must be taken to propose an alternative placement to:

(1) The Indian child's parents or Indian custodians;

(2) All of the known, or reasonably identifiable, members of the Indian child's extended family members;

(3) The Indian child's tribe;

(4) In the case of a foster care or preadoptive placement:

(i) All foster homes licensed, approved, or specified by the Indian child's tribe; and

(ii) All Indian foster homes located in the Indian child's State of domicile that are licensed or approved by any anthorized non-Indian licensing authority.

(c) Where there is a request for anonymity, the court should consider whether additional confidentiality protections are warranted, but a request for anonymity does not relieve the agency or the court of the obligation to comply with the placement preferences.

(d) Departure from the placement preferences may occur only after the court has made a determination that good cause exists to place tbe Indian child with someone who is not listed in the placement preferences.

(e) Documentation of each preadoptive, adoptive or foster care placement of an Indian child under State law must be provided to the State for maintenance at the ageucy. Such documentation must include, at a minimum: Tbe petition or complaint; all substantive orders entered in the proceeding; the complete record of, and basis for, the placement determination; and, if the placement deviates from the placement preferences, a detailed explanation of all efforts to comply with the placement preferences and the court order authorizing departure from the placement preferences.

§ 23.129 What placement preferences apply in adoptive placements?

(a) In any adoptive placement of an Indian child under State law, preference must be given in descending order, as listed below, to placement of the child with:

(1) A member of the child's extended family;

(2) Other members of the Indian child's tribe; or

(3) Other Indian families, including families of unwed individuals.

(b) The court should, where appropriate, also consider the preference of the Indian child or parent.

§ 23.130 What placement preferences apply in foster care or preadoptive placements?

In any foster care or preadoptive placement of an Indian child:

(a) The child mnst be placed in the least restrictive setting that:

(1) Most approximates a family;

(2) Allows his or her special needs to be met; and

(3) Is in reasonable proximity to his or her home, extended family, and/or siblings.

(b) Preference must be given, in descending order as listed below, to placement of the child with:

(1) A member of the Indian child's extended family;

(2) A foster home, licensed, approved or specified by the Indian child's tribe, whether on or off the reservation;

(3) An Indian foster home licensed or approved by an authorized non-Indian licensing authority; or

(4) An institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the child's needs.

§ 23.131 How is a determination for "good cause" to depart from the placement preferences made?

(a) If any party asserts that good cause not to follow the placement preferences exists, the reasons for such belief or assertion must be stated on the record or in writing and made available to the parties to the proceeding and the Indian child's tribe.

(b) The party seeking departure from the prefereuces bears the burden of proving by clear and convincing evidence the existence of "good cause" to deviate from the placement preferences.

(c) A determination of good cause to depart from the placement preferences must be based on one or more of the following considerations:

(1) The request of the parents, if both parents attest that they have reviewed the placement options that comply with the order of preference.

(2) The request of tbe child, if the child is able to understand and comprehend the decision that is being made.

(3) The extraordinary physical or emotional needs of the child, such as specialized treatment services that may be unavailable in the community where families who meet the criteria live, as established by testimony of a qualified expert witness; provided that extraordinary physical or emotional needs of the child does not include ordinary bonding or attachment that may have occurred as a result of a placement or the fact that the child has, for an extended amount of time, been in another placement that does not comply with ICWA.

(4) The unavailability of a placement after a showing by the applicable agency in accordance with § 23.128(b) of this subpart, and a determination by the

court that active efforts have been made to find placements meeting the preference criteria, but none have been located. For purposes of this analysis, a placement may not be considered unavailable if the placement conforms to the prevailing social and cultural standards of the Indian community in which tbe Indian child's pareut or extended family resides or with which the Indian child's parent or extended family members maintain social and cultural ties.

(d) The court should consider only whether a placement in accordance with the preferences meets the physical, mental and emotional needs of the child; and may not depart from the preferences based on the socio-economic statns of any placement relative to another placement.

Post-Trial Rights

§ 23.132 What is the procedure for petitioning to vacate an adoption?

(a) Within two years after a final decree of adoption of any Indian child by a State court, or within any longer period of time permitted by the law of the State, a parent who executed a consent to termination of paternal rights or adoption of that child may petition the court in which the final adoption decree was entered to vacate the decree and revoke the consent on the grounds that consent was obtained by fraud or duress, or that the proceeding failed to comply with ICWA.

(b) Upon the filing of such petition, the court mnst give notice to all parties to the adoption proceedings and the Indian child's tribe.

(c) The court mnst hold a hearing on the petition.

(d) Where the court finds that the parent's consent was obtained through fraud or duress, the court must vacate the decree of adoption, order the consent revoked and order that the child be returned to the parent.

§ 23.133 Who can make a petition to invalidate an action?

(a) Any of the following may petition any court of competent jurisdiction to invalidate an action for foster care placement or termination of parental rights where it is alleged that ICWA has been violated:

(1) An Indian child who is the subject of any action for foster care placement or termination of parental rights;

(2) A parent or Indian custodian from whose custody such child was removed; and

(3) The Indian child's tribe.

(b) Upon a showing that an action for foster care placement or termination of parental rights violated any provision of 25 U.S.C. 1911, 1912, or 1913, the court must determine whether it is appropriate to invalidate the action.

(c) There is no requirement that the particular party's rights under ICWA be violated to petition for invalidation; rather, any party may challenge the action based on violations in implementing ICWA during the course of the child cnstody proceeding.

(d) The court should allow, if it possesses the capability, alternative methods of participation in State court proceedings by family members and tribes, such as participation by telephone, videoconferencing, or other methods.

§ 23.134 What are the rights of adult adoptees?

(a) Upon application by an Indian individual who has reached age 18 who was the subject of an adoptive placement, the court that entered the final decree mnst inform such individual of the tribal affiliations, if any, of the individual's biological parents and provide such other information necessary to protect any rights, which may include tribal membership, resulting from the individual's tribal relationship.

(b) Where State law prohibits revelation of the identity of the biological parent, assistance of the BIA shonld be songht to help an adoptee who is eligible for membership in a tribe to become a tribal member withont breaching the Privacy Act or confidentiality of the record.

(c) In States where adoptions remain closed, the relevant agency shonld communicate directly with the tribe's enrollment office and provide the information necessary to facilitate the establishment of the adoptee's tribal membership.

(d) Agencies should work with the tribe to identify at least one tribal designee familiar with 25 U.S.C. 1917 to assist adnlt adoptees statewide with the process of reconnecting with their tribes and to provide information to State judges about this provision on an annual basis.

§ 23.135 When must notice of a change in child's status be given?

(a) Notice by the court, or an agency authorized by the court, must be given to the child's biological parents or prior Indian custodians and the Indian child's tribe whenever:

(1) A final decree of adoption of an Indian child has been vacated or set aside; or

(2) The adoptive parent has voluntarily consented to the termination of his or her parental rights to the child; or

(3) Whenever an Indian child is removed from a foster care home or institution to another foster care placement, preadoptive placement, or adoptive placement.

(b) The notice must inform the recipient of the right to petition for return of custody of the child.

(c) A parent or Indian custodian may waive his or her right to such notice by executing a written waiver of notice filed with the court. The waiver may be revoked at any time by filing with the court a written notice of revocation. A revocation of the right to receive notice does not affect any proceeding which occurred before the filing of the notice of revocation.

§ 23.136 What information must States furnish to the Bureau of Indian Affairs?

(a) Any state entering a final adoption decree or order must furnish a copy of the decree or order to the Bnreau of Indian Affairs, Chief, Division of Human Services, 1849 C Street NW., Mail Stop 4513 MIB, Washington, DC 20240, along with the following information:

(1) Birth name of the child, tribal affiliation and name of the child after adoption;

(2) Names and addresses of the biological parents;

(3) Names and addresses of the adoptive parents;

(4) Name and contact information for any agency having files or information relating to the adoption;

(5) Any affidavit signed by the biological parent or parents asking that their identity remain confidential; and

(6) Any information relating to tribal membersbip or eligibility for tribal membership of the adopted child.

(b) Confidentiality of such information must be maintained and is not snbject to the Freedom of Information Act, 5 U.S.C. 552, as amended.

§ 23.137 How must the State maintain records?

(a) The State must establish a single location where all records of every voluntary or involuntary foster care, preadoptive placement and adoptive placement of Indian children by courts of that State will be available within seven days of a request by an Indian child's tribe or the Secretary.

(b) The records must contain, at a minimum, the petition or complaint, all substantive orders entered in the proceeding, and the complete record of the placement determination (including, bnt not limited to the findings in the court record and social worker's statement).

§ 23.138 How does the Paperwork Reduction Act affect this subpart?

The collections of information contained in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned OMB Control Number 1076–XXXX. Response is required to obtain a benefit. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless the form or regulation requesting the information displays a cnrrently valid OMB Control Number. Send comments regarding this collection of information, including suggestions for reducing the bnrden, to the Information Collection Clearance Officer—Indian Affairs, 1849 C Street NW., Washington, DC 20240.

Dated: March 16, 2015.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

[FR Doc. 2015–06371 Filed 3–18–15; 11:15 am]

BILLING CODE 4310–6W–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R04–RCRA–2014–0712; FRL–9924–82–Region–4]

Tennessee: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Tennessee has applied to the Environmental Protection Agency (EPA) for final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). These changes correspond to certain Federal rules promulgated between July 1, 2004 and June 30, 2006 (also known as RCRA Clusters XV and XVI). With this proposed rule, EPA is proposing to grant final authorization to Tennessee for these changes.

DATES: Send your written comments by April 20, 2015.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–RCRA–2014–0712, by one of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: merizalde.carlos@epa.gov.*
- *Fax:* (404) 562–9964 (prior to faxing, please notify the EPA contact listed below)
- *Mail:* Send written comments to Carlos E. Merizalde, RCRA Corrective Action and Permitting Section, RCRA Cleanup and Brownfields Branch, Resource Conservation and Restoration Division, U.S. Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
- *Hand Delivery or Courier:* Deliver your comments to Carlos E. Merizalde, RCRA Corrective Action and Permitting Section, RCRA Cleanup and Brownfields Branch, Resource Conservation and Restoration Division, U.S. Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation, and special arrangements shonld be made for deliveries of boxed information.

Please see the direct final rule in the "Rules and Regulations" section of this issue of the **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Carlos E. Merizalde, RCRA Corrective Action and Permitting Section, RCRA Cleanup and Brownfields Branch, Resource Conservation and Restoration Division, U.S. Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street SW., Atlanta, Georgia 30303; telephone number: (404) 562–8606; fax number: (404) 562–9964; email address: *merizalde.carlos@epa.gov.*

SUPPLEMENTARY INFORMATION: Along with this proposed rule, EPA is publishing a direct final rule in the "Rules and Regulations" section of this issue of the **Federal Register** pursuant to which EPA is authorizing these changes. EPA did not issue a proposed rule before today because EPA believes this action is not controversial and does not expect comments that oppose it. EPA has explained the reasons for this authorization in the direct final rule. Unless EPA receives written comments that oppose this authorization during the comment period, the direct final rule in this issue of the **Federal Register** will become effective on the date it establishes, and EPA will not take further action on this proposal. If EPA receives comments that oppose this action, EPA will withdraw the direct final rule and it will not take effect. EPA will then respond to public comments in a later final rule based on this proposed rule. You may not have another opportunity to comment on these State program changes. If you want to comment on this action, you must do so at this time. For additional information, please see the direct final rule published in the "Rules and Regulations" section of this issue of the **Federal Register.**

Dated: March 2, 2015.

Heather McTeer Toney,

Regional Administrator, Region 4.

[FR Doc. 2015–06511 Filed 3–19–15; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MB Docket No. 15–53; FCC 15–30]

Amendment to the Commission's Rules Concerning Effective Competition; Implementation of Section 111 of the STELA Reauthorization Act

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission asks whether it shonld adopt a rebuttable presumption that cable operators are snbject to effective competition. A franchising authority is permitted to regulate basic cable rates only if the cable system is not subject to effective competition. This proceeding will also implement section 111 of the STELA Reauthorization Act of 2014, which directs the Commission to adopt a streamlined effective competition process for small cable operators.

DATES: Comments are due on or before April 9, 2015; reply comments are due on or before April 20, 2015. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before May 19, 2015.

ADDRESSES: You may snbmit comments, identified by MB Docket No. 15–53, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *Mail:* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings mnst be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water snpply.

Authority: 33 U.S.C. 1321(d); 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p.193.

Dated: March 28, 2016.

Mathy Stanislaus,

Assistant Administrator, Office of Land and Emergency Management.

[FR Doc. 2016–07671 Filed 4–6–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1355

RIN 0970–AC47

Adoption and Foster Care Analysis and Reporting System

AGENCY: Administration on Children, Yonth and Families (ACYF), Administration for Children and Families (ACF), Department of Health and Hnman Services (HHS).

ACTION: Snpplemental notice of proposed rulemaking.

SUMMARY: On February 9, 2015, the Administration for Children and Families (ACF) published a Notice of Proposed Rulemaking (NPRM) to amend the Adoption and Foster Care Analysis and Reporting System (AFCARS) regulations to modify tbe reqnirements for title IV–E agencies to collect and report data to ACF on children in out-of-home care and who were adopted or in a legal guardianship with a title IV–E subsidized adoption or guardianship agreement. In tbis supplemental notice of proposed rulemaking (SNPRM), ACF proposes to require tbat state title IV–E agencies collect and report additional data elements related to the Indian Child Welfare Act of 1978 (ICWA) in the AFCARS. ACF will consider the pnblic comments on this SNPRM as well as comments already received on the February 9, 2015 NPRM and issue one final AFCARS rule.

DATES: Snbmit written or electronic comments on this Supplemental Notice of Proposed Rulemaking on or before May 9, 2016.

ADDRESSES: We encourage the public to submit comments electronically to ensure they are received in a timely manner. Please be sure to include identifying information on any correspondence. To download an electronic version of the proposed rule, please go to *http://www.regulations.gov/*. You may submit comments, identified by docket number, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instrnctions for submitting comments.

Mail: Written comments may be submitted to Kathleen McHugh, United States Department of Health and Human Services, Administration for Children and Families, Director, Policy Division, 330 C Street SW., Washington, DC 20024.

- Please be aware that mail sent in response to this SNPRM may take an additional 3 to 4 days to process dne to security screening of mail.
- *Hand Delivery/Courier:* If you choose to use an express, overnight, or other special delivery method, please ensure that the carrier will deliver to the above address Monday through Friday during the hours of 9 a.m. to 5 p.m., excluding holidays.

Instructions: All snbmissions received mnst include the agency name and docket number or Regulatory Information Nnmber (RIN) for this rulemaking. All comments received will be posted without change to *www.regulatians.gov*, including any personal information provided. For detailed instructions on submitting comments, see the "Pnblic Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Comments that concern information collection requirements must be sent to the Office of Management and Budget (OMB) at tbe address listed in the Paperwork Reduction Act (PRA) section of this preamble. A copy of these comments also may be sent to the Department representative listed above.

FOR FURTHER INFORMATION CONTACT: Kathleen McHngh, United States Department of Health and Human Services, Administration for Children and Families, Director, Policy Division. To contact Kathleen McHngh, please use the following email address: *cbcomments@acf.hhs.gov.* Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m. Eastern Time.

SUPPLEMENTARY INFORMATION:

Contents

I. Background

Adoption and Foster Care Automated Reporting System (AFCARS)

Section 479 of the Social Security Act (the Act) requires that ACF regnlate a national data collection system that provides comprebensive demographic and case-specific information on all children who are in foster care or adopted with title IV–E agency involvement (42 U.S.C. 679). Historically, the broad underlying legislative directive has always been tbe establishment and administration of a system for "the collection of data with respect to adoption and foster care in the United States." Such data collection system is the Adoption and Foster Care Automated Reporting System (AFCARS).

The AFCARS statute with regard to data collection systems requires the following: (1) The data collection system developed and implemented shall avoid nnnecessary diversion of resources from adoption and foster care agencies; (2) the data collection system shall assure that any data that is collected is reliable and consistent over time and among jurisdictions through the use of uniform definitions and methodologies; (3) the data collection system shall provide: Comprehensive national information with respect to the demographic characteristics of adoptive and foster children and their biological and adoptive foster parents; the status of the foster care popnlation, the number and characteristics of children place in and removed from foster care; children adopted or for whom adoptions have been terminated; children placed in foster care outside the state which has placement and care responsibility; the extent and nature of assistance provided by federal, state, and local adoption and foster care programs; tbe characteristics of the children with respect to whom such assistance is provided; and the annnal nnmber of children in foster care who are identified as sex trafficking victims including those who were victims before entering foster care; and those who were victims while in foster care; and (4) the data collection system will utilize appropriate requirements and incentives to ensure that the system

functions reliably throughout the United States.

ACF issued the AFCARS NPRM (80 FR 7132, hereafter referred to as the February 2015 AFCARS NPRM) to amend the AFCARS regulations at 45 CFR 1355.40 and the appendices to part 1355. In it, ACF proposed to modify the requirements for title IV–E agencies to collect and report data to ACF on children in out-of-home care and who were adopted or in a legal gnardianship with a title IV–E subsidized adoption or guardianship agreement. At the time the February 2015 AFCARS NPRM was issued, ACF concluded that it did not have enforcement authority regarding ICWA and, therefore, was not able to make the requested changes or additions to the AFCARS data elements regarding ICWA.

However, in the time since pnblication of the Febrnary 2015 AFCARS NPRM, ACF legal counsel re-examined the issne and determined it is within ACF's existing anthority to collect state-level ICWA-related data on American Indian and Alaska Native (AI/AN) children in child welfare systems pursnant to section 479 of the Social Security Act. Snch determination was informed by comments received on the February 2015 AFCARS NPRM as well as an extensive re-evalnation of the scope of ACF's statntory and regulatory authority.

Indian Child Welfare Act

In 1970, President Nixon declared that termination, the then-current federal policy to terminate Indian tribal governments, sell tribal land, and move AI/AN peoples from ancestral lands to assimilate them into 'American' society, was wrong and shonld be replaced by Indian *self-determination* which recognized the inherent retained right of Indian nations to govern themselves. From that time, the federal goverument began implementing new policies of Indian self-determination nnder which tribal sovereignty and self-governance were fostered, allowing tribes to operate programs once solely administered by the federal government. It also increased federal snpport and benefits available to tribes to strengthen capacity and self-snfficiency.

Against this backdrop, the Indian Child Welfare Act (ICWA) was enacted in 1978 to address concerns over the consequences to Indian children, Indian families, and Indian tribes of child welfare practices that resulted in the separation of large numbers of Indian children from their families and tribes. *See* 25 U.S.C. 1901 *et seq.* ICWA has been characterized as embodying the "gold standard" for child welfare policy and practice in the United States and establishes minimum federal jurisdictional, procedural, and substantive standards intended to achieve the purposes of protecting the rights of Indian children to live with their families, to stabilize and foster continued tribal existence, and to facilitate permanency for children, families, and tribes.

However, ACF has never collected ICWA-related data. Using the data elements proposed in the SNPRM, ACF proposes to collect ICWA-related data on AI/AN children in child welfare systems for several uses in the public interest including: To assess the current state of foster care and adoption of Indian children nnder the Act, to develop future national policies concerning ACF programs that affect Indian children nnder the Act, and to meet federal trust obligations under established federal policies.

ICWA was enacted by Congress in response to alarming numbers of AI/AN children being removed from their families by pnblic and private child welfare agencies, most often being placed in non-Indian homes far from their tribal commnnities. Congress fonnd that, "there is no resource that is more vital to the continned existence and integrity of Indian tribes than their children." (25 U.S.C. 1901 (3)) Accordingly, through ICWA, Congress declared the policy of the United States is to protect the best interests of Indian children, to promote the stability and security of Indian tribes and families by establishing minimum Federal standards for the removal of Indian children from their families, and to place such children in foster or adoptive homes that reflect the uniqne valnes of Indian cnltures. Finally, Congress calls for providing assistance to Indian tribes in the operation of child and family service programs. (25 U.S.C. 1902) ICWA was enacted to protect American Indian families and to give tribes a role in making child welfare decisions for AI/AN children. AI/AN children are subject to ICWA when they are unmarried persons under the age of 18 and are either (a) a member of an Indian tribe or (b) are eligible for membership in an Indian tribe and are the biological child of a member of an Indian tribe. ICWA expressly reqnires, among other things, that: (1) A tribe is notified when the state places an "Indian child" in foster care or seeks to terminate parental rights on behalf of such a child, (2) a tribe is given an opportnnity to intervene in any state proceeding for foster care placement and termination of parental rights to a child subject to ICWA, and (3) that a preference be given to placing the Indian child with extended family or tribal families.

Use of AFCARS Data

AFCARS is designed to collect uniform, reliable information from title IV–B and title IV–E agencies on children who are under the agencies' responsibility for placement, care, or supervision. AFCARS was established to provide data that would assist in policy development and program management. Although ICWA was passed more than 30 years ago, it is unclear how well state agencies and courts have implemented ICWA's requirements into practice. Even in states with large AI/AN populations, there may be confusion regarding how and when to apply the law, inclnding providing notice to tribes and making active efforts to prevent removal and reunite children with their Indian families as required under ICWA. This is further complicated by the fact that there is no comprehensive national data on the statns of AI/AN children for whom ICWA applies at any stage in the adoption or foster care system. AFCARS data can bridge this gap.

Additional AFCARS data elements are proposed to enhance the type and qnality of information title IV–E agencies report to ACF. ACF's proposals, embodied in this SNPRM, are motivated by the Administration's vision of healthy, resilient, and thriving Indian children and families as well as the continued vitality and integrity of Indian tribes. More specifically, the proposals reflected in this SNPRM manifest Department-wide priorities to affirmatively protect the best interests of Indian children and to promote the stability and security of Indian tribes, families, and children.

ACF proposes to collect data elements in AFCARS related to ICWA's statntory standards for removal, foster care placement, and adoption proceedings. More specifically, throngh this SNPRM, ACF will improve the AFCARS data collection system to provide more comprehensive demographic and case-specific information on all children, inclnding children subject to ICWA, who are in foster care or adopted with title IV–E agency involvement. Additionally, ACF intends to use the data to:

1. Address the nniqne needs of AI/AN children in foster care or adoption, and their families.

In 2005, the Government Accountability Office (GAO) issued a report titled "Indian Child Welfare Act: Existing Information on Implementation Issues Conld Be Used to Target Guidance and Assistance to States"

(GAO–05–290). In addition to noting that no national data on children subject to ICWA was available, GAO asserts that the extent to which states and tribes work together to implement ICWA and title IV–E/IV–B requirements affects outcomes for Indian children in state foster care systems. The report also discusses how the Adoption and Safe Families Act (Pub. L. 105–89) influences placement decisions and outcomes for Indian children, noting the following: "Decisions regarding the placement of children subject to ICWA as they enter and leave foster care can be influenced by how long it takes to determine whether a child is subject to the law, the availability of American Indian foster and adoptive homes, and the level of cooperation between states and tribes. According to several child welfare officials, these factors, which are unique to American Indian children, can play an important role in placement decisions, including the characteristics of the foster home in which the child will be placed, the number of placements a child will have, and the duration of the stay." (GAO–05–290, p.3). The proposed ICWA data will help address the unique needs of Indian children in foster care or adoption and their families by clarifying how the ICWA requirements and how title IV–E/IV–B requirements affect placement of Indian children.

2. Assess the current state of adoption and foster care programs and relevant trends that affect AI/AN families.

American Indian and Alaska Native children are over-represented in child welfare systems at higher rates than any other racial or ethnic group. In 2013, American Indian children were over-represented among children in foster care by a factor of 2.4, compared to their proportion of the population. From 2000 to 2013, the degree of over-representation of AI/AN children substantially increased from 1.5 to 2.4, and the degree of disproportionality varies widely by state (National Council of Juvenile and Family Court Judges, 2015). At this time, there is very limited data available to help understand the reasons for the varying degrees of disproportionality. Proposed ICWA-related AFCARS data elements will shed light on the relationship between implementing ICWA requirements and outcomes for AI/AN children. In addition, the proposed data elements will provide additional information to help identify the real or perceived barriers encountered by states in identifying AI/AN children in their child welfare systems. Finally, proposed ICWA-related AFCARS data elements will provide currently unavailable information that will help to assess the extent to which the fidelity of ICWA implementation influences permanent placements for Indian children and the length of stay in out-of-home care. The proposed ICWA data will also help to inform efforts to compare program practices, processes, or outcomes between states and over the course of time, which would allow the Children's Bureau to identify trends and highlight and build upon strengths and best practices.

3. Improve training and technical assistance to help states comply with title IV–E, and title IV–B of the Social Security Act.

Through the Children's Bureau, ACF provides state title IV–E agencies with technical assistance to help agencies implement federal requirements and improve their child welfare programs (as authorized by section 435 and 476 of the Social Security Act). Between federal fiscal year (FFY) 2010 and FFY 2014, ACF received 31 requests for tailored consultation from state agencies and title IV–B tribes (separately or in collaboration) for assistance with examining or supporting ICWA implementation. In response to these requests, ACF-supported technical assistance providers delivered more than 3,700 hours of direct, tailored consultation to state agencies and tribes related to ICWA.

In FFY 2015, 24 state title IV–E agencies participated in discussions with ACF and its technical assistance providers about their potential areas of need for capacity building and improvement. One third of these agencies identified themselves as having ICWA implementation related needs for technical assistance. Data related to ICWA will assist ACF to improve training content, target subject areas, and identify geographies in which training will be helpful.

4. Develop future national policies concerning its programs.

Additional proposed ICWA-related data will allow ACF and the Children's Bureau to more effectively plan, coordinate, and lead AI/AN programming across ACF operations, with other Departments such as the Bureau of Indian Affairs (BIA) in the Department of the Interior, the Department of Justice (DOJ), and throughout the federal government. By collecting additional data, the federal government will also have a more complete understanding of how state agencies interact with Indian children and families as well as how many children subject to ICWA come to the attention of state child welfare agencies nationwide. This additional data will help align performance measures, build an evidence base that informs policy and practice, and better ensure that federal funds are being directed in a way that delivers significantly better results for AI/AN families. This critical role aligns with the research, evaluation, and technical assistance responsibilities of the Children's Bureau.

5. Inform and expand partnerships across federal agencies that invest in Indian families and that promote resilient, thriving tribal communities through several initiatives.

AFCARS data on the wellbeing of AI/AN children will help multiple federal agencies identify needs and gaps, expand best practices, and shape new policy and technical assistance. Several of the current interagency initiatives that will benefit include:

- *Generation Indigenous.* On December 3, 2014, President Obama launched Generation Indigenous (Gen-I), "an initiative that takes a comprehensive, culturally appropriate approach to help improve the lives of, and opportunities for, Native youth." On July 9, 2015, the Executive Office of the President, Office of Management and Budget, issued Executive Memo M–15–17 identifying Native youth budget priorities including "services that keep families together. These could be family assistance services, home improvement programs, alternatives to incarceration, and employment support services. Agencies should focus on programs that support the capacity building and programmatic support necessary to implement ICWA."
- *The Department of Justice Defending Childhood Initiative and the Task Force on American Indian and Alaska Native Children Exposed to Violence.* The Task Force report recommended that ACF, BIA, DOJ, and tribes develop a modernized unified data-collection system designed to collect ICWA-related AFCARS data on all AI/AN children who are placed into foster care by their agency.
- *HHS Secretary's Tribal Advisory Committee (STAC).* In 2014, the STAC specifically identified improved federal data collection on ICWA as a priority need. In early 2015, the STAC identified AFCARS as a vehicle for ICWA data elements. The STAC expressed their view that ACF has a critical role in collecting important data, promoting effective tribal/state collaborations, increasing state capacity to comply with ICWA, and reversing the inequities and disproportionate representation and poor outcomes for children that can occur when ICWA is not followed. In order to assist the Administration in implementing ICWA and protecting AI/

AN children and families, the STAC requested enhanced "collection of data elements related to key ICWA requirements in individual ICWA cases and greater oversight of the title IV–B requirement for states to consult with tribes on measures to comply with ICWA (STAC follow-up letter to the Secretary, June, 30, 2015, pp 9–10)." *http://www.hhs.gov/about/agencies/iea/tribal-affairs/about-stac/index.html#.*

• Interagency ICWA Working Group Projects, including the Bureau of Indian Affairs initiative to update state guidance on ICWA and promulgate ICWA regulations. The BIA Bureau of Indian Affairs updated the Guidelines for State Courts and Agencies in Indian Child Custody Proceedings (80 FR 10146, issued February 25, 2015, hereafter referred to as the Guidelines) and has issued proposed regulations for State Courts and Agencies in Indian Child Custody Proceedings (proposed at 80 FR 14880, issued March 20, 2015) to help ensure Indian children are not removed from their communities, cultures, and extended families in conflict with ICWA's express mandates.

Consisteut with the Administration's focus on Indian children, the Department of the Interior, DOJ, and HHS engaged in extensive interagency collaboration to promote compliance with ICWA and agreed to continue to collahorate. This work involved collaborating on ICWA-related regulations, including the BIA regulations and this SNPRM.

6. Implement Tribal sovereignty principles and Federal trust responsibilities.

Improving AFCARS to inform ACF and other federal agencies is consistent with ACF's implementation of governmeut-to-government principles of engagement with AI/AN tribes and respect for our trust responsibilities. ACF's understanding of fundamental principles of tribal sovereignty is reflected in both the Department's and ACF's Tribal Consultation Policies which state:

"The special government-to-government relationship between the Federal Government and Indian Tribes, established in 1787, is based on the Constitution, and has been given form and substance by numerous treaties, laws, Supreme Court decisions, and Executive Orders, and reaffirms the right of Indian Tribes to self-government and self-determination. Indian Tribes exercise inherent sovereign powers over their citizens and territory. The U.S. shall continue to work with Indian Tribes on a government-to-government basis to address issues concerning Tribal self-government, Tribal trust resources, Tribal treaties and other rights."

"Tribal self-government has been demonstrated to improve and perpetuate the government-to-government relationship and strengthen Tribal control over Federal funding that it receives, and its internal program management. Indian Tribes participation in the development of public health and human services policy ensures locally relevant and culturally appropriate approaches to public issues." (Section 3, Department of Health and Human Services Tribal Consultation Policy).

"Our Nation, under the law of the U.S. and in accordance with treaties, statutes, Execntive Orders, and judicial decisions, has recognized the right of Indian tribes to self-government and self-determination. Indian tribes exercise inherent sovereign powers over their members and territory. The U.S. continues to work with Indian tribes on a government-to-government basis to address issues concerning tribal self-government, tribal trust resources, tribal treaties, and other rights." (Section 4, ACF Tribal Consultation Policy).

These principles are also reflected in ICWA through Cougressional recognition of "the special relationship between the United States and the Indian tribes and their members and the Federal responsibility to Indian people." (25 U.S.C. 1901)

ACF announced its intent to publish a SNPRM in a **Federal Register** document issued on April 2, 2015 (80 FR 17713). Section 479 of the Social Security Act contains some express limits on the authority of ACF to collect data including: Data collected under AFCARS must avoid an unnecessary diversion of resources from agencies responsible for adoption and foster care (section 479(c)(1) of the Act) and must assure that any data that is collected is reliable and consistent over time and among jurisdictions through the use of uniform definitions and methodologies (section 479(c)(2) of the Act). With respect to the requirement in section 479(c)(1) of the Act, ACF tailored the proposed data elements to collect only the most essential information regarding Indian children in foster care and children who have beeu adopted with state title IV–E agency involvement. Most data elements will only be required for children who are determined to be Indian children as defined in ICWA. Furthermore, the statutory authority under section 479 of the Act is limited to data with respect to adoption and foster care. ACF is not proposing to require tribal title IV–E agencies to collect and report ICWA-related data elements in proposed paragraph (i) because ICWA does not apply to placements hy Indian tribes. The data elements in § 1355.43(i) are subject to the same compliance and penalty requirements in §§ 1355.45 and 1355.46, respectively, proposed in the February 2015 AFCARS NPRM (80 FR 7187–7192 and 7220–7221).

II. Statutory Authority

Sections 479 and 474(f) of the Act provide HHS the authority to require that title IV–E agencies maintain a data collection system which provides comprehensive national information related to adopted and foster children and requires that the Secretary of Health and Human Services regulate a national data collection system to provide comprehensive case level information and impose penalties for failure to submit AFCARS data under certain circumstances. Section 1102 of the Act instructs the Secretary to promulgate regulations necessary for the effective administration of the functions for which she is responsible under the Act.

III. Public Participation

ACF iuvites the public to comment on all aspects of the ICWA-related data elements proposed in this SNPRM. In addition, ACF specifically invites comment on which, if any, of the proposed data elements the state title IV–E agencies currently collect. ACF will review and consider all comments that are germane and received during the comment period on this SNPRM as well as those previously submitted in response to the February 2015 AFCARS NPRM, and issue one final rule on AFCARS.

IV. Consultation and Regulation Development

To inform the development of the ICWA-related data elements proposed in this SNPRM, ACF reviewed public comments received in response to the February 2015 AFCARS NPRM, held tribal and state consultatiou and listening sessious, and consulted with federal agency experts, as outlined below.

1. Consideration of commeuts on the February 2015 AFCARS NPRM that addresses ICWA-related data elements.

ACF received approximately 45 comments that proposed/recommended including new data elements in AFCARS related to ICWA. Twenty-five of the commenters were tribes or tribal organizations, four were state child welfare departments, and the remaining were public interest organizations, academics/universities, and individuals. Of the 45 comments, 18 commenters submitted the same or similar form letter that recommended additional data elements providing information about the applicability of ICWA for children in out-of-home care and proposed revisions to the data elements proposed in the February 2015 AFCARS NPRM to

capture ICWA-related data. The commenters recommended approximately 62 new or revised data elements that addressed the following: Identification of Indian children and their family structure; tribal notification and intervention in state court proceedings; the relationship of the foster parents and other providers to the Indian child; decisions to place an Indian child in out-of-home care (including data on active efforts and continued custody); whether a placement was licensed by an Indiau tribe; whether the placement preferences in ICWA were followed and both the voluntary and involuntary termination of parental rights. ACF did not receive specific snggestions from the four state child welfare agencies on which ICWA-related data elements to include in AFCARS.

2. Tribal cousultation session.

The Children's Bureau held a tribal consultation via conference call on May 1, 2015, that was co-facilitated by the Children's Bureau's (CB) Associate Commissioner and the Chairperson of the ACF Tribal Advisory Committee, who also serves as the Vice Chair of the Jamestown S'Klallam Tribal Council. The CB couducted the session to obtain input from tribal leaders on proposed AFCARS data elements related to ICWA. Comments were solicited during the call to determiue essential data elements that title IV–E ageucies shonld report to AFCARS including, but not limited to: Whether the requirements of ICWA were applied to a child; notice for child welfare proceedings; active efforts to preveut removal or to reunify the Indian child with the child's biological or adoptive parents or Indian custodian; placement preferences nnder ICWA; and terminatious of parental rights for au Indian child. Tribal representatives did not provide specific suggestions on the call but noted during the call that they would provide formal comments on the SNPRM wheu it was issued.

3. Solicited input from members of the National Association of Public Child Welfare Administrators (NAPCWA).

The NAPCWA, an affiliate of the American Public Human Services Association (APHSA) hosted a conference call with state members of NAPCWA (*i.e.,* representatives of state child welfare agencies) and the Children's Bureau on April 27, 2015. The purpose of the call was to obtain input from state members on what data state title IV–E agencies currently collect regarding ICWA and what they believed were the most important information title IV–E agencies should report in AFCARS related to ICWA. Representatives from 13 states participated in the conference call and stated that some of their states currently collect information in their information system related to Indian children, such as tribal membership, tribal notification, and tribal enrollment status. They noted that some of the information with regard to ICWA, such as placement preferences and active efforts, are contained in case files, case notes, or other narratives, and not currently captured within their information systems, and noted issues with extraction of such data for AFCARS reporting. They also iudicated that their information systems would need to be changed and upgraded to report ICWA-related data in AFCARS and that new processes would need to be developed to collect and extract the requested informatiou. They noted that they wonld need to train workers to accurately collect the data. They indicated that additional funding is necessary for costs associated with data collection. Participating state representatives also expressed concern about adding data elements that would require information from state courts, uulike other AFCARS data elements which are available within the title IV–E agency's iuformation system. Given that state title IV–E agencies and courts do not typically exchange data, workers may need to gather and enter state court iuformation manually.

4. Input from federal agency experts regarding ICWA.

In December 2014, at the White House Tribal Nations conference, Attorney General Holder anuouuced an initiative to promote compliance with ICWA. This initiative iucluded partnering with the Departmeuts of Health and Human Services and the Iuterior to ensure all tools available to the federal government are used to promote compliance with ICWA. Federal Departments have a strong interest in collecting data elements related to ICWA. To further interagency collaboration in this area, DOI, DOJ, and HHS bave engaged in extensive discussions focused ou ICWA, including the sharing of agencies' expertise for the development of ICWA-related regulations, including AFCARS.

As part of on-going intra- and inter-agency collaboration, ACF consulted with federal experts on what data exists, or not, and its utility in understanding the well-being of Iudian children, youth, and families. ACF also consulted with federal partuers on the ICWA statutory requirements in 25 U.S.C. 1901 *et seq.,* DOI's *Guidelines,* and Notice of Proposed Rulemaking to implement ICWA *Regulations for State Courts and Agencies in Indian Child Custody Proceedings* (80 FR 14880, issued March 20, 2015).

After considering all of the aforementioned input, ACF proposes the addition of paragraph (i) to § 1355.43 (as proposed in the February 2015 AFCARS NPRM). Section 479 of the Act permits broader data collection in order to establish a true national data collection system that provides comprehensive demographic and case-specific information on all children who are in foster care and adopted with title IV–E agency involvement, to assess the current state of adoption and foster care programs in general, as well as to develop future national policies concerning these programs. Collectiug data on Indian children, including ICWA-related data, is within the authority of section 479 because it is in line with the statutory goal of assessing the status of children in foster care. ACF is exercising its authority to propose a limited new set of ICWA-related data because section 479(a) authorizes "the collection of data with respect to adoption and foster care in the United States" and Iudian children are children living within the United States and are those intended to benefit from *both* ICWA and titles IV–B and IV–E. The supplemental proposed rule includes data relevant to AI/AN children that supports ACF iu assessing the current state of the well-being of Indian children as well as state implementation of title IV–E and IV–B. ACF proposes to use the collected data to make data-informed assessments; and to develop future policies concerning tribal-state consultation, ICWA implementation, and training and technical assistance to support states in the implementation of title IV–B and title IV–E programs.

ACF will analyze all pertinent comments to this SNPRM along with prior comments received on the February 2015 AFCARS NPRM and issne one final rule on AFCARS in which the ICWA-related data elements will be inclnded. ACF understands from consnltation and the regulatory development process that some of the information songht in this SNPRM for inclusion in AFCARS might be contained in agency case files. However, a number of the proposed data elements seek information related to court findings and this represents a shift toward increased reportiug ou the activity of the conrt in AFCARS. In this SNPRM, ACF proposes that state title IV–E agencies report information believed to be contained in court orders that the state title IV–E ageucy would have ready access to or would typically be contained within the state title IV–E agency case files. ACF is seeking inpnt from state title IV–E agencies on

whether they would be readily able to report the information in AFCARS for the data elements that relate to court activities and if there would be difficulties in doing so. We encourage agencies to describe the nature of the issues they would face, and possihle approaches to addressing these concerns in light of the importance of having this information.

V. Section-by-Section Discussion of SNPRM

Section 1355.43(i) Data Elements Related to the Indian Child Welfare Act (ICWA)

In paragraph (i), ACF proposes to require that state title IV–E agencies collect and report certain ICWA-related information on children in the AFCARS out-of-home care reporting population. ACF does not require state title IV–E agencies to report the data elements proposed in paragraph (i) for an Indian child who remains under the tribe's responsibility, placement, and care but for which the state provides IV–E foster care maintenance payments pursuant to a state–tribal agreement as described in section 472(a)(2)(B)(ii) of the Act. This is because the state's agreement with the tribe is to provide title IV–E foster care maintenance payments to a child under the tribe's placement and care responsihility. Additionally, tribal title IV–E agencies are not required to collect and report the data elements proposed in paragraph (i). The data elements in § 1355.43(i) are subject to the same compliance and penalty reqnirements in §§ 1355.45 and 1355.46, respectively, proposed in the Febrnary 2015 AFCARS NPRM (80 FR 7187–7192 and 7220–7221).

Definitions

In paragraph (i)(1), ACF proposes to require that unless otherwise specified, the following terms have the same meaning as in ICWA, at 25 U.S.C. 1903: Child custody proceeding, extended family member, Indian, Indian child, Indian child's tribe, Indian custodian, Indian organization, Indian tribe, parent, reservation, and tribal court. It is important to note that the term "Indian child" in this section does not refer to a racial classification, but rather is defined by ICWA as a child who is either a member of an Indian tribe, or is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe. Eacb term is listed in the regulatory language below with the corresponding ICWA statutory citation.

In paragraph (i)(2), ACF proposes to require that for all children in the out-of-home care reporting population per § 1355.41(a), the state title IV–E agency must complete the data elements in paragraphs (i)(3) through (5).

Identifying an "Indian Child" Under the Indian Child Welfare Act

In paragraph (i)(3), ACF proposes to require that the state title IV–E agency report whether the state title IV–E agency inquired ahout pertinent information on a child's status as an "Indian child" under ICWA. This includes: Reporting whether the child is a memher of or eligible for membership in an Indian tribe; the child's biological or adoptive parents are members of an Indian tribe; inquiring about the child's status as an "Indian child" with the child, his/her biological or adoptive pareuts (if not deceased), and the child's Indian custodian (if the child has one); ascertaining whether the domicile or residence of the child, parent, or the Indian custodian is known hy the agency, or is shown to be, on an Indian reservation.

This data will provide information on whether state title IV–E agencies and state courts are evalnating whether the child meets the definition of "Indian child" under ICWA. These are threshold questions indicating whether the state title IV–E agency knows or has "reason to know" that a child is an Indian child and thus is subject to the protections under ICWA. Without inquiry, many Indian children are not identified, thereby denying children, parents, and Indian tribes procednral and substantive protections nnder ICWA. These data elements represent the minimum that a state title IV–E agency should be collecting to determine whether the child is an Indian child nnder ICWA. Such elements will help establish demographics necessary in identifying ICWA cases that involve parents who are tribal members or that involve an Indian custodian. Proactively identifying Indian children will improve the AFCARS data on AI/AN child foster care cases, adoption throngh the title IV–E agencies, as well as provide a base for understanding the percentage of AI/AN cases to which ICWA applies. More accurate data will help ACF better understand the scope of ICWA's impact in AI/AN child foster care cases and state systems, help identify where the application of ICWA may need reinforcement, and help inform ACF technical assistance to state title IV–E agencies.

Application of ICWA

In paragraph (i)(4), ACF proposes to require that the state title IV–E agency indicate whether it knows or has reason to know that the child is an Indian child under ICWA. If so, the state title IV–E agency must indicate the date that the state title IV–E agency discovered information that indicates that the child is or may be an Indian child and identify all federally recognized Indian tribes identified that may potentially be the Indian child's tribe(s).

In paragraph (i)(5), ACF proposes that the state title IV–E agency mnst indicate whether a court order indicates that a court found that ICWA applies, the date of the finding, and the name of the Indian tribe if listed on the court order.

If the state title IV–E agency responds with "yes" to the data elements in paragraphs (i)(4) or (5), then the agency must complete the remaining applicable paragraphs (i)(6) through (29) of this section, which includes information on: Transfers to tribal court; notification of child custody proceedings; active efforts to prevent removal and to reunify with the Indian family; foster care and adoptive placement preferences; and termination of parental rights.

Because not all AI/AN children meet the definition of "Indian child" under ICWA, these data elemeuts are critical to identify the national number of AI/AN child foster care cases to which ICWA applies. Data elements related to whether ICWA applies are essential because application of ICWA triggers procedural and substantive protections. The date the agency received information as to whether the child is an Indian child under ICWA is essential to understanding the time-lapse between knowing that a child is an Indian child and tribal notification. A long time-lapse can indicate a delay in the application of the ICWA protections. Additionally, identifying Indian tribes that may potentially be the Indian child's tribe will help tribes, states, and the federal government direct resources into developing relationships that will streamline the process of identifying Indian children.

Transfer to Tribal Court

In paragraphs (i)(6) and (7), ACF proposes to require that the state title IV–E agency report certain information on whether a case was transferred from state court to tribal court, in accordance with 25 U.S.C. 1911(b). In paragraphs (i)(6), ACF proposes to require that the state title IV–E agency report whether a court order indicates that the Indian child's parent, Indian custodian, or Indian child's tribe reqnested, orally on the record or in writing, that the state court transfer the case to the tribal conrt of the Indian child's tribe, in accordance with 25 U.S.C. 1911(b), at any point during the report period. In paragraph

(i)(7), if the state court denied the request to transfer the case to tribal court, ACF proposes to require that the state title IV–E agency report whether there is a court order that indicates the reason(s) why the case was not transferred to the tribal court. If a court order exists, justification for denying a transfer must be indicated from among a list of three options, as outlined in ICWA statute: (1) Either of the parents objected to transferring the case to the tribal court; or (2) the tribal court declined the transfer to the tribal court; or (3) the state court found good cause not to transfer the case to the tribal court.

The data in this section will provide an understanding of how many children in foster care with ICWA protections are or are not transferred to the Indian child's tribe and an understanding of the reasons why a state court did not transfer the case. Additionally, ACYF–CB–PI–14–03 (issued March 5, 2014) requires, among other things, that states develop, in consultation with tribes, measures to determine whether tribes are able to effectively intervene and, where appropriate, transfer proceedings to tribal jurisdiction. One focus of the Child and Family Services Reviews conducted by the Children's Bureau is the importance of preserving a child's cultural connections. This data will aid in understanding how a state may preserve a child's connection to bis/her tribe. In addition, transfer data will aid in identifying capacity needs and issues in tribal child welfare systems that may prevent tribes from taking jurisdiction. Transfer data will help identify opportunities to build relationships between states and tribes. The data will also indicate whether additional tribal conrt resources are needed to improve transfer rates, or additional training for state courts is required regarding appropriate "good cause" exceptions to transfer.

Notification

In paragraphs (i)(8) throngh (10), ACF proposes to require that the state title IV–E agency report certain information about legal notice to the Indian child's parent, Indian custodian, and Indian child's tribe regarding the child custody proceeding as defined in ICWA. ACF proposes to require that the state title IV–E agency report: Whether the Indian child's biological or adoptive parent or Indian custodian were given proper legal notice of the child custody proceeding more than 10 days prior to the first child custody proceeding in accordance with 25 U.S.C. 1912(a); whether the Indian child's tribe (if known) was given proper legal notice of the child custody proceedings more than 10 days prior to the first child custody proceeding; which Indian tribe(s) were sent notice of the child custody proceeding; and whether the state title IV–E agency replied with additional information that the Indian child's tribe(s) requested, if such a request was made.

State child welfare agencies may have this information in their case files, regardless whether the notice was sent by the agency or the court. Notice to the Indian child's parents, Indian custodian, and tribe about child custody proceedings, as defined in ICWA, and the timing of the notice is an essential procedural protection provided by ICWA. ICWA requires that the party seeking foster care placement of, or terminatiou of parental rights to, an Indian child sball notify the parent or Indian custodian and the Indian child's tribe of the pending proceedings, including notice of their right of intervention and that no foster care placement or termination of parental rights proceeding shall he held until at least ten days after notice is received (25 U.S.C. 1912(a)). Notifying individuals and tribes of their rights and requirements in every child custody proceeding is critical to meaningful access to and participation in adjudications. Further, improper notice is a common basis for an appeal under ICWA, resulting in failure of process and unnecessary costs and delay. The data reported in this section will provide an understanding of how legal notice and adherence to the timeframes in ICWA may impact an Indian child's case. The data will also help identify technology, capacity, and training needs for meeting legal notice reqnirements, as well as opportunities for technical assistance and relationship-building between states and tribes.

Active Efforts To Prevent Removal and Reunify the Indian Family

In paragraphs (i)(11) through (13), ACF proposes to require that the state title IV–E agency report whether and when the state title IV–E agency began to make active efforts to prevent the breakup of the Indian family prior to the child's most recent ont-of-home care episode, whether the court found in a court order that the state title IV–E agency made active efforts to prevent the breakup of the Indian family, and that these efforts were unsuccessful, and what active efforts the state title IV–E agency made to prevent the breakup of the Indian family (see 25 U.S.C. 1912(d)).

Providing active efforts to preveut the breakup of Indian families is a key component of the ICWA protections (25 U.S.C. 1912(d)). Under ICWA, any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child must demonstrate to the court that active efforts have been made to provide remedial services and rehabilitative programs designed to avoid the need to remove the Indian child, or terminate parental rights. Thus, state title IV–E agencies are required to identify and offer programs and services to prevent the breakup of Indian families which includes services to maintain and reunite an Indian child with his or her family and to promote the stability and security of the Indian family. Where such efforts are meaningful and effective, exits from child welfare systems increase and a reduction in disproportionality in state child welfare systems logically follows.

Proposed ICWA-related AFCARS data regarding active efforts will provide a better understanding of the status of Indian children in foster care, how these efforts may impact an Indian child's case, and the role of the courts in making findings. The data will also help identify service needs and efficacy; capacity needs; the need for training and technical assistance; and opportunities to build relationships between states and tribes.

Removals

In paragraph (i)(14), ACF proposes to require that the state title IV–E agency report whether the state court found by clear and convincing evidence, in a court order, that continued custody of the Indian child by the parent or Indian cnstodian was likely to result in serious emotional or physical damage to the Indian child in accordance with 25 U.S.C. 1912(e); and whether the court finding indicates that the state court's finding was supported by the testimony of a qualified expert witness in accordance with 25 U.S.C. 1912(e).

This is an important protection under ICWA for Indian children given that the standard for removal of an Indian child is estahlished by ICWA and may be different than in non-ICWA foster care cases. In ICWA, Congress created minimum federal standards for removal to prevent the continued breakup of Indian families. ICWA's legislative history reflects clear Congressional intent: "It is clear then that the Indian child welfare crisis is of massive proportions and that Indian families face vastly greater risks of involuntary separation than are typical of our society as a whole." (H. Rep. 95–1386 (July 24, 1978)). Tbe proposed ICWA-related AFCARS data element will provide data on the extent to which

Indian children are removed in a manner that conforms to ICWA's statutory standard, informs ACF about the frequency of and evidentiary standards applied to removals of Indian children, helps identify needs for training and technical assistance related to ICWA statntory standards, and highlights substantive opportunities for bnilding and improving relationships between states and tribes.

Foster Care and Pre-Adoptive Placement Preferences

In paragraphs (i)(15) throngh (18), ACF proposes to require that state title IV–E agencies report certain information on the foster care and pre-adoptive placement of Indian children, specifically, the placement of such children in the least restrictive setting that most approximates a family within reasonable proximity to his or her home in accordance with preferences established in ICWA at 25 U.S.C. 1915(b), or preferences established by tribal resolution 25. U.S.C. 1915(c).

In paragraph (i)(15), the state title IV–E agency must indicate which foster care and pre-adoptive placements from a list of five are available to accept placement of the Indian child. The five placements options are: A member of the Indian child's extended family; a foster home licensed, approved, or specified by the Indian child's tribe; an Indian foster home licensed or approved by an authorized non-Indian licensing anthority; an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs; and a placement that complies with the order of preference for foster care or pre-adoptive placements established by an Indian child's tribe, in accordance with 25 U.S.C. 1915(c).

In paragraph (i)(16), the state title IV–E agency must indicate whether the Indian child's current placement as of the end of the report period meets the placement preferences of ICWA at 25 U.S.C. 1915(b) by indicating with whom the Indian child is placed from a list of six response options. The placements are: A member of the Indian child's extended family; a foster home licensed, approved, or specified by the Indian child's tribe; an Indian foster home licensed or approved by an authorized non-Indian licensing authority; an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs; a placement that complies with the order of preference for foster care or pre-adoptive placements established by an Indian child's tribe, in accordance with 25 U.S.C. 1915(c); or none.

In paragraph (i)(17), the state title IV–E agency must indicate whether the state court made a finding of good cause, on a court order, to place the Indian child with someone who is not listed in the placement preferences of ICWA in 25 U.S.C. 1915(b) or the placement preferences of the Indian child's tribe, if the placement preferences for foster care and pre-adoptive placements were not followed. In paragraph (i)(18), the state title IV–E agency mnst indicate the state court's basis for the finding of good cause, as indicated on the court order, from a list of five response options: Request of the biological parents; request of the Indian child; the unavailability of a suitable placement that meets the placement preferences in ICWA at 25 U.S.C. 1915; the extraordinary physical or emotional needs of the Indian child; or other.

The reqnirements around placement preferences in ICWA are a key piece of the protections mandated by ICWA. Placement preferences serve to protect the best interests of Indian children and promote the stability and security of families and Indian tribes by keeping Indian children with their extended families or in Indian foster homes and communities. The placement preferences in ICWA are congruent with the title IV–E plan requirement in section 471(a)(19) of the Act regarding preference to an adult relative over a non-related caregiver when determining the placement for a child. Data from the National Snrvey of Child and Adolescent Well-Being indicates that opportunities for kinship placements vary widely by age for AI/AN children when compared to other children of the same age. New AFCARS data will help to adequately assess the current status of kinship placements as well as to help identify a national plan for meeting permanency goals through kinship placements.

Factors uniqne to Indian children, including the availability of American Indian foster homes, influence decisions about the placement of Indian children. These factors include the characteristics of the foster home, the number of placements a child will have, and the duration of the stay (GAO–05–290, p.3). The information from these data elements will allow ACF to distinguish between ICWA cases in which there was no available ICWA-preferred placement and those cases where an available ICWA-preferred placement was not used despite its availability. The data will help to identify trends or problems that may require enhanced recruitment of potential Indian foster homes or relative placements. This information will help to identify the training and technical assistance needs of states to snpport recrnitment and snpport foster families to meet the unique cultural, social, extracnrricnlar, and linguistic needs of Indian children. Reporting information on good canse will help agencies better understand why the ICWA placement preferences are not followed. In addition, snch information will aid in targeting training and resources needed to assist states in improving Indian child outcomes.

Termination of Parental Rights

In paragraphs (i)(19) through (24), ACF proposes to require that the state title IV–E agency report information regarding voluntary and involnntary terminations of parental rights (TPR), which inclnde tribal customary adoptions. The information includes: Whether the rights of the Indian child's parents or Indian custodian were involuntarily or voluntarily terminated; whether, prior to ordering an involuntary termination of parental rights, the state court fonnd beyond a reasonable doubt, in a court order, that continued cnstody of the Indian child by the parent or Indian cnstodian is likely to result in serious emotional or physical damage to the Indian child in accordance with 25 U.S.C. 1912(f); whether the state court indicates that its finding was supported by the testimony of a qualified expert witness in accordance with 25 U.S.C. 1912(f); and if the TPR was voluntary, whether there is a conrt order that indicates that the voluntary consent to termination for the biological or adoptive mother and biological or adoptive father or Indian custodian was made in writing and recorded in the presence of a judge of a conrt of competent jnrisdiction and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian cnstodian in accordance with 25 U.S.C. 1913.

Distinguishing between involuntary and voluntary terminations of parental rights is important in ICWA given specific protections that must be provided in each context (25 U.S.C. 1912(e), (f) and 25 U.S.C. 1913). In addition, termination standards are important protections for Indian children under ICWA given that Congress specifically created minimum federal standards for removal of an Indian child to prevent the breakup of Indian families and to promote the stability and security of families and Indian tribes by preserving the child's

links to their parents and to the tribe through the child's parent(s). Further, a TPR may affect a child's ability to be a full member of his/her tribe, preventing the child from accessing services and benefits available to tribal members. Whether the Indian child's parents' rights were terminated in a manner that conforms to the statutory standard informs ACF as to when an Indian child's parental rights are terminated, helps identify the need for training and technical assistance to meet statutory standards, and highlights substantive opportunities for building relationships between states and tribes.

Adoption Proceedings

In paragraphs (i)(25) through (29), ACF proposes to require that the state title IV–E agency report certain information on adoptive placement preferences, which are requirements in ICWA at 25 U.S.C. 1915(a), if the Indian child exited foster care to adoption per § 1355.43(g).

In paragraph (i)(25), the state title IV–E agency must indicate whether the child exited foster care to adoption per § 1355.43(g). This is a driver question for this section; if the state title IV–E agency indicates "yes," then the agency must complete the elements in this section; if the state title IV–E agency indicates "no," then the agency must skip the elements in this section.

In paragraph (i)(26), the state title IV–E agency must indicate which adoptive placements from a list of four were willing to accept placement of the Indian child. Adoption placements preferences are found in ICWA at 25 U.S.C. 1915(a) as follows: A member of the Indian child's extended family; other members of the Indian child's tribe; other Indian families; or a placement that complies with the order of preference for adoptive placements established by an Indian child's tribe, in accordance with 25 U.S.C. 1915(c).

In paragraph (i)(27), the state title IV–E agency must indicate whether the placement reported in § 1355.43(h) meets the placement preferences of ICWA in 25 U.S.C. 1915(a) by indicating with whom the Indian child is placed from a list of five response options. The placements preferences are: A member of the Indian child's extended family; other members of the Indian child's tribe; other Indian families; or a placement that complies with the order of preference for adoptive placements established by an Indian child's tribe, in accordance with 25 U.S.C. 1915(c); or none.

In paragraph (i)(28), the state title IV–E agency must indicate whether the state court made a finding of good cause, in a court order, to place the Indian child with someone who is not listed in the placement preferences of ICWA in 25 U.S.C. 1915(a) or the placement preferences of the Indian child's tribe, if the placement preferences for adoptive placements were not followed. In paragraph (i)(29), the state title IV–E agency must indicate the state court's basis for the finding of good cause, as indicated in the court order, from a list of five response options: Request of the biological parents; request of the Indian child; the unavailability of a suitable placement that meets the placement preferences in ICWA at 25 U.S.C. 1915; the extraordinary physical or emotional needs of the Indian child; or other.

The requirements for adoption placement preferences in ICWA are a key piece of the protections provided under ICWA. Placement preferences serve the policies of protecting the best interests of Indian children and promoting the stability and security of families and Indian tribes by keeping adopted Indian children with their extended families, tribes or communities. These data elements will help provide greater understanding on how best to support Indian children in cases where adoption is the outcome. The data are important to assist in identifying trends or problems that may require enhanced recruitment of potential Indian adoptive homes or relative placements. The information from these data elements will allow ACF to distinguish between ICWA cases in which there was no available ICWA-placement and those cases where an available ICWA-placement was not used. The data will help assess the current status of kinship guardianship placements as well as to help identify a national plan for meeting permanency goals through kinship guardianship. This information will help to identify the scope of resources for training and technical assistance needed for states to recruit and support adoptive families to meet the unique cultural, social, and enrichment activity needs of Indian children. Reporting information on good cause to not follow ICWA adoption placement preferences will help to understand why the ICWA placement preferences are not followed, and will aid in identifying targeted training and resource needs to assist states in improving Indian child outcomes.

ATTACHMENT A—PROPOSED OUT-OF-HOME CARE DATA FILE ELEMENTS RELATED TO ICWA

Category & applicability	Element	Response options	Section citation
Identifying an "Indian Child" under the Indian Child Welfare Act.	Indicate whether the state title IV–E agency researched whether there is a reason to know that the child is an "Indian child" under ICWA:	.....	1355.43(i)(3).
These data elements will be reported for all children.	• Indicate whether the state agency inquired with the child's biological or adoptive mother.	Yes. No. The biological or adoptive mother is deceased.	
	• Indicate whether the biological or adoptive mother is a member of an Indian tribe.	Yes. No. Unknown.	
	• Indicate whether the state agency inquired with the child's biological or adoptive father.	Yes. No. The biological or adoptive father is deceased.	
	• Indicate whether the biological or adoptive father is a member of an Indian tribe.	Yes. No. Unknown.	
	• Indicate whether the state agency inquired with the child's Indian custodian, if the child has one.	Yes. No. Child does not have an Indian custodian.	

ATTACHMENT A—PROPOSED OUT-OF-HOME CARE DATA FILE ELEMENTS RELATED TO ICWA—Continued

Category & applicability	Element	Response options	Section citation
	• Indicate whether the state agency inquired with the child who is the subject of the proceeding.	Yes. No.	
	• Indicate whether the child is a member of or eligible for membership in an Indian tribe.	Yes. No. Unknown.	
	• Indicate whether the domicile or residence of the child, parent, or the Indian custodian is known by the agency to be, or is shown to be, on an Indian reservation.	Yes. No.	
Application of ICWA	• Indicate whether the state title IV–E agency knows or has reason to know that the child is an Indian child as defined by ICWA.	Yes No.	1355.43(i)(4).
These data elements will be reported for all children.	• Indicate the date that the state title IV–E agency discovered the information that indicates that the child is or may be an Indian child.	Date..	
	• Indicate the name(s) of all federally recognized Indian tribe(s) identified that may potentially be the Indian child's tribe(s).	Name(s)..	
These data elements will be reported for all children.	Indicate whether a court order indicates that the court found that ICWA applies.	Yes, ICWA applies No, ICWA does not apply. No court finding.	1355.43(i)(5).
	• Indicate the date of the court finding	Date.	
	• Indicate the name of the Indian tribe(s) that the court found is the Indian child's tribe, if listed on the court order.	Name(s). No name listed.	
Transfer to tribal court These data elements and all of those below only apply to Indian children.	Indicate whether there is a court order that indicates that the Indian child's parent, Indian custodian, or Indian child's tribe requested, orally on the record or in writing, that the state court transfer the case to the tribal court of the Indian child's tribe, in accordance with 25 U.S.C. 1911(b), at any point during the report period.	Yes No.	1355.43(i)(6).
	If the state court denied the request to transfer the case to tribal court, indicate whether there is a court order that indicates the reason(s) why the case was not transferred to the tribal court.	Yes No.	1355.43(i)(7).
	• Either of the parents objected to transferring the case to the tribal court.	Yes. No.	
	• The tribal court declined the transfer to the tribal court.	Yes. No.	
	• The state court found good cause not to transfer the case to the tribal court.	Yes. No.	
Notification	Indicate whether the Indian child's parent or Indian custodian was given proper legal notice more than 10 days prior to the first child custody proceeding in accordance with 25 U.S.C. 1912(a).	Yes No.	1355.43(i)(8).
	Indicate whether the Indian child's tribe(s) was given proper legal notice more than 10 days prior to the first child custody proceeding in accordance with 25 U.S.C. 1912(a).	Yes No. The child's Indian tribe is unknown.	
	Indicate the name(s) of the Indian tribe(s) that were sent notice for a child custody proceeding as required in ICWA at 25 U.S.C. 1912(a).	Name(s)	1355.43(i)(9).
	If the tribe(s) requested additional information, indicate whether the state title IV–E agency replied with the additional information that the Indian tribe(s) requested.	Yes No. Does not apply.	1355.43(i)(10).
Active efforts to prevent removal and reunify with Indian family.	Indicate the date that the state title IV–E agency began making active efforts to prevent the breakup of the Indian family for the most recent removal reported in § 1355.43(d) of the Indian child in accordance with 25 U.S.C. 1912(d).	Date	1355.43(i)(11).
	Indicate whether the court found, in a court order, that the state title IV–E agency made active efforts to prevent the breakup of the Indian family for the most recent removal reported in § 1355.43(d) and that these efforts were unsuccessful in accordance with 25 U.S.C. 1912(d).	Yes No.	1355.43(i)(12).

ATTACHMENT A—PROPOSED OUT-OF-HOME CARE DATA FILE ELEMENTS RELATED TO ICWA—Continued

Category & applicability	Element	Response options	Section citation
	Indicate the active efforts that the state title IV–E agency made to prevent the breakup of the Indian family in accordance with 25 U.S.C. 1912(d).	.....	1355.43(i)(13).
	• Identify appropriate services to help the parent.	Yes. No.	
	• Actively assist the parent in obtaining services	Yes. No.	
	• Invite representatives of the Indian child's tribe to participate in the proceedings.	Yes. No.	
	• Complete a comprehensive assessment of the family.	Yes. No.	
	• Focus on safe reunification as the goal for the Indian child.	Yes. No.	
	• Consult with extended family members to provide support for the Indian child.	Yes. No.	
	• Arrange for family interaction in most natural setting safely possible.	Yes. No.	
	• Monitor progress and participation in services to reunite the Indian family.	Yes. No.	
	• Consider alternative ways of addressing the needs of the Indian child's parent and extended family if services do not exist or are not available.	Yes. No.	
	• Support regular visits and trial home visits consistent with ensuring the Indian child's safety.	Yes. No.	
	• Conduct or cause to be conducted a diligent search for the Indian child's extended family members for assistance and possible placement.	Yes. No.	
	• Keep siblings together	Yes. No. N/A.	
	• Other	Yes. No.	
Removals	Indicate whether the court found by clear and convincing evidence, in a court order, that continued custody of the Indian child by the parent or Indian custodian was likely to result in serious emotional or physical damage to the Indian child in accordance with 25 U.S.C. 1912(e).	Yes ..... No.	1355.43(i)(14).
	Indicate whether the court finding indicates that the state court's finding was supported by the testimony of a qualified expert witness in accordance with 25 U.S.C. 1912(e).	Yes. No.	
Foster care and pre-adoptive placement preferences.	Indicate which foster care or pre-adoptive placements that meet the placement preferences of ICWA in 25 U.S.C. 1915(b) were available to accept placement.	.....	1355.43(i)(15).
	• A member of the Indian child's extended family.	Yes. No.	
	• A foster home licensed, approved, or specified by the Indian child's tribe.	Yes. No.	
	• An Indian foster home licensed or approved by an authorized non-Indian licensing authority.	Yes. No.	
	• An institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.	Yes. No.	
	• A placement that complies with the order of preference for foster care or pre-adoptive placements established by an Indian child's tribe, in accordance with 25 U.S.C. 1915(c).	Yes. No.	
	For the Indian child's current foster care or pre-adoptive placement as of the end of the report period per § 1355.43(e), indicate whether the placement meets the placement preferences of ICWA in 25 U.S.C. 1915(b) by indicating with whom the Indian child is placed.	A member of the Indian child's extended family. A foster home licensed, approved, or specified by the Indian child's tribe.	1355.43(i)(16).

ATTACHMENT A—PROPOSED OUT-OF-HOME CARE DATA FILE ELEMENTS RELATED TO ICWA—Continued

Category & applicability	Element	Response options	Section citation
		An Indian foster home licensed or approved by an authorized non-Indian licensing authority. An institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs. A placement that complies with the order of preference for foster care or pre-adoptive placements established by an Indian child's tribe, in accordance with 25 U.S.C. 1915(c). None.	
	If the placement preferences for foster care or pre-adoptive placements were not followed, indicate whether the court made a finding of good cause, on a court order, to place the Indian child with someone who is not listed in the placement preferences of ICWA in 25 U.S.C. 1915(b) or the placement preferences of the Indian child's tribe.	Yes No.	1355.43(i)(17).
	Indicate the state court's basis for the finding of good cause, as indicated on the court order.		1355.43(i)(18).
	• Request of biological parents	Yes. No.	
	• Request of Indian child	Yes. No.	
	• The unavailability of a suitable placement that meets the placement preferences in ICWA at 25 U.S.C. 1915.	Yes. No.	
	• The extraordinary physical or emotional needs of the Indian child.	Yes. No.	
	• Other	Yes. No.	
Termination of parental rights	Indicate whether the termination of parental (or Indian custodian rights was voluntary or involuntary.	Voluntary Involuntary.	1355.43(i)(19).
	Indicate whether, prior to ordering a termination of parental rights, the state court found beyond a reasonable doubt, in a court order, that continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child in accordance with 25 U.S.C. 1912(f).	Yes No.	1355.43(i)(20).
	Indicate whether the court finding, reported for paragraph (i)(20), indicates that the state court's finding was supported by the testimony of a qualified expert witness in accordance with 25 U.S.C. 1912(f).	Yes No.	1344.43(i)(21).
	If voluntary, indicate whether there is a court order that indicates that the voluntary consent to termination for the biological or adoptive mother was made in writing and recorded in the presence of a judge in accordance with 25 U.S.C. 1913.	Yes No. Does not apply.	1355.43(i)(22).
	If voluntary, indicate whether there is a court order that indicates that the voluntary consent to termination for the biological or adoptive father was made in writing and recorded in the presence of a judge in accordance with 25 U.S.C. 1913.	Yes No. Does not apply.	1355.43(i)(23).
	If voluntary, indicate whether there is a court order that indicates that the voluntary consent to termination for the Indian custodian was made in writing and recorded in the presence of a judge in accordance with 25 U.S.C. 1913.	Yes No. Does not apply.	1355.43(i)(24).
Adoption proceedings	Indicate whether the Indian child exited foster care to adoption per § 1355.43(g).	Yes No.	1355.43(i)(25).
	Indicate which adoptive placements that meet the placement preferences in ICWA at 25 U.S.C. 1915(a) were willing to accept placement.		1355.43(i)(26).

ATTACHMENT A—PROPOSED OUT-OF-HOME CARE DATA FILE ELEMENTS RELATED TO ICWA—Continued

Category & applicability	Element	Response options	Section citation
	• A member of the Indian child's extended family.	Yes. No.	
	• Other members of the Indian child's tribe	Yes. No.	
	• Other Indian families	Yes. No.	
	• A placement that complies with the order of preference for foster care or pre-adoptive placements established by an Indian child's tribe, in accordance with 25 U.S.C. 1915(c).	Yes. No.	
	Indicate whether the placement reported in § 1355.43(h) meets the placement preferences of ICWA in 25 U.S.C. 1915(a) by indicating with whom the Indian child is placed. Other Indian families. A placement that complies with the order of preference for foster care or pre-adoptive placements established by an Indian child's tribe, in accordance with 25 U.S.C. 1915(c). None.	A member of the Indian child's extended family. Other members of the Indian child's tribe.	1355.43(i)(27).
	If the placement preferences for adoption were not followed, indicate whether the court made a finding of good cause, on a court order, to place the Indian child with someone who is not listed in the placement preferences of ICWA in 25 U.S.C. 1915(a) or the placement preferences of the Indian child's tribe.	Yes No.	1355.43(i)(28).
	Indicate whether there is a court order that indicates the court's basis for the finding of good cause.		1355.43(i)(29).
	• Request of the biological parents	Yes. No.	
	• Request of the Indian child	Yes. No.	
	• The unavailability of a suitable placement that meets the placement preferences in ICWA at 25 U.S.C. 1915.	Yes. No.	
	• The extraordinary physical or emotional needs of the Indian child.	Yes. No.	
	• Other	Yes. No.	

VI. Regulatory Impact Analysis

Executive Order 12866

Executive Order (E.O.) 12866 requires that regulations be drafied to ensure that they are consistent with the priorities and principles set forth in the E.O. The Department has determined that this proposed rule is consistent with these priorities and principles. In particular, ACF has determined that a regulation is the best and most cost effective way to implement the statutory mandate for a data collection system regarding children in foster care and those that are adopted and snpport other statntory obligations to provide oversight of child welfare programs. ACF consulted with the Office of Management and Budget (OMB) and determined that this proposed rule does meet the criteria for a significant regulatory action under E.O. 12866. Thns, it was subject to OMB review.

ACF determined that the costs to title IV–E agencies as a result of this rule will not be significant. Federal reimbnrsement under title IV–E will be available for a portion of the costs that title IV–E agencies will incur as a resnlt of the revisions proposed in this rule, depending on each agency's cost allocation plan, information system, and other factors.

Alternatives Considered:

1. ACF considered not collecting certain ICWA-related data in AFCARS. Not inclnding ICWA-related data elements in AFCARS, or including too few data elements, may exclude Indian children and families from the additional benefit of improving AFCARS data.

2. ACF considered whether other existing data sets could yield similar information. ACF determined that AFCARS is the only comprehensive case-level data set on the incidence and experiences of children who are in foster care and/or adoption or gnardianship with the involvement of the state or tribal title IV–E agency.

3. Previously, ACF considered whether to permit title IV–E agencies to sample and report information on a representative population of children. Such an alternative is unacceptable given the significant limitations associated with nsing a sampling approach for collecting data, including data on AI/AN children who are in foster care, adoption, and guardianship programs. Under a sampling approach, ACF would be unable to report reliable data responsive to the Annual Outcomes Report to Congress, the Report to Congress on the Social and Economic Conditions of Native Americans, and Adoption Incentives. Second, when nsing a sample, small population subgroups (*e.g.*, children who spend very long periods in foster care or children who are adopted or run away) might occur so rarely in the data snch

that analysis on these subgroups would not be meaningful. Sampling error with respect to AI/AN populations is already a well-established issue affecting the validity and meaningfulness of large national surveys like the American Community Survey. It is a well-established that, historically, quantitative and qualitative data on AI/AN populations, including children, bas been incomplete and unreliable resulting in such populations being among the most under-counted populations groups in the United States.

4. In each of 18 states, there were fewer than 10 Indian children in foster care according to FY 2013 AFCARS data. For states that have few Indian children in foster care, ACF considered alternatives to collecting ICWA-related data through AFCARS, such as providing an exemption from reporting, or an alternative submission process or that would be less burdensome. While ACF recognizes collecting the proposed ICWA-related data may be burdensome for states with few Indian children in foster care, the alternative approacbes are not feasible due to:

- The statutory requirement that AFCARS data be comprehensive. Section 479(c)(3) requires that AFCARS provide "comprehensive national information." Exempting some states from reporting the proposed ICWA-related data elements is not consistent witb this statutory mandate, and would render it difficult to use this data for development of national policies for Indian children.
- The statutory requirement for assessing penalties on AFCARS data. Section 474(f) of the Act penalizes the title IV–E agency for non-compliance based on the total amount expended by the state for administration of foster care activities. The statnte provides for mandatory penalties, therefore, we are not authorized to permit some states to be subject to a penalty and not others. In addition, allowing states an alternate submission process would complicate and/or prevent the assessment of penalties as proposed in the February 9, 2015 NPRM in proposed § 1355.46, including penalties for failure to submit data files free of cross-file errors, missing, invalid, or internally inconsistent data, or tardy transactions for eacb data element of applicable records.
- State agencies that elect to have a SACWIS provide some of the proposed ICWA-related data elements as part of the system requirements will already have systems designed to capture some ICWA-related data.

Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this rule will not result in a significant impact on a substantial number of small entities. This proposed rule does not affect small entities because it is applicable only to state title IV–E agencies.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act (Pub. L. 104–4) requires agencies to prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an annual expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation). That threshold level is currently approximately $146 million. This proposed rnle does not impose any mandates on state, local, or tribal governments, or the private sector that will result in an annual expenditure of $100 million or more.

Congressional Review

Tbis regulation is not a major rule as defined in 5 U.S.C. 8.

Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 2000 (Pub. L. 106–58) requires federal agencies to determine whether a proposed policy or regulation may affect family well-being. If the agency's determination is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law. These proposed regulations will not have an impact on family well-being as defined in the law.

Executive Order 13132

Executive Order (E.O.) 13132 requires that federal agencies consult with state and local government officials in the development of regulatory policies with Federalism implications. Consistent with E.O. 13132, the Department specifically solicits comments from state and local government officials on this proposed rule.

Paperwork Reduction Act

Under the Paperwork Reduction Act (44 U.S.C. 35, as amended) (PRA), all Departments are required to submit to OMB for review and approval any reporting or recordkeeping requirements inherent iu a proposed or final rule. Information collection for AFCARS is currently authorized under OMB number 0970–0422. This supplemental notice of proposed rulemaking contains new information collection requirements in proposed § 1355.43, the out-of-home care data file that the Department has submitted to OMB for its review. Tbis SNPRM proposes to require state title IV–E agencies to collect and report ICWA-related data elements in the AFCARS out-of-home care data file. PRA rules require that ACF estimate the total burden created by this SNPRM regardless of what information is already available.

Comments to the February 2015 AFCARS NPRM: ACF understands from comments on the February 2015 AFCARS NPRM that National Association of Public Child Welfare Administrators (NAPCWA) and the states felt that our burden estimates were low for determining the costs to implement the proposed data elements in AFCARS NPRM. However, very few states provided estimates on the burden hours or actual costs to implement the AFCARS NPRM. The comments were primarily abont technical or programmer costs to modify the information system to extract tbe proposed data elements. This did not inclnde tbe work associated with child welfare agency workers gathering information or being trained in data entry. The estimates received to modify a state information system to extract the proposed AFCARS NPRM data elements (approximately 100) ranged from 2,000 hours to 20,000 honrs. Although ACF appreciates that tbese states provided this information on hourly and cost burden estimates, ACF received too few estimates to assist in calculating the state costs for information systems and other burden associated with this SNPRM. Therefore, ACF provides estimates using the best available information.

Burden Estimate

ACF estimates the annual reporting and record keeping burden hours of this SNPRM to be 192,285 hours. ACF estimates a one-time burden associated with this SNPRM to be 85,072 hours. The 52 respondents comprise 52 state title IV–E agencies. The following are estimates.

Collection	Number of respondents	Number of responses per respondent	Average burden per year per respondent	Total burden hours
Annual Record Keeping and Reporting Burden	52	2	3,697.79	192,285
One-Time Burden	52	1	1,636	85,072

In estimating the burden, ACF included both one-time burden estimates and annual burden estimates:

Annual burden: The annual burden to the state title IV–E agency includes activities such as: Searching data sources and gathering information, entering the information, extracting the information for AFCARS reporting, and transmitting the information to ACF.

One time burden: The one-time burden for this SNPRM, includes activities to: Develop or modify procedures and systems to collect, validate, and verify the information, adjust existing ways to comply with AFCARS requirements, and train personnel on the new AFCARS reqnirements of this SNPRM.

In developing the hnrden estimate, ACF made several assumptions abont the data in state child welfare information systems. First, ACF assumed that state title IV–E agencies may have access to most of the information for proposed data elements. ACF anticipated the information for these data elements are contained in the state title IV–E agency's paper or electronic case files. ACF estimated that some of the data elements wonld only be in paper case files or narrative fields, thns not readily able to be extracted for AFCARS reporting, and wonld require revisions to the electronic case file so that the information can be extracted for AFCARS reporting. Some of these data elements concern collecting information on court findings and other activities taking place during court processes.

ACF proposes for state title IV–E agencies to report information in court orders that the state title IV–E agency would have ready access to or would typically be in the state title IV–E agency's case files. ACF is seeking state feedback as to whether the state agency has these readily available in their agency paper files or electronic files. These are:

- A court order indicating that the child's parent or Indian custodian or the Indian child's tribe requested orally on the record or in writing that the state court transfer the case to the tribal court of the Indian child's tribe, in accordance with 25 U.S.C. 1911(b), and, where applicable, the reason(s) why the case was not transferred.
- A court order indicating the court found by clear and convincing evidence, in a court order, that continued custody of the Indian child by the parent or Indian custodian was likely to result in serious emotional or physical damage to the Indian child in accordance with 25 U.S.C. 1912(e).
- A conrt order indicating that the court made a finding of good canse, and the basis, if the placement preferences for foster care were not followed, to place the Indian child with someone who is not listed in the placement preferences of ICWA in 25 U.S.C. 1915(b) or the placement preferences of the Indian child's tribe in accordance with 25 U.S.C. 1915(c); and
- If the placement preferences for adoption were not followed, a court finding of good cause, and the basis, on a court order, to place the Indian child with someone who is not listed in the placement preferences of ICWA in 25 U.S.C. 1915(a) or the placement preferences of the Indian child's tribe.

Second, in order to determine the nnmber of cases for which state title IV–E agencies will have to report the ICWA-related data elements, ACF estimated the out-of-home care reporting popnlation using the most recent FY 2014 AFCARS data available submitted by state title IV–E agencies: 415,129 children were in foster care on September 30, 2014 and 264,746 children entered foster care dnring FY 2014. The state title IV–E agency will be required to report approximately 3 data elements for all children who are in the ont-of-home care reporting popnlation and approximately 24 data elements on children to whom the ICWA-related data elements apply.

To estimate the nnmher of children to whom the ICWA-related data elements apply, ACF used as a proxy those children whose race was reported as "American Indian or Alaska Native" in the most recent FY 2014 AFCARS data available. While not every child of this reported race category will be covered under ICWA, it is likely that the state title IV–E agency will have to explore whether these children may be Indian children as defined in ICWA. Thus, 5,960 children who entered foster care during FY 2014 were reported as American Indian or Alaska Native.

Third, ACF assumed that there will be one-time costs to implement the requirements of this SNPRM and annnal costs to collect, input, and report the information. The annnal costs involve searching data, gathering the information that meet the requirements of this SNPRM, entering the information, and extracting and submitting the information for AFCARS reporting. The one-time costs mostly involve modifying procedures and systems to collect, validate and verify information, adjnsting existing ways to comply with AFCARS; and training personnel on the new AFCARS reqnirements of this SNPRM.

Fonrth, ACF assumed that the one-time burden is similar to how long it would take to make revisions to a SACWIS to be able to meet the reqnirements of the SNPRM. Cnrrently, 36 states have an operational SACWIS. ACF understands that 24 states opted to collect at least a minimal amount of ICWA-related information per the SACWIS Assessment Review Gnide, but also recognize that most state title IV–E agencies will require some revisions to meet the requirements of this SNPRM. As more states bnild SACWIS, ACF anticipates it will lead to more efficiency in reporting and less cost and burden to the state agencies.

Finally, after reviewing the 2014 Bureau of Labor Statistics data to help determine the costs of the SNPRM, ACF assumed that there will be a mix of staff working to meet both the one-time and annnal requirements of this SNPRM with the job role of Management Analyst (13–1111) with a mean honrly wage estimate of $43.68 and those with the joh role of Social and Community Service Managers (11–9151) with a mean honrly wage estimate of $32.56. Thns, ACF averaged the two wages to come to an average labor rate of $38.12. In order to ensure we took into acconnt overhead costs associated with these labor costs, ACF doubled this rate.

Annual Recordkeeping and Reporting Burden Estimate: ACF estimated the annual recordkeeping and reporting bnrden by multiplying the time spent on the recordkeeping and reporting activities described below by the number of children in foster care to arrive at the total recordkeeping hours. These estimates represent the work

associated with the state title IV–E agency searching data sources and gathering information, entering the information, extracting the information for AFCARS reporting, and transmitting the information to ACF. These estimates are based on our assnmptions, described above, on how much of the information proposed in this SNPRM state title IV–E agencies currently have in their electronic or paper case files or information system or have ready access to, while taking into account that some of the elements may reqnire more effort to gather the information if it is not readily accessible.

- Gathering the information for and enteriug tbe ICWA-related data elements that apply to all children who enter foster care on average will take approximately 132,373 annual burden hours. (0.5 hours × 264,746 children who entered foster care = 132,373 annual burden hours for all children in the ont-of-home care reporting population)
- Gathering the information for and entering the ICWA-related data elements that apply to children in foster care who are covered by ICWA, on average will take 59,600 annual burden bours. (10 bours × 5,960 children who enter foster care with a race reported as American Indian or Alaska Native = 59,600 annual burden hours for children in the out-of-home care reporting population who are covered by ICWA). ACF estimated that it would take a state title IV–E agency on average 10 hours annually to gather and input the ICWA-related data elements that apply to children in foster care who are covered by ICWA. ACF estimated this by assuming that a state title IV–E agency would be gathering and inputting information for approximately 14 of the proposed data elements for an average foster care episode, if the child is not transferred and there is no TPR or adoption. In cases where the child is transferred, ACF estimated that the bnrden would decrease because the agency would have fewer data elements to complete and the burden would increase in cases wbere there is a TPR and the child is adopted because there would be more data elements that the agency would have to complete.
- Extracting and submitting the iuformation to ACF for AFCARS reporting on average will take 6 annual burden hours per state title IV–E agency. Nationally, the hour burden for all 52 state title IV–E agencies would be 312 (6 hours × 52 states = 312). ACF took into account tbe number of data elements proposed in this SNPRM when estimating the reporting burden.

ACF added the bullets above and estimate the number of annual recordkeeping and reporting burden hours tbat workers will spend on ICWA-related AFCARS requirements in the out-of-home care reporting population annually will be 192,285 hours (132,373 + 59,600 + 312 = 192,285). Dividing this annual figure by the 52 state title IV–E agencies, ACF arrived at approximately 3,698 average burden hours per respondent per year for the ICWA-related information in the AFCARS out-of-bome care data file. (192,285 ÷ 52 title IV–E agencies = 3,697.79 average burden hours per respondent per year.)

One-Time Burden Estimate: ACF estimated the one-time burdeu by adding up the time speut on the activities described below and multiplying it by the 52 state title IV–E agencies to arrive at the one-time burden hours. The one-time burden estimates represent the work associated with the activities described below. As stated above, ACF came to tbese estimates by using average estimates for revising a SACWIS, which is the best information available. It is also important to uote tbat states will have the option of updating their systems in a streamlined manner since ACF plans to issue the final rules for new AFCARS regulations and for child welfare information systems.

- Modifying procedures and systems (including developing or acquiring technology) to collect, validate, verify, process, and report the information to ACF on average will take approximately 130 burden hours.
- Adjustments to the existing ways to comply with AFCARS, developing technology and systems to collect and process data on average will take approximately 200 burden hours.
- The administrative tasks associated with training personnel on the new AFCARS requirements of this SNPRM which include reviewing instructions, including training developmeut and manuals on average will take approximately 30 burden hours.
- Training personnel on the new AFCARS reqnirements of this SNPRM on average will take approximately 1,276 burden hours. ACF arrived at this estimate by dividing the number of children in foster care on September 30, 2014 (415,129) by an estimated average caseload of 25 cases per worker to arrive at an estimate of 16,605 workers to be trained. ACF divided this nnmber (16,605) by 52 to account for average workers per state title IV–E agency, and arrived at 319 workers. ACF multiplied the workers (319) by the number of estimated hours to complete training (4 hours) to arrive at 1,276 burdeu hours to traiu personnel per state title IV–E agency on the uew AFCARS requirements. ACF added the burden hours above (1,636 hours) and multiplied by 52 state title IV–E agencies, which results in a one-time burden of 85,072 hours (1,636 × 52 = 85,072 one-time burden hours).

Total Burden Cost

ACF used a total cost and bnrden hour estimates to provide additional detail on projected average cost for each state title IV–E agency implementing the changes described in this SNPRM. Once the burden bours were determined, ACF developed an estimate of the associated cost for state title IV–E agencies to conduct these activities, as applicable. Based on our assumptions above, ACF used an average labor rate of $38.12 and doubled this rate to account for overhead costs ($76.24). Based on these rates, ACF estimated the cost for one-time burden to be $6,485,889.28 (85,072 one-time hours × $76.24 hourly cost/overhead = $6,485,889.28) and ACF estimated the cost for annual burden to be $14,659,808.40 (192,285 annual hours × $76.24 hourly cost = $14,659,808.40). Dividing these costs by 52 state title IV–E agencies, ACF estimated the average cost per state title IV–E agency to be $124,728.64 one-time and $281,919.39 annually. Federal reimbursement under title IV–E will be available for a portion of the costs that title IV–E agencies will incur as a result of the revisions proposed in this rule, depending on each agency's cost allocation plan, information system, and other factors.

	Hours	Average hourly labor rate + overhead	Total cost nationwide	Number of respondents	Net average cost per respondent
Total One-Time Burden	85,072	$76.24	$6,485,889.28	52	$124,728.64 One-Time.
Total Annual recordkeeping and reporting burden	192,285	76.24	14,659,808.40	52	281,919.39 Annually.

In the above estimates, ACF acknowledges: (1) ACF has used average figures for state title IV–E agencies of very different sizes and of which, some states may have larger populations of tribal children served than other states, (2) these are rough estimates of the burden because state title IV–E agencies have not been required previously to report ICWA-related iuformation in AFCARS, and (3) as described, ACF has limited information to use in making these estimates. ACF welcomes comments on these factors and all others in this section.

ACF will consider comments by the public on this proposed collection of information in the following areas:

1. Evalnating whether the proposed collection is necessary for the proper performance of the functions of ACF, including whether the information will have practical utility;

2. Evaluating whether the proposed collection is sufficient to assess and serve the nnique needs of AI/AN children under the placement and care of title IV–E agencies;

3. Evaluating the accuracy of ACF's estimate of the burden of the proposed collection of information, including the validity of the methodology and assnmptions used;

4. Enhancing the qnality, usefulness, and clarity of the information to be collected; and

5. Minimizing the burden of the collection of information on those who are to respond, inclnding through the use of appropriate automated, electronic, mechanical, or other technology, *e.g.,* permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations. Written comments to OMB for the proposed information collection shonld be sent directly to the following: Office of Management and Budget, either by fax to 202–395–6974 or by email to *OIRA_submission@omb.eop.gov*. Please mark faxes and emails to the attention of the desk officer for ACF.

VII. Tribal Consultation Statement

As we stated in section IV of this SNPRM, we held one Tribal consultation session via a teleconference call on May 1, 2015 and we did not receive suggestions from tribal representatives during the call. A few tribal representatives indicated that they would comment on the data elements through the SNPRM when it is issued.

We also stated in section IV of this SNPRM that we analyzed comments to the Feb. 2015 AFCARS NPRM that spoke to ICWA-related data elemeuts to help iuform this SNPRM. We received 45 comments that spoke to including new data elements in AFCARS related to ICWA; a majority of which were from tribes/tribal organizations. The commenters recommended data elements that provide basic information about the applicability of ICWA for children in out-of-home care, including: Identification of American Indian and Alaskan Native children and their family structure, tribal notification and intervention in state court proceedings, the relationship of the foster parents and other providers to the child, decisions to place a child in out-of-home care (including data on active efforts and continued custody), whether a placement was licensed by an Indian trihe, whether the placement preferences in ICWA were followed, and termination of parental rights (both voluntary and involuntary).

List of Subjects in 45 CFR Part 1355

Adoption and foster care, Child welfare, Grant programs—social programs.

(Catalog of Federal Domestic Assistance Program Number 93.658, Foster Care Maintenance; 93.659, Adoption Assistance; 93.645, Child Welfare Services—State Grants).

Mark H. Greenberg,

Acting Assistant Secretary for Children and Families.

Approved: February 17, 2016.

Sylvia M. Burwell,

Secretary.

For the reasons set forth in the preamble, 45 CFR part 1355 as proposed to be amended on February 9, 2015 (80 FR 7132), is proposed to be further amended as follows:

PART 1355—GENERAL

■ 1. The authority citation for part 1355 continues to read as follows:

Authority: 42 U.S.C. 620 *et seq.,* 42 U.S.C. 670 *et seq.;* 42 U.S.C. 1302.

■ 2. Amend § 1355.43 by adding paragraph (i) to read as follows:

§ 1355.43 Out-of-home care data file elements.

* * * * *

(i) *Data elements related to the Indian Child Welfare Act (ICWA)*—(1) *Definitions.* Unless otherwise specified, the following terms as they appear in this paragraph (i) are defined as follows:

Child custody proceeding has the same meaning as in 25 U.S.C. 1903(1).

Extended family member has the same meaning as in 25 U.S.C. 1903(2).

Indian has the same meaning as in 25 U.S.C. 1903(3).

Indian child has the same meaning as in 25 U.S.C. 1903(4).

Indian child's tribe has the same meaning as in 25 U.S.C. 1903(5).

Indian custodian has the same meaning as in 25 U.S.C. 1903(6).

Indian organization has the same meaning as in 25 U.S.C. 1903(7).

Indian tribe has the same meaning as in 25 U.S.C. 1903(8).

Parent has the same meaning as in 25 U.S.C. 1903(9).

Reservation has the same meaning as in 25 U.S.C. 1903(10).

Tribal court has the same meaning as in 25 U.S.C. 1903(12).

(2) For all cbildren in the ont-of-home care reporting popnlation per § 1355.41(a), the state title IV–E agency mnst complete the data elements in paragraphs (i)(3) through (5) of this section. If the state title IV–E agency responds with "yes" to the data elements in paragraph (i)(4) or (5) of this section, then the agency must complete the remaining applicable paragraphs (i)(6) throngh (29) of this section.

(3) *Identifying an "Indian Child" under the Indian Child Welfare Act.* Indicate whether the state title IV–E agency researched whether there is a reason to know that the child is an Indian child under ICWA in each paragraph (i)(3)(i) through (viii) of this section.

(i) Indicate whether the state agency inquired with the child's biological or adoptive mother. Indicate "yes," "no" or "the biological or adoptive mother is deceased."

(ii) Indicate whether the biological or adoptive mother is a member of an Indian tribe. Indicate "yes," "no" or "unknown."

(iii) Indicate whether the state agency inquired with the child's biological or adoptive father. Indicate "yes," "no," or "the biological or adoptive father is deceased."

(iv) Indicate whether the biological or adoptive father is a member of an Indian tribe. Indicate "yes," "no," or "unknown."

(v) Indicate whether the state agency inquired with the child's Indian custodian, if the child has one. Indicate "yes," or "no" or "child does not have an Indian custodian."

(vi) Indicate whether the state agency inquired witb the child who is the subject of the proceeding. Indicate "yes" or "no."

(vii) Indicate wbether the child is a member of or eligible for membership in an Indian tribe. Indicate "yes," "no," or "unknown."

(viii) Indicate whether the domicile or residence of the child, parent, or the Indian custodian is known by the agency to be, or is shown to be, on an Indian reservation. Indicate "yes" or "no."

(4) *Application of ICWA.* Indicate whether the state title IV–E agency knows or has reason to know that the child is an Indian child as defined by ICWA. Indicate "yes" or "no." If the state title IV–E agency indicated "yes," the state title IV–E agency must complete the data elements in paragraphs (i)(4)(i) and (ii) of this section. If the state title IV–E agency indicated "no," the state title IV–E agency must leave the data elements in paragraphs (i)(4)(i) and (ii) of this section blank.

(i) Indicate the date that the state title IV–E agency discovered the information that indicates that the child is or may be an Indian child.

(ii) Indicate the name(s) of all federally recognized Indian tribe(s) that may potentially be the Indian child's tribe(s).

(5) Indicate whether a court order indicates that the court found that ICWA applies. Indicate "yes, ICWA applies," "no, ICWA does not apply," or "no court finding." If the state title IV–E agency indicated "yes, ICWA applies," the state title IV–E agency must complete paragraphs (i)(5)(i) and (ii) of this section. If the state title IV–E agency indicated "no, ICWA does not apply," the state title IV–E agency must complete the data element in paragraph (i)(5)(i) of this section and leave the data element in paragraph (i)(5)(ii) of this section blank. If the state title IV–E agency indicated "no conrt finding," the state title IV–E agency mnst leave the data elements in paragraphs (i)(5)(i) and (ii) of this section blank.

(i) Indicate the date of the court finding.

(ii) Indicate the name of the Indian tribe(s) that the court found is the Indian child's tribe, if listed on the conrt order. If a name is not listed ou the court order, the state title IV–E agency must indicate "no name listed."

(6) *Transfer to tribal court.* Indicate whether there is a court order that indicates that the Indian child's parent, Indian custodian, or Indian child's tribe requested, orally on the record or in writing, that the state conrt transfer the case to the tribal court of the Indian child's tribe, in accordance with 25 U.S.C. 1911(b), at any point during the report period. Indicate "yes" or "no." If the state title IV–E agency indicated "yes," then the state title IV–E agency must complete the data element in paragraph (i)(7) of this section. If the state title IV–E agency indicated "no," the state title IV–E agency must leave the data element in paragraph (i)(7) of this section blank.

(7) If the state court denied the request to transfer the case to tribal court, indicate whether there is a court order that indicates the reason(s) why the case was not transferred to the tribal court. Indicate "yes" or "no." If the title IV–E agency indicated "yes," then the title IV–E agency must indicate whether each reason in each paragraphs (i)(7)(i) through (iii) of this section is in the court order by indicating "yes" or "no." If the state title IV–E agency indicates "no," the title IV–E agency must leave the data elements in paragraphs (i)(7)(i) through (iii) of this section blank.

(i) Either of the parents objected to transferring the case to the tribal court.

(ii) The tribal court declined the transfer to the tribal court.

(iii) The state court found good canse not to transfer the case to the tribal court.

(8) *Notification.* (i) Indicate whether the Indian child's parent or Indian custodian was given legal notice more than 10 days prior to of the first child custody proceeding in accordance with 25 U.S.C. 1912(a). Indicate "yes" or "no."

(ii) Indicate whether the Indian child's tribe(s) was given legal notice more than 10 days prior to the first child custody proceeding in accordance with 25 U.S.C. 1912(a). Indicate "yes", "no" or "the child's Indian tribe is unknown."

(9) Indicate the name(s) of the Indian tribe(s) that were sent notice for a child custody proceeding as required in ICWA at 25 U.S.C. 1912(a).

(10) If the tribe(s) requested additional information, indicate whether the state title IV–E agency replied with the additional information that the Indian tribe(s) requested. If the tribe did not request additional information, indicate "does not apply." Otherwise, indicate "yes" or "no."

(11) *Active efforts to prevent removal and reunify with Indian family.* Indicate the date that the state title IV–E agency began making active efforts to prevent the breakup of the Indian family for the most recent removal reported in paragraph (d) of this section of the Indian child in accordance with 25 U.S.C. 1912(d).

(12) Indicate whether the court found, in a court order, that the state title IV–E agency made active efforts to prevent the breakup of the Indian family for the most recent removal reported in paragraph (d) of this section and that these efforts were nnsuccessful in accordance with 25 U.S.C. 1912(d). Indicate "yes" or "no."

(13) Indicate the active efforts that the state title IV–E agency made to prevent the breakup of the Indian family in accordance with 25 U.S.C. 1912(d). Indicate "yes" or "no" for each paragraph (i)(13)(i) through (xi) and (xiii) of this section. Indicate "yes," "no" or "N/A" for paragraph (i)(13)(xii) of this section.

(i) Identify appropriate services to help the parent.

(ii) Actively assist the parent to obtain services.

(iii) Invite representatives of the Indian child's tribe to participate in the proceedings.

(iv) Complete a comprehensive assessment of the family.

(v) Focus on safe reunification as the goal for the Indian child.

(vi) Consult with extended family members to provide snpport for the Indian child.

(vii) Arrange for family interaction in most natural settiug safely possible.

(viii) Monitor progress and participation in services to reunite the Indian family.

(ix) Consider alternative ways of addressing the needs of the Indian child's parent and extended family if services do not exist or are not available.

(x) Support regular visits and trial home visits consistent with ensuring the Indian child's safety.

(xi) Conduct or cause to be conducted a diligent search for the Indian child's extended family members for assistance and possible placement.

(xii) Keep siblings together.

(xiii) Other.

(14) *Removals.* Indicate "yes" or "no" for paragraphs (i)(14)(i) and (ii) of this section: (i) Indicate whether the court found by clear and convincing evidence, in a court order, that continued custody of the Indian child by the parent or Indian custodian was likely to result in serious emotional or physical damage to the Indian child in accordance with 25 U.S.C. 1912(e). (ii) Indicate whether the court fiuding reported for this paragraph (i)(14), indicates that the state court's finding was supported by the testimony of a qualified expert witness in accordance with 25 U.S.C. 1912(e).

(15) *Foster care and pre-adoptive placement preferences.* Indicate which foster care or pre-adoptive placements that meet the placement preferences of

ICWA in 25 U.S.C. 1915(b) were available to accept placement. Indicate in each paragraph (i)(15)(i) through (v) of this section "yes" or "no."

(i) A member of the Indian child's extended family.

(ii) A foster home licensed, approved, or specified by the Indian child's tribe.

(iii) An Indian foster bome licensed or approved by an authorized non-Indian licensing authority.

(iv) An institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

(v) A placement that complies with the order of preference for foster care or pre-adoptive placements established by an Indian child's tribe, in accordance with 25 U.S.C. 1915(c).

(16) For the Indian child's current foster care or pre-adoptive placement as of the end of the report period per paragraph (e) of this section, indicate whether the placement meets the placement preferences of ICWA in 25 U.S.C. 1915(b) by indicating with whom the Indian child is placed. Indicate "a member of the Indian child's extended family," "a foster home licensed, approved, or specified by the Indian child's tribe," "an Indian foster home licensed or approved by an authorized non-Indian licensiug authority," "an institution for children approved by an Indian tribe or operated by au Indian organization which has a program suitable to meet the Indian child's needs," "a placement that complies with the order of preference for foster care or pre-adoptive placements established by an Indian child's tribe, in accordance with 25 U.S.C. 1915(c)" or "none."

(17) If the placement preferences for foster care or pre-adoptive placements were not followed, indicate whether the court made a finding of good canse, on a court order, to place the Indian child with someone who is not listed in the placement preferences of ICWA in 25 U.S.C. 1915(b) or the placement preferences of the Indian child's tribe. Indicate "yes" or "no." If the state title IV–E agency indicated "yes," then the state title IV–E agency must complete the data element in paragraph (i)(18) of this section. If the state title IV–E agency indicated "no," then the state title IV–E agency mnst leave the data element in paragraph (i)(18) of this section blank.

(18) Indicate the state court's basis for the finding of good cause, as indicated on the court order, by indicating "yes" or "no" in each paragraph (i)(18)(i) through (v) of this section.

(i) Request of the biological parents.

(ii) Request of the Indian child.

(iii) The unavailability of a suitable placement that meets the placement preferences in ICWA at 25 U.S.C. 1915.

(iv) The extraordinary physical or emotional needs of the Indian child.

(v) Other.

(19) *Termination of parental rights.* Indicate whether the termination of parental or Indian custodian rights was volnntary or involuntary. Indicate "voluntary" or "involuntary." If the state title IV–E agency indicated "voluntary", the state title IV–E agency must leave the data elements in paragraphs (i)(20) and (21) of this section blank. If the state title IV–E agency indicated "involuntary", the state title IV–E agency must leave the data elements in paragraphs (i)(22) through (24) of this section blank.

(20) Indicate whetber, prior to ordering an involuntary termination of parental rights, the state court found beyond a reasonable doubt, in a conrt order, that continued cnstody of the Indian child by the parent or Indian custodian is likely to result in serions emotional or physical damage to the Indian child in accordance with 25 U.S.C. 1912(f). Indicate "yes" or "no."

(21) Indicate whether the court finding reported for paragraph (i)(20) of this section, indicates that the state court's finding was supported by the testimony of a qualified expert witness in accordance with 25 U.S.C. 1912(f). Indicate "yes" or "no."

(22) If voluntary, iudicate whether there is a court order that indicates that the voluntary consent to termination for the biological or adoptive mother was made in writing and recorded in the presence of a judge in accordance with 25 U.S.C. 1913. Indicate "yes," "no," or "does not apply" if the mother is deceased.

(23) If voluntary, indicate whether there is a court order that indicates that the voluntary consent to termination for the biological or adoptive father was made in writing and recorded in the presence of a judge in accordance with 25 U.S.C. 1913. Indicate "yes," "no" or "does not apply" if the father is deceased.

(24) If voluntary, indicate whether there is a court order that indicates that the voluntary consent to termination for the Indian custodian was made in writing and recorded in the presence of a judge in accordance with 25 U.S.C. 1913. Indicate "yes," "no" or "does not apply" if there is no Indian custodian.

(25) *Adoption proceedings.* Indicate whether the Indian child exited foster care to adoption per paragraph (g) of this section. Indicate "yes" or "no." If the state title IV–E agency indicated "yes," the state title IV–E agency must complete the data element in paragraphs (i)(26) through (29) of this section. If the state title IV–E agency indicated "no," the state title IV–E agency must leave the data element in paragraphs (i)(26) through (29) of this section blank.

(26) Indicate which adoptive placements that meet the placement preferences in ICWA at 25 U.S.C. 1915(a) were willing to accept placement. Indicate in each paragraphs (i)(26)(i) throngh (iv) of this section "yes" or "no."

(i) A member of the Indian child's extended family.

(ii) Other members of the Indian child's tribe.

(iii) Other Indian families.

(iv) A placement that complies with the order of preference for foster care or pre-adoptive placements established by an Indian child's tribe, in accordance with 25 U.S.C. 1915(c).

(27) Indicate whether the placement reported in paragraph (h) of this section meets the placement preferences of ICWA in 25 U.S.C. 1915(a) by indicating with whom the Indian child is placed. Indicate "a member of the Indian child's extended family," "other members of the Indian child's tribe," "other Indian families," "a placement that complies with the order of preference for foster care or pre-adoptive placements established by an Indian child's tribe, in accordance with 25 U.S.C. 1915(c)," or "none."

(28) If the placement preferences for adoption were not followed, indicate whether the court made a finding of good cause, on a court order, to place the Indian child with someone who is not listed in the placement preferences of ICWA in 25 U.S.C. 1915(a) or the placement preferences of the Indian child's tribe. Indicate "yes" or "no." If the state title IV–E agency indicated "yes," then the state title IV–E agency mnst complete the data element in paragraph (i)(29) of this section. If the state title IV–E agency indicated "no," then the state title IV–E agency must leave the data element in paragraph (i)(29) of this section blank.

(29) Indicate whether there is a court order that indicates the court's basis for the finding of good cause, by indicating "yes" or "no" in each paragraph (i)(29)(i) throngh (v) of this section.

(i) Reqnest of the biological parents.

(ii) Request of the Indian child.

(iii) The unavailability of a suitable placement that meets the placement preferences in ICWA at 25 U.S.C. 1915.

(iv) The extraordinary physical or emotional needs of the Indian child.

(v) Other.

[FR Doc. 2016–07920 Filed 4–5–16; 8:45 am]

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Nat'l Council for Adoption v. Jewell, 2015 U.S. Dist. LEXIS 175213

Copy Citation

United States District Court for the Eastern District of Virginia, Alexandria Division

October 20, 2015, Decided; October 20, 2015, Filed

Case No. 1:15-cv-00675-GBL

Reporter
2015 U.S. Dist. LEXIS 175213

NATIONAL COUNCIL FOR ADOPTION, BUILDING ARIZONA FAMILIES on behalf of itself and its birth-parent clients, birth parents D.V. and N.L., and baby boy T.W. by and through his guardian ad litem PHILIP (JAY) MCCARTHY, JR., Plaintiffs, v. SALLY JEWELL, in her official capacity as Secretary of the United States Department of the Interior, KEVIN WASHBURN, in his official capacity as Assistant Secretary of Indian Affairs, BUREAU OF INDIAN AFFAIRS, and the UNITED STATES DEPARTMENT OF THE INTERIOR, Defendants.

Core Terms

Guidelines, binding, state court, notice-and-comment, agency's action, agencies, summary judgment motion, interpretive rule, legislative rule, procedures, non-binding, requirements, regulations, issuing, obligations, placement, rights, injury in fact, DENIES, tribes, custody proceeding, Families, parties, reasons, mandatory language, causal connection, legal consequence, summary judgment, proposed rule, provisions

Counsel: **[1]** For National Council for Adoption, Building Arizona Families on behalf of itself and its birth-parent clients, D.V. Birth Parent, N.L. Birth Patent, T.W. baby boy, by and through his guardian ad litem Philip (Jay) McCarthy, Jr., Plaintiffs: Anna Maria McKenzie, Jacob Stephen Siler, LEAD ATTORNEYS, Gibson Dunn & Crutcher LLP (DC), Washington, DC.

For Sally Jewell in her official capacity as Secretary of the United States Department of the Interior, Kevin Washburn in his official capacity as Assistant Secretary of Indian Affairs, Bureau of Indian Affairs, United States Department of the Interior, Defendants: Dennis Carl Barghaan, Jr., LEAD ATTORNEY, United States Attorney's Office, Alexandria, VA.

For National Congress of American Indians, Association on American Indian Affairs, The National Indian Child Welfare Association, Movants: Drew William Marrocco, Dentons US LLP (DC), Washington, DC.

Judges: Gerald Bruce Lee, United States District Judge.

Opinion by: Gerald Bruce Lee

Opinion

MEMORANDUM OPINION AND ORDER

THIS MATTER is before the court on Plaintiffs' National Council for Adoption, Building Arizona Families, on behalf of itself and its birth-parent clients, birth parents D.V. and J.L., and baby boy T.W. by and **[2]** through his guardian ad litem Philip (Jay) McCarthy, Jr.'s ("Plaintiffs") Motion for Summary Judgment on the Administrative Procedure Act ("APA") Claim [1 #] (Doc. 20). This case concerns Plaintiffs' claim that Defendants violated the notice-and-comment requirements of the APA by issuing the Guidelines for State Courts and Agencies in Indian Child Custody Proceedings, 80 Fed. Reg. 10, 146 (Feb. 25, 2015) ("2015 Guidelines"). Defendants argue that the 2015 Guidelines are non-binding, interpretive rules which are not subject to the APA's notice-and-comment requirements. Plaintiffs' urge the Court to vacate the 2015 Guidelines and invalidate the 2015 Guidelines as a matter of law.

The issue before the Court is whether the 2015 Guidelines are invalid because they were issued in violation of the notice-and-comment requirements of the APA.

The Court DENIES Plaintiffs' Motion for Summary Judgment for three reasons. First, this court does not have subject matter jurisdiction over the APA claim because Plaintiffs lack standing to challenge the 2015 Guidelines. Second, the 2015 Guidelines are not a "final agency action" within the meaning of the APA because they do not create legal rights and obligations. Third, the 2015 Guidelines are non-binding interpretive rules and are **[3]** therefore not subject to APA notice-and-comment procedures.

I. BACKGROUND

This case arises from Plaintiffs' contention that Defendants Sally Jewell in her official capacity as Secretary of the United States Department of the Interior, Kevin Washburn, in his official capacity as Assistant Secretary of Indian Affairs, the Bureau of Indian Affairs, and the Department of the Interior, violated the Administrative Procedure Act ("APA") 5 U.S.C. §§ 551-706. Plaintiffs allege that the Guidelines for State Courts and Agencies in Indian Child Custody Proceedings that were developed by the Bureau of Indian Affairs ("BIA") and issued by the Department of the Interior ("DOI") on February 25, 2015, 80 Fed. Reg. 10, 146 (Feb. 25, 2015) are invalid because they were issued in derogation of the notice-and-comment requirements of the APA, 5 U.S.C. § 553.

Plaintiff National Council for Adoption ("NCFA") is a non-profit, national adoption policy organization with its headquarters and principal place of business in Alexandria, Virginia (Doc. 1-5, 10:1-6). Plaintiff Building Arizona Families is a non-profit adoption agency headquartered in, and licensed by, the State of Arizona (Doc. 1-5, 11:1-6). Building Arizona Families is suing on its own behalf, and on behalf of its birth-parent **[4]** clients who are frustrated by the 2015 Guidelines that seek to implement the Indian Child Welfare Act ("ICWA")'s hierarchy of placement preferences regarding birth-parent client's decisions to place their children, classified as "Indian children," into adoptive homes. *Id.* Plaintiffs D.V. and N.L. are birth parents of a child who is an "Indian child" under ICWA because D.V., the child's father, is an enrolled member of the Pascua Yaqui Tribe located in Arizona and both parents, D.V. and N.L. are residents of Arizona and do not reside on an Indian reservation (Doc. 1-5, 12:1-8). D.V. and N.L. selected an adoptive placement that is not within ICWA's placement preferences. Plaintiff Phillip (Jay) McCarthy, Jr. is a resident of Arizona and is the court-appointed guardian ad litem from baby boy T.W., who is an "Indian Child" pursuant to the ICWA, because he is an enrolled member of the Navajo Nation (Doc. 1-6, 13:1-7). T.W.'s foster parents are not a preferred placement under the ICWA or the 2015 Guidelines. *Id.*

Defendant Sally Jewell is the Secretary of the United States Department of the Interior (Doc. 1-6, 14:1-2). Defendant Kevin Washburn is the Assistant Secretary for Indian Affairs **[5]** at the Bureau of Indian Affairs within the United States Department of the Interior (Doc. 1-6, 15:1-3). Defendant Bureau of Indian Affairs is a federal agency within the Department of the Interior. (1-6, 16:1-2). Defendant Department of the Interior is a federal executive department of the United States (Doc. 1-6, 17:1-2).

Congress enacted the Indian Child Welfare Act ("ICWA") to address "'the consequences to Indian Children, Indian families, and Indian tribes of abusive child welfare practices that resulted in the separation of large numbers of Indian children from their families and tribes through adoption or foster care placement, usually in non-Indian homes.'" *Adoptive Couple v. Baby Girl*, 133 S. Ct. 2552, 2557, 186 L. Ed. 2d 729 (2013) (quoting *Miss Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 32, 109 S. Ct. 1597, 104 L. Ed. 2d 29 (1989)). The ICWA applies to "child custody proceedings" (defined as foster-care placements, terminations of parental rights, and preadoptive and adoptive placements) involving an "Indian child," which is defined as "unmarried persons who is under age 18 and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe." 25 U.S.C. §§ 1903(1), (4). On November 29, 1979, the Bureau of Indian Affairs ("BIA") issued guidelines representing the BIA's interpretation of ICWA and providing procedures designed to "help **[6]** assure that rights guaranteed by the Act are protected when state courts decide Indian child custody matters." 44 Fed. Reg. 67, 584 (1979). The BIA made it clear in the introduction of the guidelines that they were meant to be simply guidelines, and that they were not binding and were distinguishable from any binding agency regulations. *Id.* The guidelines stated, "When ... the Department writes rules or guidelines advising some other agency how it should carry out responsibilities explicitly assigned to it by congress, those rules or guidelines are not, by themselves, binding." *Id.*

On February 25, 2015, the BIA updated its guidelines, but did not include the same language in the 1979 introduction which stated that the guidelines were not binding. Instead, the BIA explained that the 2015 Guidelines "promote compliance with ICWA's stated goals and provisions by providing a framework for State courts and child welfare agencies to follow." 80 Fed. Reg. 10, 146-147. In preparing the updated version, the BIA invited comments from federally recognized Indian tribes, state-court representatives, and organizations concerned with tribal children, child welfare, and adoption. *Id.*

Soon after issuing the 2015 Guidelines, the BIA initiated a notice-and-comment **[7]** rulemaking on March 20, 2015 to promulgate formal regulations to implement the ICWA (Doc. 48, 7). The BIA stated that the formal rulemaking was being proposed for the express purpose of issuing regulations that would "incorporate many of the changes made to the recently revised guidelines . . . establishing the Department's interpretation of the ICWA as a binding interpretation to ensure consistency in implementation of ICWA across all states." Proposed Rule: Regulations for State Courts and Agencies in Indian Child Custody Proceedings, 80 Fed. Reg. 14,880, 14,881 (Mar. 20, 2015); (Doc. 48, 2). Plaintiffs, National Council for Adoption and Philip (Jay) McCarthy, Jr., submitted comments on the proposed regulations (Doc. 48, 20). Nonetheless, Plaintiffs allege that the 2015 Guidelines are legislative guidelines which make them binding and that as binding "legislative rules," the BIA should have followed the APA's note-and-comment procedures before issuing them.

On May 27, 2015, Plaintiffs' filed a Complaint seeking a judgment that the 2015 Guidelines violate the APA and the United States Constitution, an order setting aside the 2015 Guidelines, and injunctive relief ordering Defendants to withdraw the 2015 Guidelines (Doc. 1-6, 9:1-5). Plaintiffs also sought a declaratory judgment that the child custody provisions of the **[8]** ICWA, 25 U.S.C. §§ 1911-1923, violate the United States Constitution and accordingly cannot be applied to them. *Id.* On July 30, 2015 Plaintiffs filed a Motion for Summary Judgment on APA Claim and a Memorandum in Support of Plaintiffs' Motion for Summary Judgment (Doc. 20-21). On September 1, 2015, Defendants filed Defendant's Memorandum of Law in Opposition to Plaintiff's Motion for Partial Summary Judgment (Doc. 48.). On September 14, 2015, Plaintiff's filed its Reply in Support of Plaintiff National Council for Adoption's Motion for Summary Judgment on APA Claim (Doc. 54.). Plaintiff's Motion for Summary Judgment is now properly before the Court.

STANDARD OF REVIEW

Under Federal Rule of Civil Procedure 56, the Court must grant summary judgment if the moving party demonstrates that there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c).

In reviewing a motion for summary judgment, the Court views the facts in a light most favorable to the non-moving party. *Boitnott v. Corning Inc.*, 669 F.3d 172, 175 (4th Cir. 2012) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986)). Once a motion for summary judgment is properly made and supported, the opposing party has the burden of showing that a genuine dispute exists. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986); *Bouchat v. Baltimore Ravens Football Club, Inc.*, 346 F.3d 514, 522 (4th Cir. 2003) (citations omitted). "[T]he mere existence of some alleged factual dispute **[9]** between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." *Emmett v. Johnson*, 532 F.3d 291, 297 (4th Cir. 2008) (quoting *Anderson*, 477 U.S. at 247-48).

A "material fact" is a fact that might affect the outcome of a party's case. *Anderson*, 477 U.S. at 248; *JKC Holding Co. v. Wash. Sports Ventures, Inc.*, 264 F.3d 459, 465 (4th Cir. 2001). Whether a fact is considered to be "material" is determined by the substantive law, and "[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Anderson*, 477 U.S. at 248; *Hooven-Lewis v. Caldera*, 249 F.3d 259, 265 (4th Cir. 2001).

A "genuine" issue concerning a "material" fact arises when the evidence is sufficient to allow a reasonable jury to return a verdict in the nonmoving party's favor. *Resource Bankshares Corp. v. St. Paul Mercury Ins. Co.*, 407 F.3d 631, 635 (4th Cir. 2005) (quoting *Anderson*, 477 U.S. at 248). Rule 56(e) requires the nonmoving party to go beyond the pleadings and by its own affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is a genuine issue. *Celotex Corp. v. Catrett*, 477 U.S. 317, 324, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986).

II. ANALYSIS

This Court DENIES Plaintiffs' Motion for Partial Summary Judgment because (1) Plaintiffs lack standing to challenge the 2015 Guidelines, (2) the 2015 Guidelines are not a "final agency action" within the meaning of the APA because they do not create legal rights and obligations, **[10]** and (3) the 2015 Guidelines are non-binding interpretive rules not subject to APA notice-and-comment procedures.

A. Plaintiffs lack standing to challenge the 2015 Guidelines

The Court DENIES Plaintiffs' Motion for Summary Judgment because Plaintiffs fail to demonstrate (1) a cognizable injury in fact, and (2) a causal connection between the claimed injury and Defendants' issuance of the 2015 Guidelines. Absent a showing of standing by Plaintiffs, this Court lacks subject matter jurisdiction over Plaintiffs' claim. *Whitmore v. Arkansas*, 495 U.S. 149, 154, 110 S. Ct. 1717, 109 L. Ed. 2d 135 (1990).

Standing exists where (1) Plaintiffs have suffered an injury in fact, (2) there is a causal connection between the injury and the condition complained of and (3) it is likely that the injury will be redressed by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559-61, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992); *see also South Carolina Coastal Conservation League v. U.S. Army Corps of Engineers*, 789 F.3d 475, 482 (4th Cir. 2015). Plaintiffs argue that National Council for Adoption has both individual and associational standing because Plaintiffs have been concretely harmed by the 2015 Guidelines. (Doc. 54, 11). However, Plaintiffs fail to demonstrate at least two necessary requirements for standing.

First, Plaintiffs do not demonstrate a cognizable injury in fact. To establish injury in fact, Plaintiffs must show that their "expenditures perceptibly impair **[11]** the organization's ability to advance its mission." *Equal Rights Ctr. v. Equity Residential*, 798 F. Supp. 2d 707, 720 (D. Md. 2011). Plaintiffs assert that National Council for Adoption and its member adoption agencies have been "forced to divert a significant portion of its limited resources" to educate its members about the 2015 Guidelines and that diverting significant resources toward educating its members and helping members comply with the 2015 Guidelines are contrary to Plaintiffs mission of securing safe, permanent homes for children who need them (Doc. 21, 8); (Doc. 54, 2). Despite Plaintiffs' claims, the 2015 Guidelines impose no duty on Plaintiffs to divert resources to comply with the 2015 Guidelines. Plaintiffs have, instead, voluntarily abided by the 2015 Guidelines. The voluntary decision by a private adoption agency to abide by the 2015 Guidelines does not give rise to injury (Doc. 48, 16) (citing to *Marshall v. Meadows*, 105 F.3d 904, 906 (4th Cir. 1997). Therefore, the voluntary expenditures by Plaintiffs to educate its members did not impair the organization's ability to advance its mission. *See Lane v. Holder*, 703 F.3d 668, 675 (4th Cir. 2012) ("educating members, responding to member inquiries, or undertaking litigation in response to legislation" are "merely abstract concerns" not suitable for adjudication).

Plaintiffs even acknowledge they **[12]** were not bound by the 2015 Guidelines when Plaintiffs submitted comments as part of Defendants' rulemaking to make parts of the 2015 Guidelines legislative rules, a process initiated soon after the BIA issued the 2015 Guidelines (Doc. 48, 17). After issuing the 2015 Guidelines, Defendants followed the APA's notice-and-comment rulemaking procedure to "incorporate many of the changes made to the recently revised guidelines . . . [with the purpose of] establishing the Department's interpretation of ICWA as binding interpretation to ensure consistency in implementation of ICWA across all States." Proposed Rule: Regulations for State Courts and Agencies in Indian Child Custody Proceedings, 80 Fed. Reg. 14,880, 14,881 (Mar. 20, 2015). Plaintiffs commented on Defendants proposed rules and stated that they "are deeply concerned that the BIA is attempting to elevate these 2015 Guidelines to federal regulatory status." 2.8 This comment evinces an understanding that the 2015 Guidelines are not binding regulations. Therefore, Plaintiffs cannot assert injury in fact for voluntary compliance with guidelines they acknowledged had no binding effect and no enforcement mechanism.

Second, Plaintiffs have not established a causal connection between injury and issuance of the 2015 Guidelines. The causation requirement is "designed to ensure that the injury complained of is not the result of the independent action of some third party not before the court." *Friends for Ferrell Parkway, LLC v. Stasko*, 282 F.3d 315, 324 (4th Cir. 2002). Plaintiffs cannot demonstrate that there is a direct link between Defendants issuing the 2015 Guidelines and Plaintiffs being injured by expending resources as a result of the 2015 Guidelines. This is because the interpretations contained in the 2015 Guidelines can only be implemented by the independent action of a third-party: state courts. *See Marshall v. Meadows*, 105 F.3d 904, 906 (4th Cir. 1997) (stating that there is no standing when a plaintiff's alleged injury was caused by the decision of a third-party). The 2015 Guidelines are merely interpretive in nature and impose no obligation unless and until a state court requires compliance with their provisions (Doc. 48, 19). It is not enough for an agency to encourage a third party to act in a particular way if the agency is not actually directing the party or mandating a specific result. *Simon v. E. Kentucky Welfare Rights Org.*, 426 U.S. 26, 42-43, 96 S. Ct. 1917, 48 L. Ed. 2d 450 (1976). Therefore, Plaintiffs have failed to establish a causal connection between Defendants issuing **[14]** the 2015 Guidelines and Plaintiffs being injured by the issuance because the 2015 Guidelines do not mandate state court compliance.

Accordingly, Plaintiffs cannot establish standing because (1) Plaintiffs have not demonstrated that they suffered a cognizable injury in fact, and (2) Plaintiffs have not established a causal connection between the injury and the Defendants' actions. For these reasons, the Court DENIES Plaintiffs' Motion for Summary Judgment.

B. The 2015 Guidelines are not a "final agency action" within the meaning of the APA

The Court also DENIES Plaintiffs' Motion for Summary Judgment because the 2015 Guidelines do not constitute "final agency action" within the meaning of the APA.

The APA authorizes judicial review of an agency action "only when a statute makes the action reviewable or the action was a 'final agency action for which there is no other adequate remedy.'" *Wollman v. Geren*, 603 F. Supp. 2d 879, 883 (E.D. Va. 2009) (quoting 5 U.S.C. § 704). If the agency action at issue is not "final" under the APA, a court lacks subject matter jurisdiction over the issue and dismissal is proper. *Id.* at 883; *see also Invention Submission Corp. v. Rogan*, 357 F.3d 452, 460 (4th Cir. 2004). The burden to prove agency action was "final" rests with the Plaintiffs. *Shipbuilders Council of Am., Inc. v. DHS*, 481 F. Supp. 2d 550, 555 (E.D. Va. 2007). The Supreme Court and the Fourth Circuit have recognized that in **[15]** order for agency action to be final it must (1) mark "the consummation of the agency's decision making process," and (2) determine rights, obligations, or legal consequences. *Bennett v. Spear*, 520 U.S. 154, 178, 117 S. Ct. 1154, 137 L. Ed. 2d 281 (1997); *COMSAT Corp. v. National Sci. Found.*, 190 F.3d 269, 274 (4th Cir. 1999). Moreover, the Fourth Circuit has held that "agency action which carries no 'direct or appreciable legal consequences' is not reviewable under the APA." *Flue-Cured Tobacco Coop. Stabilization Corp. v. U.S.E.P.A.*, 313 F.3D 852, 859 (4th Cir. 2002).

Here, Plaintiffs have not carried their burden of demonstrating that the 2015 Guidelines create rights, obligations, or legal consequences. Plaintiffs assert that the mandatory language contained in the guidelines, such as Defendants use of the word "must" 101 times, creates an obligation for state courts and agencies to comply with the 2015 Guidelines (Doc. 21, 12). This argument is unpersuasive because nothing in the 2015 Guidelines creates legal consequences for state courts, state agencies, or any other party that chooses not to adhere to the 2015 Guidelines. State courts accorded the 1979 Guidelines with some deference but did not interpret them as binding. *See e.g., Pepple ex rel. M.H.*, 2005 SD 4, 691 N.W.2d 622, 625 (D.C. 2005) (noting that the "guidelines do not have binding legislative effect"); *People ex rel. S.R.M.*, 153 P.3d 438 (Colo. Ct. App. 2006) (observing that the 1979 guidelines are persuasive but not binding authority). Similarly, state courts **[16]** applying the 2015 Guidelines have held that they are entitled to some deference but have rejected the notion that the guidelines are binding authority. *See Oglala Sioux Tribe v. Van Hunnik*, 100 F. Supp. 3d 749, 2015 WL 1466067, at *14 (D.S.D. 2015) ("The DOI Guidelines are not binding on the court but are an administrative interpretation of the ICWA entitled to great weight."); *In the Matter of M.K.T.*, Case No. 113, 110, 6-9 (Okla. Civ. App. May 1, 2015) (considering but rejecting the 2015 Guidelines recommendations because "[t]he BIA Guidelines are not binding and are instructive only"); *State ex rel. Children, Youth & Families Dep't v. Casey J.*, 2015-NMCA-088, 355 P.3d 814, 2015 WL 3879548, at *4 (N.M. Ct. App. 2015) (choosing to apply *both* the 1979 Guidelines and the 2015 Guidelines to reach its position concerning good cause to deviate from the ICWA's placement preferences); *Payton S. v. State*, 349 P.3d 162, 173 (Alaska 2015) (noting the 2015 update of the 1979 Guidelines and stating that the court has used them for "guidance in determining whether a proposed witness meets the heightened ICWA expert requirements").

Moreover, mere agency influence over third parties is not sufficient to create rights, obligations, or legal consequences for purposes of judicial review under the APA. *See Flue-Cured Tobacco Coop. Stabilization Corp. v. United States EPA*, 313 F.3d 852, 860 (4th Cir. 2002) ("Even when agency action significantly impacts the **[17]** choices available to the final decision maker, this distinction does not transform the challenged action into reviewable agency action under the APA"). The court in *Flue-Cured Tobacco* explained:

> [A]s a practical matter and of considerable importance, if we were to adopt the position that agency actions producing only pressures on third parties were reviewable under the APA, then almost any agency policy or publication issued by the government would be subject to judicial review. We do not think that Congress intended to create private rights of actions to challenge the inevitable objectionable impressions created whenever controversial research by a federal agency is published. Such policy statements are properly challenged through the political process and not the courts.

313 F.3d at 861. Here, the 2015 Guidelines serve as advisory guidelines to state courts, and even if they deemed persuasive and followed by certain courts, the state courts remain the final decision makers with regard to application of the ICWA because the 2015 Guidelines are not binding rules that compel those courts' decisions. Furthermore, voluntary compliance with the 2015 Guidelines does not make them a reviewable "final agency **[18]** action." *See Ctr. for Auto Safety v. N.H.T.S.A.*, 452 F.3d 798, 811, 371 U.S. App. D.C. 422 (D.C. Cir. 2006) (holding that "de facto compliance is not enough to establish that the guidelines have legal consequences").

For these reasons, Plaintiff has failed to demonstrate that the 2015 Guidelines are a "final agency action" within the meaning of the APA and Plaintiffs' Motion for Summary Judgment on these grounds is DENIED.

C. The 2015 Guidelines are non-binding interpretive rules not subject to APA notice-and-comment procedures

This Court DENIES Plaintiffs' Motion for Summary Judgment because the 2015 Guidelines are non-binding interpretive rules not subject to APA notice-and-comment procedures. Plaintiffs argue that the 2015 Guidelines are, at minimum, the functional equivalent of binding legislative rules that are subject to the APA's notice-and-comment requirement. Defendants counter that for the same reasons the 2015 Guidelines are not a "final agency action"—because they do not impose legal obligations—the guidelines are "interpretive rules" or statements of policy that are not subject to APA notice-and-comment procedures.

Under Title 5, Section 553 of the U.S. Code, public notice of rulemaking must be published in the Federal Register and there must be an opportunity for the general public to comment on the **[19]** proposed rule. 5 U.S.C. § 553(b)-(c). However, the provision exempts "interpretive rules" and "general statements of policy." *Id.* § 553 (b)(A). Interpretive rules "simply state what the administrative agency thinks a statute means, and only remind affected parties of the existing duties." *Id.* at 1340-41. Legislative rules, in contrast, "create new rights and have the force and effect of law." *Chen Zhou Chai v. Carroll*, 48 F.3d 1331, 1340 (4th Cir. 1995); *see also Jerri's Ceramic Arts, Inc. v. Consumer Prod. Safety Comm'n*, 874 F.2d 205, 207 (4th Cir. 1989).

In determining whether rules are legislative or interpretive the Fourth Circuit considers several factors, each of which militate toward the conclusion that the 2015 Guidelines are not legislative rules.

First, the Fourth Circuit has made clear that an agency's "own conduct . . . is highly relevant." *North Carolina Growers' Ass'n, Inc. v. United Farm Workers*, 702 F.3d 755, 765 (4th Cir. 2012). An agency's attempt to comply with the APA's notice-and-comment requirement "support[s] the conclusion that those procedures were applicable") (internal quotations omitted). *North Carolina Growers' Ass'n, Inc.*, 702 F.3d at 765. In the present case, Defendants' conduct tends to demonstrate that the 2015 Guidelines are non-binding interpretive rules. Defendants did not initiate the notice-and-comment process to make the 2015 Guidelines themselves binding, nor did Defendants seek to enforce provisions of the 2015 Guidelines (Doc. 48, 26). However, less than one month after issuing the 2015 **[20]** Guidelines, Defendants initiated a notice-and-comment procedure to transform parts of the 2015 Guidelines into legislative rules, which would be unnecessary if Defendants intended the 2015 Guidelines themselves to have binding or legislative effect (Doc. 48, 26).

The Fourth Circuit also looks to how the agency itself characterizes the document at issue. *Equity in Athletics, Inc. v. Dep't of Educ.*, 639 F.3d 91, 105-106 (4th Cir. 2011); *see also West Virginia v. Thompson*, 475 F.3d 204, 211 n.2 (4th Cir. 2007). Defendants have not characterized the 2015 Guidelines in a way that would indicate they are binding legislative rules. Rather, Defendants' characterization of the 2015 Guidelines suggests they were not meant to be legislative, but rather, interpretive rules. The 2015 Guidelines have the stated purpose of serving to "promote compliance with ICWA's stated goals and provisions by providing a framework for State courts and child welfare agencies to follow." 80 Fed. Reg. 10, 146-74. The Fourth Circuit has recognized that an agency action is not legislative where it made clear that it is not meant to be legislative. *See West Virginia v. Thompson*, 475 F.3d 204, 211 n.2 (4th Cir. 2007) (manual provision not legislative where it made clear "that it does not bind the states to any mandatory requirements beyond those in the Medicaid statute"). Plaintiffs argue that Defendants' usage of the word "must" 101 times and "may **[21]** not" ten times demonstrates that Defendants characterized the 2015 Guidelines as having a binding effect. However, mandatory language does not transform a set of interpretive rules into compulsory legislative rules. *See Am. Mining Congress v. Mine Safety & Health Admin.*, 995 F.2d 1106, 1111, 302 U.S. App. D.C. 38 (D.C. Cir. 1993) ("Nor is there much explanatory power in any distinction that looks to the use of mandatory as opposed to permissive language."). Mandatory language is not dispositive of this issue because even interpretive rules can use mandatory language when interpreting part of a statutory command. *Id.* Here, the use of mandatory language does not dictate whether the 2015 Guidelines are interpretive or legislative rules, because that language is used in the context of a document that is itself presented merely as "guidance" to "promote compliance" with the ICWA. 80 Fed. Reg. 10,146.

Additionally, the Fourth Circuit looks to the actual or intended effect of the rule. *Chen Zou Chai v. Carroll*, 48 F.3d 1331, 1341 ("A rule is a general statement of policy if it does not establish a binding norm and leaves agency officials free to exercise their discretion."); *see also Jerri's Ceramic Arts, Inc.*, 874 F.2d at 208 (rule was legislative where it "has the clear intent . . . of providing the Commission with power to enforce violations of a new rule"). The 2015 Guidelines do not have an actual or intended **[22]** effect of being legislative rules and state courts are free to exercise their discretion and depart from interpretations contained in the 2015 Guidelines. As mentioned previously, Defendants did not attempt to comply with the APA's notice-and-comment procedures when issuing the 2015 Guidelines, nor have the Defendants attempted to compel agencies to comply with the 2015 Guidelines. *Jerri's Ceramic Arts, Inc.*, 874 F.2d at 208 (rule was legislative where it "has the clear intent . . . of providing the Commission with power to enforce violations of a new rule"). Here, Defendants actions allowed state courts and agencies to adopt their own interpretation of ICWA and simply issued the 2015 Guidelines as non-binding "guidance." 80 Fed. Reg. at 10, 146 (stating that the 2015 Guidelines "provide guidance to State courts and child welfare agencies implementing [ICWA]."); *see M.K.T.*, Case No. 113, 110, at 7-8 (rejecting the 2015 Guidelines interpretation of "good cause").

Finally, the Fourth Circuit takes into consideration an agency's change of a "long-standing position" in determining whether guidelines are binding legislative rules. *Jerri's Ceramic Arts*, 874 F.2d at 208. Plaintiffs argue that the 2015 Guidelines' mark departure from prior policy that indicates a change from non-binding to binding guidelines; **[23]** Defendants' counter that the changes to the Guidelines in the 2015 update are merely the result of the BIA's intention to take a position on interpretive disagreements that have arisen among state courts in the many years that have passed since enactment of ICWA and issuance of the 1979 Guidelines. Regardless, neither the Fourth Circuit nor the APA require notice and comment before an agency can update or change its interpretation of a statute. In evaluating a change of policy, the court's inquiry must focus on whether the change was one that created new legal obligations on state courts or agencies and therefore do require notice-and-comment procedures. Here, despite any changes from the 1979 Guidelines, the 2015 Guidelines do not create new legal rights, duties, or obligations binding state courts and thus, they are not legislative rules.

Analysis of these factors supports the conclusion that the 2015 Guidelines are not legislative rules but rather that they are non-binding interpretive rules not subject to APA notice-and-comment procedures. Accordingly, Plaintiffs' claim that the 2015 Guidelines have been issued in derogation of the APA's notice-and-comment procedure fails, and Plaintiffs' **[24]** Motion for Summary Judgment is DENIED.

III. CONCLUSION

The Court denies Plaintiffs' Motion for Summary Judgment on the APA claim for three reasons. First, Plaintiffs lack standing to challenge the 2015 Guidelines because they cannot demonstrate the requisite injury in fact or causation elements. Second, the 2015 Guidelines are not a "final agency action" within the meaning of the APA because they do not create legal rights and obligations. Finally, the 2015 Guidelines are non-binding interpretive rules not subject to APA notice-and-comment procedures. For the foregoing reasons, it is hereby

ORDERED that Plaintiffs' Motion for Summary Judgment is **DENIED**.

IT IS SO ORDERED.

ENTERED this 20th day of October, 2015.

Alexandria, Virginia

10/__/2015

/s/ Gerald Bruce Lee

Gerald Bruce Lee

United States District Judge

Footnotes

[1] *See* Count I of the Complaint (Doc. I).

[2] National Council for Adoption et al., Comment on the Bureau of Indian Affairs (BIA) Proposed Rule: Regulations for State Courts and Agencies in Indian Child Custody **[13]** Proceedings (May 22, 2015), http://www.regulations.gov/#!documentDetail;D=BIA-2015-0001-0514 .

VIRGINIA: IN THE JUVENILE AND DOMESTIC RELATIONS COURT FOR THE CITY OF VIRGINIA BEACH

	) Case No.
	)
	) INDIAN CHILD WELFARE
	) ACT NOTICE,
In the Matter of	)
	)
_____, D/O/B	) 25 U.S.C. § 1912(a)
	)
A person under eighteen years of age	)
_____	)

TO: 1. _____TRIBE
_____
_____

2. _____, BIOLOGICAL PARENT

3._____, BIOLOGICAL PARENT

INDIAN CHILD WELFARE ACT NOTICE

Notice is hereby given pursuant to the Indian Child Welfare Act, 25 U.S.C. §§ 1901-1963, that a petition involving the above named minor child has been filed in the Virginia Beach Juvenile and Domestic Relations Court alleging that the child is within the jurisdiction of the court. A copy of the petition is attached. It is alleged that the above named minor child is a member of or eligible for membership in the _____Indian tribe, and that the Indian Child Welfare Act applies to this proceeding:

1. Information on the child is as follows:

   a. Name: _____

   b. Present residence: c/o VBDHS, 3432 Virginia Beach Blvd., Virginia Beach, VA 23452

   c. Place of birth: _____

d. Date of birth:_____

e. Where child was taken into custody: Virginia Beach, VA

f. Tribal affiliation: _____

g. Tribal census of enrollment number: _____

2. Information on the parents is as follows:

A. i. Mother's Name:_____

ii. Maiden Name: _____

iii. Permanent Address: _____

iv. Current Address: _____

v. Place of Birth: _____

vi. Date of Birth: _____

vi. Tribal Affiliation: _____

vii. Tribal enrollment or census number: _____

B. i. Father's Name: _____

ii. Permanent Address: _____

iii. Current Address: _____

iv. Place of Birth: _____

v. Date of Birth: _____

vi. Tribal Affiliation: _____

vii. Tribal enrollment or census number: _____

C. If these are not the natural parents, please supply the same information on the natural parents: _____

D. Please supply the names of relatives, other family names, and other information

about the extended family that will aid in identification, included all known grandparents and next of kin (*attached additional pages if necessary*):

_____

_____

_____

_____

_____

3. The petitioner in this proceeding is:

   a. Name: City of Virginia Beach- Department of Human Services

   b. Address: 3235 Virginia Beach Blvd., Virginia Beach, VA 23452 Phone: 757-437-3300

   c. Title: N/A

4. The social worker for the state in this proceeding, if not the petitioner is:

   a. Name:

   b. Address: 3235 Virginia Beach Blvd., Virginia Beach, VA 23452 Phone: 757-385-3307

5. The attorney for the petitioner is:

   a. Name:_____

   b. Address: Office of the City Attorney, 2401 Courthouse Dr., Ste. 260, Virginia Beach, VA 23456 Phone : 757-385-4531.

6. Other party information:

A. Guardian *ad litem* for Child:

_____

B. Court Appoint Special Advocate ("CASA"): _____

7. The petition has been filed in the **Virginia Beach Juvenile and Domestic Relations Court.** A hearing is scheduled in this matter on _____ before **JDR#** __.

The address of the court is **2425 Nimmo Parkway, Municipal Center, Bldg. 10A, Virginia Beach, VA 23456.** The phone number of the court is **757-385-4391.**

8. No proceeding involving the above named minor child shall take place until at least ten (10) days after receipt of this notice.

9. The biological parent, and any Indian custodian of the above named child have the right to intervene and be made a party in this proceeding under the Indian Child Welfare Act.

10. If the parents or Indian custodians are unable to afford counsel, counsel will be appointed to represent them. The parents or Indian custodians have the right to be represented by an attorney at every stage of this proceeding. The court may, in its discretion, appoint an attorney to represent the above named minor child. ***Parent's counsel is;_____; counsel is being paid by the Commonwealth of Virginia.***

10. The tribe, upon request, has the right to be granted at least an additional twenty (20) days to prepare for this proceeding. Such request may be made by motion, in writing, or by calling the court clerk at the number listed under #6, above.

11. *The tribe and the parents have* the right, upon request, to examine all documents or other material which may be used to make a decision in this matter. Such request shall be made in writing to the court clerk, or the Court at the hearing.

13. The parents, or the Indian custodians have the right to petition the court to transfer this proceeding to the Tribal Court. Such petition shall be in writing and presented to the court clerk or orally to the court at the scheduled hearing. The petition shall be granted in the absence of good cause to the contrary or the objection of either parent.

14. A decision in this matter may effect the future custodial rights of the parent, and the Indian custodians of the above named minor child, and may in the termination of parental

rights to the child, and the permanent placement or adoption of the child.

15 The information contained in this notice and the attached Petition is confidential and should not be disclosed or revealed to any person or agency which is not necessary for proper notification of the parents, Indian custodians or the tribe of the above named minor child, and which is not necessary for the exercise of their rights under the Indian Child Welfare Act.

16. This notice has been sent by registered mail, return receipt requested, this _____ day of _____, 20____ to the Tribe (25 USC §1912) and the biological parent(s), and via fax, regular mail, and e-mail to counsel for father, the guardian *ad litem,* and if appointed, CASA, and via hand delivery to the Virginia Beach Juvenile and Domestic Relations Court.

_____
Of Counsel for Petitioner

Office of the Virginia Beach City Attorney
Associate City Attorney
2401 Courthouse Dr., Ste. 260
Virginia Beach, VA 23456
757-385-4531-phone
757-385-5681-fax

Certificate of Service

The affirmations set forth in paragraph 16 herein are incorporated herein by reference and carried out this day, the ____ of ____, 20__.

_____
Associate City Attorney

CHILD SUPPORT: OVERVIEW AND HOT TOPICS 2016

I. Appeal Bond issue for Civil Contempt for Nonpayment of Support

A. Support Contempt Appeal Statutes

1. Va. Code Ann. § 16.1-296

A. From any final order or judgment of the juvenile court affecting the rights or interests of any person coming within its jurisdiction, an appeal may be taken to the circuit court within 10 days from the entry of a final judgment, order or conviction and shall be heard de novo. However, in a case arising under the Uniform Interstate Family Support Act (§ 20-88.32 et seq.), a party may take an appeal pursuant to this section within 30 days from entry of a final order or judgment. ...

H. No appeal bond shall be required of a party appealing from an order of a juvenile and domestic relations district court except for that portion of any order or judgment establishing a support arrearage or suspending payment of support during pendency of an appeal. In cases involving support, no appeal shall be allowed until the party applying for the same or someone for him gives bond, in an amount and with sufficient surety approved by the judge or by his clerk if there is one, to abide by such judgment as may be rendered on appeal if the appeal is perfected or, if not perfected, then to satisfy the judgment of the court in which it was rendered.

Upon appeal from a conviction for failure to support or from a finding of civil or criminal contempt involving a failure to support, the juvenile and domestic relations district court may require the party applying for the appeal or someone for him to give bond, with or without surety, to insure his appearance and may also require bond in an amount and with sufficient surety to secure the payment of prospective support accruing during the pendency of the appeal. An appeal will not be perfected unless such appeal bond as may be required is filed within 30 days from the entry of the final judgment or order. However, no appeal bond shall be required of the Commonwealth or when an appeal is proper to protect the estate of a decedent, an infant, a convict or an insane person, or the interest of a county, city or town.

If bond is furnished by or on behalf of any party against whom judgment has been rendered for money, the bond shall be conditioned for the performance and satisfaction of such judgment or order as may be entered against the party on appeal, and for the payment of all damages which may be awarded against him in the appellate court. If the appeal is by a party against whom there is no recovery, the bond shall be conditioned for the payment of any damages as may be awarded against him on the appeal. The provisions of § 16.1-109 shall apply to bonds required pursuant to this subsection.

This subsection shall not apply to release on bail pursuant to other subsections of this section or § 16.1-298.

2. § 16.1-109. Appellate court may require new or additional security

A. The court to which the appeal is taken may on motion for good cause shown, after reasonable notice to the appellant, require the appellant to give new or additional security,

and if such security be not given within the time prescribed by the appellate court the appeal shall be dismissed with costs, and the judgment or order of the court from which the appeal was taken shall remain in effect and the appellate court shall award execution thereon, with costs, against the appellant and his surety.

B. When a bond or other security is required by law to be posted or given in connection with an appeal or removal from a district court, and there is either (i) a defect in such bond or other security as a result of an error of the district court, or (ii) the district court erroneously failed to require the bond or other security, and the defect or failure is discovered prior to sending the case to the circuit court, the district court shall order that the appellant or applicant for removal cure such defect or failure within a period not longer than the initial period of time for posting the bond or giving the security. If the error or failure is discovered after the case has been sent to the circuit court, the circuit court shall return the case to the district court for the district court to order the appellant or applicant for removal to cure the defect or post the required bond or give the required security within a period of time not longer than the initial period of time for posting the bond or giving the security for removal. Failure to comply with such order shall result in the disallowance of the appeal or denial of the application for removal.

3. Va. Code § 16.1-298 Child and Spousal Support Orders are not suspended on appeal.

B. Juvenile Court Processes Contempt Appeals Excerpt from the District Court Manual:

IV. CIVIL AND CRIMINAL CONTEMPT IN CHILD SUPPORT AND BIFURCATED APPEALS

Civil and criminal contempt may be appealed without appealing the support arrearage and without posting a bond for the arrearage.

See Virginia Supreme Court of Appeals opinions in Forte v. Dep't of Soc. Servs., Div. of Child Support Enforcement, 65 Va. App. I (201 5) and Zedan v. Westheim, 62 Va. App. 39 (2013).

V. APPEAL BONDS -CIVIL SUPPORT

Appeal bonds are paid when an appeal is filed in a suppo1t case only in particular circumstances. An arrearage bond is required upon the appeal of any order that establishes an arrearage or suspends payment of support during the appeal. An appearance bond and or accrual bond may be required upon the appeal of a conviction for failure to support or of a finding of civil contempt involving failure to support.

B. Arrearage Bond-When Mandatory

Total arrearage amount owed by respondent. The actual bond amount will be determined by the Judge and will vary by local practice. An arrearage bond is a bond on the appeal of any order that establishes an arrearage or suspends payment of support during the pendency of the appeal. On civil appeal cases, this amount has to be paid before the appeal can be transmitted to or heard in the circuit court.

The respondent has thirty days from the date of judgment in the JDR court to post the bond. Once the appeal is noted the respondent shall be released from jail unless the judge orders the respondent held i n jail until the bond is posted.

C. Accrual Bond

The amount of support that will be owed from the date of the hearing in the JDR court until the appeal is heard in circuit court. The actual bond amount will be determined by the Judge and will vary by local practice. An accrual bond is set at the Judge's discretion on the appeal of a conviction for failure to support or on the appeal of a finding of civil or criminal contempt involving failure to support. The respondent has thirty days from the date of judgment in JDR court to post the bond. Once the appeal is noted the respondent shall be released from jail unless the judge orders the respondent held in jail until the bond is posted.

D. Appearance Bond

An amount ordered with or without surety by the JDR court to ensure the appellant's appearance in the circuit court. An appearance bond is set at the judge's discretion on the appeal of a conviction for failure to support or on the appeal of a finding of civil or criminal contempt involving failure to support. If the judge sets a secure appearance bond the respondent must remain in jail until the bond is posted.

C. CASE LAW:

1. Peet v. Peet, 16 Va. App. 323, 429 S.E.2d 487 (1993) - The Court sentenced "Richard Peet to fifteen days in jail and suspended execution of the sentence until a date certain. The fact that the court suspended execution of the sentence and continued the case until a date certain so that Richard Peet could purge himself of the civil contempt does not make the decree interlocutory. The contempt decree imposed a sentence and fully adjudicated all issues; it was final, and this Court has jurisdiction of the appeal."

2. *Street v. Street*, 24 Va. App. 14, 17, 480 S.E.2d 118, 120 (1997)

Wife filed a show cause against husband for failure to pay support. At the trial, the court found the husband in contempt and sentenced him to jail with a review date to provide a repayment plan and pay a substantial sum of money. Prior to the hearing, the matter was placed back on the docket. Husband paid $4000 and had a pending installation job he could complete. The court released him over wife's objection and continued the matter for him to come up with a re-payment plan. Husband subsequently filed a motion to modify spousal support. The court denied his motion and rejected his payment plan. The court sentenced him back to jail. Husband appealed and the wife objected on the grounds that he failed to file an appeal in a timely fashion. Her position was that he should have filed an appeal when he was first sentenced to jail. The Court rejected the argument, holding that although the orders were appealable because he was found in contempt and a sentence was imposed, the orders were not final because they did not "dispose of the whole subject, give all the relief that was contemplated, provide with reasonable completeness for giving effect to the sentence, and leaves nothing to be done in the cause save to superintend ministerially the execution of the decree."

3. *McCall v. Department of Social Servs., Div. of Child Support Enforcement ex rel. Ware*, 20 Va. App. 348, 457 S.E.2d 389 (1995)

In 1992 Amherst J&DR Court found Mr. McCall guilty of civil contempt and sentenced him to 365 days in jail all but 100 days were suspended and set the arrearage at $3,370. The court set the appeal bond at $450. DCSE filed a motion in circuit court requesting increase in the appeal bond. The court increased the appeal bond to $3,370.00. After thirty days, the appeal was dismissed. Mr. McCall appealed and contended, for the first time on appeal, that pursuant to the 1992 version of Code § 16.1-107, he may appeal the civil contempt citation without being required to post an appeal bond, even though the bond was required for that portion of the order establishing the support arrearage. Therefore, according to McCall, the trial court erred in dismissing his entire appeal. McCall did not at any time in the trial court request that he be allowed to proceed with an appeal of the civil contempt order, which required no bond, even though the trial court was dismissing the appeal for failing to post an appeal bond for the support arrearage judgment. The Court, in rejecting his argument, held that it was Mr. McCall's duty to notify the court he was only appealing the contempt finding and not the arrearage amount. "Neither the J&DR court nor circuit court judge is required to determine whether an appellant intends to appeal only a "portion" of a court's rulings and order."

4. *Avery v. Department of Social Servs., Div. of Child Support Enforcement ex rel. Clark*, 22 Va. App. 698, 472 S.E.2d 675 (1996)

Appellant father who was incarcerated on an unrelated matter was adjudged by the juvenile court to be guilty of contempt, assessed a support arrearage and sentenced to 12 months in jail unless he paid the arrearage of $9,200 or reached an agreement with DCSE. Circuit Court of Campbell County dismissed the appeal for lack of jurisdiction because Mr. Avery did not post an appeal bond. Mr. Avery appealed the circuit court's ruling. The Court of Appeals, reversing the trial

court, held that a finding of contempt is not an order establishing an arrearage. The Court cited *McCall* as it authority.

5. *Virginia Dep't of Social Servs., Div. of Child Support Enforcement, ex rel. May v. Walker*, 253 Va. 319, 485 S.E.2d 134 (1997)

The trial court sentenced the father to six months in jail, but suspended his sentence on the condition that he pay child support arrearage and continue to pay support. He appealed to the circuit court; no appeal bond was set and he posted none. The department claimed that the circuit court did not have jurisdiction to hear the case because the father had not posted the appeal bond as required by Va. Code Ann. § 16.1-296(H). The circuit court ruled that it had jurisdiction, heard the case on its merits, and found that the father was not in arrears. The court of appeals affirmed. The court held that the statutory requirements for appeal bonds had always been construed as mandatory, and the exercise of appellate jurisdiction had been confined to the provisions of the written law. Section 16.1-296(H) mandated an appeal bond, and the posting of such bond was required within 30 days from the date of judgment. However, no bond was posted within the 30-day period. Thus, the circuit court did not have jurisdiction to hear the appeal. Section 16.1-296(H) placed the burden on the party applying for the appeal to ask for and have the trial court set the bond and approve the surety.

The Court declared that **Code § 16.1-296(H) could not be more clear:** "no appeal shall be allowed" unless and until a bond is given by the party applying for the appeal. The statutory requirements for appeal bonds always have been construed as mandatory, and the exercise of appellate jurisdiction has been confined to the provisions of the written law.

6. *Mahoney v. Mahoney*, 34 Va. App. 63, 537 S.E.2d 626, 627 (2000)

On August 28, 1998, the Arlington Juvenile and Domestic Relations District Court (J&DR) found appellant, Michael Mahoney (father), in civil contempt of court on Jeanne Mahoney's Rule to Show Cause which was issued against the father for failing to comply with court-ordered support, both child and spousal, as well as medical bills and attorney's fees. The court entered judgment against father in the amount of $ 151,902.52, the amount in arrears due to mother. On appeal to the circuit court, father characterized the appeal as one challenging the "jurisdiction of the Court [to] enter any orders and the validity of all orders entered in this case based on fraud." He specifically noted his intention not to appeal the amounts of support found due and owing. Bond was fixed at $ 165,888.62 by the juvenile court. When no bond was posted, the circuit court dismissed father's appeal upon mother's motion. The court's order of dismissal was appealed to this Court. We affirm the circuit court's decision on the grounds that follow:

1. Mahoney's challenge to the validity of "all orders entered" by the juvenile court, and to the authority of the court to enter any such orders, necessarily and logically implicates a challenge to the subject of the orders entered by the juvenile court. In this case, the order

Mahoney appealed from the juvenile court to the circuit court established a support arrearage he owed to his former wife.

2. In addition, not only is the substantive issue of support arrearages logically related to, and inherent in, Mahoney's challenge to the jurisdiction of the court and the claimed invalidity of "all orders entered," but the law governing appeals from courts not of record also provides a well established legal foundation for the imposition of bond.
    a. Appeal is trial de novo such that the lower court order is annulled and all issues raised by the petitioner are addressed. The circuit court acts as a court of original jurisdiction.
    b. The policy underlying the requirement of appeal bonds is clear. An appeal bond provides assurances that any judgment that may be rendered on appeal, if perfected, will be satisfied. Such bonds ... provide assurances in cases in which an appeal is not perfected that the judgment of the court in which it was rendered will be satisfied. ...Indeed, the policy considerations underlying the need for bond upon appeal from the lower court are so material to the statutory scheme reflected in Code § 16.1-296(H) that the failure to post the required bond will constitute reversible error even when the appellant prevails in the trial de novo. See Commonwealth ex rel. May v. Walker, 253 Va. 319, 323, 485 S.E.2d 134, 136-37 (1997).

7. *Sharma v. Sharma*, 46 Va. App. 584, 620 S.E.2d 553 (2005)

The father appealed an order which increased his child support obligation, and established a retroactive arrearage balance. The J&DR court clerk set the appeal bond at "0." The mother sought to have the appeal dismissed on grounds the father failed to post an appeal bond. One of the father's arguments was that the increase in child support should be bifurcated from the arrearage established, citing Avery. In dismissing the appeal, the Court of Appeals reasoned as follows:

> [o]ur inquiry here is the relationship between the components of the appealed order, i.e., the relationship between the arrearage and the child support. Put differently, is the arrearage judgment intrinsically, inherently, and logically related to the child support judgment?
>
> Here, the answer is in the affirmative. The arrearage arose because of the effective date of the increase in child support. Without the ruling on child support, there would be no arrearage. Therefore, these two issues could not be separated on appeal, nor could the judgment appealed be bifurcated. As in Mahoney, the issues were so intertwined that one could not appeal one issue without contesting the other.

8. *Forte v. Dep't of Soc. Servs., Div. of Child Support Enforcement*, 65 Va. App. 1, 772 S.E.2d 303, (2015)

On December 5, 2011, the Hampton Juvenile and Domestic Relations District Court ordered Forte to pay $1,237 per month in child support to Courtney T. Newsome. The same order also sets forth arrearages totaling $18,873.50. The payments were to begin on January 1, 2012. When

combined with a required $200 monthly payment toward arrearages, appellant was ordered to pay $1,437 per month.

Approximately two years later, on December 5, 2013, appellant filed a motion to amend his child support obligation on the basis of a reduction in his income. On February 3, 2014, the juvenile court denied the motion, finding that appellant had not shown a change in circumstances. The court also calculated the support arrearages at $24,328.91. Forte sought to appeal the juvenile court's denial of his motion, and the court ordered him to post an appeal bond for the arrearage amount. He objected to the bond, arguing that "an appeal from a denial of a motion to amend future support payments," such as his appeal, did not require a bond. The Circuit Court dismissed his appeal.

The Court of Appeals rejected Mr. Forte's arguments on two grounds:

1. [a]ppeal of the denied motion to reduce child support is intrinsically and logically related to the arrearages. By statute, whenever a court issues an order directing the payment of child support, whether the order is an original or modifies an existing order, it must determine the amount of arrearages, if any. *See* Code § 20-60.3(9) (requiring a trial court to include, in an order directing the payment of child support where arrearages exist, among other things, the arrearages' amount);
2. This case involves support: appellant is asking the court to reduce the amount of his child support. The circuit court may deny his request for a reduction in support if he perfects his appeal. If he does not perfect his appeal, he must post a bond "to satisfy the judgment of the" juvenile court. Accordingly, appellant must post a bond sufficient to "abide by such judgment as may be rendered on appeal." Id.

9. Problem with Avery Rationale is it relies on *McCall* which interpreted an outdated statute:

Justice Colemans rationale for *McCall*:

Thus, because the 1992 amendment to Code § 16.1-107 had a separate provision for appeals for J&DR courts, the holding in *Scheer* that Code § 16.1-107 contained "mandatory provisions . . . which require a bond in an appeal of a civil case," *Scheer*, 10 Va. App. at 342, 392 S.E.2d at 203, has no application to the present case. Accordingly, we must determine whether the 1992 version of Code § 16.1-107, which provides that no appeal bond shall be required for appeals from J&DR courts except that a circuit court "shall order a bond for *that portion of any* order entered or judgment rendered establishing a support arrearage," required the circuit court to allow an appeal of all issues from a J&DR court and to dismiss only the support issue when the appeal bond is not posted.

In 1993, Code § 16.1-296 was enacted which not only contains the general exception to posting bonds except for that portion of any order establishing support arrearage but also contains the following language:

[i]n cases involving support, no appeal shall be allowed until the party... gives bond ... to abide by such judgment as may be rendered on appeal if the appeal is perfected or, if not perfected, then to satisfy the judgment of the court in which it was rendered.

In 1993, the mandatory bond provisions were put back into the statute for cases involving child support.

II. ARREARAGES

A. Financial Records:

Terminology:

Allocation (proration) is a process of dividing an NCP's payment among all cases for which s(he) is ordered to pay support. The system automatically allocates a support payment from an NCP among the NCP's cases, IV-D and non-IV-D, based on a hierarchy of current support and arrears. APECS executes this hierarchy through a table of support types, accounts, and subaccounts. Support types include but are not limited to the following; a) Child Support, b) Medical Support, and c) Spousal Support.

Distribution is the allocation of child support collected to the various types of debt within a child support case ie., monthly child support obligation, child support arrearage, child support interest, spousal support, spousal support arrears, spousal support interest, medical arrears and medical interest etc.

Federal Tax Refund Offset Program collects past due child support amounts from noncustodial parents through the interception of their Federal income tax refund, or an administrative payment, such as Federal retirement benefits. Since its purpose is to collect past due child support, this is the one instance where the payment is credited first to the arrearage balance and then to current support owed for the month. Additionally, this is one instance where TANF debt is paid before non-TANF debt.

B. Understanding Payment Account Record – See Sample Account Record

Top Portion of the Fiscal Record

FOR THE PERIOD: Unless the caseworker requests otherwise, the system will default to 01/01/1989 through the date the record was printed.

Frequency Amount is typically the current monthly principal amount of child support ordered. The amount does not include the ordered amount of arrears payments.

Charge Date - identifies the next charge date for this case. If this field is blank, the current support is closed; for example, the child support order

may have terminated or the custodial parent has closed the case yet TANF arrearage is owed.

ORDER START DATE - identifies when the first payment of the current child support order became due.

Columns

DT PST (date posted) - this column identifies the date that a transaction occurred. This is in month, day and year format. Transactions include the charge date, when the agency made an adjustment, or when a payment posted to the case. A gap in the date range means no transaction occurred for that period. Gaps are typically seen in arrearage only cases when there have been no payments for extended periods of time.

ADJ (Adjustments) - this column identifies that an adjustment has occurred. A one letter code describes which subaccount(s) have been adjusted. These codes include the following: (A) Arrearage; (B) Both arrears and current support; (C) Current support; (I) Interest; (F) Fees; and (M) Multiple subaccounts in any combination.

ORD AMT (Ordered Amount) - this column shows the current support due for the corresponding month.

Payment - this column lists the payment(s) made to the case. The code following the payment identifies the specific account that was reduced by the payment. The following are the code definitions: (A) Arrears; (B) Both arrears and current support; (C) Current Support; (I) Interest; (F) Fees and (M) Multiple accounts.

CSUP Bal (child support balance) - this column displays the balance due of the current support subaccount for that date. Even though the support is due on the first of the month and not paid, it is not reflected into the arrearage column until the first date of the following month. For example, if Mr. Smith owes $500 per month in child support due on the first of each month and he does not pay for September 2011, his current support balance will continue in the current monthly support column through September 31st. On October 1, 2011, the $500 will be removed from the current child support column and moved to the arrearage column. Consequently, when Mr. Smith's child support case is in court on the 15th of September, the total arrears balance would be computed by adding the current child support column with the arrearage column to arrive at the total principal arrearage owed through September 15th. If Mr. Smith paid $200 on September 8th, the account record would reflect in his current child support column $300, which is the remaining current child support balance owed for September.

Arrs bal (Arrearage Balance) - this column displays the total arrears

balance due for the date reflected. It does not include current support owed for the month. Caveat: if noncustodial parent owes both child and spousal support, the arrearage amount may include both.

Int Bal (Interest Balance) - This column reflects the interest due for the case. The system charges interest on the principal balance only.

Fee (Fee Balance) - this column identifies the balance of all fees due as of the displayed date. Fees included are genetic testing, legal fees, and IRS fees.

Tot Bal (Total Balance) - the column shows the total balance for all of the following columns; Arrears balance (ARRS BAL), Interest balance (INT BAL), and Fee balance (FEES).

NOTICE OF APPEAL – SUPPORT PROCEEDING Case No. .....

Commonwealth of Virginia VA. CODE §§ 16.1-296, 16.1-298

..... Juvenile and Domestic Relations District Court
CITY OR COUNTY

.....Date of Final Order or Judgment

..... *v./In re,* .....

Appellant: .....
NAME AND ADDRESS

Appealed to the ..... Circuit Court .....
CITY OR COUNTY TELEPHONE NUMBER

.....
STREET ADDRESS

Date and Time of Appearance in Circuit Court: ..... for [ ] Trial [ ] Setting of Trial Date
I, the undersigned, note an appeal to the following conviction, judgment or final order:

[ ] **CIVIL SUPPORT PROCEEDINGS**: (excluding civil contempt finding for nonpayment of support): .....
I understand that the order of judgment from which I appeal remains in full force and effect until modified or annulled by the Circuit Court. If the order being appealed adjudicates or establishes an arrearage, an appeal bond for the arrearage, as described below, is required.

[ ] **CRIMINAL NONSUPPORT**: Appeal of conviction and order of support. I understand that the order of support from which I appeal remains in full force and effect until modified or annulled by the Circuit Court. An appearance bond and/or accrual bond, if ordered, is described below.

[ ] **CIVIL CONTEMPT:**
- [ ] Appeal of finding of contempt. An appearance bond and/or accrual bond, if ordered, is described below.
- [ ] Appeal of order establishing support arrearage. An appeal bond for the arrearage required and described below.

[ ] **CRIMINAL CONTEMPT:**
- [ ] Appeal of conviction. An appearance bond and/or accrual bond, if ordered, is described below.
- [ ] Appeal of order establishing support arrearage. An appeal bond for the arrearage required and described below.

I understand that this appeal may be withdrawn at any time prior to the hearing date set for my case (see additional information on second page). I promise to appear before the Circuit Court of this jurisdiction on the date and time as shown above.

08/18/2016 _____
DATE APPELLANT/ATTORNEY FOR APPELLANT

By order of the Court, bond is required as follows:

An appeal bond for the arrearage in the amount of $ ..... must be posted with the clerk of the juvenile and domestic
AMOUNT OF ARREARS
relations district court within thirty (30) days of the entry of the judgment for the appeal to be completed (perfected) (Form DC-460, CIVIL APPEAL BOND). The Appellant's failure to do so, as required by law, will result in the loss of the right to appeal. The appeal bond for the arrearage will be written to indemnify ..... the party in whose favor a judgment was rendered in this court in the event that such party is awarded a judgment by the Circuit Court.

[ ] An accrual bond in the amount of $ 0.00 to secure the payment of prospective support while the appeal is pending is ordered and must be posted with the juvenile and domestic relations district clerk within thirty (30) days of contempt finding/conviction or nonsupport conviction (Form DC-460, CIVIL APPEAL BOND). If the bond is not posted within thirty (30) days and the defendant has been released from jail, a capias may be issued for failure to abide by the conditions of bail.

[ ] An appearance bond in the amount of $ 0.00 [ ] unsecured [ ] secured to ensure appellant's appearance is ordered (Form DC-330, RECOGNIZANCE). Further conditions of release:

.....

08/18/2016 _____
DATE CLERK

See second page for additional important information.

NOTICE OF APPEAL – SUPPORT PROCEEDING

Case No. .....

Commonwealth of Virginia VA. CODE §§ 16.1-296, 16.1-298

..... Juvenile and Domestic Relations District Court
CITY OR COUNTY

.....Date of Final Order or Judgment

..... *v./In re.* .....

Appellant: .....
NAME AND ADDRESS

Appealed to the ..... Circuit Court .....
CITY OR COUNTY TELEPHONE NUMBER

.....
STREET ADDRESS

Date and Time of Appearance in Circuit Court: ..... for [ ] Trial [ ] Setting of Trial Date
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- [ ] Appeal of conviction. An appearance bond and/or accrual bond, if ordered, is described below.
- [ ] Appeal of order establishing support arrearage. An appeal bond for the arrearage required and described below.

I understand that this appeal may be withdrawn at any time prior to the hearing date set for my case (see additional information on second page). I promise to appear before the Circuit Court of this jurisdiction on the date and time as shown above.

.....08/18/2016.....
DATE

_____
APPELLANT/ATTORNEY FOR APPELLANT

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AMOUNT OF ARREARS
relations district court within thirty (30) days of the entry of the judgment for the appeal to be completed (perfected) (Form DC-460, CIVIL APPEAL BOND). The Appellant's failure to do so, as required by law, will result in the loss of the right to appeal. The appeal bond for the arrearage will be written to indemnify ..... the party in whose favor a judgment was rendered in this court in the event that such party is awarded a judgment by the Circuit Court.

[ ] An accrual bond in the amount of $ .....0.00..... to secure the payment of prospective support while the appeal is pending is ordered and must be posted with the juvenile and domestic relations district clerk within thirty (30) days of contempt finding/conviction or nonsupport conviction (Form DC-460, CIVIL APPEAL BOND). If the bond is not posted within thirty (30) days and the defendant has been released from jail, a capias may be issued for failure to abide by the conditions of bail.

[ ] An appearance bond in the amount of $ .....0.00..... [ ] unsecured [ ] secured to ensure appellant's appearance is ordered (Form DC-330, RECOGNIZANCE). Further conditions of release:

.....

.....08/18/2016.....
DATE

_____
CLERK

See second page for additional important information.

[ ] Dismissed on motion of Petitioner.

The Respondent was this day:

[ ] tried in absence

[ ] present

The Respondent was:

[ ] represented by counsel

.....

NAME OF COUNSEL

[ ] not represented by counsel

The Respondent:

[ ] denied contempt

[ ] did not contest contempt

[ ] admitted contempt

And was TRIED and FOUND by me:

[ ] not guilty of civil contempt

[ ] guilty of civil contempt

[ ] See attached Order

In addition:

[ ] that there is a support arrearage of $ .....

as of .....

[ ] with interest included

[ ] without interest included

[ ] that the garnishee should have withheld $ .....

[ ] Pending disposition on .....

DATE AND TIME

the court ORDERS

.....

.....

.....

.....

DATE

_____

JUDGE

[ ] I ORDER the charge dismissed

[ ] with prejudice

[ ] without prejudice

I impose the following Disposition:

[ ] Placed in custody until the respondent complies with the requirements of the court's order for a maximum of

.....

[ ] Civil fine of $ .....

payable to .....

[ ] Judgment against garnishee in favor of judgment creditor of $ .....

[ ] Other: .....

.....

.....

[ ] Appeal Bond $ .....

[ ] Appearance Bond $ .....

[ ] unsecured [ ] secured

[ ] Accrual Bond $ .....

[ ] Work Release [ ] authorized if eligible

[ ] required [ ] not authorized

[ ] Other: .....

.....

[ ] Respondent may purge his/her jail sentence by paying a lump sum of $ ..... to

[ ] DCSE [ ] .....

[ ] Purge Clause .....

.....

.....

[ ] Respondent has been advised of his or her right to appeal the civil contempt.

.....

DATE

_____

JUDGE

RETURNS: Each respondent was served according to law, as indicated below, unless not found.

Name .....

Address .....

.....

.....

[ ] PERSONAL SERVICE | Telephone No. .....

[ ] Being unable to make personal service, a copy was delivered in the following manner:

[ ] Delivered to family member (not temporary sojourner or guest) age 16 or older at usual place of abode of party named above after giving information of its purport. List name, age of recipient, and relation of recipient to party named above.

.....

.....

[ ] Posted on front door or such other door as appears to be the main entrance of usual place of abode, address listed above. (Other authorized recipient not found.)

[ ] Served on Secretary of the Commonwealth.

[ ] Not found

_____

SERVING OFFICER

..... for _____

DATE

COSTS

120 CT. APPT. ATTY. $ .....

234 JAIL ADMISSION FEE $ .....

FOR THE PERIOD: JANUARY 01, 1989 THRU AUGUST 30, 2011

PARTICIPANT: NCP [redacted] R IVD # [redacted]
CL [redacted] C MPI # [redacted]

ORDER INFORMATION FREQUENCY AMOUNT $341.28 TOTAL BAL: $ +16,173.21
FREQUENCY MNTH
A CHARGED DATE 09/01/2011
D ORDER START DATE 10/01/2003

DT PST	J	ORD AMT	PAYMENT		CSUP BAL	ARRS BAL	INT BAL	FEES	TOT BAL
082611			157.49	C	+26.30	+14731.32	+1427.84	+14.05	+16173.21
081211			157.49	C	+183.79	+14731.32	+1427.84	+14.05	+16173.21
080111		+341.28			+341.28	+14731.32	+1427.84	+14.05	+16173.21
072911			157.49	B		+14731.32	+1354.19	+14.05	+16099.56
071511			157.49	C	+26.30	+14862.51	+1354.19	+14.05	+16230.75
070111		+341.28	157.49	C	+183.79	+14862.51	+1354.19	+14.05	+16230.75
062011			157.49	C	+26.30	+14836.21	+1280.01	+14.05	+16130.27
060311			157.49	C	+183.79	+14836.21	+1280.01	+14.05	+16130.27
060111		+341.28			+341.28	+14836.21	+1280.01	+14.05	+16130.27
052011			157.49	C	+26.30	+14809.91	+1205.97	+14.05	+16029.93
050911			157.49	C	+183.79	+14809.91	+1205.97	+14.05	+16029.93
050111		+341.28			+341.28	+14809.91	+1205.97	+14.05	+16029.93
042111			157.49	C	+26.30	+14783.61	+1132.06	+14.05	+15929.72
040711			157.49	C	+183.79	+14783.61	+1132.06	+14.05	+15929.72
040111		+341.28			+341.28	+14783.61	+1132.06	+14.05	+15929.72
032511			157.49	C	+26.30	+14757.31	+1058.28	+14.05	+15829.64
031111			157.49	C	+183.79	+14757.31	+1058.28	+14.05	+15829.64
030111		+341.28			+341.28	+14757.31	+1058.28	+14.05	+15829.64
022511			157.49	C	+26.30	+14731.01	+984.63	+14.05	+15729.69
021411			157.49	C	+183.79	+14731.01	+984.63	+14.05	+15729.69
020111		+341.28			+341.28	+14731.01	+984.63	+14.05	+15729.69
012811			157.49	B		+14731.01	+910.98	+14.05	+15656.04
011811			157.49	C	+26.30	+14862.20	+910.98	+14.05	+15787.23
010311			157.49	C	+183.79	+14862.20	+910.98	+14.05	+15787.23
010111		+341.28			+341.28	+14862.20	+910.98	+14.05	+15787.23
122010			157.49	C	+26.30	+14835.90	+836.81	+14.05	+15686.76
121010			157.49	C	+183.79	+14835.90	+836.81	+14.05	+15686.76
120110		+341.28			+341.28	+14835.90	+836.81	+14.05	+15686.76
112210			157.49	M	+26.30	+14809.60	+762.77	+14.05	+15586.42
110810			157.49	C	+183.79	+14809.60	+762.77	+14.05	+15586.42
110110		+341.28			+341.28	+14809.60	+762.77	+14.05	+15586.42
102210			157.49	C	+26.30	+14783.30	+688.86	+14.05	+15486.21
100810			157.49	C	+183.79	+14783.30	+688.86	+14.05	+15486.21
100110		+341.28			+341.28	+14783.30	+688.86	+14.05	+15486.21
092410			157.49	C	+26.30	+14757.00	+615.08	+14.05	+15386.13
091410			157.49	C	+183.79	+14757.00	+615.08	+14.05	+15386.13
090110		+341.28			+341.28	+14757.00	+615.08	+14.05	+15386.13
082710			157.49	B		+14757.00	+541.30	+14.05	+15312.35
081910			157.49	C	+26.30	+14888.19	+541.30	+14.05	+15443.54
080210			157.49	C	+183.79	+14888.19	+541.30	+14.05	+15443.54
080110		+341.28			+341.28	+14888.19	+541.30	+14.05	+15443.54
071610			157.49	A		+14888.19	+466.86	+14.05	+15369.10
070210			470.49	B		+15045.68	+466.86	+14.05	+15526.59
070110		+341.28			+341.28	+15174.89	+466.86	+14.05	+15655.80
062510			157.49	C	+26.30	+15148.59	+391.12	+14.05	+15553.76
060710			157.49	C	+183.79	+15148.59	+391.12	+14.05	+15553.76
060110		+341.28			+341.28	+15148.59	+391.12	+14.05	+15553.76
052810			498.00	A	+26.30	+15122.29	+315.51	+14.05	+15451.85
052410			157.49	C	+26.30	+15620.29	+315.51		+15935.80
051410			157.49	C	+183.79	+15620.29	+315.51		+15935.80
050110		+341.28			+341.28	+15620.29	+315.51		+15935.80
042710			157.49	C	+26.30	+15593.99	+237.55		+15831.54
041910			157.49	C	+183.79	+15593.99	+237.55		+15831.54
040110		+341.28			+341.28	+15593.99	+237.55		+15831.54
033010			157.49	C	+26.30	+15567.69	+159.72		+15727.41
031010			157.49	M	+183.79	+15567.69	+159.72		+15727.41
030110		+341.28			+341.28	+15567.69	+159.72		+15727.41
022610			157.49	B		+15567.69	+81.89		+15649.58
021710			157.49	C	+26.30	+15698.88	+81.89		+15780.77
020110		+341.28	157.49	C	+183.79	+15698.88	+81.89		+15780.77
012710	M				+341.28	+15357.60	+5.11		+15362.71
010110		+341.28			+341.28	+341.28			+341.28
122209	C	+341.28							+0.00
071806	M	-341.28							+0.00
070106		+341.28			+341.28	+1023.84	+5.11		+1028.95
061506		+341.28			+341.28	+682.56	+1.70		+684.26
051506		+341.28			+341.28	+341.28			+341.28
041706		+341.28			+341.28				+0.00
041406			170.64	C					+0.00
031606			170.64	C	+170.64				+0.00
031506		+341.28			+341.28				+0.00
030106			117.19	C					+0.00

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 5  NOTE: ARRS BAL @ CLOSING (THRU 6/06) = $1023.84..  ADDED 7/06-11/09
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PF9-CONTINUE

A Handbook for Military Families

★ Helping You with Child Support ★

U.S. Department of Health and Human Services
Administration for Children and Families
Office of Child Support Enforcement

September 6, 2013

Foreword

Thank you for serving our country.

Military service provides rewarding opportunities and experiences. There are also challenges when family members serve in the active duty military or are called to federal service while in the National Guard or Reserve forces. One area we want to assist you with is child support.

Military service can be hard on a family. Domestic issues may arise at any point during a member's military service, but they seem especially prevalent at pre-deployment, during deployment, and after the return home. According to Pentagon statistics, the start of *Operation Enduring Freedom* in Afghanistan brought an increase in military divorces.[1] The divorce rate is important to child support because the Pentagon reported in 2011 that approximately 44 percent of active duty members and 43 percent of Reserve and National Guard members are parents. In addition, the Pentagon estimates that 30,000 soldiers become unwed fathers each year.

As a service member, or spouse or former spouse of one, you have unique child support needs. All branches of the armed forces offer parenting programs and resources to strengthen military families. This handbook supplements those resources by providing information you might need regarding paternity establishment, child support, access/visitation, and child custody. First line supervisors and military commanders may also find this a handy addition to a leadership toolkit.

We understand this may be uncharted territory for you, so we have included a Frequently Asked Questions section at the end of each chapter and a glossary of terms at the end of the publication. For more detailed information, please read the general Child Support Enforcement Handbook that is available on the federal Office of Child Support Enforcement website in both English (www.acf.hhs.gov/programs/css/resource/handbook-on-child-support-enforcement) and Spanish (www.acf.hhs.gov/programs/css/resource/nuestros-hijos-nuestra-responsibilidad).

Service members do not need the added stress of family issues when they are trying to safeguard our freedom. While studies show that children do better when they are cared for and supported by two loving parents, we know that being together is not always the best option. We hope this handbook will help your child support issues go more smoothly if you are ever in this situation.

Thank you — and your family — for your service.

Vicki Turetsky
Commissioner, Office of Child Support Enforcement

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[1] See http://www.military.com/daily-news/2013/01/23/military-divorce-rate-down-slightly-in-2012.html. The military divorce rate in 2001 was 2.6 percent. By 2009, the military divorce rate had climbed to 3.6 percent. That rate decreased to 3.5 percent in 2012. The divorce rates released by the Pentagon do not include data on Reserve and National Guard members or on service members who divorced after leaving the military. *Births, Marriages, Divorces, and Deaths: Provisional Data for 2009*, National Vital Statistics Report, Vol. 58, No. 25, Centers for Disease Control and Prevention (August 27, 2010). Military and civilian divorce rates cannot be accurately compared due to the differences in how they are tracked.

Table of Contents

Organization of the Handbook

We divided this handbook into chapters so you can find the information you need quickly and easily. The main chapters address the following topics:

- **The Child Support Program**—overview, general information, and legal resources;
- **Location of Noncustodial Parents**—state, federal, and military resources;
- **Paternity Establishment**—acknowledgments, court orders, genetic testing, military processes;
- **Support Establishment**—financial obligations and health care coverage;
- **Support Enforcement**—military regulations, income withholding, enforcement methods, medical support requirements;
- **Modifying Existing Support**—laws and procedures available to parents;
- **Intergovernmental Cooperation**—terms; overview; rules and agreements governing situations that cross state, tribal, or federal borders; Status of Forces Agreements;
- **The Servicemembers Civil Relief Act**—history, application in child support situations, invoking protections; **and**
- **Access, Visitation, Custody, and Parenting Time**—overview, laws and regulations, resolution of parenting time issues, family care plans, and custody orders.

We also included a *Questions and Answers* (Q&A) section at the end of each chapter. We wrote the first set for situations that pertain to *Custodial Parents* and tailored the second group for *Noncustodial Parents*. Chapter VII has two sets of Q&A because it has two parts.

There are two appendices at the end. The first is a glossary of major terms we used and the second lists the addresses to all the websites we referenced in this handbook. The websites listed were current on the date of publication, but may have changed since then. OCSE is not responsible for the contents of any "off-site" web page referenced by the websites.

For More Information

This handbook gives you basic information. To find out more information about child support, see your local child support office. The telephone numbers for state child support agencies are in telephone directories, usually under the state/county social services agency, or on the state's child support website. State websites often provide addresses and phone numbers for local offices. You can find a list of state and tribal child support agency contacts on the federal Office of Child Support Enforcement (OCSE) website, www.acf.hhs.gov/programs/css/resource/state-and-tribal-child-support-agency-contacts. Tribal programs are also listed on OCSE's Intergovernmental Reference Guide web page by tribe, https://extranet.acf.hhs.gov/irg/welcome.html, and on the State and Child Support Agency Contacts page by state, www.acf.hhs.gov/programs/css/resource/state-and-tribal-child-support-agency-contacts.

We hope you find this information useful. If you have any questions about the content of this publication, please contact the OCSE Public Inquiry Branch at OCSEHotline@acf.hhs.gov.

I. The Child Support Program

This chapter explains the child support program. You may interact with the child support program as a custodial parent or a noncustodial parent.

Mission of the Child Support Program

Congress created the Child Support Program in 1975. People often call it the IV-D Program because Title IV-D of the Social Security Act created it. There is a federal Office of Child Support Enforcement (OCSE). OCSE regulates the Title IV-D program and provides outreach. Each state operates a state child support agency, as do more than 50 tribes. These child support agencies are often called IV-D agencies. They provide the day-to-day processing of child support cases.

The mission of the child support program is to enhance the well being of children by assuring that help in obtaining child support, including financial and medical, is available through locating parents, establishing paternity, establishing fair support obligations, and monitoring and enforcing those obligations. In addition to these core services, the child support program provides innovative services to families to assure that parents have the resources they need to support their children and raise them in a positive way.

The child support program serves one in four children in the country.

Services Provided by the Child Support Program

Originally, the primary purpose of the child support program was to recover welfare costs. Over the years, Congress has passed laws that embrace a broader mission for the program to obtain reliable support for children as they grow up. These days, 94 percent of collected support is paid directly to families. The result is a gradual shift in the child support program toward a family-centered model.

The child support program provides core services in the area of location of parents, paternity establishment, support order establishment and enforcement, and order modification. As state child support programs move to a more family-centered model, they have begun to:

- Encourage parents to participate in the establishment of child support orders.
- Educate parents about the child support program.
- Establish realistic child support orders.
- Use automated systems to discover missed payments as early as possible.
- Notify noncustodial parents about missed payments before the agency takes enforcement actions.
- Modify (change) a support order to ensure that it stays consistent with a parent's ability to pay.
- Reduce that portion of child support debt owed to the government if noncustodial parents start paying current support.
- Pass through more support to families in public assistance cases instead of keeping it to repay the state for cash assistance.

For more details on this, read the *2012 Child Support Handbook*, www.acf.hhs.gov/programs/css/resource/handbook-on-child-support-enforcement.

Most child support agencies are eager to work with military representatives and both parents. There is usually a military liaison within the state or local child support agency. Reach out to the child support agency whenever you have issues or need to do some problem-solving. Be proactive. (See Chapter VI on Modification of Support for tips on being proactive.)

Recipients of Child Support Services

The child support program provides services automatically to families receiving help under the Temporary Assistance for Needy Families (TANF) program or whose children are entitled to Foster Care Maintenance payments. Families wanting help from the child support program, who are not receiving TANF or foster care help (or have not received such assistance in the past), must apply for services through a state child support agency or one of the tribes running a child support program. There is an application fee of $25, which many states absorb. Both custodial parents and noncustodial parents can apply for child support services.

Focus of Services

Federal law requires child support agencies to provide services related to the financial support of children. In certain circumstances, the law also requires the agencies to provide spousal support enforcement services. There is currently no legal requirement that they provide access and visitation services. However, increasingly child support agencies participate in collaborative efforts to mediate access/visitation and custody issues. For further discussion, see the Chapter IX on Access, Visitation, Custody, and Parenting Time.

Legal Representation

When needed, government attorneys or private attorneys under contract help child support agencies process IV-D cases. These attorneys have a relationship with the agency; they do not represent parents. A parent may hire a private attorney and still receive IV-D services. However, it is not necessary to hire an attorney in order to seek child support through a IV-D agency. The child support agency will assist in filing legal actions related to child support.

Questions and Answers for Custodial Parents

Do I have to be receiving public assistance in order to get help from a state child support agency?

No, you do not have to receive public help in order to receive child support services. You are eligible for services from a state child support agency if you are:

- A parent (mother or father) or person with custody of a child who needs help to establish a child support or medical support order or to collect support payments.
- A parent or person with custody of a child who has received help under the Temporary Assistance for Needy Families (TANF), Medicaid, and federally assisted Foster Care programs.

- A parent (mother or father) who wants help to have a child support order reviewed to see if it is still fair and three years have passed since the most recent review, or there has been a substantial change of circumstances.

Where do I apply for help in obtaining child support?
If you have received help under TANF, Medicaid, or federally assisted Foster Care programs, you do not have to apply for child support services; you automatically receive child support services. If you have not received such help, you can apply for child support services through the state or local child support office. Usually, applying to a child support agency in your state is most effective; however, you have the right to apply to the agency in another state if that will result in better service. The telephone numbers for state child support agencies are in telephone directories, usually under the state/county social services agency, or on the state's child support website. These sites are listed at www.acf.hhs.gov/programs/css/resource/state-and-tribal-child-support-agency-contacts.

Can someone else receive information about my child support case while I'm deployed?
Yes. You may designate another person to receive information about your case while you are away. To designate this person, complete the state agency form authorizing the release of information, and file it with the child support office handling your case. Many state and local child support agencies require this form even if you have completed a military Power of Attorney designating someone to act on your behalf. When you return from deployment, you can complete a form revoking the authorization for release of information.

Questions and Answers for Noncustodial Parents

Can noncustodial parents receive services from a state child support agency?
Yes, if you are a noncustodial parent, you can receive child support services if you are:

- An unmarried father who wants to establish paternity in order to establish a legal relationship with your child.
- A noncustodial parent whose case is not in the IV-D child support program but who wants to make payments through the program so that there is an official record of payments.
- A parent (mother or father) who wants help to have a child support order reviewed to see if it is still fair and three years have passed since the most recent review, or there has been a substantial change of circumstances.

Where do I apply for help if I want to establish that I'm the dad of my child or if I want to change a child support order I already have?
You can apply through the state or local child support office. Usually, applying to the child support agency in your state is most effective; however, because there are no residency requirements for IV-D services, you can apply to receive services in any state.
The telephone numbers for state child support agencies are in telephone directories, usually under the state/county social services agency, or on the state's child support agency website. These sites are listed at www.acf.hhs.gov/programs/css/resource/state-and-tribal-child-support-agency-contacts.

If I'm paying child support under a support order that the child support agency is enforcing, do I need to let the agency know if I'm deployed?

Yes. Before you deploy (or join active duty military service), contact the child support agency that handles your support case to:

- Inform the agency that you will be deployed (or are joining the military) and what the length of your military commitment will be.
- Provide changes in your address, wages, and health care coverage for your children.
- Request a review of your support order for possible modification if your financial circumstances have changed since the order was issued.
- Sign a form authorizing the release of information if you want to designate someone to speak on your behalf about your child support case. The signed authorization will allow the child support agency to discuss your case with your designee. The military Power of Attorney you completed will not necessarily enable your designee to receive information about your child support case while you are deployed.

Can someone else receive information about my child support case while I'm deployed?
Yes. You may designate another person to receive information about your case while you are away. To designate this person, complete a state form authorizing the release of information and file it with the child support office handling your case. When you return from deployment, you can complete a form revoking the authorization for release of information. The military Power of Attorney you completed will not necessarily enable your designee to receive information about your child support case while you are deployed.

If I'm paying child support under an order that the child support agency is enforcing, what should I do after I return from deployment, return to a non-federal Reserve/Guard status, or terminate my military service?
After you return from deployment, return to a non-federal Reserve/Guard status, or terminate your military service, contact the child support agency that handles your support case to:

- Inform the agency of your return or discharge.
- Provide changes in your address, wages, and health care coverage for your children.
- Request a review of your support order for possible modification if your financial circumstances have changed since the order was last issued or modified.

II. Location of Noncustodial Parents

This chapter of the handbook is primarily written for custodial parents who are filing a claim for paternity establishment or support and need to know the location of the other parent in order to provide that person legal notice. Due to the nature of military service, the residential address and duty station (work address) for active component members of the military frequently change. In addition, due to national security concerns, there are instances when the military is prohibited from disclosing the residence or work address for a given member. This is particularly true during time of war where the military's disclosure of residence or duty stations may indicate troop movements. If you are the custodial parent and do not know the location of the military parent, the child support program can help locate the member. However, child support agencies are prohibited from sharing location information directly with you.

State and Federal Locate Resources

The federal Office of Child Support Enforcement operates the Federal Parent Locator Service (FPLS). The FPLS includes the National Directory of New Hires (NDNH), which receives information from:

- The Internal Revenue Service, the Department of Defense, the National Personnel Records Center (including quarterly wage data for federal employees), the Social Security Administration, and the Department of Veterans Affairs.
- State Directories of New Hires.
- State Workforce Agencies.

The NDNH contains new hire records, quarterly wage records for almost all employed people, and unemployment insurance claims.

States also operate a locator service called the State Parent Locator Service (SPLS). State and tribal child support agencies, with due process and security safeguards, can get information from the following sources:

- State and local governments (for example, vital statistics; state tax files; real and titled personal property records; occupational and professional licenses and business information; employment security agencies; public assistance agencies; motor vehicle departments; and law enforcement departments).
- Records of private entities like public utilities and cable television companies (such as names and addresses of individuals and their employers as they appear in customer records).
- Credit bureaus.
- Information held by financial institutions, including asset and liability data.
- The State Directory of New Hires, to which employers must report new employees.

Location services are also available to learn the whereabouts of a parent or child in order to make or enforce a custody or visitation determination. Authorized persons to receive address information include[2]:

- Any agent or attorney of any state who has the authority/duty to enforce a child custody or visitation determination.
- A court, or agent of the court, having jurisdiction to make or enforce a child custody or visitation determination.

A child's parent is not an authorized person for access or custody purposes.

Military Locate Resources

With the possible exception of the Army, each military branch maintains a locator service that will provide immediate family members and government officials with location information free of charge. Others are charged a small fee. More information is available through the DoD Knowledge Base website, https://kb.defense.gov/app/answers/detail/a_id/646/session/L3RpbWUvMTM3MDQ1Mjc2NS9zaWQvdWFuOFEtcmw%3D.

In order to process a request, the military's locator service needs the service member's full name and Social Security number. If you know the member's date of birth, rank, and location and time period of the member's last duty station, you should also provide that information. In deciding when to contact one of these offices, keep in mind that military records may run up to 90 days behind reassignments.

Air Force
Air Force Personnel Center
Attn: DPDXIDL
550 C St West, Ste 50
Randolph AFB, TX 78150-4752
(210) 565-2660
www.afpc.af.mil/library/airforcelocator.asp

Army
(By mail only)
Army World Wide Locator Service
Enlisted Records & Evaluation Center
8899 East 56th Street
Indianapolis, IN 46249-5031
www.army.mil/contact/, "Additional Frequently Asked Questions" section, "Locator Service"

[2] 42 U.S.C. § 663(d).

Marine Corps
Marine Locator
Headquarters US Marine Corps
Personnel Management Support Branch (MMSB-17)
2008 Elliot Road
Quantico, VA 22134-5030
(703) 784-3941/3942/3943
(800) 268-3710
www.marines.mil/FAQs.aspx, "Personnel Locator"

Navy
Navy Worldwide Locator
Bureau of Naval Personnel
PERS 1
5720 Integrity Drive
Millington, TN 38055-3120
(901) 874-5672
(866) 827-5672
www.public.navy.mil/bupers-npc/organization/npc/csc/Pages/NavyLocatorService.aspx

Coast Guard
(By mail or email only)
Commander
Personnel Service Center
US Coast Guard Stop 7200
4200 Wilson Blvd., Suite 1100
Arlington, VA 20598-7200
Email: ARL-PF-CGPSCCGlocator@uscg.mil
www.uscg.mil/locator/

Most large military bases maintain legal assistance offices. The legal assistance attorneys' duties include helping military spouses and dependent children obtain the service member's military address. They are not legally required to assist parents who have never been married to the service member.

Questions and Answers for Custodial Parents

What if I do not know where the noncustodial parent is currently stationed?
You can ask for help from your local child support agency. Unless protected, child support agencies can use the Federal Parent Locator Service (FPLS) to locate the current duty station of a parent who is in any of the uniformed services.

You can also get help from the noncustodial parent's military branch. With the possible exception of the Army, each military branch maintains a locator service that will provide immediate family members and government officials with location information free of charge. More information is available through the DoD Knowledge Base website,

https://kb.defense.gov/app/answers/detail/a_id/646/session/L3RpbWUvMTM3MDQ1Mjc2NS9zaWQvdWFuOFEtcmw%3D.

In order to process a request, the military's locator service needs the service member's full name and Social Security number. If you know the member's date of birth, rank, and location and time period of the member's last duty station, provide that information also. In deciding when to contact one of these offices, keep in mind that military records may run up to 90 days behind reassignments.

Air Force
Air Force Personnel Center
Attn: DPDXIDL
550 C St West, Ste 50
Randolph AFB, TX 78150-4752
(210) 565-2660
www.afpc.af.mil/library/airforcelocator.asp

Army
(By mail only)
Army World Wide Locator Service
Enlisted Records & Evaluation Center
8899 East 56th Street
Indianapolis, IN 46249-5031
www.army.mil/contact/, "Additional Frequently Asked Questions" section, "Locator Service"

Marine Corps
Marine Locator
Headquarters U.S. Marine Corps
Personnel Management Support Branch (MMSB-17)
2008 Elliot Road
Quantico, VA 22134-5030
(703) 784-3941/3942/3943
(800) 268-3710
www.marines.mil/FAQs.aspx, "Personnel Locator"

Navy
Navy Worldwide Locator
Bureau of Naval Personnel
PERS 1
5720 Integrity Drive
Millington, TN 38055-3120
(901) 874-5672
(866) 827-5672
www.public.navy.mil/bupers-npc/organization/npc/csc/Pages/NavyLocatorService.aspx

Coast Guard
(By mail or email only)
Commander
Personnel Service Center
US Coast Guard Stop 7200
4200 Wilson Blvd., Suite 1100
Arlington, VA 20598-7200
Email: ARL-PF-CGPSCCGlocator@uscg.mil
www.uscg.mil/locator/

Most large military bases maintain legal assistance offices. The legal assistance attorneys' duties include helping military spouses and dependent children obtain the service member's military address. They are not legally required to assist parents who have never been married to the service member. Additionally, if you know the unit or company of the service member, location is much easier; usually you can find the unit on the internet, providing a starting point for your locate inquiry.

Questions and Answers for Noncustodial Parents

My ex-spouse won't let me see my children, in violation of our custody order. I don't even know where my children are living now. Can my lawyer or I ask the Federal Parent Locator Service (FPLS) to find the address of my ex-spouse and children?
Not directly. Parents are not authorized persons who can obtain address information in order to enforce a custody or visitation order. However, you or your attorney can submit a request to the court having jurisdiction to make or enforce the child custody or visitation determination and ask the court to make a request to use the FPLS through the local or state child support agency.

I am on active duty. Why do I need to let the child support agency know my new duty station?
If you have a child support case, it is important that you receive information on a timely basis. Such communication may include information on how to make a timely challenge to an order or whom to contact if you have questions about your case. Child support orders cannot be retroactively modified (changed) so you always want to make sure you are proactive about your case.

III. Paternity Establishment

Under state law, a child born during marriage is presumed to be the child of those married parents. When a child is born outside of a marriage, his or her paternity must be legally established for the child and parents to have certain legal rights and responsibilities. This chapter of the handbook focuses on what either parent can do to legally establish paternity of a child.

Acknowledgment of Paternity

Putting the father's name on the child's birth certificate does not legally establish paternity. However, a parent can legally establish paternity without going to court. If a father acknowledges paternity by signing a written admission or voluntary acknowledgment of paternity, that is a legal determination of paternity. All states have programs under which birthing hospitals give unmarried parents of a newborn born in that state the opportunity to acknowledge the father's paternity of the child. States must also help parents acknowledge paternity up until the child's eighteenth birthday through vital records offices or other offices that the state designates. Parents do not have to apply for child support services when acknowledging paternity. An acknowledgment of paternity becomes a legal finding of paternity unless the man who signed the acknowledgment denies that he is the father within 60 days. Generally, he can challenge the finding of paternity only based on fraud, duress, or material mistake of fact.

Court Order of Paternity

A judicial order, entered by agreement or following a court or an administrative hearing, can establish paternity. Paternity can also be established by a default order if the man was served notice of a paternity hearing but did not appear.

The legal finding of paternity creates the basis for the obligation to provide support. A court or an agency cannot establish a financial support order for a child who is born to unmarried parents until paternity has been established.

Genetic Testing

If a man is not certain that he is the father, the child support agency can arrange for genetic testing. The parties do not have to live in the same state. These tests are simple to take and highly accurate.

DEERS Enrollment for Health Care

Children born to unmarried parents, when at least one parent is a military member, are entitled to military health care and enrollment in the Defense Enrollment Eligibility Reporting System (DEERS) if:

- There is an order establishing paternity;
- The child is dependent upon the member for more than 50 percent of his or her support; **or**

- The military member acknowledges the child by signing a voluntary acknowledgment of paternity.

Children who do not reside with the member are also eligible for such health care and enrollment in DEERS.

Questions and Answers for Custodial Parents

Why should I establish paternity?
Once paternity is legally established for a child born to unmarried parents, that child has the same legal rights as any child born to married parents. These rights include health care coverage, inheritance, and certain types of benefits such as social security, life insurance, pension payments, and veteran's benefits. Many people do not realize that **a child may not be able to claim these benefits from the father, unless legal paternity has been established.** The child also has a chance to develop a relationship with the father, and to develop a sense of identity and connection to the "other half" of his or her family. Studies show that children whose fathers take active roles in their upbringing lead lives that are more successful. Establishment of paternity is also important for the health of the child. The medical history of both parents is important information for doctors to have in order to treat the child more effectively now, and later as an adult.

How can I establish paternity?
If the father acknowledges paternity, you can establish the child's paternity through the voluntary acknowledgment process. Every state has a voluntary acknowledgment program. Both parents must sign the paternity acknowledgment form before a notary. Birthing hospitals have the form, as do bureaus of vital statistics and child support agencies. Only the biological father and mother should sign the form. If you are not sure who the biological father is, you may contact the local child support agency to arrange a genetic test.

A genetic test involves tissue samples (often from the inside of the cheek) of the man, mother, and child. Genetic test results can establish the probability of paternity to such a high extent that they often result in a legal presumption of paternity; however, in most states they do not automatically result in a legal establishment of paternity. The tests can also exclude a man who is not the biological father.

If the father does not voluntarily acknowledge paternity, a court or an administrative agency can adjudicate paternity. This requires the filing of a legal action. Each party in a contested paternity case must submit to genetic tests at the request of either party or the child support agency.

Do both of us have to live in the same state in order to sign an acknowledgment or affidavit to establish paternity?
No. The acknowledgment of paternity form can be mailed to a parent in any location. For example, if the father has been deployed or is stationed overseas, the form can be mailed to him at his current duty station. If he decides to sign it, he must sign it in front of a notary public and mail it back. After you both have signed the acknowledgment of paternity, you can send the completed notarized form to the Office of Vital Statistics in the state where the child was born.

My boyfriend is on a military base abroad and I am about to have his baby. How can I establish paternity and get an order for support?

Once you have had your baby, you can establish paternity and get a support order by applying for child support services at your local child support agency. If your boyfriend is willing to sign documents to acknowledge paternity and agree to support, then the agency can usually help prepare a consent order outlining your agreement. The order will establish paternity and a child support payment amount based on the state's support guidelines. Once there is a support order, the agency or court will also establish an income withholding order to collect support from your boyfriend's income. Since he is in the military, the Defense Finance and Accounting Service (DFAS) will process the income withholding. If he is on a naval ship or lives on a military base abroad and will not acknowledge paternity, it may be necessary to wait until he returns to the United States for genetic testing to be done.

Is there a fee to sign an acknowledgment or affidavit to establish paternity?
No. There is no fee to sign an acknowledgment of paternity. Nor is there a fee for the notary service if the parents come to a child support agency or military legal assistance office to have their signatures on the acknowledgment notarized. Some notaries outside the child support agency may charge a small fee for their notary service. There is no fee to send the notarized acknowledgment of paternity to the Office of Vital Statistics. There is a small fee to get a copy of the child's updated birth certificate.

What happens after paternity is established?
A legal finding of paternity is the basis for a financial support order. You can ask a child support agency to help you get a child support order. The child support caseworker may discuss the child's financial and health care needs with the father and what he is required to pay for child support according to the state child support guidelines. If a court issues a child support order later, it may also include terms of custody, visitation, and other parental rights.

Do I need a lawyer to amend the birth certificate?
No. You do not need a lawyer to amend the birth certificate. You can use a paternity acknowledgment form, a court order, or an administrative determination of paternity to request an amendment of the certificate in the state where the child was born, regardless of where you reside or the father resides. Please contact the Office of Vital Statistics, or the city or county court system that handles the family courts or juvenile and domestic relations courts where you live in order to determine what steps you need to take or paperwork you need to file.

Many cities and counties allow amendment of a birth certificate using forms available from the Office of Vital Statistics or the equivalent state office. Others will allow you to work with the clerk of the court to file the necessary paperwork but others may require a hearing.

Questions and Answers for Noncustodial Parents

Why should I establish paternity?
Even if you plan to marry the child's mother after the child is born, establishing paternity helps to protect the relationship between you and the child from the very start.

Once paternity is legally established, you as the child's father have access and custody rights just like the mother does. The child has a chance to develop a relationship with you and a sense of identity and connection to the "other half" of the family. Research indicates that children whose fathers take active roles in their upbringing lead lives that are more successful.

Paternity establishment also provides you and the child with legal rights to Social Security benefits, life insurance benefits, and inheritance. By establishing paternity, you ensure the child has legal rights to other benefits as well, such as veteran's benefits and health care coverage. For example, in order for a child to be enrolled in TRICARE, the military requires proof that a court has determined paternity, that the child is dependent upon the member for more than 50 percent of his or her support, or that the military member has signed a voluntary acknowledgment of paternity. Many people do not realize this, but **a child born to unmarried parents may not be able to claim these benefits from his or her father unless there is a legal determination of paternity**.

Establishment of paternity is also important for the health of the child. The medical history of both parents is important information for doctors to have in order to treat the child more effectively now, and later as an adult.

In addition to rights, the establishment of paternity results in responsibilities. As the legal parent of the child, you have a responsibility to provide financial support.

How can I establish paternity?
If you acknowledge that you are the child's father, you can establish the child's paternity through the voluntary acknowledgment process. Every state has a voluntary acknowledgment program. Both parents must sign the paternity acknowledgment form before a notary, but they can sign it at different locations. See the response to the question below. Birthing hospitals have the form, as do bureaus of vital statistics and child support agencies. Only the biological father and mother should sign the form. If you are not sure that you are the biological father, you may contact the local child support agency about arranging a genetic test.

I'm going to be deployed at the time of my child's birth. Can I acknowledge paternity before the child is born?
In nonmarital cases, some states will allow the service member to acknowledge paternity before the child's birth. These states may require that the member be on active duty and have military orders showing that he cannot be present at the child's birth. Signing a paternity acknowledgment form prior to the child's birth may be appropriate if you are certain that the child is yours. Because of the legal consequences of signing a paternity acknowledgment, if you are uncertain of your paternity, you should delay signing the acknowledgment and request genetic testing after the child is born.

Do both of us have to live in the same state in order to sign an acknowledgment of paternity?

No. Parents can sign the acknowledgment of paternity form in any location. For example, if you are deployed, the form can be mailed to you at your current duty station. If you decide to sign it, you must do so in front of a notary public and mail it back to the custodial parent or child support agency. After both parents have signed the paternity acknowledgment form, the completed notarized form can be sent to the Office of Vital Statistics in the state where the child was born. Sometimes the child support agency can help; it may keep an electronic copy for its records. If one of you is overseas, the Red Cross or a local military legal assistance office may be able to help coordinate signatures.

Is there a fee to sign an acknowledgment of paternity?
No. There is no fee to sign the paternity acknowledgment form. If you and the custodial parent come to a child support agency or military legal assistance office to have your signatures notarized, there is no fee for the notary service. Some notaries outside the child support agency may charge a small fee for their notary service. There is no fee to send the notarized paternity acknowledgment form to the Office of Vital Statistics. There is a small fee to get a copy of your child's updated birth certificate.

I am on active duty. My girlfriend had a baby. I've been paying support through a voluntary military allotment. Recently, after an argument, she told me the child wasn't mine. Do I have to keep paying support?
If there is no court order establishing paternity and you have not signed a paternity acknowledgment form, then you have no legal obligation to pay support. Nor are there any military regulations requiring you to provide financial support in that circumstance. Because you are paying through a voluntary allotment, you may terminate that allotment at any time. If you stop the voluntary allotment, your commanding officer should make sure that you are not receiving BAH at the WITH DEPENDENTS rate based solely on the support of the child.

However, if you stop the allotment and a court or an administrative agency later determines that you are the father, you may be ordered to pay retroactive support; in some states that is for a certain time period, and in other states it can be back to the child's birth. For that reason, if there is a chance that the child is yours, it is advisable to contact the local child support agency and apply for services. The agency will help you coordinate genetic testing. The genetic testing can conclusively exclude someone from paternity or establish a probability of paternity that can be as high as 99.99 percent.

What happens if I am not sure that I am the father?
If you are not sure if you are the father, you may request genetic testing. This painless test involves tissue samples (often from the inside of the cheek) of the man, mother, and child. Genetic test results can establish the probability of paternity to such a high extent that they often result in a legal presumption of paternity. The tests can also exclude a man who is not the biological father.

If genetic tests are necessary, who pays for them?
If the state child support agency orders the tests, the state must pay the cost of the testing. If the tests establish a high probability that you are the father, some states will seek reimbursement from you for the test costs; the costs are usually less than $300 per child. If a party disputes the original test result, he or she can pay for a second genetic test and the state must then obtain additional testing.

I am active duty military. If I acknowledge paternity and want to provide financial support, how can my commander help me?

According to regulations governing active duty military, if you acknowledge paternity and agree to provide financial support, you can ask your commander to help you:

- Obtain the appropriate available housing/dependent allowance.
- Understand what you need to do to complete a voluntary allotment for the child.
- Get a military identification card for your child.
- Obtain ordinary leave, consistent with military requirements, in order to marry your child's mother.

If I acknowledge paternity and want to provide financial support, how can the child support agency help me?

If you acknowledge paternity and want to provide financial support, you can apply for IV-D child support services in order to establish a child support order. The child support agency will seek the establishment of a financial support order based on a numerical formula called a child support guideline. Once the court or agency establishes a support order, payments will go through the State Disbursement Unit, and you will have a record of your payments. See Chapter IV on Support Establishment.

I am active duty military. How do I provide health care benefits for my children, if I'm not married to their mother?

Step 1: Establish paternity

Establishing paternity is the first step to providing health care benefits for children born of unmarried parents. A court order establishing parentage is one way to legally determine parentage and dependent status. According to a January 28, 2008, Memorandum for Secretaries of the Military Departments, service members can also use a voluntary paternity acknowledgment form to establish dependency for health care benefits. Both you and the mother must sign the paternity acknowledgment form, a sample of which is available online at www.acf.hhs.gov/programs/css/resource/affidavit-in-support-of-establishing-paternity. Because each state has its own acknowledgment form, you must use the acknowledgment from the state where your child was born. You can get the form at any birthing hospital in that state or from the local child support agency.

Step 2: Go to military ID card issuance site

The protocol allows you, as the military sponsor, to go to the nearest military installation with an ID card issuance site (a specific service affiliation is not required) to determine dependent child status. You will need the child's birth certificate and a copy of the paternity order or signed acknowledgment form. As the sponsor, you will sign an Application for Identification Card/DEERS Enrollment (see DD Form 1172, www.dtic.mil/whs/directives/infomgt/forms/eforms/dd1172-2.pdf). Once the military technician validates the order or acknowledgment/affidavit of paternity, the technician will scan the documents into the Defense Enrollment Eligibility Reporting System (DEERS) database and the child is automatically enrolled to receive TRICARE coverage. There is no cost.

If the mother is the custodial parent, it is also possible for her to go the nearest military installation with an ID card issuance site. She will need to bring the child's birth certificate, a copy of a paternity order or a signed paternity acknowledgment form, and your signed Application for Identification Card/DEERS Enrollment (see DD Form 1172, www.dtic.mil/whs/directives/infomgt/forms/eforms/dd1172-2.pdf). Once the installation military

technician validates the court order or voluntary paternity acknowledgment form, the technician will scan the documents into the DEERS database and the child is enrolled to receive coverage.

If I'm not married to my child's mother, can my child get military health care without a court order?

Yes. There are three basic requirements:

- You may acknowledge paternity voluntarily through state procedures without a court order. This is most easily done by both of you signing a voluntary paternity acknowledgment form. Once the acknowledgment is filed with and accepted by the state's Vital Records Office, you will be listed as the father on the birth certificate.
- You must apply for dependency status. For that, you will need the child's birth certificate and a copy of the paternity acknowledgment form. The military personnel office will review the application for completeness. Once all requirements are met, the office will verify the child as your dependent. Depending upon the child's age and where the child is living, you may also need to get the child an ID card. If your child is 10, you as the sponsor must get an ID card for the child. If your child is less than 10, the child can usually use your ID card. However, children under age 10 should have their own ID cards when they are in the custody of a parent who is not eligible for TRICARE benefits or who is not the custodial parent after a divorce. If needed, the military personnel office will issue the child a military dependent ID card or provide you with paperwork and instructions so someone else can help the child obtain one.
- The child must then be registered with DEERS, a computerized system that keeps track of all recipients authorized to receive certain defense department benefits. Once registered, the child will be eligible for treatment in a military facility, if space is available, or treatment under TRICARE from a civilian hospital. See www.tricare.mil.

I am getting ready to deploy and want to ensure my child can get health care while I'm gone. I know I need to take a copy of my paternity acknowledgment form with me to the military ID card issuance site in order to establish dependency. How can I get a copy of the form that I signed?

It is advisable that you keep copies of all legal documents, including a signed paternity acknowledgment. If you do not have a copy, you may be able to get a copy through the child support office that is handling your case. Unfortunately, in states that are closed record states, it may be difficult to obtain a certified copy of the signed acknowledgment without a court order. In these states, the original form, along with the child's birth certificate, is placed in a sealed file. The Vital Records Office will not provide a copy without a court order.

I am active military and have a child from a previous relationship who lives with his mother. Is that child eligible to receive health care while I'm deployed?
Yes. All of your children are eligible to receive military health care so long as the following steps have occurred:

- A military installation with an ID card issuance site has determined that the child is your dependent.
- The military office has registered the child in DEERS.

IV. Support Establishment

When a person has children, that person assumes legal, moral, and financial duties. Those duties exist, regardless of whether the parents live together or apart and regardless of whether the parents were married when the children were born. When parents do separate, it is critical that they continue to both provide financial and emotional support for their children. This chapter discusses processes available through the military, and through state proceedings, for the formal payment of child support.

Family Support Guidelines under Service Regulations

Each branch of the military has regulations requiring support for a member's dependents. If there is no support order, or written agreement between the parties, these regulations apply. The amount considered "adequate support" varies, depending upon the service branch.

- Air Force 36-2906: www.e-publishing.af.mil/shared/media/epubs/AFI36-2906.pdf
- Army Regulation 608-99: http://armypubs.army.mil/epubs/pdf/R608_99.pdf
- Navy & Marine Corps Support Guidelines: www.gpo.gov/fdsys/pkg/CFR-2007-title32-vol5/pdf/CFR-2007-title32-vol5-part733.pdf and www.gpo.gov/fdsys/pkg/CFR-2007-title32-vol5/pdf/CFR-2007-title32-vol5-part734.pdf
- Coast Guard (Chapter 2.E of the Personnel Manual, Commandant Instruction M1600.2): www.uscg.mil/directives/cim/1000-1999/CIM_1600_2.pdf

ARMY

The Department of the Army sets minimum support requirements. See AR 608-99, FAMILY SUPPORT, CHILD CUSTODY, AND PATERNITY (2003). Soldiers must comply with the following:

1. The financial support provisions of a court order or the financial support provisions of a written agreement in the absence of a court order.

2. Minimal support requirements in the absence of a court order or written agreement as outlined in the table below for a soldier receiving credit for payment of rent, utilities, mortgage, interest due on loans, and real property insurance payments.

Situation	Level of Support
Single-family units	
Family unit not in government housing	Basic Allowance for Housing II - With Dependents (BAH - WITH)
Family unit in government housing	No support unless supported family member(s) move(s) out of government housing, then the soldier will provide BAH II - WITH
Family members within the family unit residing at different locations	Pro-rata share of BAH II - WITH to each family member not residing in government housing No additional support for family members residing in government housing

Situation	Level of Support
Single-family units	
Soldier married to another person on active duty in any service	No support unless required by court order or by agreement
Single-family unit where Soldier married to active duty spouse *but with* children from marriage *or* prior marriage	
Soldier does not have custody of any children and the children do not reside in government quarters	BAH Differential (BAH-DIFF) to the military member having custody of the child or children
Soldier does not have custody of any children and the children reside in government quarters	No additional support
Soldier has custody of one or more children	No support for a child or the children in the custody of the other military member
Multiple family units	
Family members in government housing	No additional support
Each family member not in government housing	Pro-rata share of BAH II - WITH

A pro-rata share = 1/(Total number of supported family members) X BAH II - WITH

NAVY

Navy requirements for support are found in 32 C.F.R. § 733.3.[3] The Navy requires a member to comply with a court order or agreement between the parties. If there is no agreement or court order, then the following guidelines apply:

Situation	Level of Support
Spouse only	1/3 of gross pay
Spouse and one minor child	1/2 of gross pay
Spouse and two or more children	3/5 of gross pay
One minor child	1/6 of gross pay

[3] See also Navy Military Personnel Manual (MILPERSMAN) art. 1754-030 (Support of Family Members); art. 5800-10 (Paternity Complaints).

Situation	Level of Support
Two minor children	1/4 of gross pay
Three minor children	1/3 of gross pay

The above chart is a guideline and is "not intended as a fixed rule" and "actual support may be increased or decreased as the facts and circumstances warrant." See 32 C.F.R. § 733.3(a)(2).

Gross pay includes basic pay and BAH, but not hazardous duty pay, sea or foreign duty pay, incentive pay, or basic allowance for subsistence pay. See 32 C.F.R. § 733.3(b)(2).

MARINE CORPS

Marine Corps requirements for dependent support are found in 32 C.F.R. § 733.3.[4] In the absence of a court order or an agreement, the following is the guide for Marine support obligations:

Situation	Level of Support	
	Amount(s)	Up to a Maximum of
Civilian spouse		
Single family in government housing (civilian spouse)	$200.00 per supported person	1/3 gross pay, per month
Single family not in government housing (civilian spouse)	Either $200.00 per supported family member, or BAH WITH, whichever is greater	1/3 gross pay, per month
Multiple families (not including a spouse in the armed forces)	Either $200.00 per supported family member, or the pro rata share of BAH WITH, whichever is greater	1/3 gross pay, per month
Both spouses in the armed forces		
No children of the marriage	No support obligation, regardless of any disparities in pay grade	N/A
All children of the marriage in the custody of one spouse	Either $200.00 per supported child, or BAH WITH, whichever is greater	1/3 gross pay, per month
Custody divided between the two parents	Either $200.00 per supported family member, or the pro rata share of BAH WITH, whichever is greater	1/3 gross pay, per month

[4] See also MC Order P5800.16A (LEGLADMIN), ch. 15 (Dependent Support and Paternity).

Gross pay includes basic pay and BAH, but does not include hazardous duty pay, incentive pay, or basic allowance for subsistence. See 32 C.F.R. § 733.3(c)(1).

AIR FORCE

The Air Force, unlike its sister services, does not provide specific quantities of support owed to family members. Instead, Air Force policy regarding support provides that each Air Force member is expected to "provide adequate financial support to family members." See AFI 36-2906, PERSONAL FINANCIAL RESPONSIBILITY, para 3.2.1 (1998). Para. 7.2 states that members must "provide adequate financial support of a spouse or child or any other relative for which the member receives additional allowances for support. Members will also comply with the financial support provisions of a court order or written support agreement."

Upon receipt of a complaint of non-support by a family member, the Air Force requires the member to prove financial support. The member may not receive BAQ[5] at the with-dependent rate if the member is not providing financial support to his or her spouse or children. If the member does receive BAQ, the Air Force may recoup the BAQ for periods of non-support (para 3.2.3). In addition, the Defense Finance and Accounting Service (DFAS) will cooperate with the family member to implement involuntary collection of support through garnishment or statutory allotments (Attachment 2).

COAST GUARD

The Coast Guard has established the following support requirements in the absence of a court order:

Situation	Level of Support
Spouse Only	Basic Allowance for Housing Differential (BAH-DIFF) plus 20% of basic pay
Spouse and one minor or handicapped child	BAH-DIFF plus 25% of basic pay
Spouse and two or more minor or handicapped children	BAH-DIFF plus 30% of basic pay
One minor or handicapped child	16.7% (1/6) of basic pay
Two minor or handicapped children	25% (1/4) of basic pay
Three or more minor or handicapped children	33% (1/3) of basic pay

See COAST GUARD DISCIPLINE AND CONDUCT MANUAL Section 2.E.3.c. (COMDTINST M1600.2, Issued 29 Sep 2011).

For this scale, BAH-DIFF is defined as the difference between the BAH with dependents rate and the BAH without dependents rate as calculated for the member.

[5] AFI 36-2906, dated 1998, has not been rewritten since the term BAQ was replaced by BAH.

Voluntary Allotment

In the absence of any order, a service member can set up a voluntary allotment[6], asking that money be taken from his or her paycheck and sent directly to the custodial parent. Such assistance will help reduce financial strain until a child support order is established. In addition, this procedure provides an official record of payments that may help the member receive proper credit for payments made prior to the entry of a support order in states that authorize retroactive support. Keep in mind, however, that there is no uniform treatment of voluntary allotments. Some courts may consider the voluntary allotments a gift, since there is nothing in writing indicating its purpose as child support, and may not credit the allotment amount against any retroactive support award. It is therefore advisable that you get an order for support at the earliest time possible.

Because it is a voluntary allotment, the member can stop the allotment at any time.

Establishment of an Order

Establishment of a legal order for child support can benefit both parents. It ensures that both parents know the specific financial obligation. Additionally, the order will usually require payments to go through a centralized State Disbursement Unit so there is an official record of payments. In order to obtain a child support order, either parent can seek legal advice, ask the court about the availability of a pro se process for handling the matter without a lawyer, or apply to receive services from a child support agency.

State Child Support Guidelines

All states have laws or rules establishing child support guidelines. Support guidelines are numerical formulas that the court or administrative agency uses to calculate how much a parent should contribute to a child's financial support; the formulas are based on parental income and economic data on the cost of rearing children. Federal law requires that a court or an agency presume that the guideline amount is the appropriate amount of child support. Support amounts can deviate from the guideline amount. For that to happen, however, the state must find that applying the guideline in that particular case would result in an inappropriate order that is not in the best interest of the child. State support guidelines vary. Some factor in the income of both parents. Others are based on a percentage of the income of the noncustodial parent only, with the assumption that the custodial parent is already contributing to the child's financial well-being. You may call your local child support office or visit the state agency's website to find out about your state's child support guidelines. See www.acf.hhs.gov/programs/css/resource/state-and-tribal-child-support-agency-contacts.

[6] If the service member has a support order requiring payment to the custodial parent directly, the member may also use a voluntary allotment as a means to comply with the order.

Determining Income of a Military Member

In determining income, most state support guidelines initially start with "all income," that is, both taxable and non-taxable income. For military members, that means most states will include base pay (which is based on rank and time in service), any special skills pay (for example, flight pay, hazardous duty pay, career sea pay, and jump pay), bonuses (for example, a lump sum payment for re-enlisting), and allowances such as Basic Allowance for Housing (BAH) and Basic Allowance for Subsistence (BAS). The quarterly wage report that the Department of Defense provides to the National Directory of New Hires, operated by the federal Office of Child Support Enforcement (OCSE), includes all income that a military person receives. Such information is also on the member's Leave and Earnings Statement (LES). Most child support agencies will ask the service member for copies of his or her LES that covers a period of time.

The LES provides a wealth of information that is critical to the order establishment process. The LES has 78 separate fields that include, among other things, the following information:

- All pay the member receives (Base, Special, Incentive, and Bonus) [field 19]
- All allowances and entitlements the member earns [field 10]
- Member's leave balances [fields 25 – 32]
- Number of dependents the member claims [field 51]
- Member's declared state of domicile [field 44]

Special skills pay and hazardous duty pay may be for a limited time. Therefore, the fact that it is reflected on one or more LESs does not mean the member will receive such pay all year. In order to ensure that the ordered support amount is appropriate, the service member must let the court or agency know the start and end dates of such pay. In addition, it is important to note that most bonuses are paid at the field level and are not processed by DFAS. As a result, a bonus may be noted on the LES retroactively. This means that the bonus generally does not appear in the earnings for the active pay period (line #33) but can be identified using the year-to-date earnings (line #34). The child support agency or custodial parent will want to check that line to determine whether the member has received any bonuses that should be factored into the guideline calculation.

The LES also identifies whether a given source of income is taxable. Many state child support guidelines initially start with a person's gross income, but then allow certain deductions before calculating the support obligation based on the person's net income. Decision-makers vary regarding the treatment of a service member's nontaxable income (BAS and BAH). The service member can seek information from the child support agency about how the guidelines will treat his or her nontaxable income. It is important that the service member provide accurate income information to the court and/or child support agency to assist in the appropriate calculations.

Medical Support

Current federal law requires every child support order to include a provision for health care coverage. Medical support can take several forms.

The custodial or noncustodial parent may be ordered to:

- provide health insurance if available through his/her employer;

- pay for health insurance (health care coverage) premiums or reimbursement to the custodial parent for all or a portion of the costs of health care coverage obtained by the custodial parent; **and/or**
- pay additional amounts to cover a portion of ongoing medical bills or as reimbursement for uninsured medical costs.

In the civilian sector, health care coverage for a child is potentially available through either of the parents' employers, public coverage, or state health insurance Exchanges (available starting in October 2013). Children of active or retired military members also have access to the military's TRICARE program. See below.

Obtaining Medical Support from Military Personnel

A legal dependent of an active or a retired military member is eligible for services through the Military Health System. This is true regardless of whether the dependent resides with the member, but options are limited to military medical facilities or services obtained through TRICARE—the health care program serving uniformed service members, retirees, and their families. Reservists are not eligible for TRICARE (unless they are serving under federal activation orders), nor are defense department civilian employees. National Guard and Reserve members may be eligible to purchase TRICARE Reserve Select. You can find out more at www.tricare.mil/trs.

To enroll a child in TRICARE, the child must be registered in the Defense Enrollment Eligibility Reporting System (DEERS). DEERS maintains information on the military service person, known as the "sponsor," and his or her dependents. DEERS is the database used to confirm eligibility for military benefits including health care. A sponsor is automatically registered in DEERS, but the sponsor must enroll his or her family members. When there is a change in information, each family member's eligibility record must be updated separately.

The Defense Manpower Data Center (DMDC) MilConnect website, https://www.dmdc.osd.mil/milconnect/, contains more information about the DEERS enrollment process.

The TRICARE website offers detailed information about coverage options at www.tricare.mil. Excerpts are included below.

TRICARE Prime

This is a managed care option offering the most affordable and comprehensive coverage for military families. It is available in the United States in designated Prime Service Areas. Other Prime options are available for active duty service members and their families in remote U.S. areas and overseas. The sponsor must sign a completed enrollment form and submit the form to the regional contractor or local TRICARE Service Center. Under certain circumstances, the custodial parent may enroll the child in TRICARE Prime. In some cases, there are premium payments depending on the military member's status (for example, quarterly premiums for family members of retirees). This program is similar to a civilian health maintenance operation (HMO) policy. There is no deductible, but some services require a co- payment.

TRICARE Standard and Extra

This is a fee-for-service plan that is available to all non-active duty beneficiaries throughout the United States. TRICARE Standard and Extra allow a non-active duty beneficiary to manage his or her own health care by seeking services from any TRICARE-authorized provider. There are no enrollment forms or fees, but there is an annual deductible for outpatient services and cost-shares for most services. Coverage is automatic as long as the information is current in DEERS.

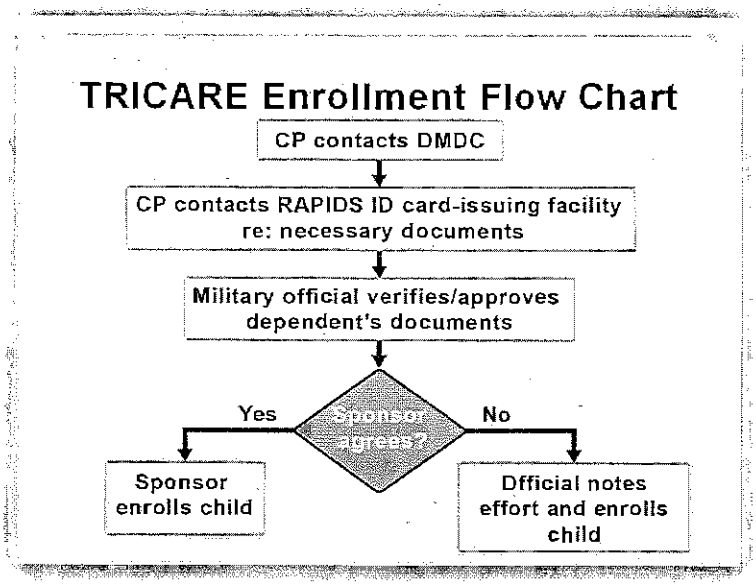
Enrollment in TRICARE

Before any enrollment can occur, the child must be determined to be a military dependent and enrolled in DEERS. (See the next section on how to determine eligibility.) Documents establishing dependency include a court-ordered paternity determination or an acknowledgment of paternity form (if the child's parents were not married), and a birth certificate. The court order only has to establish paternity; it does not have to order financial or medical support.

The easiest way to enroll a dependent into DEERS is to have the military member (sponsor) enroll the child. The military member can go to the nearest military installation or Reserve or National Guard unit with a RAPIDS ID Card Issuing Facility (RAPIDS is the acronym for the Real-Time Automated Personnel Identification Card System). The member can go to any installation; the installation does not have to be specific to the member's service branch. The military member can also enroll the child during pre-deployment processing programs.

The member must bring documents establishing the child's dependent status. If the child was born to unmarried parents, the member must bring a copy of the paternity order or paternity acknowledgment/affidavit in order to establish the child's dependent status. However, each branch of the service may have slightly different procedures, so the member should call in advance to confirm what documents are needed.

As the sponsor, the member will sign an Application for Identification Card/DEERS Enrollment (see DD Form 1172, www.dtic.mil/whs/directives/infomgt/forms/eforms/dd1172-2.pdf). Once the installation military technician validates the documents establishing dependency, the documents are scanned into the DEERS database and the child is automatically enrolled to receive TRICARE coverage. There is no cost associated with the child's enrollment into DEERS.



If the military member does not enroll the child in DEERS, the custodial parent can enroll the child by going to a RAPIDS ID Card Issuing Facility and presenting the appropriate documents to the official who verifies dependent status. Anyone can locate the nearest RAPIDS ID Card Issuing Facilities via the internet at www.dmdc.osd.mil/rsl. If internet access is not available, the custodial parent may obtain the information by contacting the Defense Manpower Data Center (DMDC) Support Office Monday through Friday between 9:00 a.m. and 6:30 p.m. (ET) at (800) 538-9552. An advance call to the closest RAPIDS ID Card Issuing Facility is important because branches may have slightly different procedures particularly concerning base access for someone who does not have a defense department identification card.

Documents Needed to Enroll Child

The custodial parent or sponsor will need to present the following documents to the verifying official:

- The child's birth certificate (usually a certified copy).
- If the child was born to unmarried parents, a legal determination of paternity (for example, a court-ordered paternity finding, an administrative paternity order, or a voluntary paternity acknowledgment signed by both parents).
- If applicable, a court or an administrative order showing the "sponsor" (the military member) has an obligation to provide support for the child.
- Any forms that the local installation requires.

If the sponsor will not sign the enrollment paperwork, the verifying official can sign on the sponsor's behalf if all of the required documents are present. The official will document the failed efforts to obtain the sponsor's signature. The sponsor may not decline coverage of his/her dependent child.

A custodial parent wishing to enroll a child into DEERS by mail should contact a military installation or a Reserve or National Guard unit with a RAPIDS ID Card Issuing Facility. The installation or unit should be the same service branch as the noncustodial parent. The custodial parent will need to provide documentation to prove dependency. One requirement for enrollment

is the Social Security number (SSN) of the noncustodial parent/military member. If the custodial parent does not know the noncustodial parent's SSN, a child support caseworker can obtain the SSN and complete all the required paperwork to initiate the enrollment. The caseworker can fax or mail the paperwork to the appropriate RAPIDS ID Card Issuing Facility. Once the paperwork is completed and approved, the custodial parent will need to take the child to the ID Card Issuing Facility to obtain a military ID card for the child. Children under the age of 10 will need a personal ID card when in the custody of a parent who is not eligible for TRICARE benefits or who is not the custodial parent after a divorce. If needed, the military personnel office will issue the child a military dependent ID card or provide the necessary paperwork and instructions so someone else can help the child obtain one.

Medical Care through TRICARE

Obtaining Medical Care for Your Child after Enrollment

Once enrolled in DEERS, the child is eligible to receive health care in two ways. The child may be able to obtain health care services and medications from military hospitals and clinics if space is available. The child may also use the cost share medical coverage, TRICARE, with civilian health providers. Getting health care from a uniformed service hospital or clinic, when available, saves money and paperwork. Military bases have Beneficiary Counseling Assistance Coordinators to answer questions custodial parents may have about health care coverage.

TRICARE uses the term "shared" rather than "covered" because the cost is shared by the beneficiary after satisfaction of an annual deductible cost. Parents can submit claims to TRICARE up to a year after treatment. Commencement of military medical benefits is determined by either the child's date of birth or the date(s) of the sponsor's military service, not the DEERS enrollment date.

TRICARE program handbooks explaining coverage are available by writing to TRICARE Management Activity (TMA) Public Affairs Branch Aurora, CO 80045-6900, or by calling (303) 361-1000/1129. The publications are also available electronically at www.tricare.mil/Publications.aspx.

How to Learn Whether a Dependent Has Already Been Enrolled in DEERS and is Entitled to TRICARE Benefits

If you are receiving IV-D child support services, it is easy to learn whether your child has already been enrolled in DEERS and is therefore eligible for TRICARE benefits. There is an electronic match between the Federal Case Registry (FCR), operated by OCSE, and the Defense Manpower Data Center (DMDC), operated by DoD, that provides child support workers with that information. DMDC matches its records against the FCR participants to determine whether a child is eligible for military medical benefits. DMDC reports the results to the FCR, and the FCR transmits the match information to the states every quarter.

Once an active duty or a retired military member and eligible family members are enrolled in DEERS, they have health care benefits. These benefits do not include dental care but TRICARE dental coverage is available at an additional cost to the service member. The custodial parent must follow the procedures in the previous section for enrollment if the child is shown as eligible but not already enrolled in DEERS.

"TRICARE covers most inpatient and outpatient care that is medically necessary and considered proven. However, there are special rules or limits on certain types of care, while other types of care are not covered at all."[7]

A custodial parent (not a child support worker) may confirm eligibility for a child by calling the DMDC Support Office (DSO) telephone center help line at (800) 538-9552. If the custodial parent is divorced from the military person (sponsor) but has a prior DEERS record and can establish that he/she is the child's parent, DEERS can provide eligibility information. If the custodial parent was never married to the sponsor or was never enrolled in DEERS, the parent will first need to provide proof that he or she is actually the parent of the child in question. Acceptable documents include the child's birth certificate that names the parent in question and custody orders. The parent will need to send the documents to DSO for review. Once DSO updates the tracking system, DSO can release specific information to the custodial parent.

State Legal Proceedings for Establishment of a Support Obligation

Some states establish support through court hearings. Others use consent processes or administrative processes. Under each of these processes, the decision-maker uses child support guidelines to establish the order amount, unless there is a finding as to why a deviation is appropriate. The orders are legally binding on the parties.

Duration of Support Obligation

A noncustodial parent usually must pay ongoing support until a child is 18 years of age or has graduated from high school, whichever comes later. Some states require support for a longer time.

Questions and Answers for Custodial Parents

I don't have a court order for support. Until I get one, is there any way I can get support from my ex-spouse who is in the military?
Yes. Each service branch has regulations and policy requiring the service member to provide adequate support for his or her dependents. The amount considered "adequate support" varies, depending upon the service branch. If there is no written agreement between the parties or no support order, these regulations apply.

In the absence of a court order, you may ask your ex-spouse to establish a voluntary allotment authorizing DFAS to take the money from his or her monthly paycheck and send it directly to you. You should both agree on which guidelines you will use to determine the amount of the voluntary allotment, either the service branch's regulations or your state's support guidelines. Keep in mind that your ex-spouse can stop the allotment at any time because it is voluntary.

If your ex-spouse does not establish a voluntary allotment and is failing to provide support, you may ask the commanding officer for help in getting financial support.

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[7]TRICARE.Mil Covered Services webpage, www.tricare.mil/CoveredServices.aspx.

If the service member fails to provide support, whom should I contact?
There are several options depending on the circumstances:

You have a support order	You can contact the local child support agency or court to assist with enforcement. You can contact the service member's commanding officer.
You have an income withholding order and are receiving child support services	You can make sure that the child support agency is aware of the member's military status so that the agency can send the withholding order to the Defense Finance and Accounting Service (DFAS).
You have an income withholding order but are not receiving child support services	You can serve DFAS with the income withholding or garnishment order yourself. Instructions are on the DFAS website: www.dfas.mil/garnishment.html. You can contact the service member's commanding officer.
You do not have a support order	You can contact the service member's commanding officer or the installation and inquire about receiving support pursuant to the support regulations of the member's service branch. When doing this, include your name; the names of the service member's dependents; the service member's name, rank, and last four digits of the member's Social Security number (if known); and the amount of support in cash or in kind that the member is paying, if any. Attach all pertinent documents such as your marriage certificate, birth certificates, last Leave and Earnings Statement (LES), military orders, and any bills that you have. You can also contact your local child support agency for assistance in establishing a support order.

Can a military attorney file court documents for me?
Normally, only a civilian attorney can represent you in a civilian court. An Armed Forces legal assistance attorney (who may or may not be a judge advocate) can help you find local civilian counsel, can refer you to the local child support office, and may assist in preparing documents that you may file in court yourself. All Active Component members of the Armed Forces (and their family members) are eligible to receive Armed Forces legal assistance. Reserve Component and National Guard members (and their family members) are also eligible under certain circumstances.

What military pay is considered when a child support order is established?
State child support guidelines are based, in part, upon parental income. Some guidelines use gross income; others use net income. State guidelines that use net income vary in the allowable deductions from gross income in order to determine net income. All state guidelines will consider the service member's base pay, special skills pay, and bonuses as part of gross pay. State guidelines will vary in their treatment of non-taxable allowances (BAH and BAS). In many states, the guidelines will treat these allowances as income and include them within the guideline calculation.

Where can I go to get information about military pay?

Military pay is comprised of basic pay; available allowances, such as Basic Allowance for Housing (BAH), and Basic Allowance for Subsistence (BAS) or Separate Rations (Sep Rats); special skill pay (for example, flight pay); and bonuses (for example, reenlistment). The member's Leave and Earnings Statement (LES) provides information about the member's basic pay, allowances, and special pay. The following resources are available on line:

DoD Pay Tables	www.dfas.mil/militarymembers/payentitlements/militarypaytables.html
Basic Allowance for Housing (BAH)	www.defensetravel.dod.mil/site/bah.cfm (Contains housing tables & a zip code search feature)
Leave and Earnings Statement (LES)	https://mypay.dfas.mil

Does the military offer health care coverage for my child?
Yes. TRICARE is the health care program serving Uniformed Service members, retirees, and their families. While activated, National Guard and Reserve members and their families may also enroll in TRICARE Prime. When inactive, but serving in the Selected Reserve, National Guard and Reserve members and their families may be eligible for TRICARE Reserve Select, but they have to pay a monthly premium. See www.tricare.mil for more information.

If I'm not married to my child's father, who is active military, can my child still get health care benefits through TRICARE?
Yes. A child can get health care benefits through TRICARE so long as the following steps have occurred:

- A military installation or Reserve or National Guard unit with an ID card issuance site has determined that the child is the military member's dependent.
- The military office has registered the child in the Defense Enrollment Eligibility Reporting System (DEERS).

Establishing paternity is the first step to providing health care benefits for children born to unmarried parents. Although you will need a copy of your child's birth certificate, it is not evidence that paternity has been established and that the child is a legal dependent of the member. A court order determining parentage is one way that dependency is determined. Another way is if both of you have a signed and notarized voluntary paternity acknowledgment form. Because each state has its own acknowledgment form, you must use the acknowledgment from the state where your child was born. You can get the form at any birthing hospital in that state, as well as the local child support agency. The sponsor (military member) or you—as the custodial parent of a child born to unmarried parents—can go to the nearest military installation or Reserve or National Guard unit with a RAPIDS ID Card Issuance Facility (a specific service branch affiliation is not required) to register the dependent child's status. RAPIDS Site locator is available at www.dmdc.osd.mil/rsl/appj/site?execution=e2s1.

The easiest way to enroll a dependent in DEERS is to have the military sponsor enroll the child. As the sponsor, the member will sign an Application for Identification Card/DEERS Enrollment (see DD Form 1172, www.dtic.mil/whs/directives/infomgt/forms/eforms/dd1172-2.pdf). Once the installation military official validates the order or acknowledgment/affidavit of paternity, the documents are scanned into the DEERS database and the child is automatically enrolled to

receive TRICARE coverage. There is no cost associated with the child's enrollment into DEERS.

If the military member does not enroll the child in DEERS, you, as the custodial parent, can enroll the child by going to a RAPIDS ID Card Issuing Facility and presenting the appropriate documents to the official who verifies dependent status. Once the installation military technician validates the order or voluntary paternity acknowledgment form, a sample of which is available online at www.acf.hhs.gov/programs/css/resource/affidavit-in-support-of-establishing-paternity, the documents are scanned into the Defense Enrollment Eligibility Reporting System (DEERS) database and the child is enrolled to receive coverage.

How do I enroll my child in the TRICARE program?
Before any enrollment in TRICARE can occur, the child must be determined to be a military dependent and registered in DEERS. Each branch of the service may have slightly different procedures. If you are the custodial parent, you must go to the nearest RAPIDS ID Card Issuing Facility and present the appropriate documents to the verifying official. (RAPIDS stands for Real-Time Automated Personnel Identification Card System and refers to the application process through which individuals receive ID cards.) You can find the location of the nearest RAPIDS ID Card Issuing Facility via the Internet at www.dmdc.osd.mil/rsl. You can also contact the Defense Manpower Data Center (DMDC) Support Office help line Monday through Friday between 9:00 a.m. and 6:30 p.m. (ET) at (800) 538-9552.

In addition to providing documentation about dependency, you will need the Social Security number (SSN) of the noncustodial parent/military member. If you do not know the member's SSN but you are receiving child support services, the child support caseworker can obtain the member's SSN and complete all the required paperwork to initiate the enrollment.

Before the DEERS enrollment can be completed, the RAPIDS ID Card Issuing Facility will attempt to have the sponsor sign the Application for Identification Card/DEERS Enrollment (see DD Form 1172, www.dtic.mil/whs/directives/infomgt/forms/eforms/dd1172-2.pdf). The amount of time for this process will vary depending on the location and the assignment of the military member. If the sponsor is unwilling to sign, the verifying official may sign on behalf of the sponsor after all efforts to obtain the sponsor's signature have failed and those efforts have been documented. The sponsor may not decline coverage of his/her child.

Once enrolled in DEERS, the child is eligible for health care coverage under TRICARE and should have a military ID card, regardless of the child's age, if he or she is living with the non-military parent. The RAPIDS facility can issue the ID.

Questions and Answers for Noncustodial Parents

How will a separation or divorce affect my military benefits?
Separation or divorce will affect your status for housing allowances or entitlement to government-owned or leased quarters. Failure to provide actual support for dependents may result in a loss of entitlements at the "with dependents" rate if you have no other dependents physically living with you. Additionally, after a divorce, your former spouse is no longer a "dependent" even if you are required to pay spousal support.

Can a military attorney file court documents for me or represent me in court?

Normally, only a civilian attorney can represent you in civilian court. An Armed Forces legal assistance attorney (who may or may not be a judge advocate) can help you find local civilian counsel, can refer you to the local child support enforcement office, and may prepare documents that you may file in court yourself. All Active Component members of the Armed Forces (and their family members) are eligible to receive Armed Forces legal assistance. Reserve Component and National Guard members (and their family members) are also eligible under certain circumstances.

I am active duty military. If I don't want to wait until my court date, is there anything I can do to set up a voluntary allotment for child support?
You can establish a voluntary allotment of earnings and route money from your pay to your dependents. Military rules strongly encourage members who are separated from their families due to their military service to establish voluntary allotments to provide for the financial support of their dependent family members. Because it is voluntary, you can start this allotment even before a child support order exists. Your commanding officer can help you get the voluntary allotment forms. At a minimum, you should establish the allotment for the amount that your military branch regulation states is adequate. You may also want to review the applicable state child support guidelines and establish the allotment for an amount consistent with those guidelines. Most state child support agencies have on-line guideline calculators accessible through their websites.

What military pay is considered when a child support order is established?
State child support guidelines are based, in part, upon parental income. Some guidelines use gross income, others use net income. State guidelines based upon net income vary in the allowable deductions from gross income in order to determine net income. With those variances in mind, all state guidelines will consider the service member's base pay, special skills pay, and bonuses. State guidelines will vary in their treatment of non-taxable allowances (BAH and BAS).

I heard that the court can't touch my VA disability benefits. Does that mean the court can't consider them as income to me?
In most circumstances, a court or an agency cannot garnish VA disability benefits for enforcement of child support; that means there usually can be no withholding from your VA disability benefits. However, if you receive VA disability benefits, the amount of those benefits is considered income to you and the court or agency will include them when determining the support guideline amount.

I am a service member. What should I do if I receive notice of a child support order?
See someone in the Armed Forces Legal Assistance program or a private attorney, as soon as possible. All Active Component members of the Armed Forces (and their family members) are eligible to receive Armed Forces legal assistance. Reserve Component and National Guard members (and their family members) are also eligible under certain circumstances.

A lawyer can answer many questions and help you to make a fair and intelligent decision about your choices, options, and alternatives. Bring a copy of any documents or court papers that you have. You may also want to contact any child support agency identified in the notice or order.

If I am the service member, how do I enroll my child in the TRICARE program?
Before your child is eligible for TRICARE, he or she must first be enrolled in the Defense Enrollment and Eligibility Reporting System (DEERS) as your dependent. DEERS maintains the

records of each military member (the sponsor) and his/her registered dependents. It does not cost you anything to enroll your dependent into DEERS and once your child is registered, enrollment in the TRICARE program is automatic.

Because you are the military member and sponsor, the easiest way to enroll your child into DEERS is to go to the nearest military installation or Reserve or National Guard unit with a Real-Time Automated Personnel Identification Card System (RAPIDS) ID Card Issuing Facility (a specific service affiliation is not required). You can also enroll the child during pre-deployment processing programs.

You will need the following documents to enroll your dependent in DEERS:

- The child's birth certificate (usually a certified copy)
- If the child was born to unmarried parents, a legal determination of paternity (for example, a court-ordered paternity finding, an administrative paternity order, a voluntary paternity acknowledgment signed by both parents)
- If applicable, a court or an administrative order showing you (the military sponsor) have an obligation to provide support for the child.

Some local installations require additional forms. It therefore is a good idea to contact the installation before arriving to request DEERS enrollment in order to determine if the installation requires completion of special local forms.

If I am a mobilized reserve component member, can I obtain military health care for my children?

Yes. Family members of a reserve component member ordered to federal active duty for more than 30 consecutive days are eligible for the TRICARE benefits on the first day of the sponsor's order to active duty. The Defense Enrollment Eligibility Reporting System (DEERS) reflects a family members' eligibility for TRICARE benefits. TRICARE Standard and Extra has cost shares (20 percent or 15 percent depending on whether a network provider is selected) and annual $50 to $300 deductibles depending on the rank of the sponsor and number of covered family members.

Family members may also be eligible for the TRICARE Prime Remote For Active Duty Family Members (TPRADFM). TPRADFM requires enrollment and may be available to RC families of mobilized/activated RC members if they meet the following criteria: (1) The sponsor must be ordered to active duty for more than 30 consecutive days. (2) The sponsor's residence is located in a TPRADFM Zip Code (typically more than 50 miles, or approximately one hour of driving time, from the nearest military medical treatment facility). (3) The eligible family members must reside with the active duty sponsor at the time of activation or effective date of the orders. (4) The RC member's residential mailing address in DEERS must be the same as the family member. For more information, go to www.tricare.mil/Welcome/Eligibility/NGRMandFamilies.aspx.

V. Support Enforcement

This chapter provides general information for both custodial and noncustodial parents about support enforcement. Once a support order is established, the expectation is that payments will be made in a timely manner and in the correct amount. Any disruption in payment, even if temporary, can cause financial difficulty for a child. For that reason, federal and state governments have enacted laws providing for the enforcement of support. The goal of some of these laws, such as income withholding, is to prevent support arrears from ever occurring. The goal of other laws is to collect lump sum payments toward arrears, once they do exist. In addition to enforcement tools, state child support programs have become more proactive in addressing reasons parents cannot or do not pay child support, such as lack of employment or orders that no longer reflect their current income or financial circumstances. If you are a noncustodial parent experiencing a reduction in income or loss of employment, it is important that you contact the child support agency to request a review and possible adjustment of the order before support arrears build up. Keep in mind that the Servicemembers Civil Relief Act provides certain protections related to legal proceedings, which may include enforcement actions. See Chapter VIII on the Servicemembers Civil Relief Act for details.

Military Regulations Governing Support Enforcement

Federal regulations and the rules of each service branch require military members to honor the terms of their child support orders. These military rules give commanding officers the authority to punish members who fail to support their dependents. Below are the federal regulations that govern the collection of child support from members of the military:

- Garnishment processing for all military branches: 5 C.F.R. Part 581
- Army: 32 C.F.R. Part 584
- Navy/Marine Corps: 32 C.F.R. Part 733

Each branch has also developed its own policy regarding support:

- Army Regulation 608-99, Chapter 2 (Family Support, Child Custody, and Paternity)
- Secretary of the Air Force Instruction (SECAF INST) 36-2906, Personal Financial Responsibility
- Navy Military Personnel Manual (MILPERSMAN) art. 1754-030 (Support of Family Members)
- U.S. Marine Corps, Order P5800.16A Marine Corps Manual for Legal Administration (LEGALADMIN), cha. 15 (Dependent Support and Paternity)
- U.S. Coast Guard Commandant Instruction (COMDTINST) M1600.2, cha. 2.E (Sept. 2011)(Supporting Dependents)

Income Withholding

Congress requires all states to have laws providing that income withholding is a method for noncustodial parents to comply with child support orders. Income withholding means that support payments are deducted from the noncustodial parent's paycheck or other source of income. Some states call the process garnishment, wage withholding, or wage attachment. State law must provide that immediate income withholding is part of the initial support order, without

regard to the existence of arrears (past-due support). This requirement is for orders that the state child support program is handling, as well as for private cases. The only exceptions to immediate income withholding are (1) if the court or agency finds good cause not to order immediate income withholding, or (2) if both parents agree to an alternative arrangement. Where the court or agency does not immediately order income withholding, upon entry of the order, withholding will automatically be triggered if an arrearage equal to one month's payment occurs.

Benefits of Income Withholding

Immediate income withholding is beneficial to both parents. Because income withholding begins as soon as the order is issued, it lessens the likelihood of arrears occurring so long as the noncustodial parent is employed. Immediate income withholding in all cases also helps eliminate the stigma that was formerly associated with support garnishments. Employers now know that employees' payment of support through income withholding means that their employees are being responsible and meeting their support obligations.

If the noncustodial parent has an employer, income withholding for child support is like other forms of payroll deduction, such as income tax, social security, union dues, or any other required payment. Once the employer receives the income withholding order, the employer will follow its directions for deducting a certain amount for support and forwarding the payments to the State Disbursement Unit (SDU). The SDU will then send the withheld money to the custodial parent, often through electronic bank deposit. Income withholding is less effective if the noncustodial parent is self-employed or changes jobs frequently.

Limits on the Amount that can be Withheld

An immediate income withholding is for the amount that the order requires for current support. If an arrearage accrues, the income withholding can be changed to include an additional amount to pay off the arrears. There are limits to the amount of income that an employer can withhold from a person's wages. An employer cannot withhold more than the lower of the garnishment limits within state law or the federal Consumer Credit Protection Act (CCPA). The CCPA limits range from 50 – 65 percent of disposable pay depending upon whether the noncustodial parent has other dependents and how long the noncustodial parent has been in arrears.

Military Voluntary Allotment

Members of the military may establish a voluntary allotment of earnings and route money from their pay to their dependents. Because it is voluntary, the service member can start this allotment even before a child support order exists in the case. A commanding officer will help the member obtain the voluntary allotment forms. While a commander can order a subordinate to obtain a voluntary allotment for his/her family, a commander cannot actually issue the allotment.

A voluntary allotment can help avoid the build-up of unpaid child support during the order establishment process. In addition, this procedure provides an official record of payments that may help the member receive proper credit for payments made prior to the entry of the order in states that authorize retroactive support. The member can revise or stop a voluntary allotment at any time. As noted in the next paragraph, the member should terminate the voluntary allotment once an order is established and income withholding begins.

In addition to voluntary allotments, members of the Armed Forces and civilian defense department employees are subject to involuntary allotments to enforce their support obligations. The most common form of involuntary allotment is an income withholding under state law. The other form of involuntary allotment is one based on a federal statute, 42 U.S.C. § 665. See discussion below. An involuntary income withholding, regardless of the specific form, has priority over a pre-existing voluntary allotment. However, it does not stop the voluntary allotment; the military member must terminate the voluntary allotment if he or she does not want both allotments in place.

Income Withholding under State Law

A military member or civilian defense department employee is subject to state income withholding in order to enforce a child support obligation.

Income Subject to Withholding

Support can be withheld from the following types of income:

- Military active duty pay (basic pay and certain bonuses, but not BAH and BAS/Sep Rats)
- Military reserve pay
- Military retired pay
- Federal DoD civilian employee pay and civilian retirement pay
- "Any other remuneration for employment"

Veterans' disability benefits are not subject to withholding unless the member has waived a portion of retired or retainer pay in order to receive such compensation. This situation occurs when a former service member waives part of his or her retired pay (which is taxable) in order to receive Department of Veterans Affairs (VA) disability compensation (which is nontaxable). When this happens, that part of the VA payment that the retiree receives in lieu of the waived retired pay is subject to garnishment. However, if the member's entitlement or disability compensation is greater than his or her entitlement to retired pay, and the service member waived all of his or her retired pay in favor of disability compensation, then none of the disability compensation is subject to garnishment or attachment.

Defense Finance and Accounting Service (DFAS)

DFAS processes payroll for all branches of the U.S. Department of Defense (DoD), including the pay for members who are on active duty, in the reserves, and retired from military service. It also processes the pay for civilian DoD employees, but does not process payroll for civilian employees of government contractors working on a military project. The U.S. Coast Guard is within the U.S. Department of Homeland Security and not part of the defense department; it therefore has its own payroll processing center.

The DFAS website for information regarding its services is www.dfas.mil. To reach the page with information about child support income withholding, click on the tab on the left titled *Find Garnishment Information.* That takes the user to a page with information on child support and alimony, including frequently asked questions and answers.

Activated National Guard or Reserve Members

DFAS processes the pay for members of the National Guard and Reserves who have been activated into federal service. If a National Guard member or Reservist already has an income withholding through his or her civilian employer, the child support agency can transfer the

withholding to DFAS in order to prevent or reduce missed payments. It is important for the activated National Guard member or Reservist to notify his or her employer as soon as possible upon notification of activation and deployment. The employer should then notify the child support agency of the last day of employment, the amount of the last paycheck, the dependents currently enrolled in health insurance through the employer, and what date that coverage will terminate. The service member should also notify the child support agency of his or her call to active duty in order to expedite the agency's transfer of the income withholding order to DFAS or the Coast Guard processing center. In the event there is a gap from when the state withholding stops and the military involuntary allotment begins, the service member is responsible to provide the child support payment directly to the child support agency's State Disbursement Unit.

Returning National Guard or Reserve Member

When a National Guard member or Reservist returns from deployment, it is important that the member notify the child support agency of the member's separation date. This date is on the DD Form 214, "Certificate of Release or Discharge from Active Duty." Failure to do so may result in the service member's having two income withholding orders in effect – a civilian one and a military one.

Movement from Active Duty to Retired Status

DFAS is able to track an individual's move from active duty to retirement. This means that DFAS will automatically transfer the child support withholding to the member's retirement pay account if DFAS was previously implementing a child support income withholding order on the same individual when he or she was receiving active duty pay. However, it can take 30 to 60 days for the member's retired pay account to begin paying. This means that there may be a delay in payment. If there is a delay in payment from DFAS, the service member is responsible for sending the child support payment directly to the child support agency's State Disbursement Unit.

Federal Statutory Allotment for Child Support

The federal statutory allotment is an income withholding remedy specifically directed toward the military. Pursuant to the federal statute[8], a IV-D agency or a court can use this involuntary allotment to enforce both child and spousal support obligations owed by a member of one of the uniformed services on active duty.

There are two prerequisites:

- A court or an administrative order establishing a child support (or spousal and child support) obligation, **and**
- An arrearage in an amount equal to or greater than two months support under the obligation.

There are due process protections to the service member. The designated official in the appropriate uniformed service must receive notice; that official must in turn give notice to the affected member. Before there can be an allotment from the member's pay and allowances, the member must have an in-person consultation with a judge advocate or a legal assistance officer to discuss various factors related to the member's support obligation. However, if 30 days have

[8] 42 U.S.C. § 665. Implementing federal regulations are at 32 C.F.R. 54.

passed since the member received notice, and it has not been possible to arrange such a consultation, despite continuing good faith efforts, then it is permissible to initiate the federal statutory allotment.

Once DFAS receives notice to begin the allotment, it will withhold the amount necessary to comply with the support order.

Advantages and Disadvantages
The federal statutory allotment has advantages and disadvantages when compared to the state child support income withholding remedy.

Advantages

- It allows the attachment of both BAH and BAS/Separate Rations benefits, which are not attachable by state income withholding.
- Lower state garnishment limits, if provided by state law, do not apply. Only the CCPA limits apply.

Disadvantages

- A custodial parent cannot initiate it. Only an "authorized person," defined as a IV-D child support agency, a court that has the authority to issue a support order, or an agent of such a court, can initiate the federal statutory allotment.
- The noncustodial parent must be a member of the "uniformed" services on active duty (does not include members of the reserve components, retirees, or civilian employees of the military).
- The noncustodial parent must be delinquent in an amount equal to, or greater than, the amount owed for two months of current support payments.
- The allotment will not begin until the member has consulted with a judge advocate of the service or with a law specialist in the case of the Coast Guard, or until 30 days after the notice where it has not been possible to arrange such a consultation in spite of good faith efforts.
- The allotment will include amounts for arrears only if the order provides for an arrearage payback amount. If the order does not, the allotment will only be for current support.

The Uniformed Services Former Spouses' Protection Act

Overview
The Uniformed Services Former Spouses' Protection Act (USFSPA) is a law Congress enacted in 1982 to provide benefits to certain former spouses of military members. It can be used to collect child support from retired military personnel. The USFSPA is located at 10 U.S.C. § 1408.[9] The USFSPA does not automatically entitle a spouse or former spouse to a portion of the member's retired pay; the final court order must award a portion of the member's military retired pay as property to the member's spouse or former spouse. The decision whether to award

[9] The implementing regulation is Department of Defense Financial Management Regulation (DoDFMR), Volume 7B, Chapter 29.

retirement pay is solely in the discretion of the state court and the amount awarded will vary. There is no formula that the court must follow in dividing retired pay.

Court orders enforceable under the USFSPA include final decrees of divorce, dissolution, annulment, and legal separation, and court-ordered property settlements incident to such decrees. The USFSPA also provides a method of enforcing current child support, child support arrears, and current alimony awarded in the court order. **Because the USFSPA enforces court orders for the benefit of a former spouse, DFAS cannot enforce a child support obligation contained in a paternity order.**

Initiation of Enforcement under the USFSPA

In almost all cases, it is the retired spouse of the military member who directly initiates enforcement under the USFSPA. To apply for payments under the USFSPA, a completed Application for Former Spouse Payments from Retired Pay (DD Form 2293, www.dtic.mil/whs/directives/infomgt/forms/eforms/dd2293.pdf) signed by a former spouse, together with a copy of the applicable court order certified by the clerk of court, should be served either by facsimile or by mail, upon the:

Defense Finance and Accounting Service
Cleveland DFAS-HGA/CL
P.O. Box 998002
Cleveland, Ohio 44199-8002
(888) DFAS-411 888-332-7411
Fax: 877-622-5930 (toll free)
216-522-6960 (commercial)
580-6960 (DSN)

To ensure that the document is processed in a timely and efficient manner, the following information must be included with the fax:

- Member/Employee Social Security number (SSN) - Court Orders/Documents will not be processed if the SSN is not on the document,
- Return phone number, **and**
- Return fax number.

Each fax transmission should only include correspondence for one member or employee. If there are multiple documents for one member, they can be sent in one fax transmission.

Application Form

The application form should state which awards the former spouse is seeking to enforce under USFSPA (i.e., alimony, child support, and/or division of retired pay as property). **If the application does not contain this information, then only awards of retired pay as property will be enforced under the USFSPA.** A former spouse should also indicate the priority of the awards to be enforced in case there is not sufficient disposable retired pay to cover multiple awards.

Court Order

The court order should contain sufficient information for DFAS to determine whether the Servicemembers Civil Relief Act (SCRA) and the USFSPA's jurisdictional requirements have been met.

In order to enforce a court order for a division of retired pay as property, the former spouse must have been married to the military member for a minimum of 10 years while the member was performing 10 years of service creditable towards eligibility for retired pay. If DFAS cannot determine the parties' marriage date from the court order, then the former spouse must submit a photocopy of their marriage certificate. If the former spouse is requesting child support, and the court order does not contain the birth dates of the children, the former spouse must provide photocopies of their birth certificates.

A retired pay as property award must be expressed as a fixed dollar amount or percentage of disposable retired pay. If the parties were divorced prior to the member's retirement, the court order can express the award as an acceptable formula or hypothetical retired pay award.[10]

Maximum Payment Amount

The maximum that can be paid to a former spouse under the USFSPA is 50 percent of a member's disposable retired pay (even if arrears exist). In cases where there are payments both under the USFSPA and pursuant to an income withholding order/garnishment for child support or alimony, the total amount payable cannot exceed 65 percent of the member's disposable earnings for garnishment purposes. Disposable retired pay is gross retired pay less authorized deductions. The authorized deductions depend on the effective date of the parties' divorce, dissolution, annulment, or legal separation.[11] Changes in the member's authorized deductions will result in a change in the amount the former spouse receives.

The right to payments under the USFSPA stops upon the death of the member or former spouse, whichever occurs first, unless the applicable court order provides that the payments stop earlier.

Other Enforcement Methods

Income withholding is the most effective child support enforcement method. However, income withholding is not always effective, especially if the noncustodial parent is self-employed, moves or changes jobs frequently, or works for cash or commissions. In those circumstances where payment is not regularly made, it may be necessary to enforce the support order through other means. Subject to due process safeguards, states have laws that allow enforcement techniques, such as state and federal income tax refund offset, liens on real or personal property owned by the noncustodial parent, freezing or attachment of bank accounts, license suspension, passport denial, contempt, and criminal nonsupport.

Many of these enforcement remedies are automated. Increasingly, state child support programs are looking closely at their cases to evaluate the noncustodial parent's ability and willingness to pay, and to determine which particular enforcement remedy is most appropriate for a particular case. You can learn more information about each remedy discussed below by reading the general Child Support Enforcement Handbook that is available on the federal Office of Child Support Enforcement website.

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[10] See DoDFMR, Volume 7B, Chapter 29, for examples of each type of award including sample language.

[11] See DoDFMR, Volume 7B, Chapter 29 for further information on authorized deductions.

Federal Income Tax Refund Offset

Eligibility

The Federal Tax Refund Offset Program collects past-due support payments from the tax refunds of parents who have been ordered to pay child support. The program is a cooperative effort between the federal Office of Child Support Enforcement, the Department of the Treasury, and state child support agencies. There is no difference in the treatment of military and civilian cases. If a noncustodial parent owes at least $150 in Temporary Assistance for Needy Families (TANF) past-due support, or at least $500 in non-TANF past-due support, and the state child support program is enforcing the parent's case, the state child support agency must submit the case to the Office of Child Support Enforcement for tax refund offset. If past-due support is owed to more than one state, each state must submit its case(s).

Due Process Requirements

Noncustodial parents receive a written advance notice, called a pre-offset notice, at least 30 days before their case may be submitted for tax refund offset. This notice informs the noncustodial parent of the amount of past-due support owed at the time the notice is sent, the parent's right to contest the arrearage, and procedures and timeframes for contacting the state child support agency to request an administrative review. The actual amount deducted from the tax refund may differ from the amount shown on the pre-offset notice due to the payment or non-payment of child support after the notice is mailed. The state updates the arrearage amount regularly, but is not required to issue a new notice each time the arrearage changes. If the noncustodial parent owes past-due support to more than one state, the parent will receive a separate notice from each state.

At the time of the intercept, Treasury's Bureau of Fiscal Service mails an offset notice to the noncustodial parent stating that all or part of his/her federal tax refund was intercepted (offset) because of the child support debt owed. The notice also advises the noncustodial parent to contact the state child support agency for questions or additional information.

Distributions of Monies Withheld from Refund

States may choose how they distribute support collections from the federal tax refund offset program. Some states pass some or all of the collection through to the family. Others apply some or all of the offset to reimburse money owed for TANF provided to the family prior to distributing monies to the family. The state may hold the money for up to six months if the offset involves a joint tax return. This extra time is to allow the spouse of the noncustodial parent to request the return of his or her share of the refund.

State Income Tax Refund Offset

All states with state income tax must have laws that require the offset of state income tax refunds to collect past-due child support. The procedure is nearly identical to the federal income tax refund offset because there must be advance notice to the noncustodial parent with an opportunity to challenge. However, any money collected from the state income tax refund first goes to satisfy current support due for that month, then for past-due support owed to families, and finally to states to repay cash assistance provided the family.

Liens on Property

All states have laws that cause a lien for past-due support to arise automatically against a noncustodial parent's real and personal property. A lien on property does not by itself result in the immediate collection of any money. It only prevents the owner from selling, transferring, or borrowing against the property until the child support debt is paid. States are required to recognize liens issued by another state.

Although child support liens arise by operation of law, each state has its own laws and procedures for "perfecting" liens. Most states require that there be some type of recording of the support order or arrearage amount in a public office, such as the recorder of deeds for real property. Some states maintain a centralized registry for liens. Once a lien is created, it remains a cloud on the title as security for the child support arrearage judgment. That cloud exists until the child support agency or custodial parent releases the lien or it expires.

Attachment of a Financial Institution Account

All states have agreements with financial institutions doing business in their state for conducting a quarterly data match known as the Financial Institution Data Match (FIDM). The match identifies accounts belonging to noncustodial parents who are delinquent in their child support obligations. These accounts include demand deposit, checking, savings, and money-market mutual fund accounts. Once a child support agency identifies such accounts, it may place a lien and levy on the accounts in order to collect the past-due child support. The child support agency must provide a noncustodial parent with certain due process protections before it can attach and seize the parent's financial assets to satisfy child support arrears.

License Suspension

All states are required to have procedures for suspending or restricting licenses of noncustodial parents who are delinquent in their child support payments. The affected licenses are drivers' licenses, professional and occupational licenses (for example, medical license, law license, beautician license), and sporting/recreational licenses. States have varying thresholds of the amount of past-due support that triggers license suspension procedures. A state can also suspend a license if the noncustodial parent fails to comply with a subpoena or warrant related to a child support proceeding.

The state must provide due process protections, which include giving a notice to the noncustodial parent and providing an opportunity to challenge the action. The goal of this remedy is to motivate the noncustodial parent to communicate with the child support agency about his or her child support arrears rather than preventing someone from driving or conducting his or her business. Often the agency and parent are able to work out a payment plan for elimination of the arrears without taking the parent's license.

Passport Denial

Under the Passport Denial Program, once noncustodial parents are certified by a state as having arrearages exceeding $2,500, the federal Office of Child Support Enforcement submits their names to the State Department. The State Department then denies the parents U.S. passports when they apply for them or use a passport service. If a parent owes past-due support to more than one state, each state is required to submit its case(s).

Additionally, when noncustodial parents with eligible, certified past-due child support cases use a passport service or apply to the State Department with regard to an existing passport, the State Department can revoke (physically take) or limit the passport. This includes both official and civilian passports. Revocation occurs any time the passport agency or embassy has the passport in hand, such as:

- Renewing an existing passport
- Adding pages to an existing passport
- Repairing/reissuing a damaged passport
- Changing a name or updating a picture
- Accepting an existing passport as proof of identification

Noncustodial parents are not automatically removed from the Passport Denial Program even if their arrearages fall below the $2,500 threshold.

Due Process Requirements

A state child support agency must send a noncustodial parent a written advance notice at least 30 days before the state may submit the parent's case for passport denial. The notice informs the noncustodial parent of the amount of past-due support owed at the time the notice is sent, the parent's right to contest the arrearage, and procedures and timeframes for contacting the state child support agency to request an administrative review. If the noncustodial parent owes child support to more than one state, each state will send a separate notice.

When an individual applies for a passport, the State Department denies the application based on the child support obligation owed by the applicant. The State Department sends a notice to the noncustodial parent explaining that it denied the passport application because of past-due child support. The notice advises the applicant to contact the appropriate state child support agency for further information, and provides a listing of each state's contact information.

Steps to Take if a Passport is Denied

The noncustodial parent must contact the appropriate state or local child support agency to make satisfactory arrangements to pay the past-due support obligation. If more than one state submitted the parent's name to the Passport Denial Program, the parent must reach an agreement with all states involved in order for the passport to be released.

Once the parent has paid off the arrearage and/or reached a payment agreement with the affected state(s), the state(s) will submit a request to the federal Office of Child Support Enforcement to remove the noncustodial parent's name from the program. After the passport denial request is withdrawn, it is still the responsibility of the noncustodial parent to contact the National Passport Information Center (NPIC) at (877) 487-2778 or make an appointment at a regional passport agency to obtain a passport.

Military and Interest Rates

Sometimes a person's military activation has a "material effect" on the member's ability to pay the state's usual interest rate charged for unpaid child support. In these cases, the member may request that the interest rate charged on the child support arrears that accrued prior to deployment be reduced to six percent for the duration of deployment in accordance with the Servicemembers

Civil Relief Act.[12] See Chapter VIII on the Servicemembers Civil Relief Act. If a child support agency is enforcing the order, the member can make the request to the agency. It may be appropriate for the member to seek help from a military legal assistance office.

Judicial Enforcement Remedies

Child support offices can use the above methods without directly involving the courts. If actions available through the child support program are not successful, state child support agencies can take cases to court for other enforcement actions such as show cause hearings for contempt of court, and criminal prosecutions for nonsupport.

Civil Contempt

In addition to the enforcement remedies noted above, child support agencies and courts often have access to resources that can help parents who face personal barriers to employment, resulting in nonpayment of support. These resources include workforce development agencies that help provide employment training and job placement for noncustodial parents. They also include referrals that can help reduce problems such as alcohol or drug abuse that may interfere with the noncustodial parent's regular employment. Courts often try to be proactive at the beginning of a case, ensuring that the order is realistically based upon the noncustodial parent's ability to pay. There are cases, however, when a noncustodial parent has the ability, but is unwilling, to pay support. For these cases, civil contempt may be an appropriate enforcement tool.

Before a court finds someone in contempt with the possibility of incarceration, the court must ask about the person's ability to pay. States have developed a number of best practices to aid this inquiry, such as appointed counsel for indigent noncustodial parents and the development of financial affidavits seeking information about the noncustodial parent's income and assets. If a court finds the noncustodial parent in contempt, the punishment must be remedial. The goal is compliance with the order. Therefore, if the court finds the person in contempt, the court typically sentences the person to a certain period of incarceration, but allows the parent to "purge" the contempt finding and avoid incarceration by meeting certain terms. The noncustodial parent must be able to fulfill the conditions set; in other words, the noncustodial parent "holds the keys" to his or her cell. The conditions usually include payment of some or all of the arrears.

State and Federal Criminal Nonsupport

In more egregious cases where civil enforcement remedies are not successful in collecting child support despite a parent's ability to pay it, there can be criminal charges brought against the non-paying parent. There are criminal offenses for nonsupport of children at both the state and federal level.

The custodial parent cannot file a criminal nonsupport action; only a prosecuting attorney can. States that have state criminal nonsupport statutes vary as to whether such an offense is a misdemeanor or whether it can also be a felony. State laws also vary as to the elements of the offense. Conviction of nonsupport requires proof beyond a reasonable doubt.

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[12] See 50 U.S.C. app. § 527.

In addition to state laws, there are federal laws that make the nonpayment of child support a criminal offense. There is a misdemeanor offense, as well as a felony offense, depending on the amount of arrearage. Both offenses are limited to cases where the noncustodial parent has failed to pay child support for a child who resides in another state.

It is important to remember that the various enforcement remedies discussed in this chapter are not exclusive. A child support agency may use several remedies at the same time, if necessary.

Enforcement of Medical Support

Who is Eligible

TRICARE is the military health care program for all uniformed services, including the Coast Guard. TRICARE is available to active duty, retired military, and members of the reserve component who have been recalled to federal active duty. It is not available to civilian employees of the military. To obtain health insurance information on defense and Coast Guard civilian employees, you can contact the human resources office for civilian DoD employees at a nearby military installation.

Process for Enrollment

An eligible dependent is automatically eligible for TRICARE coverage once the dependent is enrolled in DEERS. The easiest way to enroll a dependent into DEERS is to have the military member (sponsor) enroll the child. There is no cost associated with the child's enrollment into DEERS.

You must provide the following documents to enroll a dependent into DEERS:

- A certified copy of the child's birth certificate, naming the military member as the child's parent
- If the child was born to unmarried parents, a legal determination of paternity (for example, a court order determining paternity, an administrative paternity order, or a notarized voluntary acknowledgment of paternity signed by both parents)
- A court or an administrative order showing the sponsor has an obligation to provide support for the child
- Any other forms required by the local installation.

If the military member does not enroll the child in DEERS, the custodial parent can enroll the child by presenting the above documents to the verifying official at the nearest military installation or Reserve or National Guard unit with a RAPIDS ID Card Issuing Facility (RAPIDS is the acronym for the Real-Time Automated Personnel Identification Card System). You can find the nearest location by visiting www.dmdc.osd.mil/rsl/. Before DEERS enrollment is completed, there must first be an attempt to get the military sponsor to sign the enrollment paperwork. If the sponsor will not sign the paperwork, the verifying official can sign on the sponsor's behalf, provided all of the required documents are present.

If a grandparent is retired from the military *and* the custodian of a dependent child, that grandparent can enroll the child in DEERS, making that child eligible for military health care coverage, either on a base or through TRICARE. Although health insurance remains available to

retired members of the military and their dependents via TRICARE, the co-pay will vary for retired members.

Options for Coverage

All military bases have Health Benefits Advisors to assist custodial parents with the available options for health insurance coverage. In addition, TRICARE program handbooks explaining coverage are available through the TRICARE website at www.tricare.mil/Publications.aspx.

Obtaining Health Care

When the child is enrolled in DEERS, the child is eligible to receive health care in two ways. First, the child may obtain health care and medications from military hospitals and treatment facilities if space is available. In addition, the child can use the "cost share" medical coverage, TRICARE, with civilian health care providers. Claims to TRICARE "must be filed within one year of the date of service or within one year of the date of an inpatient discharge."[13] When service from a military hospital or health care facility is available, it is preferable since it is usually less expensive and involves less paperwork.

Dental Coverage

Dental coverage from the military differs from health care coverage because dental coverage is not automatic. Dependents of military members and retirees do not have dental coverage unless they enroll and pay the premiums. Visit www.tricare.mil/Dental/TDP.aspx for more information.

Questions and Answers for Custodial Parents

I am on active duty. Under my current support order, payments are forwarded to me. What happens when I am deployed overseas?
Child support orders direct support payments to the custodial parent for the care of the child. When you are deployed abroad, your child may go to stay with the noncustodial parent, another family member, or a friend – depending upon your court order, or – in the absence of a court order – your Family Care Plan. However, until your child support order is changed, the State Disbursement Unit will forward child support payments to the address on file for you as the custodial parent. Prior to deployment, you can contact the child support office to discuss how to redirect your child support payments to the person who will be caring for your children while you are deployed. You may have to request a modification of the court order. Alternatively, you can make private arrangements with your bank to allow the caregiver designated in your Family Care Plan to access the debit card or bank account in order to receive the support payments.

Before my ex-spouse's National Guard unit was activated, I received my child support payments from his civilian employer on a biweekly basis. Will I continue to receive child support biweekly while my ex-spouse is on active duty?
No. The law requires civilian employers to forward money to the State Disbursement Unit within seven business days from the date it is deducted. However, for service members on active duty, the process is a little different. The Defense Finance and Accounting Service (DFAS) deducts the

[13] TRICARE Prime Handbook, page 26, "Health Care Claims."

child support payments from a service member's pay during the work month, January for example, and sends a single payment to the state child support agency on the first business day of the next month. The transfer typically happens on the first day of the month, which, in this case, would be February 1. There may be an adjustment when the first falls on a weekend or federal holiday.

The end result is that you will likely receive your payments on a monthly basis, instead of on the bi-weekly schedule that applied to your former spouse's civilian pay.

My former spouse/former boyfriend is in the National Guard, and was recently called to active duty. Why don't I receive the full amount of the ordered child support, like I did before he deployed?

There may be several reasons why you are not receiving the full amount of ordered child support. One common reason, if payment is through income withholding, is that your former spouse or boyfriend is making less money on active duty than when he was employed as a civilian. The Consumer Credit Protection Act (15 U.S.C. § 1673) limits the amount that can be deducted from someone's pay for child support or alimony. The limit ranges from 50 to 65 percent of the person's disposable earnings. If the child support amount exceeds those limits, there may be a gap between the amount of child support that was ordered and the amount that can be withheld from his military pay. Until the order is modified, however, your former spouse or boyfriend owes the amount of support in the order, even if full payment cannot be made through income withholding. If he is making less money while on active duty, he can request the child support agency to review his order for possible modification.

My support order requires payment on the 15th and 30th of each month. What should I do if I don't receive my child support on time from the service member?

The Defense Finance and Accounting Service (DFAS) deducts the child support payments from a service member's monthly paycheck and sends those payments to the state child support agency on the first business day of the month following the month from which the payments were deducted. If the first day of the new month falls on a weekend or holiday, however, the payment could be sent during the previous month. In other words, payments withheld from the member's January pay will be sent to the agency on or about February 1. When February 1 is Saturday or Sunday, the payment will be sent on the last business day in January. If you receive your support payments by Electronic Funds Transfer (EFT), you will receive them more quickly than those sent by mail.

If you have not received your child support payment by the 10th of the month, please contact the child support agency before contacting the service member, the member's commanding officer, or the local military pay office. Although DFAS and the child support agency will make every effort to process child support payments as soon as possible, there may be times when delays can occur through no fault of the service member.

For checks issued from the accounts of civilian employees of the Department of Defense, please allow seven days from the date of the normal distribution of checks (biweekly cycle).

Why might my child support stop when the noncustodial parent goes from active duty to retired status?

Although the Defense Finance and Accounting Service (DFAS) is notified when a member retires, it can take 30 to 60 days for the Office of Retired Pay to create the retired pay account.

DFAS cannot begin withholding support from retired pay until the retired pay account is established, which means there may be a delay in payment. If you are receiving support and know the member is about to retire, please contact your child support agency and DFAS at (888) DFAS-411 (888-332-7411). Please make sure you know the member's Social Security number.

Can I use income withholding to collect child support ordered against the U.S. service member by a foreign court?
In order to enforce a foreign order in the United States, you must first register that order in a state where the service member is residing, or has income or assets. For example, if you have a German court order and the service member returns to the United States, you must get a copy of the German court order and register it in the appropriate U.S. court. The most common way to do that is through the Uniform Interstate Family Support Act (UIFSA). A child support agency can assist you with such matters, including with translation of the order.

The foreign order will be filed with the court, and a notice of registration sent to the service member. There are limited defenses that the member can raise. The most common defense raised to the registration of a foreign support order is that the foreign court that issued the support order did not have personal jurisdiction over the noncustodial parent. If the member fails to raise a defense in a timely manner, or if the court – after a challenge – upholds the registration, the foreign order is confirmed and the U.S. court will order the member to comply with the order's support terms. The court or agency will convert the foreign currency into U.S. dollar equivalent. The court or child support agency can then enforce the order by income withholding.

As a former spouse of a military retiree, am I automatically entitled to a portion of the retiree's retired pay?
No, there is no federal law that automatically entitles a former spouse to a portion of a member's military retired pay; a court order must award a former spouse a portion of the member's military retired pay. The Uniformed Services Former Spouses' Protection Act (USFSPA) accomplishes two things. First, it authorizes (but does not require) state courts to divide military retired pay as a marital asset or as community property in a divorce proceeding. Second, it provides a mechanism for a former spouse to enforce retired pay as a property award by direct payments from the member's retired pay. Retired pay as property payments are prospective only, meaning you cannot collect retired pay arrears under the USFSPA.

As a former spouse of a military retiree, can I enforce any other types of court-ordered awards under the Uniformed Services Former Spouses' Protection Act (USFSPA)?
Yes. The USFSPA also provides for the enforcement of court-ordered current alimony, current child support, and child support arrears. In order to apply for child support arrears, you must submit a court order awarding the arrears that was issued not more than two years before it was submitted for payment. This requirement is in addition to the application requirements. You cannot collect alimony arrears under the USFSPA. Current child support and alimony, as well as child support and alimony arrears, may also be enforced by a state withholding order under 42 U.S.C. § 659 or by a federal statutory military allotment under 42 U.S.C. § 665.

Questions and Answers for Noncustodial Parents

I am a member of the National Guard, with an income withholding order at my full time civilian job. How can I make sure that my child support continues to be deducted from my paycheck once I am on active duty?
If you pay child support and the payments are withheld directly from the paycheck of your civilian job, contact the child support agency as soon as possible after learning of your pending activation. The child support agency can transfer the income withholding from your civilian employer to the Defense Finance and Accounting Service (DFAS) so that your child support will be deducted from your military pay. There may be some delay before the income withholding at DFAS goes into effect. To avoid any lapse in payments during this time, you must send payments yourself to the payment address in your order (which will usually be the address of the child support agency's State Disbursement Unit) until you see the child support deducted from your military pay. Do not send payments directly to the custodial parent. When sending payments to the State Disbursement Unit, make sure you include information identifying your child support case. Most states have payment coupons that you can send in with your payment, which provide the required information.

Your civilian employer should keep the income withholding order on file so that, once you return to work, the income withholding against your civilian wages can resume. When you return from deployment, it is important that you notify the child support agency of your separation date. Failure to do so may result in your having two income withholding orders in effect.

I'm a Federal Technician and will be deploying soon. Can I call the Defense Finance and Accounting Service (DFAS) myself to have my income withholding order transferred?
No. A telephone call from you is insufficient. DFAS must receive notice of the transfer from the court or agency that issued the withholding order.

What should I do if a court has ordered a reduction in payments but the military is still withholding the former amount?
If a court has ordered a reduction in your child support payments, the Defense Finance and Accounting Service (DFAS) must receive a copy of the modified income withholding order, referencing the same case number that requires DFAS to pay a reduced amount. Therefore, you should send a copy of the most recent court order and income withholding order to DFAS. A legal assistance attorney can help you forward the document to the appropriate office and determine if the document is sufficient. If a child support agency is handling your case, you can also contact the child support office for help.

If I'm paying my child support under a federal statutory allotment, can I stop it at any time?
No. The title of the statute is a bit of a misnomer; a federal statutory allotment is not voluntary. Unlike a voluntary allotment, you cannot stop it. A federal statutory allotment is a type of withholding or garnishment against the pay and allowances of an active duty member of one of the uniformed services. It does not stop until the Defense Finance and Accounting Service (DFAS) receives notice of termination from the court or agency that issued the withholding order.

I'm about to retire from the military but I still owe child support. How can I make sure that the Defense Finance and Accounting Service (DFAS) continues to withhold child support from my retirement pay? Will my current withholding automatically switch over?
Although DFAS is notified when a military member retires, it can take 30 to 60 days for DFAS Retired and Annuitant Pay to create the retired pay account. DFAS cannot start withholding support payments until the retired pay account is established, so there may be a delay. If you are a member about to retire and have a support obligation that needs to continue, please call the Customer Care Center at (888) DFAS-411 (888-332-7411). If a child support agency is involved, please also notify the child support agency of your pending retirement.

How can I get a copy of my payment record if the Defense Finance and Accounting Service (DFAS) is withholding money from my paycheck?
Please contact one of the offices listed below for payment history information. The Office of the Assistant General Counsel for Garnishment Operations does not have access to pay records.

Retired and Annuitant Pay, www.dfas.mil/dfas/retiredmilitary.html	800-321-1080
Military Pay, www.dfas.mil/dfas/militarymembers.html	888-332-7411
Civilian Pay, www.dfas.mil/dfas/civilianemployees.html	800-729-3277

If a child support agency is servicing your case, you can also request a copy of your payment record from the child support agency.

My child support order was issued in a state that charges 10 percent interest on unpaid child support. Now that my reserve unit has been called to active dnty, do I still have to pay that much interest on the arrears I owe?
The Servicemembers Civil Relief Act (SCRA) limits the amount of interest that may be collected on debts of persons in active military service to six percent per year during the period of military service. This provision applies to all debts incurred prior to the commencement of active duty, including child support obligations. See 50 U.S.C. app. § 527.

The interest rate reduction does not occur automatically. For the SCRA limits to apply, you must provide the creditor (which may be the child support agency and/or custodial parent) with written notice and a copy of the military orders calling you to military service and any orders further extending military service.

If the creditor wants relief from the limitations of this section of the SCRA, it will need to prove, to the satisfaction of the court or administrative agency, that military service does not materially affect your ability to pay interest on the child support arrears at a rate more than six percent per year. The burden of proof is on the creditor. "Normally, the key aspect of the inquiry will be into the service member's finances. It will not stop, however, with a review of the service member's income. There are times when a person will experience an increase in income because of a mobilization, but the financial situation will worsen. Members activated from the reserve components may find they have two households to maintain and that child care and other expenses have likewise increased."[14]

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[14] Sec. 6-2, p. 6-3, The Servicemembers Civil Relief Guide, JA 260, prepared by the Administrative and Civil Law Department, The Judge Advocate General's School, United States Army, Charlottesville, Virginia (March 2006).

It is important to note that the six percent limit does not apply if the support amount was ordered after you entered active service. The benefit is only for debts that you had prior to your entry onto active duty.

I'm in the Army Reserves and have been called to active duty. My support order requires that I provide health insurance coverage for my children. Currently, my children are receiving health coverage through insurance provided by my civilian employer. What will happen to their health insurance coverage once I'm deployed?
Your call to military duty means that your existing insurance coverage through your civilian employer may end. If that happens, you may enroll your children in the military health care program called TRICARE. Family members of the National Guard and Reserves are eligible for TRICARE health insurance after the service member has been activated for 30 days.

If you notify the child support agency that you will no longer be maintaining your existing health insurance plan, the caseworker in many states will assist you in enrolling your children in TRICARE. If a child support agency is not handling your case, you can contact your nearest TRICARE service center for information and the necessary forms you need to sign in order to obtain health care coverage for your children. TRICARE contact information is at www.tricare.mil. You can also enroll your child during your Soldier Readiness Processing (SRP) or other pre-deployment processing.

If your civilian employer maintains your health insurance coverage during your deployment, the Department of Defense advises that you keep this coverage effective. Once you return to civilian employment, your dependents are no longer eligible for benefits through the military.

I need a passport but I owe child support. What will happen?
If you are a service member who is deployed outside the United States, you will receive a military passport for your official use. Your military passport can be suspended or revoked because of child support arrears. Additionally, you may need a civilian passport for certain situations or for personal travel while you are on leave. If you owe $2,500 or more in child support arrears, the State Department will deny your request for an official or a civilian passport until you make arrangements with the child support agency to pay the child support arrearage you owe.

Can I deduct child support payments on my income tax return?
No. The tax treatments of child support and alimony payments are different. Alimony is taxable income to the recipient and deductible by the payor spouse. In contrast, child support is not taxable income to the custodial parent or the child. Nor can the parent who pays child support claim such payments as a deduction on his or her tax return.

How do I stop the Defense Finance and Accounting Service (DFAS) from withholding child support payments when my child is graduating from high school and past the legal age of majority in the state that issued my support order?
The answer depends on the method used to start payments. If the payments were made by DFAS because of an income withholding order issued by a child support agency, you will need to contact the child support agency handling the case to have it send DFAS a termination order. The reason for this is that most withholding orders that are issued by child support agencies direct DFAS to withhold "until further order."

If you are a National Guard member or reservist who was called to active duty and has returned to your non-DoD civilian job, and now your civilian job is collecting child support, please contact your local child support agency. Ask the agency to send DFAS a notice to terminate the order that is affecting your reserve pay. Pay statements from your non-DoD civilian job are not sufficient for DFAS to stop withholding.

If no child support agency is involved with your case, you may need to file pleadings with the court to terminate the withholding order.

I'm a retired military member. How do I stop the Defense Finance and Accounting Service (DFAS) from withholding child support payments when my child is past the legal age of majority in the state that issued my support order?
If you are a retired military member and DFAS is issuing payments from your retired pay based on an application under the Uniformed Services Former Spouse Protection Act (USFSPA), 10 U.S.C. § 1408, then the language in the divorce decree that details the child support obligation may determine your next steps.

If the decree states when payments are supposed to stop, that language would be controlling. If it does not state when child support should stop, you will need to go back to court to get an order stopping the child support. There is no federal statute that controls this, so it is up to the state court that issued the order to instruct DFAS to terminate the payments.

If DFAS is issuing payments under the USFSPA and the divorce decree does state that payments will stop upon some condition (usually turning 18 and graduated from high school), then you will need to provide DFAS proof that the condition has been satisfied. Acceptable proof of graduation includes a program from the commencement that lists the child's name, or a letter from the school stating the child has graduated or otherwise left school.

A problem arises when DFAS is withholding pay and issuing support payments under the USFSPA, and the divorce decree orders support payments for more than one child. If the divorce decree does not state how much of the payment goes toward each child individually, then you and your former spouse will have to obtain a modified order instructing DFAS on how to proceed when a child emancipates. If it is not spelled out in the order, DFAS will continue to withhold the full amount of support even if one child is emancipated; emancipation of a child does not automatically result in reduction of the child support order unless the award is specified as an amount per child.

I have been paying my former spouse by a voluntary allotment. Now we have a court order directing payments under the Uniformed Services Former Spouses' Protection Act (USFSPA). Will the voluntary allotment automatically stop when the USFSPA withholding begins?
The voluntary allotment **will not automatically stop**. If you have been paying your former spouse's award by voluntary allotment and your former spouse has been awarded direct payments under the USFSPA, you must notify DFAS Retired and Annuitant Pay to stop the allotment. DFAS has no authority to stop any of a member's voluntary allotments. If your former spouse is overpaid because an allotment is not cancelled in a timely manner, it will be your responsibility to recover any overpayment.

VI. Modification of Support

Child support orders should be fair. When a court or an administrative agency initially establishes a support order, it should set a realistic amount based on the parties' incomes. For an order to remain appropriate over time, it is important for the court or agency to periodically review the order to make sure that it continues to reflect the parties' financial circumstances and child's needs. This chapter discusses laws and procedures available to parents to help ensure orders remain appropriate.

States are required to have procedures for the periodic review and adjustment, if appropriate, of child support orders handled by state child support agencies. A state may satisfy this requirement by:

- Reviewing and, if appropriate, adjusting the order according to the state's support guidelines if the amount of the child support under the order differs from the amount that would be awarded according to the guidelines;
- Applying a cost-of-living adjustment to the order according to a formula developed by the state; **or**
- Using automated methods (including automated comparisons with wage or state income tax data) to identify orders eligible for review, conduct the review, identify orders eligible for adjustment, and apply the appropriate adjustment.

If a state applies a cost-of living adjustment or uses an automated method, the state must have procedures that permit either party to challenge the cost-of-living or automated adjustment, and request a review and, if appropriate, an adjustment according to the support guidelines.

Regardless of the procedure the state uses to conduct a review, one must occur, upon parental request in non-TANF[15] IV-D[16] cases, at least once every three years. Either party may request a review sooner than that based on changed circumstances. A person who has a support order that is not being handled by the child support agency can also file legal papers requesting the court to review the order.

Orders in cases involving service members have a particular need for periodic review. Orders established while a soldier is deployed may be significantly higher due to combat pay and additional allowances based upon deployment. These need to be monitored and modified appropriately to reflect reduced pay when the soldier returns to his or her permanent station. Orders established while a person is in a civilian job may not accurately reflect a person's ability to pay when the National Guard member or reservist is ordered to active duty; the civilian pay income may be much higher or lower than active duty pay.

If your support order does not reflect your current support needs or ability to pay, it is important to check with the local child support agency or court to see if the order is still in line with the state child support guidelines, and to ask how to request a review or modification. You may want

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[15] A non-TANF case is one in which the caretaker is not receiving *Temporary Assistance for Needy Families (TANF)*.

[16] A IV-D case is a case in which the state/local/or tribal child support program established under Title IV-D of the Social Security Act is providing services.

to seek legal assistance. Some states also have procedures for filing a modification request *pro se*, or on your own.

Questions and Answers for Custodial Parents

I am in the Air National Guard and have a full time civilian job. If I earn less money when I'm on active duty, can I ask the court to order the noncustodial parent to pay more support?
Yes. If you know you are being called to active duty and you will earn less income, you can ask to have your child support order modified. Be proactive. Procedures for seeking a modification vary among the states. If a child support agency is handling your case, you can ask the agency to review your order to see if an adjustment is appropriate. If a child support agency is not handling your case, you may apply for IV-D child support services or ask the court if there is a *pro se* process that allows you to complete all the legal paperwork yourself. You may also want to seek legal assistance through the installation's JAG office, a legal advisor, or a private attorney.

When a court or an agency reviews a modification request, it considers the parties' current financial circumstances, the needs of the child, and how those factors fit into application of that state's child support guidelines. Some states use a guideline model that is based on a percentage of the noncustodial parent's income. In those states, a change in your income (as the custodial parent) may not affect the child support order. Most states use a guideline model that considers the combined income of both parents. In those states, your change of income may have more impact on the support award. The court or agency in those states will want to know your anticipated date of deployment, rank and years in service, current civilian income, and whether your employer will provide any compensation or benefits during your deployment. Documentation such as military orders, Leave and Earnings statements, civilian pay stubs, and letters from employers are important to support your request.

To help ensure that your petition is given highest priority, it is advisable to write "Guard/Reserve" or "Expected Deployment Date is X" somewhere on the petition or request.

If my support order is modified, will the Defense Finance and Accounting Service (DFAS) automatically change the amount of income it is withholding from my ex-spouse's military pay?
There is no automatic modification of the income withholding. If your support order is modified, DFAS needs to receive notice of the modification. If a child support agency is handling your case, that agency usually issues the new withholding order. Check with the agency to make sure. Once DFAS receives a copy of an amended income withholding order, it will change the amount of income it withholds from your ex-spouse's military pay.

My child's father is in Iraq. I recently saw a copy of his Leave and Earnings Statement (LES), and he's making a lot more money than when the support order was established. Can I request a modification?
You may request a review and, if appropriate, an adjustment based on changed circumstances. Keep in mind, however, that the current LES may be high because it includes deployment income. Such income is temporary and ends when the deployment ends. The time remaining in the member's deployment may affect your decision about whether to seek a modification. Also keep in mind that if the order is modified upward to reflect a higher income while the member is

in Iraq, the member can request a downward modification upon his return from deployment if his income decreases.

Questions and Answers for Noncustodial Parents

I am in the Air National Guard and have a full time civilian job but I've been called to active duty. Will the amount of my income withholding automatically change when I'm earning less money on active duty?
No. When your income changes, there is no automatic change in the amount of your support order or income withholding. The Consumer Credit Protection Act (CCPA) may limit the percentage of income that can be withheld from your pay. However, that does not affect the amount you have been ordered to pay. You are still responsible for the full amount of the support obligation. That means that if the amount paid through income withholding is less than your support obligation, you are falling behind each month. And support arrears cannot be retroactively modified.

It is very important that you be proactive about your support case. If you know you have been called to active duty and are going to be deployed, notify the child support agency or the court as soon as possible. If you will be earning less income when you are called for active duty, you can request to have your child support order modified. The procedure for seeking a modification varies among the states. In some states, the state child support agency can assist you, including helping with translation of the order. In other states, there is a *pro se* process that allows you to complete all the legal paperwork yourself. You may want to seek legal assistance from a judge advocate, military legal assistance officer, or private attorney. It is important to start this process as soon as possible because there may be delays due to court calendaring or agency workloads.

To help ensure that your petition is given highest priority, it is advisable to write "Guard/Reserve" or "Expected Deployment Date is X" somewhere on the petition or request.

I'm a reservist who has been activated. My active duty pay is less than the civilian pay that my support order is based on. How do I have my child support order changed?
If you earn less income when you are called for active duty, you can request to have your child support order modified. The procedure for seeking a modification varies among the states. In some states, the state child support agency can assist you. In other states, there is a *pro se* process that allows you to complete all the legal paperwork yourself. You may want to seek advice from a judge advocate, military legal assistance officer, or private attorney.

When a court or an agency reviews a modification request, it considers the parties' current financial circumstances, the needs of the child, and the way those factors fit into application of the child support guidelines. Some states use a guideline model based on a percentage of the noncustodial parent's income. Most states use a guideline model that considers the combined income of both parents. Under both models, a change in your income, as the noncustodial parent, may affect the support award. The court or agency will want to know your anticipated date of deployment, rank and years in service, current civilian income, and whether your employer will provide any compensation and benefits during your deployment. Documentation such as military orders, Leave and Earnings statements, civilian pay stubs, and letters from employers will make it more likely that the court will be able to provide appropriate relief.

To help ensure that your petition is given highest priority, it is advisable to write "Guard/Reserve" or "Expected Deployment Date is X" somewhere on the petition or request. If the state has a military liaison, you may also want to contact that person.

How can I file for a modification after I am deployed?
If you decide to file for a modification after you have deployed, check with your JAG officer or available legal advisor for general filing information. If a child support agency is handling your case, you may also contact the agency.

If I file for a modification, will my support order automatically be reduced?
No. Your support order will not automatically be reduced. The court or agency will review the current financial circumstances of both parties, along with the child's needs, and compute the guideline support amount. The review may result in an upward modification, a downward modification, or no change.

If my support order is reduced, will the Defense Finance and Accounting Service (DFAS) automatically reduce the amount of its income withholding?
No. There is no automatic modification of the income withholding. If your support order is modified, DFAS needs to receive notice of the modification. If a child support agency is handling your case, that agency usually issues the new withholding order. Check with the agency to make sure. Once DFAS receives a copy of an amended income withholding order, it will change the amount of income it withholds from your military pay.

I recently received notice that my support order is going to be automatically changed through a cost-of-living adjustment. The notice said something about challenging the proposed amount within a certain time period, but I'm getting ready to deploy. Can I just ignore the notice and take care of everything when I get back?
No, **you should not ignore the notice**. The time frames in the notice have legal consequences. If you have questions about the proposed adjustment, or if you disagree with it, you should seek legal advice through the JAG office, a legal assistance office, or a private attorney. You should also consider contacting the child support agency or court prior to your deployment.

VII. Intergovernmental Cooperation

Service members change locations more than the general population. Because of changes in assignments and deployments, it is common for parents of military families to live in different jurisdictions. They may live in different states. One parent may be a member of a Native American tribe. In some cases, one parent may live in the United States and the other parent may live in a foreign country. These types of child support cases are called intergovernmental cases.

This chapter provides information for custodial and noncustodial parents who live in different jurisdictions. Because an intergovernmental case can be complicated, the Office of Child Support Enforcement (OCSE) recommends that you seek guidance from a legal professional or your local child support agency. The information in this chapter provides an overview of what these types of cases entail. However, it is not a substitute for professional legal advice.

Part One: Interstate/Tribal Cooperation

All state and tribal child support agencies are required to provide child support services as vigorously for children who live outside their borders as for those under their own jurisdiction. State and tribal Central Registry offices receive incoming intergovernmental child support cases, ensure that the information given is complete, send cases to the right local office, and respond to inquiries from out-of-jurisdiction child support offices. Standard forms make it easier for caseworkers and the courts to find the information they need.

When the parents live in different states, there are particular laws that apply. The main laws are the Full Faith and Credit for Child Support Orders Act, which is a federal law, and the Uniform Interstate Family Support Act (UIFSA), which is a state law.

Terminology

The military is known for its use of acronyms. The child support world is no different. Here are some of the most commonly used interstate child support terms and acronyms.

Continuing Exclusive Jurisdiction: This refers to the special type of jurisdiction that a tribunal (see definition below) must have in order to modify a child support order in the interstate context. The term is more commonly known by its acronym, CEJ.

Controlling Order: Sometimes an older case will have two or more valid and enforceable child support orders. The term "controlling order" refers to the order that a tribunal determines is the governing order and therefore entitled to prospective enforcement. The tribunal will make this determination based on rules within UIFSA, and the process is called Determination of Controlling Order (DCO).

Forum State: This refers to the state in which the proceeding is held, or decision made.

Home State: This refers to the child's state of residence for the six months immediately before the filing of the UIFSA action. If the child is less than six months old, this term refers to the state where the child has resided since birth.

Initiating State: This is the state in which a UIFSA proceeding has been filed, for forwarding to a second state, which is called the responding state.

Interstate Case: An interstate case is a case in which two states are involved in processing because the parents live in different states.

Obligee: This is the person to whom a support duty is owed. The obligee is usually the custodial parent.

Obligor: This is the person who owes a support duty. Once an order has been established, the noncustodial parent is often referred to as the obligor.

Registration: This is the process a tribunal uses to file or record a sister state's support order so that it can be recognized, usually as the first step before enforcing or modifying it.

Responding State: This is the state in which a proceeding is filed or heard in response to a pleading from an initiating state.

State: This term, within UIFSA, refers to a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession under the jurisdiction of the United States. The term includes an Indian Nation or tribe.

Tribunal: This is a court, an administrative agency, or a quasi-judicial entity authorized to establish, enforce, or modify support orders, or to determine parentage.

Overview of UIFSA

All states have enacted the Uniform Interstate Family Support Act (UIFSA), which is model legislation.[17] Because the Act has been amended over time, some states have the 1996 version and some have a more recent version. Regardless of which version a state has enacted, the main concepts are the same.

One Order World

Prior interstate laws allowed a court to issue a new support order each time one of the parties moved to a new jurisdiction. This led to conflicting orders that were confusing to parents and judges alike. It was unclear which support amount was controlling; calculation of arrears was a nightmare. The main goal of UIFSA is to create a "one order world." In other words, the goal is for there to be one controlling support order between the parents at any point in time. UIFSA accomplishes that goal through three main concepts:

- A prohibition against new orders when there is already a support order entitled to recognition.
- Determination of the controlling order in old cases where there are already multiple support orders.

[17] The Uniform Law Commissioners develop model legislation, which states have discretion to enact. UIFSA is unique because Congress required states to enact it as a condition of receiving federal funds. Tribes are not required to enact UIFSA as a condition of receiving federal funds to operate their IV-D child support programs.

- Recognition of a state's continuing, exclusive jurisdiction (CEJ) to modify its support order in certain circumstances, and rules for where to seek a modification when there is no state with CEJ.

Evidentiary Provisions

UIFSA recognizes the cost and burden of travel in interstate cases. Therefore, it prohibits a responding tribunal from requiring the physical presence of the petitioner at any hearing. It allows for the admission into evidence of certain documents and records, including their transmission by fax machine. It also permits and, in some circumstances, requires that a tribunal allow a party or witness to testify by telephone, audiovisual means, or other electronic means at a location designated by the tribunal. For example, this means that a person could testify via Skype.

One-State and Two-State Proceedings

In order to establish paternity or a support obligation, a court or an administrative agency must have personal jurisdiction over the alleged father or noncustodial parent. One element of personal jurisdiction is notice. Notice refers to an individual's right to be formally informed of a legal proceeding. Depending upon state law and the type of legal proceeding involved, notice may be by personal service; certified or registered mail; or first class mail. Notice is valid if it satisfies the requirements of the forum state.

The other element of personal jurisdiction is contacts between the forum state and the individual party. When a petitioner files a pleading seeking relief from a tribunal in a state, the petitioner submits to that state's jurisdiction. The contacts between the respondent and the forum state are not always as clear.

A respondent is subject to a tribunal's personal jurisdiction if the person lives there. Fairness dictates that a state has authority to decide cases involving its residents. This is the basis for the two-state process used in UIFSA. Under the two-state process, the petitioner in State A (initiating state) files a support action, often with the help of a child support agency. The action is forwarded to the appropriate court or state child support agency in State B (responding state), which is usually the state where the respondent lives. Two states are involved in processing the case, with the forum state being the state where the respondent lives.

John (petitioner) lives in Iowa and files an action in Iowa against Jane (respondent), which is forwarded to Illinois where Jane resides. Because Jane resides in Illinois, the tribunal in Illinois has personal jurisdiction over her and will oversee the proceedings.

Sometimes a petitioner can file an action that is heard in the state where the petitioner lives, even if the respondent is not a resident of that state. In that situation, the forum state is the state where the petitioner lives. In order for a petitioner to file a proceeding that is heard in his or her own state, the respondent must have sufficient minimum contacts with the petitioner's state so that it is fair for a tribunal in that state to assert personal jurisdiction over the respondent. A long arm statute lists a number of actions by a nonresident that the state considers sufficient minimum contacts between the nonresident and the forum state in order for a tribunal in the forum state to assert personal jurisdiction over the nonresident. It is called "long arm" jurisdiction because the tribunal is "reaching out" and extending its jurisdiction over a nonresident. UIFSA has a long

arm statute listing a number of bases that allow a tribunal to assert personal jurisdiction over a nonresident in a paternity or support establishment case. Under long arm jurisdiction, an *inter*state case (a case involving more than one state) is converted into an *intra*state case (a case handled within one state) because only one state's court or agency is involved in the matter.

Child and Spousal Support

Spousal Support

You can use UIFSA to establish, enforce, or modify both child support and spousal support. However, many states will not enforce a separation agreement through UIFSA; instead, they require a civil action to enforce a contract. State and tribal IV-D child support agencies do not receive federal funds for the establishment of spousal support. Therefore, most child support agencies do not provide services for the establishment of alimony or spousal support. Child support agencies will assist in the enforcement of spousal support if the spousal support is part of a child support order the agency is also enforcing.

Paternity Establishment

One-State Long Arm Action

UIFSA authorizes the establishment of paternity in two ways. If an alleged father has certain minimum contacts with a state (for example, he has resided in the state and provided prenatal expenses or support for the child, or he had sexual intercourse in the state that may have resulted in conception of the child), even if he is not a resident of the state, that state has long arm jurisdiction over the alleged father so a court or an agency in that state can determine paternity. Under long arm jurisdiction, the mother can bring a legal action to establish paternity in the state where she lives, even if the alleged father does not live there. In order to hear the case, the court or agency in the mother's state must find that the alleged father has personal contacts with the state and has received notice of the legal action.

Two-State Action

If the alleged father does not have sufficient minimum contacts with the state where the mother lives, the alternative method is for the mother to use a two-state process. Under the two-state process, she will file the paternity action in the state where the alleged father lives. A child support agency or the court in the mother's state usually will help the mother file the action. Once the alleged father is served, any hearing will be in the state where the alleged father lives.

Support Establishment

If there is no existing support order entitled to recognition, UIFSA authorizes the establishment of a support order in two ways.

One-State Long Arm Action

If the noncustodial parent has sufficient minimum contacts with the custodial parent's state so that the state can exercise long arm jurisdiction, the custodial parent can bring a support action in his or her own state. In order to hear the case, the court or agency in the custodial parent's state must find that the noncustodial parent has personal contacts with the state and received notice of the legal action. If the tribunal determines that the noncustodial parent has a support obligation, it will establish support using its state support guidelines.

Two-State Action
If the noncustodial parent does not have sufficient minimum contacts with the state where the custodial parent lives, the alternative method is for the custodial parent to use a two-state process. Under the two-state process, the custodial parent files a support action in the state where the noncustodial parent lives. A child support agency or the court in the custodial parent's state usually will help the custodial parent file the action. Once the noncustodial parent is served, any hearing will be in the state where the noncustodial parent resides. In this case, the noncustodial parent's state support guidelines will apply.

Support Enforcement

CEJ and Controlling Order
There are two important concepts to UIFSA's one order world: continuing exclusive jurisdiction (CEJ) and controlling order. Both come into play with regard to enforcement and modification.

CEJ means that a tribunal has exclusive jurisdiction to modify its support order. A tribunal has CEJ if it has issued a support order and the individual obligee, obligor, or child continues to reside in the state where the order was issued.

CEJ = order + individual party or the child lives in the state.

The controlling order is the order that governs current support.

Enforcement When There is One Order
When there is only one support order, that order is the controlling support order in the case. That order can be enforced in any state. Even if both parties have moved away from the state that issued the order, the order remains the controlling, enforceable order.

Enforcement When There are Multiple Orders
For cases that arose prior to 1994[18], there may be more than one support order in the case and those orders may have been issued by different states. The noncustodial parent/obligor is responsible for paying the highest amount of any of those existing support orders; states should credit payment for a particular time period against the same time period under any other ongoing support orders in effect. In other words, a person does not have to pay twice.

When there are several orders in effect involving the same parties and child, either party can ask a tribunal to determine which is the controlling order. UIFSA has rules that a tribunal must follow in determining the controlling order. Until that determination is made, the noncustodial parent must comply with all existing support orders and, as noted above, must pay the highest amount. Once a tribunal makes that determination, the controlling order will govern the support amount the obligor must pay going forward. The initially determined controlling order will also govern the *duration* of the support obligation, that is, how long the noncustodial parent must pay

[18] Congress enacted the federal Full Faith and Credit to Child Support Orders Act (FFCCSOA) in October 1994. On that date, every state was required to follow the federal law. FFCCSOA established rules for determining the controlling order and modification jurisdiction that are consistent with the rules in UIFSA, which is a state law that was enacted by all states after FFCCSOA.

support. Arrears under the other old orders are still enforceable, up to the point that a determination of controlling order is made.

Enforcement Remedies

UIFSA authorizes both one-state and two-state enforcement remedies. A one-state enforcement remedy is direct income withholding. Under direct income withholding, an employer must comply with an income withholding order that it receives from a state, regardless of whether the employer does business in the state that issued the order. The withholding order may include provisions for the payment of current support and arrears, as well as medical support in the form of a periodic cash payment or health insurance coverage. Direct income withholding allows the enforcement action to take place without involving the child support agency or court in the employer's state. Direct withholding is beneficial because withholding begins quickly and bypasses what is often a time-consuming interstate process.

UIFSA provides the noncustodial parent/obligor an opportunity to challenge the direct income withholding, but the parent must raise the challenge in the state where the employer is located. If the parent challenges the withholding, the tribunal or child support agency in the employer's state will become involved.

Registration for enforcement is the two-state enforcement process under UIFSA. Under this procedure, a state's support order is registered, or filed, in a second state where the noncustodial parent has income or assets. The noncustodial parent receives notice of the registration and has an opportunity to contest the registration, the validity of the registered order, or the statement of arrears under the registered order. If the noncustodial parent does not timely raise a valid defense, the registered order is confirmed. The court or agency in the second state can enforce the registered support order using any enforcement remedies available under the laws of the second state.

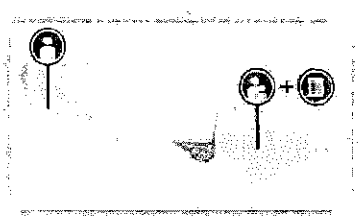
If an order is registered for enforcement, it is not subject to modification. If either party wants a modification, that person must follow UIFSA's procedures for modification.

Modification

UIFSA recognizes that there are times when a party wants to change a support order. In order to make sure that there is only one controlling support order in a case, UIFSA outlines when a court or an agency has jurisdiction to modify a previous ruling.

One Support Order

As noted earlier, an important concept in UIFSA is continuing, exclusive jurisdiction (CEJ). A tribunal has CEJ to modify a support order if it issued that support order and at least one of the following—the individual obligee, obligor, or child—continues to reside in that state. As long as a tribunal has CEJ, no tribunal in another state can modify that support order.



An example will help explain the concept. Assume that there is a Texas divorce decree awarding the father custody and ordering the mother to pay him child support. Later, custodial parent Dad decides to remain in Texas with the child when Mom gets transferred to California. As long as Dad continues

to live there, Texas has continuing, exclusive jurisdiction to modify its order. Dad can enforce the order in any state where the mother has property or assets, but no other state can modify the order.

A tribunal "loses" CEJ when all of the individual parties and child(ren) move away or when the individual parties file a written consent with the tribunal that issued the order to have another state exercise modification jurisdiction and assume CEJ. If the state that issued the order no longer has CEJ, the party seeking modification usually must register the support order in the state where the other party lives.

More than One Support Order

For cases that arose prior to 1994, there may be more than one support order in the case and those orders may have been issued by different states. If a party wants to modify an order, it is important to know which state is the proper place for filing the modification request or petition. If you are the person wanting to change the support order, an attorney or a child support agency can help you determine where to file the modification request.

Exceptions to Modification Rules

There are three exceptions to UIFSA's modification rules:

- First, the rules only apply to modification of child support orders. UIFSA has a separate provision governing modification of spousal support orders. Only the original issuing tribunal has CEJ to modify the spousal support order. (NOTE: Child support agencies do not handle the modification of spousal support orders. However, an individual can file a petition for modification using a private attorney or filing *pro se.*)
- The second exception applies when there is a written agreement between the parties. Even if there is a CEJ state, the parties can file written consent in the state that issued the order for another state to modify the order and assume CEJ so long as one of the parties or child is subject to the personal jurisdiction of that second state.
- The third exception applies when there is one support order, no party or child lives in the issuing state, and now everyone lives in the same state. Under UIFSA, the party seeking a modification can register the support order in the state where everyone is living. Going back to our example above, if Dad and the children move to New Jersey, Mom or Dad can register the support order in New Jersey for the purpose of modification.

Registration for Modification

As noted above, if there is no CEJ state, a petitioner wanting a modification usually registers the controlling support order in the respondent's state for the purpose of modification. Along with the registration request, the petitioner can seek enforcement of any arrears under the existing support order(s).

Limitations on Modification

The registering tribunal cannot modify any aspect of the support order that the law of the issuing state would not allow to be modified, including the duration of the obligation of support. The law of the state that issued the initial controlling order determines the duration of support. Once an obligor fulfills that duty, a state cannot place a new support obligation on the obligor by establishing a new support order.

Example: A support order is registered in a state where the support duty ends at age 21. The law of the state that issued the order provides that the support duty ends at the later of age 18 or

graduation from high school. Once the child graduates, the registering court cannot modify the order and establish a new support obligation to age 21.

Applicable Support Guidelines
The law of the forum state (the state in which the proceeding is held) will govern the modification proceeding. That means that the support guidelines of the state conducting the modification proceeding will determine the new support amount.

The Full Faith and Credit for Child Support Orders Act

The Full Faith and Credit for Child Support Orders Act (FFCCSOA), 28 U.S.C. § 1738B, is a federal law that does not require states to pass legislation in order to implement it. Rather, it became law governing all states as soon as then President Bill Clinton signed it in October 1994. It therefore preceded most states' enactment of UIFSA. FFCCSOA includes UIFSA's framework for reaching one controlling order.

Unlike UIFSA, FFCCSOA applies to Indian tribes as well as to states. The result is that courts of all United States territories, states, and tribes must give full faith and credit to a child support order issued by another state or tribe that had jurisdiction over the parties and the subject matter. Full faith and credit means that the tribunal must recognize the order as valid and enforce it.

Tribal Cases

As sovereign nations, tribes have a unique relationship with the federal government. For the first time in the history of the Title IV-D program, the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 authorized tribes and tribal organizations to operate full service child support programs. Many tribes operate such programs. These programs are listed on OCSE's Intergovernmental Reference Guide web page by tribe, https://extranet.acf.hhs.gov/irg/welcome.html, and on the State and Child Support Agency Contacts page by state, www.acf.hhs.gov/programs/css/resource/state-and-tribal-child-support-agency-contacts.

Storytelling for Healing, a website developed by the Administration for Native Americans, provides information on many topics important to Native American veterans, such as a historical perspective with statistics from previous wars; Post-Traumatic Stress Disorder; the role of ceremony in service and healing; and resources for Native American veterans. The website also provides a DVD that includes interviews with individual veterans discussing issues they face today. See www.acf.hhs.gov/programs/ana/resource/native-american-veterans-storytelling-for-healing-0?page=1.

Questions and Answers for Custodial Parents

My divorce order was issued in Florida, but now my active duty ex-spouse is assigned to Fort Hood, Texas. Can the order still be enforced?
If you have a valid divorce order issued by Florida, it can be enforced in any state where your ex-spouse has income and assets. One particularly appropriate enforcement remedy is income withholding. If the Defense Finance and Accounting Service (DFAS) receives a copy of the income withholding order, it can begin withholding support from your ex-spouse's military

income. The order is enforceable, even if your ex-spouse no longer lives in the state that issued the support order.

My support order was established in Texas. I am active duty military. The children and I are now stationed in Virginia. My ex-husband is still living in Texas. I've heard he has changed jobs and is making more money now. I could really use an increase in support since the children are older. How wonld I go about getting the Texas order modified?
The Uniform Interstate Family Support Act contains rules for determining the appropriate place to seek modification. Assuming the Texas order is the only order entitled to recognition, the important question is "Where do the parties and child live?" If an individual party or a child still resides in the state that issued the order, that state has continuing, exclusive jurisdiction to modify the order. Because your ex-husband is still living in Texas, the state that issued the support order, Texas is where you must file your modification action. You may contact your local child support agency or court for help. Note: Texas child support guidelines will determine the amount of any modification.

The only exception is if **both** you and your ex-husband request that the modification action be heard in another state, such as Virginia, by filing a written consent.

My support order was established in Texas. The children and I are now living in Louisiana. My ex-husband, who is active duty military, is now stationed in Georgia. I could really use an increase in support since the children are older. How would I go about getting the Texas order modified?
The Uniform Interstate Family Support Act contains rules for determining the appropriate place to seek modification. Assuming the Texas order is the only order entitled to recognition, the important question is "Where do the parties and child live?" If no party or child still resides in the state that issued the order (Texas in this example), that state no longer has continuing, exclusive jurisdiction to modify the order. Since you are the one seeking modification, you must register the support order in a state—other than your own state of Louisiana—that has jurisdiction over your ex-husband. In other words, you would register the Texas order in Georgia for modification. You may contact your local child support agency or court for help. Because any hearing will be held in Georgia, Georgia child support guidelines will determine the amount of any modification.

My boyfriend is in the military. If his home of record is Tennessee, is that state also considered his physical residence?
A service member's home of record is usually the state in which the member enlisted or the member has family ties. The home of record is not necessarily where the member is physically stationed. A state other than the home of record may have personal jurisdiction over a member for legal proceedings. You may contact your local child support agency or court for help in determining which state would have jurisdiction.

I am a member of the Navajo Nation and have a tribal support order. My former boyfriend is stationed at Fort Carson, Colorado. Will Colorado enforce my tribal support order?
Yes. States and tribes are required by federal law to recognize and enforce each jurisdiction's valid support orders. You can apply for services with a tribal child support program or with a state child support program. For a list of tribal and state child support agency contacts, go to www.acf.hhs.gov/programs/css/resource/state-and-tribal-child-support-agency-contacts. Either jurisdiction will assist you in enforcing the tribal support order. One particularly effective

enforcement remedy is income withholding. If the Defense Finance and Accounting Service (DFAS) receives a copy of the tribal income withholding order, it can begin withholding support from your former boyfriend's military income.

Questions and Answers for Noncustodial Parents

I am getting ready to deploy and want to ensure my child has access to health care while I'm gone. I know I need to take a copy of my paternity acknowledgment form with me to the military ID card issuance site in order to establish dependency, but I signed it in a different state. How can I get a copy of the form that I signed?
You may be able to get a copy of your signed paternity acknowledgment through the child support office that is handling your case. If your state agency has a military liaison, contact that person since the liaison will understand the urgency of a pending deployment and may have resources for expediting the request. Unfortunately, in states that are closed record states, it may be difficult to get a certified copy of the signed acknowledgment without a court order. In these states, the original form, along with the child's birth certificate, is placed in a sealed file. The Vital Records Office will not provide a copy without a court order. Your base legal assistance office may be able to offer guidance.

My support order was established in Texas. The children and my ex-spouse are still living there, but I'm active duty and am now stationed in Virginia. If I want to ask for a reduction in support, can I file here in Virginia?
The Uniform Interstate Family Support Act contains rules for determining the appropriate place to seek modification. Assuming the Texas order is the only order entitled to recognition, the important question is "Where do the parties and child live?" If an individual party or a child still resides in the state that issued the order, that state has continuing, exclusive jurisdiction to modify the order. Because your ex-spouse is still living in Texas where the support order was issued, Texas is where you must file your modification action. The only exception is if you and your ex-spouse file a written consent requesting that the modification action be heard in another state, such as Virginia. You may contact your local child support agency or court for help. Note: If the hearing is in Texas, Texas child support guidelines will determine the amount of any modification.

My support order was established in Texas. The children and my ex-spouse are now living in Louisiana. I'm stationed in Georgia. How would I go about getting the Texas order modified?
The Uniform Interstate Family Support Act contains rules for determining the appropriate place to seek modification. Assuming the Texas order is the only order entitled to recognition, the important question is "Where do the parties and child live?" If no party or child still resides in the state that issued the order (Texas in this example), that state no longer has continuing, exclusive jurisdiction to modify the order. Since you are the one seeking modification, you must register the support order in a state—other than your own state of Georgia—that has jurisdiction over your ex-spouse. In other words, you would register the Texas order in Louisiana for modification. You may contact your local child support agency or court for help. Because any hearing will be in Louisiana, Louisiana child support guidelines will determine the amount of any modification.

I just got served with notice that a Florida support order has been registered in my state for enforcement. The amount of arrears stated is all wrong. But I'm getting deployed in a week and don't have time to take care of this. Can I just ignore the notice, and take care of it when I get back? Doesn't the Servicemembers Civil Relief Act (SCRA) protect me?
If you have been served with a notice of registration for enforcement, **do not ignore it**. The notice contains important timeframes. If you do not challenge the amount of arrears within that time period, the arrearage amount will be confirmed and you will be unable to challenge it later.

Some military members mistakenly believe that the SCRA automatically protects them from all legal actions. **A stay (the legal term for a postponement) under the SCRA is not automatic**. The SCRA provides for a stay of at least 90 days upon a proper request from the member in administrative and civil matters. If you are unable to appear in a court or in an agency proceeding on the date required because of your active military service, you must request this SCRA protection in writing and include certain information with the request. See Chapter VIII of this document for more on the Servicemembers Civil Relief Act. A judge advocate or legal assistance officer should also be able to provide advice.

Part Two: International Cases

With the ease of international travel, increase in international businesses, and mobility of our military troops, states and the federal government have had to develop legal mechanisms and procedures for handling international child support cases.

Bilateral Agreements

The federal government has the authority to enter into written agreements with foreign countries for the purpose of enforcing family support obligations. Such countries are referred to as "foreign reciprocating countries" or FRCs.

The one condition is that the country must have established, or begun to establish, procedures for the establishment and enforcement of support for residents of the United States.[19] These procedures must include:

- Procedures to establish child support orders, including procedures to establish paternity if necessary to establish a support order;
- Enforcement procedures;
- Collection and distribution processes for support payments;
- Cost-free services, including administrative and legal services; **and**
- A designated agency to serve as the Central Authority to facilitate enforcement.

Once such a declaration is made, IV-D child support agencies in the United States must provide child support services to such FRCs as if the request for service came from a U.S. state.

An up-to-date list of countries with which the United States maintains reciprocal agreements is available through the web site of the federal Office of Child Support Enforcement

[19] See 42 U.S.C. § 659A.

(www.acf.hhs.gov/programs/css/resource/foreign-reciprocating-countries). As of February 2013, the following countries and Canadian provinces or territories have been designated an FRC:

Australia

Canadian Provinces/Territories

Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland/Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island, Saskatchewan, Yukon

Czech Republic

El Salvador

Finland

Hungary

Ireland

Israel

The Netherlands

Norway

Poland

Portugal

Slovak Republic

Switzerland

The United Kingdom of Great Britain and Northern Ireland

The Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance

Recently, the United States actively participated in negotiations to develop the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance. The Convention requires Contracting Countries to:

- Establish, enforce, and modify child support orders;
- Enforce spousal support orders if they are connected to a child support order;
- Allow spouses to seek relief directly with the courts (not through a government agency) to establish spousal support.

In 2010, the U.S. Senate approved the Resolution of Advice and Consent to the president regarding the Hague Convention. Additional steps must occur before the Treaty can enter into force for the United States.

State Reciprocity Arrangements

UIFSA authorizes the international enforcement of support obligations. Many states have established reciprocal arrangements for child support with foreign countries that are not federally recognized FRCs, for example, the Federal Republic of Germany. Even where there is no reciprocal arrangement, a court can decide to enforce a foreign order if it determines that the foreign jurisdiction has a law or procedures that are substantially similar to UIFSA and satisfy due process.

State Child Support Agency Services

An individual in a foreign country can also apply directly to a state child support agency for child support services. The agency must treat such a request like a request from a resident of another state.

Status of Forces Agreement (SOFA)

The previously mentioned agreements and conventions are child support specific and are not directly related to the military. In contrast, the military often operates under a status of forces agreement, which is an agreement between a host country and a foreign nation with forces stationed in that country. The SOFA is meant to clarify how the foreign military is allowed to operate in the host country. It addresses a number of issues, including legal issues associated with the military such as civil and criminal jurisdiction over the bases. In civil matters, such as the establishment of a child support order, it is not uncommon for the SOFA to provide that courts of the host country have jurisdiction over U.S. personnel and family members stationed in that country. How detailed the SOFA is depends in large part upon how long-term the military presence in the host country is expected to be. Each SOFA is negotiated separately with the host country, although the United States has a multilateral SOFA with NATO members. The United States currently has more than 90 SOFAs.

Questions and Answers for Custodial Parents

I am a U.S. service member. While I was deployed abroad, I was intimate with a man from that country and got pregnant. Now that the child is born, I need financial assistance for the child. Can I file a support action against a man who lives in another country?
Yes. You can apply for child support services, and the child support agency will assist you in filing an action. You may also consider hiring a private attorney. If the man has no contacts with the United States that would provide a basis for jurisdiction, you will need to file the action in a country with jurisdiction over him. That will most likely be the country where he lives. That means you will be dependent upon another country's laws, procedures, and legal system.

The U.S. Government has negotiated federal-level reciprocity declarations with several countries. The website for the federal Office of Child Support Enforcement (OCSE) lists countries with which the U.S. has agreements. See www.acf.hhs.gov/programs/css/international. If there is not a federal agreement, check with your state child support agency to determine if there is a state-level agreement with the country in question. OCSE's Intergovernmental Reference Guide includes information about these international-level agreements. See www.acf.hhs.gov/programs/css/irg-state-map.

These international child support agreements specify procedures for establishing and enforcing child support orders across borders. While requirements for establishing paternity and a support order vary depending on the other country involved, you will need to provide some of the same information as in a domestic case. You should include as much specific information as possible about paternity, your income, and the alleged father's location, income, and employment.

Please be aware that international cases usually take longer to process than domestic cases and the level of help provided foreign petitioners, such as you, will vary greatly.

I am on active military duty. I want to file a UIFSA support establishment action in the state where I am assigned against a man who lives in another country. Can I make the man appear in the state court UIFSA proceeding?
No. Under the Uniform Interstate Family Support Act (UIFSA), the physical presence of a nonresident party is not required for the establishment of a support order. Therefore, a state court cannot require the man to attend if he resides in a foreign country, even if he has been served and is subject to the personal jurisdiction of the state court. In your case, UIFSA (2001) allows the man who lives in another country to testify under penalty of perjury by telephone, audiovisual means, or other electronic means.

I went to my local child support agency for help in filing a support action against a man in another country. How long will it take to get a support order?
There is no easy answer. U.S. child support agencies must meet certain case processing timeframes. These federal regulations, however, do not apply to foreign countries. The Hague Convention requires timely processing of cases and contains timeframes for providing certain status updates, but it does not contain timeframes for establishing an order.

Questions and Answers for Noncustodial Parents

I am a soldier stationed in the Federal Republic of Germany (Germany). Recently a German woman obtained a German judgment against me as a result of a paternity action declaring me to be the father of her child and ordering me to pay 143 Euro per month in child support. An American military legal assistance officer has told me that Germany validly acquired jurisdiction over me. Do I have to comply with the order while I'm stationed here?
Yes. You are required by Army regulations[20] to comply with a foreign support order if:

- The foreign court order has been recognized and enforced by a court within the United States; **or**
- The United States has agreed in a treaty or international agreement to honor valid financial support orders entered by the courts of a particular foreign nation. (For the purpose of this provision, this regulation enforces court orders on financial support issued by German courts with regard to soldiers assigned to and present for duty within that country.)

Therefore, if Germany validly acquired jurisdiction over you, you are required to comply with the order and provide financial support to the child in the dollar equivalent of 143 Euro per month. In addition, while stationed in Germany, you may have the dollar equivalent of 143 Euro withheld from your pay each month if you fail to comply voluntarily with the court order (by virtue of the U.S. Army's honoring and implementing the German court garnishment order pursuant to the governing status of forces agreement).

I am in active service with the Army. I was briefly married to a woman from a foreign country. She has returned to that country and obtained a child support order against me. Do I have to comply with the order? I'm currently stationed in the United States.

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[20] See AR 608-99, paragraph 2-4.

The Army Regulation (AR) covering these situations, AR 608-99, does not require a soldier to comply with a foreign court order on financial support except in either of the following situations:

- The foreign court order has been recognized and enforced by a court within the United States.
- The United States has agreed in a treaty or international agreement to honor valid financial support orders entered by the courts of a particular foreign nation. (For the purpose of this provision, this regulation enforces court orders on financial support issued by German courts with regard to soldiers assigned to and present for duty within Germany.)[21]

Therefore, you only have to comply with the foreign order if it meets one of those situations.

However, the regulation does offer this strong warning, "a soldier who fails to comply with the financial support provisions of a foreign court order, regardless of whether it is enforced by this regulation, does so at his or her own peril. This is particularly true if the soldier is within the jurisdiction of the foreign court or if the foreign court order is later recognized and enforced by a court within the United States."[22]

If you are involved in a case where there is a court order from a nation that the U.S. does not have a child support reciprocity agreement with and no U.S. state has recognized or enforced the order, the regulation goes on to provide the following guidance: "a soldier is in compliance with this regulation if he or she is providing financial support in an amount required by the foreign court order or by this [Army] regulation, whichever is less."[23]

While I was stationed in the Federal Republic of Germany, I was intimate with a German woman. I have since been reassigned to an Army installation in the United States. Recently I received a copy of a German support order for a child I never even knew she had. What do I do?

You should seek legal advice through the JAG Office or Legal Assistance Office, or from a private attorney.

Army regulations[24] require you to comply with a foreign support order if:

- The foreign court order has been recognized and enforced by a court within the United States; **or**
- The United States has agreed in a treaty or international agreement to honor valid financial support orders entered by the courts of a particular foreign nation. (For the purpose of this provision, this regulation enforces court orders on financial support issued by German courts with regard to soldiers assigned to and present for duty within that country.)

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[21] Id.

[22] AR 608-99, paragraph 2-4(d).

[23] AR 608-99, paragraph 2-4(e).

[24] See AR 608-99, paragraph 2-4.

In order for the German order to be recognized by the United States, you must have received due process under U.S. laws. At a minimum, that means you must have received notice of the German action, and Germany must have had personal jurisdiction over you.

If the mother registers the German court order in the United States for enforcement, and the U.S. court finds that you have raised a valid defense to the order, the German order will not be enforceable against you in the United States. Even if a U.S. court determines that the German order is not enforceable in the United States, this does not prevent the U.S. court from establishing a U.S. support order against you if it determines you have a support obligation to this child. That order may also include retroactive support, depending upon the laws in the state conducting the hearing. Remember also that Germany will still consider the order enforceable. If you travel within the European Union, Germany may seek to enforce the order against you.

If you raise a defense to the registration and enforcement of the German order, but the U.S. court finds that you do not have a valid defense and thereby confirms the order, then the German order will be binding upon you in the United States and you must comply with the financial support provisions of the order.

A woman in the Philippines, where I was once stationed, has filed a UIFSA support action against me in Virginia where I now reside. Can I make her appear in the state court UIFSA proceeding?

No. Pursuant to the Uniform Interstate Family Support Act (UIFSA), the physical presence of a nonresident party is not required for the establishment of a support order. Therefore, the Virginia court cannot require the woman to attend if she is residing in a foreign country, even if she is the petitioner. In your case, UIFSA (2001) allows the woman who lives in the Philippines to testify under penalty of perjury by telephone, audiovisual means, or other electronic means.

I am in the United States. A foreign support order was issued against me. It was registered for enforcement in the state where I currently am stationed. The U.S. court found that the foreign country had personal jurisdiction over me, and it recognized the foreign support order. When I am paying support, what date should be applied for converting the foreign country's order amount into a U.S. dollar amount? The date the foreign country entered its order? The date the order was recognized in the United States? Each time I make a payment?

There is no federal law or regulation on this issue. The Uniform Interstate Family Support Act (UIFSA) and the Hague Convention do not address it. The court or agency will base its decision on state law and procedure. While the U.S. court may order you to pay a set amount of support in U.S. dollars, keep in mind that the court is setting an equivalent amount to the foreign currency amount. Whether payment of the equivalent amount fulfills your support obligation under the foreign order will be determined by the foreign court, based on full payment in the currency of the foreign order.

VIII. The Servicemembers Civil Relief Act

The Servicemembers Civil Relief Act (SCRA), formerly known as the Soldiers' and Sailors' Civil Relief Act, is a federal law that provides protections to individuals in military service. It is found at 50 U.S.C. app. 501 *et seq*. It is not found in state statutes. The law's purpose is to postpone, suspend, terminate, or reduce the amount of certain civil obligations so that members of the armed forces and certain other individuals can focus their full attention on their military or professional responsibilities without adverse consequences for themselves or their families. The key provisions of the SCRA that apply to cases involving family law are Sections 201, 202, 204 - 207 (codified at 50 U.S.C. app. §§ 521, 522, 524 - 527).

This chapter will provide an overview of the SCRA. Keep in mind that the rights extended under the SCRA are sometimes complicated. If you are a service member, it is important to get advice from your military legal assistance office about how the SCRA applies to your own circumstances. For example, the SCRA frequently conditions the availability of certain rights on whether your ability to meet certain obligations is "materially affected" by your military service. Whether you are "materially affected" can mean different things in different situations. A legal assistance attorney will help you understand your rights under the SCRA and can help you enforce those rights.[25]

At the end of the chapter, you will find websites for additional information as well as sample letters for invoking the SCRA.

Legislative History

The SCRA, enacted in 2003 and amended several times since, revised and expanded the Soldiers' and Sailors' Civil Relief Act of 1940 (SSCRA), a law designed to ease financial burdens on service members during periods of military service. The SCRA enables service members to devote their time and attention to the defense needs of the Nation by providing protections related to such things as rental agreements, security deposits, prepaid rent, evictions, installment contracts, credit card interest rates, automobile repossessions, mortgage interest rates, mortgage foreclosures, civil judicial proceedings, automobile leases, life insurance, health insurance, and income tax payments.

In November 2009, the Military Spouses Residency Relief Act (MSRRA) became law and amended the SCRA. This new law changes some basic rules of taxation that may affect service members and their spouses. Because the law is complicated and its effect will depend on the interpretations of each state, service members and their spouses are encouraged to seek advice from a military legal assistance office.

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[25] From an article on the Servicemembers Civil Relief Act, prepared for Military OneSource with the assistance of Shawn Shumake, Colonel, US Army, Director, Office of Legal Policy, Office of the Under Secretary of Defense (Personnel and Readiness), Christopher Garcia, former Director, Office of Legal Policy, and Christopher B. Rydelek, former Head, Legal Assistance Branch, Judge Advocate Division, Headquarters, U.S. Marine Corps. See www.militaryonesource.mil/moving?content_id=267394.

The most recent amendments to the SCRA were in the Veterans Benefits Act of 2010. One change is an improvement of the ability for service members to terminate cell phone contracts. Basically, any time a member gets orders to go somewhere where he or she cannot get cell phone service for more than 90 days, the member has the right to terminate the contract. In addition, if the service member is on a family plan and moves or deploys, the service can be terminated by the member's mother or father, or whoever is paying for the plan. Another change is that Congress clarified the statutory language regarding the question of early termination charges on residential leases. The new language leaves no doubt that early termination charges are prohibited.

Protected Individuals

The SCRA protects all service members on federal active duty, including:

- Members of the U.S. Armed Forces (Army, Navy, Air Force, Marine Corps, and Coast Guard) who are on active duty status, or who are absent from duty as a result of being wounded or being granted leave;
- Reserve, National Guard, and Air National Guard personnel who have been activated and are on federal active duty;
- National Guard personnel under a call or order to active duty for more than 30 consecutive days under section 502(f) of Title 32, United States Code, for purposes of responding to a national emergency declared by the president and supported by federal funds;
- Public Health Service and National Oceanic and Atmospheric Administration Officers detailed for duty with the armed forces.

Actual deployment while in active military service is not a prerequisite to qualify for the protections of the SCRA.

If you have questions about whether you are covered under the SCRA, contact your nearest Armed Forces Legal Assistance Program office. You can find the nearest location at http://legalassistance.law.af.mil/content/locator.php.

If you fall into one of the above categories, the SCRA may also afford certain protections to your dependents, including your spouse, your children, and any individual for whom you provided more than one-half of his or her financial support for the past180 days. Extension of SCRA protections to dependents varies from section to section of the SCRA.

The SCRA does not protect you or your dependents if you are a civilian working for the Department of Defense or a contractor.

Key Parts of the SCRA Related to Child Support and Access/Custody Proceedings[26]

Court and Administrative Proceedings

The SCRA provides for an automatic stay of at least 90 days upon a proper request from the member in civil administrative and judicial matters. The member who is unable to appear in court or an administrative hearing on the date required because of active military service must request this SCRA protection in writing and include certain information with the request. After receiving the written request, the judge, magistrate, or hearing officer **must** grant a minimum 90-day delay. This delay is mandatory under the SCRA, unlike the SSCRA, and the member's letter requesting postponement is not an appearance or waiver of any defense by the member. Any additional delay beyond the mandatory 90-day period is within the discretion of the judge, magistrate, or hearing officer.

"This provision is of obvious benefit to members of the Guard and Reserves who are in the middle of litigation but called to rapidly mobilize. It is of benefit to members of the active component when they face suit while deployed or otherwise when they are a significant distance from the courtroom.[27]" [28]

This protection does not apply to criminal court or criminal administrative proceedings. You should consult with a legal assistance attorney for the strict statutory requirements before requesting a stay.

Default Judgments

A member may request the court or agency to re-open a matter and set aside a default judgment if the judgment was entered against the member during the member's period of military service[29] or within 60 days after termination of or release from such military service.[30] The member must send a timely request for such relief (i.e., within 90 days from release from active duty), show the active service materially affected the member's ability to defend against the action, and show that he or she has a good defense. You should consult with a legal assistance attorney to obtain information on possible relief available to you.

Reduced Interest

A member may reduce the higher interest rates the member pays for any financial obligation (for example, a credit card, loan, mortgage) individually or jointly entered into **before** active service

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[26] The information in this section is largely excerpted from information provided on the website of the U.S. Air Force Legal Assistance. See the SCRA Fact Sheet at https://aflegalassistance.law.af.mil/lass/lass.html.

[27] This is not to say that distance from the proceeding will necessitate a stay, but merely a brief comment on the law's obvious utility.

[28] Section 3-5 of The Servicemembers Civil Relief Guide, JA 260, prepared by the Administrative and Civil Law Department, The Judge Advocate General's School, United States Army, Charlottesville, Virginia (March 2006).

[29] Reserve Component personnel are entitled to most of the Act's "rights and protections" on the date they receive active duty orders, which is before actual active duty. See 50 U.S.C. app. § 516.

[30] 50 U.S.C. app. § 521.

to six percent if active service materially affects the member's ability to repay the financial obligation. In addition, the SCRA prohibits the lender from accelerating the principal amount owed, and forgives (vs. defers) the excess interest payments that would have been due under the higher interest rate so that the member is not liable for the excess after he or she is released from active service. This reduced interest rate is effective only during the period of active military duty for most obligations; however, for a mortgage obligation, the reduced interest rate continues for one year following release from military service. Finally, this reduced rate does not apply to financial obligations (including refinancing or credit card balance increases) entered into or accrued while on active service.

Insurance

The SCRA provides for reinstatement of health insurance without waiting periods or other penalties, provided the insurance was effective before the active duty period, the insurance was terminated during the active duty period, and certain other conditions exist. The SCRA also provides protection against termination of policy or forfeiture of premiums to members who have individual life insurance policies. For SCRA protection for life insurance policies, the member must submit a written request to the Department of Veteran Affairs.

Domicile (Legal Residence)[31]

The SCRA continues the protection the SCRA granted for domicile and residence. Do not confuse legal residence (domicile) with residence. A person can have as many residences as he/she can afford, but can have only one legal residence (domicile). The domicile is the state where the member resided at some point in time and, while residing there, formed the intent to return to the state after his or her military service ends and remain there indefinitely. Generally, the domicile is the state entered in the member's pay records. A member can maintain the domicile or legal residence in the state in which the member resided before entering active duty. A member does not lose the domicile (legal residence) in a state when absence from that state is due to military orders. A member, however, can change his or her domicile if the member meets the conditions for changing legal residence.

Start and Termination of Protections[32]

The following information is quoted from a guide prepared by the Judge Advocate General's School, U.S. Department of the Army:

> Although the SCRA's protections commence no later than when a person enters active military service, there are provisions which expand this coverage. Reserve Component personnel, for example, are entitled to most of the Act's "rights and protections" on the date they receive active duty orders.[33] . . . Furthermore, a servicemember is protected

[31] The issue of residence is relevant for the purpose of a court's determination of personal jurisdiction. A court must have personal jurisdiction over someone to establish paternity, or to establish a support order.

[32] Information in this section is copied from Section 2-3 of The Servicemembers Civil Relief Guide, JA 260, prepared by the Administrative and Civil Law Department, The Judge Advocate General's School, United States Army, Charlottesville, Virginia (March 2006).

[33] 50 U.S.C. app. § 516(a).

even during "any period which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause."[34]

The SCRA's coverage *normally* terminates "on the date on which the servicemember is released from military service or dies while in military service."[35] Other sections of the Act qualify this "period of military service." For example, the protection calling for the stay of a civil proceeding extends for "90 days after termination of or release from military service."[36] As to default judgments, "[a]n application [to set aside a default judgment] . . . must be filed not later than 90 days after the date of termination of or release from military service."[37] Importantly, even when the member has left the service, the right to challenge the default extends for an additional 60 days.[38]

Invoking the SCRA

Many of the SCRA protections are not automatic. It is wrong to assume that, because a person is a service member, the member can ignore a court summons or a support order entered in the member's absence. The SCRA does not protect the member from all judicial proceedings. It is important for the member to be proactive about legal proceedings.

Remember, many SCRA protections require the member to request the protection in a timely manner. For certain SCRA protections (such as interest rates), the member also may have to show that the active military service materially affects his or her ability to pay.

There are times when a service member will want to participate in a hearing rather than asking for a delay. Such is the case when the service member is asking for a modification of child support or alimony due to financial difficulties imposed by deployment, or by mobilization if the person is a Guard/Reserve member. The reduction in pay that most Guard/Reserve members face frequently leads to support arrears with no ability to ask the court to retroactively modify the order since federal law provides that any missed support payment becomes a judgment. In many states, the issue of modification can be resolved without a court hearing on the basis of financial affidavits and supporting documentation provided by the parties and other witnesses. Where a member wishes to give "live" testimony, the member or the member's attorney should explore any options available for taking testimony electronically. In addition to the telephone, a service member sometimes can obtain access to video teleconferences (VTCs) at commercial or command facilities that allow real-time audiovisual interaction. Testimony via SKYPE is also a possibility. Section 316(f) of the Uniform Interstate Family Support Act (UIFSA) provides for parties to "testify by telephone, through audiovisual means or by any other electronic means."

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[34] 50 U.S.C. app. § 511(2)(C).

[35] 50 U.S.C. app. § 511(3).

[36] 50 U.S.C. app. § 522.

[37] 50 U.S.C. app. § 521(g)(2).

[38] 50 U.S.C. app. § 521.

The SCRA is a broad act, addressing many issues affecting service members such as foreclosure, eviction as a renter, apartment leases, motor vehicle leases, and cell phone contracts. The U.S. Department of Justice (DOJ), Civil Rights Division, has developed general questions and answers about the SCRA that are accessible through DOJ's website.[39]

If you believe that your rights under the SCRA have been violated, you should contact your nearest Armed Forces Legal Assistance Program office to see if the SCRA applies to your particular situation. Dependents of service members can also contact or visit local military legal assistance offices where they reside. In order to have your SCRA matter reviewed by the DOJ, you must first seek the help of your military legal assistance office. If that office cannot resolve the complaint, it may choose to forward the complaint to the DOJ. The DOJ then will review the matter to determine whether DOJ action is appropriate. However, in emergency situations (such as an imminent foreclosure, eviction, or repossession), you can contact Civil Rights Division's Housing and Civil Enforcement Section:

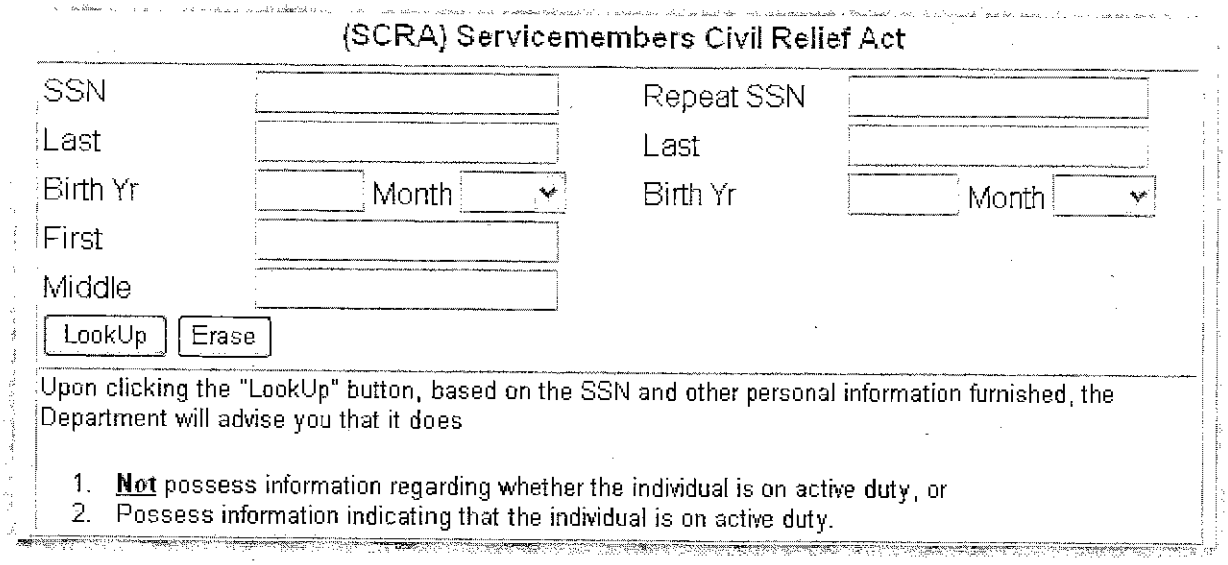
U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, N.W.
Housing and Civil Enforcement Section, NWB
Washington, DC 20530
(202) 514-4713
TTY (202) 305-1882
Email: fairhousing@usdoj.gov

Because the SCRA covers many topics, the FAQ sections provide answers to SCRA questions specifically related to child support and access/custody issues.

Questions and Answers for Custodial Parents

How do I know if my former boyfriend is still in the military for purposes of the SCRA?
You can use the Defense Manpower Data Center's (DMDC) Military Verification service to confirm whether someone is in the military. The website will tell you if the person is currently serving in the military. It is available 24 hours a day. See www.dmdc.osd.mil/appj/scra/scraHome.do.

[39]See www.justice.gov/crt/about/hce/documents/scra_qa_5-26-11.pdf. According to the Department of Justice, they are intended to provide the service member with an overview of the SCRA's protections and the kinds of issues that could arise in connection with military service. They do not constitute legal advice.


(SCRA) Servicemembers Civil Relief Act

SSN | Repeat SSN
Last | Last
Birth Yr | Month | Birth Yr | Month
First
Middle
LookUp | Erase

Upon clicking the "LookUp" button, based on the SSN and other personal information furnished, the Department will advise you that it does

1. **Not** possess information regarding whether the individual is on active duty, or
2. Possess information indicating that the individual is on active duty.

When you perform a check, based on the Social Security number (SSN) and other personal information you furnished, the system will indicate either that the Department does not possess information regarding the individual or that the individual is in the military. If the individual is on active duty, the system will show his or her branch of service and the beginning date of active duty status. The system shows this information in a signed printable letter format containing the Department of Defense seal. Although the system will provide the information using either a SSN or a Date of Birth (DOB), you need both pieces of personal information to ensure the accuracy of the identified person.

Questions and Answers for Noncustodial Parents

Does the SCRA apply to criminal proceedings, such as a criminal nonsupport prosecution?
No. It only applies to civil proceedings.

Does the SCRA apply to civil judicial proceedings?
Yes, the SCRA applies to civil judicial proceedings.

Does the SCRA apply to administrative proceedings, such as a challenge to income withholding?
Yes. The SCRA applies to administrative as well as court proceedings.

What is the effect on a civil action or proceeding?
Under the SCRA, a service member may obtain a stay of a civil action or proceeding if the following conditions are met:

- The service member is in active military service[40];
- The request for a stay is by the member's motion or the tribunal's own motion;
- The service member sends the following documents to the court or agency –

[40] Or is within 90 days after termination of or release from military service. See 50 U.S.C. app. § 522.

- A letter or other communication from the member stating how the member's current military duties "materially affect" his or her ability to appear and stating a date when the member will be available to appear, **and**
- A letter or other communication from the member's commanding officer stating that the member's current military duties prevent the member's appearance and that military leave is not authorized for the member at the time of the letter.

If the member makes an application for a stay and presents the required documents, the tribunal must stay the action for a period of not less than 90 days. The service member may apply for an additional stay.

Does the fact that a service member is on active duty automatically mean that the member's current military duties "materially affect" his or her ability to appear?
No. Department of Defense Directive 1327.06, "Leave Procedures" (September 30, 2011), requires that when a service member requests leave to attend paternity or child support hearings, ordinary leave "shall be granted" unless the service member is serving in a contingency operation or "exigencies of service" require that leave be denied.

What factors would be examples of when my current military duties "materially affect" my ability to appear in a child support proceeding?
When applying for a stay, the SCRA requires you to state in a letter or other communication how your current military duties materially affect your ability to appear. There is no federal definition of "material effect."

If your ability to initiate or defend the action is impaired because your military duties prevent you from appearing in court or the administrative forum at the designated time and place, or from assisting in the preparation or presentation of your case, then that would be an example of "material effect." For example, your duties may "materially affect" your ability to appear if your station is distant from the courthouse; if you lack sufficient leave that may be used for travel, preparation, and attendance in court; or if you are on an assignment that precludes the granting of leave to take care of your civil legal affairs.

On the other hand, your current military duties may not materially affect your ability to appear in the child support proceeding if, for example,

- The courthouse is in close proximity to the base, and
- You have a reasonable amount of annual leave accrued that can be used in trial preparation and attendance, **or**
- If the child support agency is willing to coordinate telephonic testimony or your participation via SKYPE.

Although the SCRA does not require it, a statement from you about leave availability is probably a good idea. Similarly, although not required by the SCRA, "it would be best if the commander elaborated on the facts [explaining why your current military duties prevent your appearance and why military leave is not authorized] and, if known, set out a date" for your attendance.[41]

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[41] Sec. 3-5, p. 3-26, The Servicemembers Civil Relief Guide, JA 260, prepared by the Administrative and Civil Law Department, The Judge Advocate General's School, United States Army, Charlottesville, Virginia (March 2006).

If I seek a stay under the SCRA and the tribunal grants a stay of the proceedings, how long will the stay last?
If you, the service member, provide the required letters or communications demonstrating material effect, the court or agency must stay the action for a period of not less than 90 days. You may apply for an additional stay based on the continuing material effect of military duty on your ability to appear. The request for an additional stay may be made at the time of the initial application or any other time where you are unavailable to defend the action. The same documents are required:

- A letter or other communication from you the member stating how your current military duties "materially affect" your ability to appear and stating a date when you will be available to appear, **and**
- A letter or other communication from your commanding officer stating that your current military duties prevent your appearance and that military leave is not authorized for you at the time of the letter.

Granting the additional stay is within the discretion of the court.

How does the SCRA apply if a service member is served with a summons, but fails to appear at the proceeding?
The SCRA provides that, prior to the entry of a default judgment in a case where the defendant member does not make an appearance, the plaintiff must file an affidavit with the tribunal:

- Stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; **or**
- If the plaintiff is unable to determine whether the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service.

If it appears that the defendant is in military service, the tribunal may not enter a judgment until after the court appoints an attorney to represent the defendant. If the appointed attorney cannot locate the service member, actions by the attorney in the case do not waive any defense of the service member or otherwise bind the service member.

If a default judgment is entered in the absence of such an affidavit, the service member can later seek to reopen the default judgment. Even if an affidavit is filed, the member can later seek to reopen the default judgment. The tribunal entering the judgment must, upon application by or on behalf of the service member, reopen the judgment for the purpose of allowing the service member to defend the action if it appears that:

- The service member was materially affected by reason of that military service in making a defense to the action; **and**
- The service member has a meritorious or legal defense to the action or some part of it.

If a service member is not physically present at the proceeding, can the tribunal still find that he or she "made an appearance"?
Yes. For example, if the service member has hired an attorney of record in the proceeding or if he or she has filed pleadings in the case, the tribunal will find that the service member has in fact made an appearance. The section of the SCRA regarding default orders (50 U.S.C. app. § 521) would therefore not apply. However, 50 U.S.C. app. § 522 (regarding stay of proceedings when a service member has notice) could be invoked.

Am I, as a service member, entitled to appointed counsel under the SCRA?
If the plaintiff files an affidavit showing that you, the defendant, are in active military service, the tribunal cannot enter a default order until the tribunal has appointed an attorney to represent you. If the tribunal fails to appoint an attorney, the default judgment is still valid but you can later seek to reopen the judgment. In legal terms, the order is voidable.

What does the court-appointed attorney do?
Under the SCRA, if the defendant is a service member, the appointed attorney is primarily responsible for obtaining a stay of the proceedings until the service member can be present. It is important to note that the acts of an appointed attorney are not binding on the service member and that the attorney cannot waive any of the member's legal rights. A service member will be bound only to the acts of an appointed attorney that the service member has authorized. If the service member authorizes the appointed attorney to perform some act before the tribunal, the tribunal may construe those actions as an appearance by the member.

My wife divorced me while I was deployed. My kids are gone. She cleaned out my bank account. How can the SCRA help me?
If you are a service member, were properly served, and the court entered a default order against you without your participation in the proceeding, the SCRA permits you to ask the court to reopen the default judgment. See 50 U.S.C. app. § 521(g). Five conditions must exist in order for you to reopen a default judgment:

- The tribunal must have entered the default judgment during your military service or within 60 days thereafter;
- You made no appearance;
- You or your legal representative filed an application to reopen the judgment within 90 days after the termination of your military service or during military service;
- You were materially affected by reason of your military service in defending the action; **and**
- You have a meritorious or legal defense to the action, or some part of it.

So long as you did not make an appearance, you can file an application to reopen the divorce judgment during your military service or within 90 days after its termination. You will need to show that your military service materially affected your ability to defend the action, and that you have a meritorious or legal defense to the action or some part of it.

If the order is simply a divorce decree, it may be difficult to establish a meritorious or legal defense. However, if the divorce order contains property settlement provisions, a child support order, or access or custody provisions, you may be able to establish that your deployment materially affected your ability to defend the action and that you have a meritorious or legal defense to part of the action.

The SCRA does not address your wife's removal of funds from a bank account. State law and bank regulations will govern who is the account holder(s) and has the ability to withdraw funds.

The court entered a money judgment against me, determining my child support arrears to be more than I think they are. Since the judgment was entered in my absence while I was on active duty, can I ignore it?
No, you should not ignore it. If the default judgment was entered against you during your military service (or within 60 days after termination of or release from such military service), in

violation of the SCRA, it is merely voidable and not void. That means the judgment remains valid, and is enforceable, until you properly challenge it.

There are a number of things to keep in mind with regard to challenging a default judgment.

- Only certain default judgments can be challenged. The default judgment must have been rendered against you during your period of active duty service or within 60 days thereafter. This excludes judgments rendered before you entered military service or more than 60 days after separation from service.
- There is a time limit for challenging the default judgment. You have 90 days from the end of your active service to file an application to reopen the default judgment. If you discover the default judgment more than 90 days after termination of your military service, it is too late to invoke the SCRA.
- You, the service member, must meet three criteria in order to reopen a default judgment.
  - You must not have made an appearance in the case;
  - You must show that your military service materially affected your ability to defend the suit; **and**
  - You must have a meritorious or legal defense to the action or some part of it. In the question raised, that means you must be able to show that your military service affected your ability to defend the suit (for example, you were stationed in Okinawa at the time of the proceeding) and that you have a meritorious or legal defense (for example, the calculation of arrears is incorrect).

To find detailed information about how to invoke your rights under SCRA, contact your nearest Armed Forces Legal Assistance Program office. You can find the nearest location at http://legalassistance.law.af.mil/content/locator.php.

Do state interest rates on unpaid child support apply to a military member?
Yes, with an important limitation. If you incurred the support obligation before entry on active duty, the highest interest rate under the SCRA that the state can charge is six percent. See 50 U.S.C. app. § 527. For the SCRA limits to apply, you must provide the creditor with written notice and a copy of the military orders calling you to military service as well as any orders further extending your military service. You must provide the documentation not later than 180 days after the date of your termination or release from military service.

A court may grant a creditor relief from the limitations of this section of the SCRA if, in the opinion of the court, the ability of the member to pay interest upon the obligation or liability at a rate in excess of six percent per year is not materially affected by reason of the service member's military service. The burden of proof is on the creditor. "Normally, the key aspect of the inquiry will be into the servicemember's finances. It will not stop, however, with a review of the servicemember's income. There are times when a person will experience an increase in income because of a mobilization, but the financial situation will worsen. Members activated from the reserve components may find they have two households to maintain and that child care and other expenses have likewise increased."[42]

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[42] Sec. 6-2, p. 6-3, The Servicemembers Civil Relief Guide, JA 260, prepared by the Administrative and Civil Law Department, The Judge Advocate General's School, United States Army, Charlottesville, Virginia (March 2006).

It is important to note that the six-percent limit does not apply if the noncustodial parent incurred the support obligation after entry into active service. The benefit is only for those debts that existed prior to the service member's entry on active duty.

Can a service member seek a stay of enforcement of a child support order due to his or her active duty?

Yes, pursuant to the SCRA (50 U.S.C. app. § 524), a tribunal may on its own motion, and must upon application of the member, stay (temporarily halt) an attachment or garnishment action against a service member's property, such as a bank account, if it finds that the service member's compliance with the order is materially affected by reason of the member's military service.

This section of the SCRA applies to an action or proceeding against a service member commenced in a court or an administrative agency before or during the period of the member's military service or within 90 days after such service terminates.

If the member's military service existed at the time the tribunal initially entered the judgment, and the tribunal factored that service into its decision, it is unlikely that the tribunal will later grant a stay of judgment enforcement, assuming compliance with all the requirements of the SCRA.

Websites with Additional Information about the SCRA

To find more information about the SCRA and other laws that protect the rights of service members, visit the U.S. Department of Justice site at www.servicemembers.gov.

The U.S. Air Force Legal Assistance website has an overview of the SCRA, as well as FAQs and sample form letters, https://aflegalassistance.law.af.mil/lass/lass.html.

Military OneSource provides an overview of the basic SCRA protections, www.militaryonesource.mil/moving?content_id=267394.

You may also wish to contact the military legal assistance office nearest you: http://legalassistance.law.af.mil (within the continental United States) or www.militaryinstallations.dod.mil (worldwide).

The material in this sample letter[43] represents general legal principles. Although the information below was current as of the date it was drafted, the law is continually changing. It is always best to consult an attorney about your legal rights and responsibilities regarding your particular case.

SAMPLE LETTER INVOKING STAY OF LEGAL PROCEEDING

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

John D. Doe, Rank, Service Branch
Address
City, State 00000

The Honorable Judge's Name
Address
City, State 00000

Date

RE: Request for Stay of Proceedings
Docket/Case #: **XXXXXXXXX**

Dear Honorable Judge's Name:

Please accept this letter as my formal written request for a stay of proceedings, in the case above, as provided in the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. App. Section 522. I am an active duty servicemember currently stationed overseas at **[Name of Installation]**.

I am unable to attend the scheduled proceeding because **[briefly explain the situation]**. I will return to the states on **[date]** and will be prepared to proceed shortly thereafter on **[date]**. If you will not stay the proceedings until that date, I request that you appoint counsel to represent me after the initial 90-day stay according to the SCRA, 50 U.S.C. App. Section 522.

Please find the attached letter from my unit commander.

If you have any questions or require any additional information, you may contact me, in writing, at the address listed above.

Sincerely,

John D. Doe, Rank, Service Branch

Attachment:
Commander's Letter

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[43] This sample letter is from the Air Force Legal Assistance website: https://aflegalassistance.law.af.mil/lass/lass.html

The material in this sample letter[44] represents general legal principles. Although the information below was current as of the date it was drafted, the law is continually changing. It is always best to consult an attorney about your legal rights and responsibilities regarding your particular case.

SAMPLE LETTER RE: 6% INTEREST CAP

John D. Doe, Rank, Service Branch
Address
City, State 00000

Name of Creditor
Address
City, State, Zip

Date

RE: Limitation of Interest
Case #: **XXXXXXXXX**

Dear Sir or Madam:

This letter is to advise you that I have been ordered to active duty service with the United States Armed Forces. As a result of my military service, I have lost my civilian employment income. I incurred the above referenced child support obligation prior to entry on active duty. My entry into military service has materially affected my ability to make payments.

I entered active duty on _____ (date), and am presently on active duty assigned to _____(unit). The Servicemembers Civil Relief Act of 2003, 50 U.S.C. Appendix, Section 527, sets a six percent per annum ceiling on interest charges (including service charges, renewal charges and fees) during the period of a servicemember's military service for obligations incurred prior to the date of entry into active duty when the active duty materially affects the ability to pay.

Since entering active duty, I have experienced [a decrease in salary, an increase in expenses] adversely affecting my ability to pay. Thus, I am requesting an adjustment of the interest on my unpaid child support to reflect the statutory six percent rate. This rate became effective upon my receipt of the order to report for military service, which was on _____(date). See attached copy of the military orders calling me to military service and any orders further extending military service. Please ensure that your records reflect this statutory ceiling and that any excess charge is withdrawn. The interest over six percent must be forgiven, not just deferred, and my monthly payments must be reduced by the reduction in the interest rate.

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[44] This sample letter is based on one appearing on the Air Force Legal Assistance website: https://aflegalassistance.law.af.mil/lass/lass.html. It has been adapted for a child support order.

Please contact me at _____(phone or address) with a [revised payment schedule/revised calculation of child support arrears]. Thank you for your understanding and support in this matter.

Sincerely,

John Doe, Rank, Service Branch

** ENCLOSE A COPY OF YOUR CURRENT LEAVE AND EARNINGS STATEMENT (LES) AND A COPY OF YOUR ORDERS THAT (1) ACTIVATED YOU AS A RESERVIST OR (2) BROUGHT YOU ON ACTIVE DUTY.

IX. Access, Visitation, Custody, and Parenting Time

Whether or not parents stay together, they are parents for life and their children depend on them. Parents who have a healthy relationship with each other are better able to cooperate and work together for their child's emotional and financial well-being.

Contribution of Child Support Program to Healthy Family Relationships

The child support program has played a critical role in supporting healthy marriage and couples skill-building programs. Since 2002, the federal Office of Child Support Enforcement (OCSE) has funded projects and grants through which over 15,000 couples and individuals have received healthy marriage, couples skill-building, and child support education.

Relationship between Child Support and Access/Visitation

Children need both financial and emotional support from their parents. Recognizing the importance of having both parents involved in a child's life, most states factor visitation and custody arrangements into their child support guideline calculations when establishing the appropriate amount of child support.

Custodial parents cannot legally deny visitation rights because noncustodial parents have failed to pay child support. Similarly, noncustodial parents cannot legally withhold child support because custodial parents will not allow them to visit the children. On the "ground" level, however, parents often link the two issues through their behavior. Where the parental relationship is poor, it can lead parents to withhold child support or block access and visitation. In contrast, noncustodial parents who have good relationships with their children may feel a greater commitment to providing for their needs, including paying child support consistently.[45]

Research suggests that where there is healthy parental contact there is also often improved child support payment.

- A 2002 HHS Inspector General study found that a noncustodial parent's participation in access/visitation mediation resulted in increased access rights of the noncustodial parent, visitation by the noncustodial parent, and support payments by the noncustodial parent. The study estimated that monthly child support payments went up by $56 per case after receiving mediation services.[46]
- According to a 2007 Census Bureau report, a majority (81.7 percent) of the custodial parents due child support payments in 2007 had arrangements for joint child custody or visitation privileges with the noncustodial parent. Among this group, 78.3 percent received at least some child support payments in 2007. Of the custodial parents due child

[45] Paul Amato. "The Impact of Family Formation Change on the Cognitive, Social and Emotional Wellbeing of the Next Generation." *The Future of Children* 15:2 (2005), 75-96.

[46] Department of Health and Human Services, Office of the Inspector General. "Effectiveness of Access and Visitation Programs." 2002. OEI-05-02-00300. See http://oig.hhs.gov/oei/reports/oei-05-02-00300.pdf.

support who did not have either joint custody or visitation arrangements, 67.2 percent received child support payments.[47]

- Another study found that parents who were behind in their child support and received parenting education nearly doubled their child support payments during the 12 months following program participation.[48]

Access/Visitation Services Provided by Child Support Program

Child support agencies are required to provide child support services. In certain circumstances, they are also required to provide spousal support enforcement services. There is currently no legal requirement, however, that child support agencies provide access/visitation services, and therefore most do not directly provide such services.

As noted earlier, all states currently participate in the federal Access and Visitation formula grant program, which is funded separately from the child support program by 42 U.S.C. § 669(b). The AV grant program provides states with funds to administer programs to support and facilitate noncustodial parents' access to and visitation with their children. Services provided through the grants include mediation (both voluntary and mandatory), counseling, education, development of parenting plans, visitation enforcement (including monitoring, supervision, and neutral drop-off and pickup), and development of guidelines for visitation and alternative custody arrangement. Services vary among the states. In some states, the child support agency participates in the coordination of services under the grant.

Resolution of Parenting Time Issues

Sometimes parents need help resolving parenting time issues. Some states have used federal Access and Visitation grant money to fund mediation projects through the court, the child support agency, or other community organizations. Local jurisdictions also often fund dispute resolution or mediation services through the courts.

The service member has a number of additional resources available to assist with access/visitation issues. Some are free, such as those offered through military legal assistance offices, military lay advisors and counselors, and non-military advocacy groups. Usually these resources provide counseling and mediation help. Military legal assistance officers do not represent service members in state court.

The service member may also hire a private lawyer to help resolve access and custody issues, and to represent the member in any legal proceeding. There are also *pro se* (self-help) options.

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[47] U.S. Census Bureau. "Custodial Mothers and Fathers and Their Child Support: 2007". www.census.gov/prod/2009pubs/p60-237.pdf

[48] Center for Policy Research. Child Access and Visitation Programs: Participant Outcomes. 2006.

Definition of Terms

Access, Visitation, or Parenting Time

States use many legal terms to refer to the time a child spends with each parent. These terms include "access," "visitation," and "parenting time." Parents can agree upon parenting time in a parenting plan or the court can establish parenting time in its order.

Joint Custody

Joint custody is a legal term that can refer to joint legal custody, joint physical custody, or both. Parents with joint legal custody each have authority to make decisions, such as seeking medical treatment, that impact their child. Parents with joint legal custody should consult with each other, where possible, before making major decisions affecting the child's well-being.

Parents with joint physical custody have an agreement or a court order providing a specified level of care-taking time between each parent and child. Joint physical custody does not mean an exact division of the child's time with each parent. However, it differs from an arrangement where one parent has sole physical custody and the other parent has visitation or access. In a joint physical custody arrangement, the child spends substantial residential time with each parent. The court most typically awards joint physical custody where the parents agree to the arrangement.

In joint custody cases, usually the parents agree upon, or the court determines, the child's residence for such purposes as school.

Applicable Laws and Regulations

State Laws

State law varies with regard to custody issues. Some states leave custody totally within the court's discretion based on the best interest of the child. Some states have a presumption of joint physical custody when the parents are in agreement. A few states claim to have a presumption of joint custody in all cases, which can be challenged based on evidence.

You may have heard the myth that a military parent cannot have primary custody of a child. This is simply not true. Each state has laws regarding custody, and many states require separating or divorcing parents to develop a parenting plan that is flexible enough to meet the job demands of each parent as well as the needs of the child. The Commissioners on Uniform State Laws recently completed a Deployed Parents Custody and Visitation Act, which it hopes state legislatures will enact to address custody and visitation issues that arise when parents are deployed in military or other national service.

Military Regulations and Policy

Each military branch has regulations and/or policy concerning access and custody. In the absence of a court order, the service member must comply with military policy. Where there is a court order, military policy requires compliance with the order. The contents of a court order may be the basis for a lawful order from the member's commander.

Custody Proceedings and the Servicemembers Civil Relief Act

As noted earlier, the Servicemembers Civil Relief Act (SCRA) provides for an automatic stay of civil administrative and judicial matters for at least 90 days **upon a proper request from the service member**. If a member receives notice that a state proceeding related to custody or access/visitation has been initiated against him or her during a period of military service or within 90 days thereafter, the member has the right under the SCRA to request that the action or proceeding be stayed for a period of at least 90 days. Remember that protection under the SCRA is not automatic. The member must produce a statement showing how his or her military duties materially affect the member's ability to appear and state a date when the member will be available to appear. The member must also produce a statement from his or her commanding officer stating that the member's current military duty prevents his or her appearance and that military leave is not authorized for the member at the time of the statement. The court must grant the initial request for a stay upon production of the required statements.

The member also has the right to request that the court extend such a stay if necessary. The granting of an additional stay beyond the mandatory 90-day period is within the discretion of the court. If the member's request for an extension of a stay is denied, then the court must appoint an attorney to represent the member in the action or proceeding.

Depending upon the issues in the custody or visitation proceeding, the service member may wish to proceed with the hearing rather than delay it. For example, a member who needs an adjustment to visitation rights may elect to request electronic or telephonic testimony rather than allow a delay to affect the situation of the child. Section 111 of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) permits an individual to testify by telephone, audiovisual means, or electronic means.

It is important for a service member to seek legal advice about invoking the protections of the SCRA as soon as possible after learning of a legal action. He or she may contact the nearest Armed Forces Legal Assistance Program office. See http://legalassistance.law.af.mil/content/locator.php. The member may also seek help from a private attorney.

Family Care Plan[49]

A Family Care Plan is a "blueprint" that spells out how the military member's children or incapacitated adults will be cared for in the member's absence – whether the member is deployed, on temporary duty, or otherwise unavailable because of military obligations. It allows for a smooth transition of responsibilities to a spouse or other caregiver when a service member must leave for short or long periods of time. It also assures commanders that the members of the unit will be ready to accomplish their missions with little or no disruption by family issues.

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[49] The information on Family Care Plans is from an article entitled "Preparing a Family Care Plan," developed by Ceridian, which is no longer available. Another resource is "Creating a Family Care Plan for Caregivers," available on the website of Military OneSource. See www.militaryonesource.mil/phases-new-to-the-military?content_id=267568.

Who Must Have a Family Care Plan?

Department of Defense Instruction 1342.19 spells out when a Family Care Plan is required. According to that directive, the following members within all active and reserve components and the DoD Civilian Expeditionary Workforce must have a Family Care Plan:

- Single parents with custody of children under 19 years of age.
- Dual military couples with custody of children under 19 years of age. (They must develop a single Family Care Plan that both members sign.)
- Married service members who have custody or joint custody of a child whose noncustodial biological or adoptive parent is not the current spouse of the service member.
- Service members who are solely responsible for the care of children under the age of 19 or adult family members unable to care for themselves. This category includes situations where a service member's spouse is injured, chronically sick, or otherwise unable to care for family members or other dependents.
- Service members who, for any other reason, are primarily responsible for dependent family members. This category includes service members with spouses who speak little or no English or are unable to drive or otherwise gain access to basic resources such a medical care and food.
- Service members who do not fit into any of these categories may also want to develop a Family Care Plan.

Each service has a corresponding directive that explains that branch's guidelines. A member's commander or supervisor can tell the member the resources that are available to help the member create a Family Care Plan that meets his or her service's specific requirements. These resources include installation family centers and legal assistance offices.

When Should a Member Make a Family Care Plan?

When members enter any of the required categories above, they should contact their supervisor or commander about creating a Family Care Plan. Active-duty members have up to 60 days to submit the final Family Care Plan. Reserve component service members must submit their final Family Care Plan within 90 days of alert notification.

It is important that the member update the Family Care Plan when there is a change in family circumstances that results in the member becoming responsible for the logistical, medical, or financial support of another person. This is especially true when a child support or visitation/custody order is issued. At a minimum, the member must annually provide written certification to his or her commander that the Family Care Plan is current.

What Must be in a Family Care Plan?

The requirements for a Family Care Plan may vary somewhat depending on the service or the member's particular circumstances. However, all plans must contain the following basic information:

- The name and contact information of the member's caregiver and alternate caregiver. The caregivers selected must be non-military, at least 21 years of age, and capable of caring for themselves and the member's family. The member must sign a statement certifying that the caregiver has accepted responsibility for the care of the member's family

members. The statement must maintain that the member has provided the caregiver with necessary information and copies of all documents required to be included in the Family Care Plan, such as power(s) of attorney. Note: The existence of a custody order will affect whom the member can designate as caregiver. See discussion below.

- Provisions for short- and long-term absences.
- Financial arrangements that ensure the self-sufficiency and financial security of the family members including documentation of allotments and other financial resources and descriptions of how they will be used. The member must also include a copy of his or her power(s) of attorney with the plan. Note: The existence of a child support order will affect this information.
- Logistical arrangements for transporting family members and/or caregivers to a new location. If the member has different caregivers for short- and long-term absences, the member's plan should address transporting family members from a short-term caregiver to a long-term caregiver in the case of deployment (or other lengthy separation) with little or no notice.
- The name of any noncustodial biological or adoptive parent not named as the caregiver, along with that parent's consent to the Family Care Plan. NOTE -- If the parent will not consent to the third party caregiver, the member must explain the absence of such consent in writing and acknowledge the availability of legal counsel to discuss the associated risks and the best possible course of action (including the possibility of incorporating the family care plan into a temporary order by a court of competent jurisdiction).
- The name of the person the member designates to have temporary responsibility for the member's dependent family members in the event of the member's incapacity or death. If the member has named someone in his or her will to have custody of his or her children in the event of death, the Family Care Plan should still designate someone to be responsible until permanent custody can be established legally. It may or may not be the same person as the caregiver.

What are Additional Issues to Address?

The Family Care Plan may also include specific instructions on arrangements for childcare, educational requirements, health care, and family activities. It may specify the locations of important documents, such as wills, insurance papers, and birth certificates. It may also include arrangements for communication between the member and his or her children during times of short-term and long-term separation.

Relationship between a Family Care Plan and a Custody Order

Although a Family Care Plan is a very useful tool for addressing parenting issues, it does not take the place of a court order related to custody or access/visitation. Therefore, despite the presence of a Family Care Plan, either parent may seek a court order concerning access/visitation and/or custody. Sometimes the process of preparing the Family Care Plan can highlight issues that might warrant seeking a modification of any existing child support or child custody order. If there is a conflict between the Family Care Plan and the court order, the order prevails.

On the other hand, the presence of a court order does not eliminate the need for a Family Care Plan. If a person falls within the required categories of individuals under DoD Instruction 1342.19, he or she must prepare a Family Care Plan. The member should ensure that the Family

Care Plan is consistent with the court order; the member may wish to incorporate certain provisions of the court order into the Family Care Plan.

Even if a member is not required to prepare a Family Care Plan, it may still be beneficial to do so. A Family Care Plan or a non-military Parenting Plan can address the day-to-day parenting issues that most court orders do not address. For example, co-parenting couples may find it helpful to develop a plan for handling everyday childrearing issues like extracurricular activities, religious instruction, tattoos, or piercings.

In addition to military resources, a member may wish to contact his or her local court for information on child access, parenting plans, and child access/custody mediation services.

Questions and Answers for Custodial Parents

My ex-husband has visitation under our divorce decree. But as an enlisted soldier, he is required to live on base and is unable to exercise his overnight visitations. He doesn't have enough income to rent a hotel room during the visitations. He asked if I would agree to a change in custody. Should I agree to it? If he is named as the custodial parent, he says he can get an exemption from living on post.
If you have a court order naming you as the primary residential parent and providing your ex-husband with access/visitation at certain time periods, it is important that you seek legal advice before agreeing to a change of those terms. There are significant legal ramifications to a change in custody. It will affect who has primary responsibility for care of the child. It will also affect who has the duty to pay child support.

We are separated but do not have any court orders. Can we resolve custody through a Family Care Plan?
No. Although a Family Care Plan can designate the caregiver when the member experiences a short-term or long-term absence, it does not take the place of a court order. You can both consent to the terms of the Family Care Plan, but you should not consider the Plan as "resolving" custody in the sense of an enforceable order. In other words, the Family Care Plan will not protect your rights the way a court order will. State courts have the overriding authority to determine child custody arrangements, in spite of what you have in a Family Care Plan.

I am active duty military. My ex-spouse and I have two children. If I have custody under a court order, can I designate my new spouse as the caregiver of our children while I am deployed?
If you have sole physical custody, when you deploy you can't decide on your own to whom you want to transfer custody. A DoD directive requires you to try to notify the noncustodial biological or adoptive parent (in your case, your ex-spouse) as far in advance as practicable of your impending deployment. It also requires you to try to obtain the noncustodial parent's consent to any family care plan that would leave the child in the custody of a third party. If the noncustodial parent does not agree or there is going to be any conflict, you can ask the court to grant a temporary order designating another person to have custody of the child. In some states, you may need to hire a private attorney for legal assistance in filing the action. Only the court with jurisdiction over the civil family matters can make the temporary order. A Military Family Care Plan cannot legally change the terms of a court order. Depending upon the language in the

order, once the deployment ends, the temporary order ends and the parties will be governed by the terms of the original order that was in place prior to the temporary order.

I am active duty military and the custodial parent under our divorce decree. My former spouse has agreed to my designation in my Family Care Plan of my mother as the caregiver of our child. How can I make sure that my mother receives the child support paid by my former spouse while I'm deployed?
Depending upon the state, the State Disbursement Unit will continue to send payments to you by check, through a debit card, or through a direct deposit to your bank account, unless it receives an order to the contrary. You may make private arrangements with your bank to allow your mother access to the debit card or bank account in order to reach the support payments. If the deployment is going to be long-term, you may want to ask the court or agency that issued the order to temporarily redirect or assign payments to your mother while she has temporary custody of your child. Once you return from your deployment, you need to make sure the temporary order is terminated and that terms of the original order are reinstated.

How can I be involved in my child's life while I'm deployed?
There are many ways to stay connected with your child during deployment, including sending letters, pictures, and video and audio greetings. The military has excellent on-line resources available. In addition to those available through each active duty service branch, you may also wish to review those available through Military OneSource, the National Guard Family Program, and the Reserve Component Resource Center. See also www.militarychild.org/public/upload/files/Deployment.pdf.

The person caring for your child during deployment can support the child's relationship with you while you are deployed by following a consistent plan of communication. This can be detailed in a court order, outlined in the Family Care Plan, or agreed to in a separate parenting plan.

Do I need to do anything about my custody order when I return home from a period of deployment?
Once you are no longer deployed, it is important to notify the child support agency and court of your new address. If there was a temporary custody order in place during deployment, that order usually terminates when the deployment or temporary duty concludes and terms of the original order apply. In some states, it may be necessary to return to court to terminate the temporary order.

Questions and Answers for Noncustodial Parents

I can't find my child and the custodial parent. What can I do?
One of the services of the federal Office of Child Support Enforcement (OCSE) is helping to locate children in certain cases. Federal law allows state child support programs to use the Federal Parent Locator Service (FPLS) in parental kidnapping or child custody cases (including cases in which the custodial parent has hidden the child in violation of a visitation order) if:

- A civil action to make or enforce a custody order has been filed in the state courts;
- A criminal custodial interference case is being investigated or prosecuted.

Requests for information from the FPLS in custody and parental kidnapping cases must come from a state child support agency. They cannot come directly from an individual parent. Find

state child support agency telephone numbers, addresses, and web site data for state and tribal child support agency website links on OCSE's web site at www.acf.hhs.gov/programs/css/resource/state-and-tribal-child-support-agency-contacts. To cover processing costs, states may collect a fee from people using the service.

I'm the noncustodial parent. I love my kids. I pay my child support. About half the time when I go to pick them up for my weekend, my ex-wife has made other plans for them. It's not fair that the state will enforce my child support obligation but not do anything about my right to see my kids.
It is in your children's best interest that you continue to spend time with them. Although the child support program currently lacks authority to enforce visitation, many state or local governments have developed procedures for enforcing visitation orders. In addition, the federal government has made funding available to states for developing model programs to ensure that children will be able to have the continuing care and emotional support of both parents. Check with your local family court, clerk of court, or child support agency to see what resources are available to you and to find out about laws that address custody and access/visitation/parenting time.

If I am the noncustodial/nonresidential parent under a court order, can I designate someone else to exercise my visitation rights while I'm deployed?
In some states, when the noncustodial parent deploys, state law allows that parent to designate a person who will temporarily exercise the parent's visitation. The court must approve the designated person, using a "best interest of the child" standard.

We are separated but do not have any court orders. Can we resolve custody through a Family Care Plan?
Although a Family Care Plan can designate the caregiver when the member experiences a short-term or long-term absence, it does not take the place of a court order. You can both consent to the terms of the Family Care Plan, but you should not consider the Plan as "resolving" custody in the sense of an enforceable order. State courts have the overriding authority to determine child custody arrangements, in spite of what you have in a Family Care Plan.

How can I be involved in my child's life while I'm deployed?
It is hard to be away from your children. However, there are many ways to stay connected with your child during deployment, including sending letters, pictures, and video and audio greetings. The military has excellent on-line resources available. In addition to those available through each active duty service branch, you may also wish to review those available through Military OneSource, the National Guard Family Program, and the Reserve Component Resource Center. See also www.militarychild.org/public/upload/files/Deployment.pdf. If you are a father, you may be interested in *Deployed Fathers & Families: Guide for Military Personnel*, published by the National Fatherhood Initiative, http://fatherhood.org/page.aspx?pid=516.

The residential parent or caregiver can support the child's relationship with you while you are deployed by following a consistent plan of communication. This can be detailed in a court order, outlined in the Family Care Plan, or agreed to in a separate parenting plan.

Do I need to do anything about my custody order when I return home from a period of deployment?
Once you are no longer deployed, it is important to notify the child support agency and court of your new address. If there was a temporary custody order in place during deployment, that order usually terminates when the deployment or temporary duty concludes and terms of the original order apply. In some states, it may be necessary to return to court to terminate the temporary order.

After I return from deployment, am I allowed to make up lost visitation/parenting time?
You may wish to work with the other parent to come up with a schedule for reconnecting with your child. In some cases, it may be appropriate to ask the court to consider ordering additional periods of visitation or residential time. The court will consider what is in the best interest of the child.

APPENDICES

Appendix 1

Definition of Terms

Acknowledgment of Paternity – a voluntary recognition by a man, or both parents, that the man is the father of a child, usually provided in writing in an affidavit or a similar sworn statement. A notarized acknowledgment of paternity that is signed by both parents constitutes a legal determination of paternity.

Adjudication – a legal determination by a court or an administrative agency.

Administrative procedure – the method by which an executive agency makes and enforces support orders. It is usually less formal than a judicial procedure, which is usually held in a courtroom, and in which judicial officers make and enforce support orders.

Arrears/arrearage – child support payments that are past due.

Child support agency – an agency that exists in each of the 50 states, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands; as well as in more than 50 Native American tribes. It is often called the "IV-D" (pronounced "Four-D") agency because the federal legislation that established the child support program is in Title IV, Part D of the Social Security Act. The list of state and tribal child support agencies is available at www.acf.hhs.gov/programs/css/resource/state-and-tribal-child-support-agency-contacts.

Child Support Program – the federal/state/local and tribal partnerships established under Title IV, Part D of the Social Security Act to locate parents; establish paternity; and establish, modify, and enforce child support orders.

Consent agreement – a voluntary agreement or order that both parties enter into and sign.

Consumer Credit Protection Act (CCPA) – the federal law that limits the amount that may be withheld from a person's earnings for child support and commercial debt.

Continuing Exclusive Jurisdiction (CEJ) – the legal doctrine that limits the authority of a state or tribe to modify another state's or tribe's support order. The doctrine is essential to ensuring only one support order is in effect at any one time. A tribunal has CEJ if it has issued a support order, and one of the parties or a child resides there. If a state has CEJ, it is the only state with jurisdiction to modify the support order, unless there is a written agreement between the parties for another jurisdiction to modify the order.

Controlling Order – the order that governs the amount of current support that an obligor must pay for a child.

Custodial parent – the person who has primary care, custody, and control of a child. Some states use the term "residential parent." Some states use the term "custodial party" or "caretaker" if the child resides with a relative, legal guardian, or some other legally responsible adult. When parents are separated or divorced, the court order usually designates which parent is the custodial parent.

Custody order – a legal determination that establishes who has care and control of a child, and with whom the child shall live. State and tribal laws vary with regard to custody issues (such as joint custody, sole custody, shared custody).

Default – the failure of a defendant to appear, or file a timely answer or response, in a civil case after the person has been served with a summons and complaint.

Default judgment or default order – a decision that a tribunal makes when the defendant fails to respond or appear after proper notice.

Defendant – the person against whom a civil or criminal proceeding is begun. The defendant in a civil proceeding is also called the "respondent."

Disposable pay or disposable earnings – wages remaining after subtracting mandatory deductions such as: federal, state, and local taxes; FICA and Medicare taxes; unemployment and workers' compensation insurance; state employee retirement system contributions; and additional deductions mandated by state law.

Duration of support – the period during which a parent has an obligation to provide financial support for a child. States have varying laws regarding duration of support.

Electronic funds transfer (EFT) – the automated transfer of money from one bank account to another or to a child support agency.

Enforcement – the process of obtaining payment of a child support or medical support obligation. The most effective enforcement remedy is income withholding. Other enforcement remedies include federal and state income tax refund offset, license suspension, and seizure of bank accounts.

Establishment – the process of determining parentage or obtaining a child support order.

Federal Case Registry (FCR) – a national database that maintains key information on IV-D cases and orders, as well as on most non-IV-D child support orders. The FCR receives this information on a daily basis from the State Case Registry that is located in every state. The FCR matches the information with employment information contained in the *National Directory of New Hires* (NDNH), and reports any matches to the appropriate states to help with case processing. The FCR and the NDNH are part of the Federal Parent Locator Service (FPLS) that is operated by the federal Office of Child Support Enforcement.

Federal Income Tax Refund Offset – an enforcement remedy under which the Internal Revenue Service intercepts federal income tax refunds of parents who owe child support and sends the money to the federal Office of Child Support Enforcement (OCSE). OCSE in turn sends to the money to the appropriate state child support agencies to be applied to the parent's support arrears.

Federal Office of Child Support Enforcement (OCSE) – the federal agency responsible for oversight of the Title IV-D child support program. It writes regulations that govern the state child support agencies, which are responsible for day-to-day processing of child support cases. OCSE also operates the Federal Parent Locator Service, which includes the Federal Case Registry and

the National Directory of New Hires. OCSE is part of the Administration for Children and Families, within the Department of Health and Human Services.

Federal Parent Locator Service (FPLS) – A group of data sharing, collection and enforcement systems and telecommunication networks operated by the federal Office of Child Support Enforcement (OCSE) that supports the core mission of the child support program: location of parents, establishment of paternity, establishment of fair and equitable child support obligations, modification of support, and enforcement of support including such measures as income withholding. The FPLS includes the Federal Case Registry (FCR) and the National Directory of New Hires (NDNH). The FPLS also helps prevent improper payments in federal and state benefit programs. There are regulations that govern who is authorized to receive information from the FPLS, what are the authorized purposes for receipt of information, and what type of information may be provided.

Federally Assisted Foster Care – a federal/state/tribal program that provides financial support to people, families, or institutions raising children who are not living with their parents.

Financial Institution Data Match (FIDM) – a quarterly data match to identify financial accounts that belong to parents who owe past-due child support.

Finding – the formal determination by a court or an administrative agency that has a legal effect.

Full Faith and Credit – the legal doctrine under which a state or tribe must honor a valid order or judgment entered by another state or tribe.

Garnishment – an enforcement remedy under which part of a person's wages and/or other type of income is withheld for the payment of a debt. Some states refer to a garnishment as a "withholding" or an "attachment."

Genetic testing – DNA analysis of inherited factors (usually by tissue or saliva test) of the mother, child, and alleged father that can help prove or disprove that a particular man fathered a particular child.

Guidelines – the numerical formulas that states and tribes use to set child support obligations. Support guidelines are based on the income of the parent(s) and other factors as determined by state and tribal law. Tribunals must use guidelines to determine the child support amount, unless there is a written finding that applying the guidelines would be inappropriate in a particular case.

IV-D (pronounced "Four-D") Child Support Program – the federal/state/local and tribal child support programs established under Title IV-D of the Social Security Act.

Immediate income withholding – automatic deductions from a noncustodial parent's income that start as soon as the order establishes a support obligation and the employer receives notice of the order.

Judgment – the legally binding decision by a tribunal on the rights and claims of the parties to an action. A judgment may also be called a "decree" or an "order."

Jurisdiction – the legal authority that a court or an administrative agency has over particular persons, certain types of cases, and in a defined geographical area.

Legal father – a man recognized by law as the male parent.

Lien – a legal claim upon property to prevent its sale or transfer until a debt is satisfied.

Long arm statute – a law that permits a state or tribe to claim personal jurisdiction over a nonresident. There must be some meaningful connection between the nonresident and the state or tribe that is asserting jurisdiction in order for a court or an agency to reach beyond its normal jurisdictional border.

Medicaid program – a program that provides federally funded medical support for low-income families.

Medical support – Health care coverage provided to a child pursuant to a support order. It includes insurance coverage; cash medical support, including payment of health insurance premiums; and payment of health care bills (including dental and eye care). Indian Health Service and TRICARE are acceptable forms of medical support.

National Directory of New Hires (NDNH) – a national database containing new hire and quarterly wage information from every State Directory of New Hires and federal agency. It also contains Unemployment Insurance data. OCSE maintains the NDNH as part of the expanded Federal Parent Locator Service.

Noncustodial parent – the person who does not have primary care, custody, and control of a child.

Obligation – the duty of support that a parent or spouse owes to a child or spouse. A support order usually expresses that obligation as an amount of money that the parent or spouse must pay as financial support or medical support for the child(ren) or spouse.

Obligee – the person to whom a duty of support is owed; the person who receives support payments. The obligee is often also called the "custodial parent."

Obligor – the person who has the obligation to provide financial support or medical support; the person who is making support payments. The obligor is often also called the "noncustodial parent."

Offset – the amount of money taken from a parent's state or federal income tax refund to satisfy a child support debt.

Order – the legally binding decision by a tribunal on the rights and claims of the parties to an action. An order may also be called a "decree" or "judgment."

Parentage – the legal mother-child relationship or father-child relationship as determined by state or tribal law.

Paternity judgment – the legal determination of fatherhood.

Perfecting a lien – the procedure a creditor follows to give other creditors notice of his or her lien against certain property. It protects the creditor's interest in the property. The method for perfecting a lien varies among the states. Often, creditors 'perfect' a child support lien against

real property by recording terms of the support order or the amount of arrears in the county or state registry of deeds or equivalent office.

Personal Jurisdiction – a tribunal's legal authority over a person. A tribunal must have personal jurisdiction to establish a support order.

Petitioner – the person who files a civil action. The petitioner is also called the "plaintiff."

Plaintiff – the person who files a civil action. The plaintiff is also called the "petitioner."

Presumption of paternity – a rule of law under which evidence of a man's paternity (such as genetic test results) creates a legal inference that the man is the father of a child. A rebuttable presumption is one that can be overcome by evidence that the man could not be the child's father (such as evidence of the man's sterility). An irrebuttable or conclusive presumption is a final determination of the issue; a court will not allow any contrary evidence to be presented.

Probability of paternity – the statistical likelihood that the alleged father is the biological father of the child, as indicated by genetic test results.

Pro se – a procedure in which a party represents himself or herself in a legal matter.

Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) – federal legislation passed in 1996 that is also known as Welfare Reform. In addition to establishing time limits and work requirements for recipients of public assistance, it required states to enact a number of child support laws in order to receive federal funding. This legislation created the New Hire Reporting program and required the establishment of State and Federal Case Registries.

Public assistance – money granted from the state, tribal, or federal government to a person or family for living expenses. Eligibility is based on need and varies among programs. Applicants for certain types of public assistance (for example, Temporary Assistance for Needy Families or TANF) are automatically referred to their state or tribal child support agency for child support services. This allows the state or tribe to seek support payments from the noncustodial parent so the custodial party can become more self-sufficient and the state or tribal government can recoup some of its public assistance expenditures.

Respondent – the person against whom a civil action is filed. The respondent is also called the "defendant."

Retroactive support – support for a period prior to the entry date of the order. For example, in paternity cases, state law may require retroactive support to the date of the child's birth. Some states have laws requiring support retroactive to the date the legal action was filed.

State Directory of New Hires - a database maintained by each state that contains information employers report about new hires. Employers must report certain required information within 20 days of hiring an individual. The state sends the data to the National Directory of New Hires.

State Disbursement Unit – the single entity in a state that receives and distributes child support payments.

State Parent Locator Service (SPLS) – a service operated by state child support agencies to locate parents in order to establish paternity, and to establish and enforce child support obligations. Tribes can access the information through an agreement made with a state.

State Workforce Agencies (SWAs) – state agencies that provide Quarterly Wage and Unemployment Insurance Compensation data to the National Directory of New Hires.

Statute of limitations – the cutoff point on the length of time a person has to take a particular legal action. State and tribal laws vary on the statute of limitations for collecting child support arrears.

Stay – an order by a tribunal that suspends all or some of the proceedings in a case.

Temporary Assistance for Needy Families (TANF) – time-limited public assistance payments made to poor families, based on Title IV-A of the Social Security Act. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) replaced Aid to Families with Dependent Children (AFDC) with TANF. The TANF program provides parents with job preparation, work, and support services to help them become self-sufficient. Applicants for TANF benefits are automatically referred to their state or tribal child support agency for child support services. This allows the state or tribe to seek support payments from the noncustodial parent so the custodial party can become more self-sufficient and the state or tribal government can recoup some of its public assistance expenditures.

Tribal IV-D Program - A child support program administered by a federally recognized Indian tribe or tribal organization and funded under Title IV-D of the Social Security Act.

Tribal Organizations – organizations run by Native American tribes.

Tribunal – a court, an administrative agency, or a quasi-judicial entity authorized to establish, enforce, or modify support orders, or to determine parentage.

Uniform Interstate Family Support Act (UIFSA) – a law that every state has enacted, which provides a process for establishing, enforcing, and modifying support obligations in cases where the parents live in different jurisdictions. Tribes are not required to enact UIFSA.

Visitation – a term for the time a noncustodial parent spends with his or her children. States may also use the term "access" or "parenting time." Parents can agree upon parenting time in a parenting plan or the court can establish parenting time in its order.

Wage withholding – a procedure by which automatic deductions are made from a person's earnings or other income to pay a debt such as child support. Wage withholding may also be called "income withholding," "income attachment," "income assignment," or "garnishment."

Appendix 2

List of Websites Used in this Publication

The websites listed here were current on the date of publication, but may have changed since then. All but one of the links direct you to another federal agency. One is a link to a nonprofit organization. We are not endorsing or recommending the organization, but we believe some of its website content may be relevant to or useful for military members and their children. OCSE/ACF is not responsible for the contents of any "off-site" web page referenced in this document.

Links are listed alphabetically by the title of the publication or by the name of the federal agency.

Website	Link
Affidavit in Support of Establishing Paternity, Sample Form	www.acf.hhs.gov/programs/css/resource/affidavit-in-support-of-establishing-paternity
Application for Former Spouse Payments from Retired Pay, DD Form 2293, February 2008	www.dtic.mil/whs/directives/infomgt/forms/eforms/dd2293.pdf
Application for Identification Card/DEERS Enrollment, DD Form 1172	www.dtic.mil/whs/directives/infomgt/forms/eforms/dd1172-2.pdf
Basic Allowance for Housing (BAH)	www.defensetravel.dod.mil/site/bah.cfm
Child Support Handbook, 2012, HHS ACF OCSE	*www.acf.hhs.gov/programs/css/resource/handbook-on-child-support-enforcement*
Custodial Mothers and Fathers and Their Child Support: 2007, US Department of Commerce, US Census Bureau	www.census.gov/prod/2009pubs/p60-237.pdf
Coast Guard Personnel Manual, Chapter 2.E, Commandant Instruction M1600.2, Sept. 2011	www.uscg.mil/directives/cim/1000-1999/CIM_1600_2.pdf
Code of Federal Regulations Part 733-Assistance to and Support of Dependents; Paternity Complaints (32 C.F.R. § 733.3), Navy & Marine Corps Support Guidelines, 2007	www.gpo.gov/fdsys/pkg/CFR-2007-title32-vol5/pdf/CFR-2007-title32-vol5-part733.pdf

Website	Link
Code of Federal Regulations Part 734-Garnishment of Pay of Naval Military and Civilian Personnel for Collection of Child Support and Alimony (32 C.F.R. § 733.3), Navy & Marine Corps Support Guidelines, 2007	www.gpo.gov/fdsys/pkg/CFR-2007-title32-vol5/pdf/CFR-2007-title32-vol5-part734.pdf
Creating a Family Care Plan for Caregivers on the Military OneSource website	http://www.militaryonesource.mil/phases-new-to-the-military?content_id=267568
DEERS enrollment process on the MilConnect site of the Defense Manpower Data Center (DMDC)	https://www.dmdc.osd.mil/milconnect/
Defense Finance and Accounting Center (DFAS)	www.dfas.mil
Defense Finance and Accounting Service (DFAS) Civilian Pay	www.dfas.mil/dfas/civilianemployees.html
Defense Finance and Accounting Service (DFAS) Military Pay	www.dfas.mil/dfas/militarymembers.html
Defense Finance and Accounting Service (DFAS) Pay Garnishment	www.dfas.mil/garnishment.html
Defense Finance and Accounting Service (DFAS) Retired and Annuitant Pay	www.dfas.mil/dfas/retiredmilitary.html
Department of Defense (DoD) Leave and Earnings Statement (LES)	https://mypay.dfas.mil
Department of Defense (DoD) Pay Tables	www.dfas.mil/militarymembers/payentitlements/militarypaytables.html
Deployed Father's Guide Produced by the National Fatherhood Coalition	http://fatherhood.org/page.aspx?pid=516
Effectiveness of Access and Visitation Programs, Report, OEI-05-02-00300, by the Department of Health and Human Services (HHS), Office of the Inspector General written in 2002	http://oig.hhs.gov/oei/reports/oei-05-02-00300.pdf
Family Support, Child Custody, and Paternity, Army Regulation (AR) 608-99	http://armypubs.army.mil/epubs/pdf/R608_99.pdf

Website	Link
Guía para el Cumplimiento del Sustento de Menores (*Handbook on Child Support Enforcement*), Spanish Version, ACF OCSE	www.acf.hhs.gov/programs/css/resource/nuestros-hijos-nuestra-responsibilidad
Health and Human Services (HHS), Administration for Children and Families (ACF), Office of Child Support Enforcement (OCSE) Foreign Reciprocating Countries	www.acf.hhs.gov/programs/css/resource/foreign-reciprocating-countries
HHS, ACF, OCSE, Intergovernmental Reference Guide (IRG)	https://extranet.acf.hhs.gov/irg/welcome.html
HHS, ACF, OCSE, IRG: Policy Profiles and Contacts	http://www.acf.hhs.gov/programs/css/irg-state-map
HHS, ACF, OCSE International Division	http://www.acf.hhs.gov/programs/css/international
HHS, ACF, OCSE State and Tribal Agency Contacts	www.acf.hhs.gov/programs/css/resource/state-and-tribal-child-support-agency-contacts
How to prepare our children and stay involved in their education during deployment... Pamphlet by the Military Child Education Coalition	www.militarychild.org/public/upload/files/Deployment.pdf
Military Installations	www.militaryinstallations.dod.mil
Native American Veterans - Storytelling for Healing page on HHS Administration for Native Americans website	www.acf.hhs.gov/programs/ana/resource/native-american-veterans-storytelling-for-healing-0?page=1
Personal Financial Responsibility, Air Force Instruction (AFI) 36-2906, Jan. 1, 1998	www.e-publishing.af.mil/shared/media/epubs/AFI36-2906.pdf
Real-Time Automated Personnel Identification Card System (RAPIDS) Issuing Facility	www.dmdc.osd.mil/rsl/
Real-Time Automated Personnel Identification Card System (RAPIDS) Site Locator	www.dmdc.osd.mil/rsl/appj/site?execution=e2s1
SCRA website, Defense Manpower Data Center (DMDC)	www.dmdc.osd.mil/appj/scra/scraHome.do

Website	Link
Servicemembers Civil Relief Act (SCRA) on Military OneSource	www.militaryonesource.mil/moving?content_id=267394
Servicemembers Civil Relief Act (SCRA) Questions & Answers for Servicemembers Fact Sheet provided by the Dept. of Justice	www.justice.gov/crt/about/hce/documents/scra_qa_5-26-11.pdf
Servicemembers.Gov, "Information Dedicated to the Civil Rights of Servicemembers", US Department of Justice	www.servicemembers.gov
TRICARE	www.tricare.mil
TRICARE Covered Services	www.tricare.mil/CoveredServices.aspx
TRICARE Dental Program	www.tricare.mil/Dental/TDP.aspx
TRICARE National Guard/Reserve Members and Families	www.tricare.mil/Welcome/Eligibility/NGRMandFamilies.aspx
TRICARE Plans	http://www.tricare.mil/Welcome/Plans.aspx
TRICARE Reserve Select	www.tricare.mil/trs
TRICARE SMART Site for educational materials	www.tricare.mil/Publications.aspx
U.S. Air Force Worldwide Locator	www.afpc.af.mil/library/airforcelocator.asp
U.S. Armed Forces Legal Assistance	https://aflegalassistance.law.af.mil/lass/lass.html
U.S. Armed Forces Legal Assistance Locator	http://legalassistance.law.af.mil/content/locator.php
U.S. Army Enlisted Records & Evaluation Center	www.army.mil/contact/
U.S. Coast Guard World Wide Locator	www.uscg.mil/locator/
U.S. Marine Corps Locator	www.marines.mil/FAQs.aspx
U.S. Navy World Wide Locator	www.public.navy.mil/bupers-npc/organization/npc/csc/Pages/NavyLocatorService.aspx

For more information on how the child support system works in your state or tribe, contact your state or tribal child support agency. For general information about the child support program, contact the federal Office of Child Support Enforcement, 370 L'Enfant Promenade, Washington, D.C. 20447, or visit the website at www.acf.hhs.gov/programs/css.

LEGAL ETHICS: ETHICAL CONCERNS OF EMAIL AND SOCIAL MEDIA FOR GALS AND CACS

LEGAL ETHICS

Materials Prepared and Presented by: Bretta Z. Lewis, Esq.

I. SAFEGUARDING CLIENT CONFIDENCES AND PROTECTING PRIVILEGE- EMAIL and ELECTRONIC DATA

Lawyers know they cannot share client communications with third parties, or give confidential advice or gather confidential information in the presence of opposing parties or third party witnesses. With the advent of email, social media, and other methods of communicating, lawyers have to be careful that they are applying ethical standards to the new methods of communication.

In March 2016, **Rule 1.6** regarding safety of electronic data and information transmitted electronically was updated to explain what is expected of an attorney in terms of protecting electronic data. Attorneys are NOT expected to prevent all cyber-attacks or breaches. Ethics rules do not require attorneys to prevent the unforeseeable or unreasonable or to have absolutely foolproof security, as it appears that that would be requiring the impossible.

HYPOTHETICAL – EMAIL BREACHES/ACCIDENTS

In June 2016, GAL Katy Kiddielawyer is appointed to represent the interests of two little girls, age 8. The girls' mother unfortunately has mental health issues and sends incessant emails about how the government is against her, her water is being poisoned, and everyone at DHS, in the police department, the FBI, and society in general is incompetent, including the GAL. The mother routinely records all of her conversations, including telephone conversations with the children. She also tells the children to record conversations that are occurring within the father's home, including conversations with the GAL. She tells the kids "this is a fun way to make it almost like mommy is there!"

Katy remains professional in her communications with the mother, but sends the emails to a mental health expert retained by the father, asking whether these emails indicate mental health issues or whether this is normal parenting behavior.

Because the mother is very determined to demonstrate that the cards are stacked against her, she hacks into to the GAL's email account to find out what the GAL is writing to other people about her. She finds the emails sent to the expert and files a bar complaint stating that the GAL's security was not sufficient to protect the children's confidential information, including counseling and school records that the GAL has obtained about the children. The mother alleges that the GAL has violated her ethical duty to the children by failing to secure their records.

The mother also hacks the father's attorney's emails and finds out that the father's attorney and the father are routinely emailing each other with the subject line "She's crazy" and that the emails contain several negating opinions and even jokes about the mother's behavior.

Questions:

1. Has the GAL breached her ethical duty to protect the children?

    a. What if the GAL's email address is a free "Hotmail" or "yahoo" account?
    b. Does your analysis change if the GAL's email is a private domain such as Katy@Kiddielawyer.com?
    c. Does it matter if the lawyer has deleted the emails and the mother found them on a place not normally accessible even if you have the attorney's password?
    d. Does it matter if the GAL has asked the providers whether their files are encrypted and has confirmed that the providers always send encrypted files?

2. The mother also files a bar complaint against the father's attorney claiming that he has breached privilege by failing to secure his email and that he has violated professional ethics regarding conduct when he insulted her and called her crazy.

    a. Has the father's attorney committed misconduct?
    b. Does it matter whether he is a solo practitioner or in a 100 lawyer firm?
    c. Does it matter that the mother works at an agency specializing in cyber security?
    d. Please answer (a) – (d) above, but apply it to the father's attorney

3. Is there any remedy available against the mother for her behavior even though she isn't a lawyer? What if the GAL becomes upset about the mother's behavior and informs her that there may be criminal repercussions for her having hacked into her email and/or recording the conversations without consent of the GAL? Has the GAL violated any rules by telling the mother that there may be criminal consequences?

4. Does the mother's behavior in recording the conversations and/or filing bar complaints create a conflict for the GAL or the father's attorney? Does everyone have to withdraw now that they are all seemingly adversarial in the bar proceedings and/or in any prosecution for the hacking?

5. What if the bar responds by returning the complaints to the mother with a letter stating that her complaints are invalid and will not be investigated?

HYPOTHETICAL 2 – EMAIL BREACHES/ACCIDENTS

Janis Johnson is a court appointed lawyer on the Virginia Beach CAC/GAL list. She is appointed to represent David Defendant, a juvenile charged with a curfew violation, trespassing, underage possession of alcohol, and possession of burglary tools. David is 16 but is relatively immature. He does not have a cell phone and his mother, also the alleged victim, does not have a landline, so if you want to talk to David on the phone, you have to call his mother's cell or send him email. His email address is DD@hotmail.com and his mother says she is worried about his safety, as there is a lot of gang activity in his school, so she checks his messages every day to make sure he is not in contact with any bad kids.

David comes to your office and tells you that he did not so anything wrong, he only had the alleged burglary tools because he was fixing a broken screen door, and he was outside after curfew but also that was because he was making repairs on his mother's house, which is just feet away from the public road.

His mother agrees that she asked him to do the repairs and says her boy is a good boy and he would not do anything wrong. Days later, you get an email from David's email address confessing that he was lying in your office and that he actually was trying to break into the neighbor's car because he saw an Xbox through the window? The email says not to tell anyone and asks you to keep it secret. "You're my lawyer, so this is totally a secret, right?"

QUESTIONS

1. Now that you have this email from David's address, do you have a duty to verify that it was actually David who sent it to you, and not his mother, since you know that his mother has access to his email?

2. Can you ethically advise David to delete the email he sent you and explain that his mother is monitoring the emails in his account, or is that unethical because it is destroying evidence?

3. If David's mother finds the confession email and sends it to the prosecutor, what can you do to make sure it does not come into evidence?

4. Can the prosecutor accept the email and attempt offer it into evidence, knowing that the child was trying to send it to you in confidence, or does that violate any rules of ethics?

5. When you call the number you have for David, someone answers the phone and you think it is David, so you say "Hello David, I got your email and I am worried about you." The response shocks you, "No, this is David's mother!" Have you violated any rules? What do you do now?

II. CONFLICT CHECKS RULE 1.9

One problem commonly experienced in Family Law Matters is the rotating family and name matrix, particularly in lower income or Court Appointed Cases:

HYPOTHETICAL - The Rotating Family/Name Matrix

In January 2010, Court appointed attorney Ashley Allen was appointed in Virginia Beach Juvenile Court to represented client Barbie Botox on a domestic assault charge involving her husband, Butch Botox. By the time Ms. Allen met her, Barbie had moved out of the marital residence and was living with her mother in Virginia Beach.

Butch and Barbie had previously resided together in Chesapeake, but the alleged assault happened at the Virginia Beach Oceanfront during the July 4, 2010 fireworks show when the couple disagreed about whether the Baby Bubba's bottle should be filled with Mountain Dew or Dr. Pepper. Barbie received a deferred finding and was ordered into anger management classes. She was ordered to undergo a psychological evaluation and was ordered to be of good behavior for two years. During the subsequent two years, the couple divorced, Barbie received a diagnosis of bipolar disorder accomplished some treatment, and became medication compliant. With Barbie's consent, Baby Bubba was adopted by Butch's new wife, a local dentist. Happily, Bubba longer drinks soda from his bottle. In February 2012, Ms. Allen verified with the Court that the charges had been dismissed pursuant to the deferred finding because no further incidents had arisen involving Barbie and she had satisfied the conditions. She sent a termination letter to Barbie at her mother's Virginia Beach address, however it was returned with a stamp stating "no longer at this address." The phone numbers Ms. Allen had for Ms. Botox were no longer working numbers, and the email she attempted to send to Barbie.Botox@hotmail.com bounced back stating the account had been deleted.

On December 31, 2012, Barbie came back to see Ms. Allen because she wanted to file a petition in Virginia Beach Juvenile Court seeking a protective Order against her new flame, Beau Bolling. She claimed that Beau slashed her tires on Christmas Eve. Beau denied slashing the tires and subsequently filed a Petition for a Protective Order against Barbie following a New Year's Eve altercation that allegedly resulted from Beau's overly-enthusiastic ball-drop kiss with Barbie's sister, Bambi. At the time, Beau and Barbie were residing together and each was seeking the court to grant him/her exclusive use of the residence, a mobile home on Virginia Beach Boulevard.

Ms. Allen remembered Barbie and assumed she had no conflicts with Barbie because she was a former client. She asked where Beau Bolling was employed and learned, shockingly, that he is unemployed. She ran a check on Beau Bolling using his name and did not find any conflicts within her computer system, so she took the case and assisted Barbie, whose last name had, pursuant to her divorce, been changed to Bennington, her maiden name. On February 14, 2013, the date of the hearing, Barbie and Beau tearfully reconciled in the Courthouse hallway and both insisted that the protective order petitions be withdrawn.

On June 14, 2014, a lady named Babs Billings came to see Ashley Allen, saying that she had "seen her in action in Court" and that she wanted her to defend her in a domestic violence case in Norfolk. The summons she brought to the consultation listed an alleged victim named Barbara Brooks, a family member, residing at Babs's address on Fort Worth Avenue in Norfolk. The police report stated that Babs had been involved in a "mutual combat" situation and that there were cross-warrants filed.

During the meeting with Ms. Allen, Babs explained that she and her daughter, Barbara Brooks had been in an altercation at the bar where the daughter is the bartender. She stated that she had been talking with a man when her daughter became enraged and started a fight. Babs said she didn't know the man's last name but she thought his first name was Beau. She said she thought her daughter had dated him previously but that they had broken up, so she thought he was "fair game." She said that when she saw them talking, her daughter came "flying across the bar,"

snatched off her wig, and punched her in the face. Babs said she was shocked when the police arrived and arrested not only her daughter, but her as well. Beau, who was unbeknownst to Ms. Allen, the same Beau that had withdrawn the protective Order against Barbie Botox in 2013, said he had "learned his lesson" and broke it off that night with both women.

After agreeing to take the case, Ashley Allen ran a conflict check using name, address, and employer and found no conflicts for Ms. Billings (or her employer) or Ms. Brooks (or her employer), and did not know Beau's last name, but she ran the first name Beau through a client database and saw that she had never represented anyone named Beau. Her conflict check system did not list Beau Bolling as an opposing party in any prior matter because the matters were withdrawn by agreement prior to trial.

As it turns out, Ms. Brooks is none other than the former Barbie Botox, who had been married briefly in late 2013 to a Bob Brooks, and kept his last name. She also now goes by "Barbara" because she wants to be taken more seriously. Because Barbie had a different name, different address, different employer, different marital status and no children, she did not trigger the conflict check in Ms. Allen's office. When she was initially logged into Ms. Allen's database, she was listed as Barbie Botox, married, unemployed, one child, and had an address in Chesapeake. Currently, Barbie also looks substantially different, as she has always a penchant for plastic surgery, tattoos, piercings, and experimental hair colors and styles.

Ms. Allen did not recognize Barbie when she saw her at the mother/daughter arraignment, or first hearing during which Barbie was asking for a continuance so she could retain counsel. Barbie was also unaware that Ms. Allen was her former lawyer, as she had had several court appointed lawyers in the interim for various matters related to substance abuse Ms. Allen's conflict check system does not use social security numbers, particularly with court appointed clients, who are not filtered through the normal intake procedures because the initial meeting is usually in the jail or the courthouse, so she was not able to make the connection before she took the case and had done substantial work on behalf of Ms. Billings, including interviewing witnesses who said that Ms. Billings was not the aggressor and was attacked unprovoked by her crazed daughter, who they said "was off her meds."

Ms. Allen finally figured out that Barbara is a former client when she heard a voicemail recording provided by Babs in which she used the same threats against her mother that she had made against her husband in 2010 on a voicemail. Now Ashley wonders if she has a potential conflict in Babs's case, which is set for trial in less than a week.

Questions Related to Rule 1.9:

1. Does Ashley Allen have a conflict now that she knows Ms. Brooks used to be her client? Does it matter that this is a different alleged victim?

2. Can Ms. Allen still represent Babs Billings and if so, does she need to discuss it with Ms. Brooks and/or get a conflict waiver?

3. Does it change the situation if part of Barbie's defense when she was married to Mr. Botox was that she had a previously undiagnosed mental health issue for which she was now seeking treatment, which information was shared with Ms. Allen to assist in her defense?

4. Does Beau Bolling's involvement as a witness to the altercation between Babs and Barbie create a conflict since Ms. Allen was in an adversarial role to Beau prior? During a telephone interview with Beau, Beau told Ms. Allen's paralegal that he is willing to testify that he used to live with Barbie and that she "was crazy then and is crazy now." He also revealed that Barbie has medication that she takes inconsistently, sometimes more than prescribed and sometimes she skips it altogether because it makes her feel sluggish.

5. Is Ashley's conflict check system adequate or is she ethically bound to use social security numbers to make sure there is not an issue?

6. If Ashley withdraws from the case, is she in compliance with Rule 1.9 as long as she gets out as soon as she recognizes the conflict?

7. If Ashley withdraws from the case to avoid any problems with Rule 1.9, is she opening herself up to any other ethical issues regarding her representation of Babs?

III. Dealing with Opposing Counsel - Spoliation Issues – Rule 3.4

ADVISING YOUR CLIENT TO DELETE SOCIAL MEDIA, TEXTS OR EMAILS

Hypothetical -

Criminal lawyer Hallie Halstead represents defendant Rhianna Reinstein. Rhianna is charged with possession of heroin with intent to distribute. She has priors for possession of cocaine, and two prior DUIs. Rhianna swears that the heroin was not hers, and that it belonged to her former boyfriend who anonymously tipped off police to the location of the drugs, which he planted in her car without her knowledge because he wanted to get back at her for pressing charges when he assaulted her a few weeks ago. You tell Rhianna that you require a $5,000 retainer in cash or a cashier's check. She says she will get the money together and call you in a week or two. In preparation to be retained, you check up on your potential client's story, and you find on her Facebook, Instagram and other social media pages several selfies of her shooting up, as well as about 500 pictures of her and the ex, taken under various overpasses and in hotel rooms, mugging for the camera holding up drug paraphernalia.

QUESTIONS:

1. At this point, should you call Rhianna and tell her to delete her social media pages, or at least to sanitize them or make them look more respectable? Is that legal advice? If so, does it create a duty even though you haven't been retained?

2. Whether or not Rhianna hires you, is it unethical to advise her to delete or sanitize her page? Is that destroying evidence?

3. When a plea bargain is offered by the prosecutor, should you warn her that the photos she deleted may have been downloaded by the police prior to her deleting them or the prosecutor and that if she doesn't take the plea, she could risk exposure of these items? After all, if you printed them, who else may have? What if she becomes upset that you printed the photos before she even hired you? Was there any issue with printing photos of a potential client?

4. If Rhianna deletes the photos before anyone sees them, but you still have them, are they confidential and/or privileged? When Rhianna later becomes famous, can you ethically tell anyone that you have these photos, since she is not the one who told you about them or showed them to you? Does it matter that the photos were available to the public at the time you found them?

5. Does your ethical obligation or the implications change if the selfies and inappropriate content are on your client's phone rather than on the internet? Can you advise your client to delete all of her photos from her password protected emails, text chains, and her cloud storage?

IV. Dealing with GALs

RULE 4.2 and LEO 1870

Speaking to represented child through a parent... how to advise parents without violating this rule?

Hypothetical Question Implicating this Rule

Martin Millstead is an attorney representing Mom Murray in a custody case. Mom is convinced that the children, girls, ages 10 and 12 would be far better off in her care and custody than they are in the shared arrangement that the parents have now.

Mom tells Martin that she wants custody and hires him to assist her with the case.

Mom tells Martin that the children have been asking to change the custody arrangement and states that one of the children is refusing to go to the father's home, even though there is an order for equally shared custody. Mom tells Martin that she does not suspect abuse or neglect of the children, but that she simply wants the children to be with her because she is their mother and it's the right thing for girls to be with their mother. Martin has no reason to disbelieve the mother's story that the children have been asking to avoid the father's home. A GAL is appointed for the children shortly after Martin enters the case. The GAL visits the mother's home and tells her that the children have expressed something different than what she has reported and that the children report that they are actually doing well with the shared arrangement.

After hiring Martin, the mother sends emails and text messages to the children telling them not to talk to the GAL and only to talk to her new lawyer, who she trusts more than she trusts the GAL. Her emails say that her lawyer wants to talk to them and that this advice for the children about not talking to the GAL came from her new lawyer, Martin. She reported to Martin that the GAL was lying about what the children said and that justice will never be served unless the truth comes out directly from the children.

QUESTIONS

1. When mother asks Martin to speak to the children about their preferences, what should he do?

2. If opposing Counsel and/or the GAL get a hold of the emails the mother sent to the children telling them not to talk to the GAL, what implications might this have for Martin? What if the mother's statements are true? What if they aren't true?

3. Does opposing counsel or the GAL have any obligation to report Martin to the bar for violating any rule? What about the rule stating that attorneys who become aware of misconduct must report?

4. How should Martin advise the mother if she really believes that the GAL has done something inappropriate or misrepresented the children's preferences?

Other issues of Navigating LEO 1870 – Stay professional

Heather Zaug Case – You don't have to hang up on people to be ethical.

Issues related to communicating with Social Services/City Attorney/Social Worker in DHS cases – how to advise your court appointed client about cooperating versus protecting his or her rights?

END OF HYPOTHETHICALS AND CLE MATERIALS PREPARED BY BRETTA Z. LEWIS