

Chapter 4 – Jurisdiction

4.1 Overview

Under Article V, Section 5 of the Pennsylvania Constitution, the Courts of Common Pleas are given jurisdiction over all cases “except as may otherwise be provided by law.” This general jurisdiction extends to child welfare cases, among many others.

Although jurisdiction over each case before the Court of Common Pleas is vested in the court as a whole, for the sake of administrative efficiency cases may be allocated among divisions — specialized units of judges given responsibility for particular kinds of court business. In a judicial district large enough to have permanent divisions, proceedings in child welfare cases are handled by judges sitting in the court’s Juvenile Court Division. However, terminations of parental rights and adoption matters are reserved for the Orphans’ Court Division.

The conduct of dependency actions is governed primarily by the Juvenile Act, the Pennsylvania Child Protective Services Law and the Rules of Juvenile Court Procedure. These statutes and rules have been amended to meet the requirements of federal law, including the Adoption and Safe Families Act (ASFA), and are intended to ensure children’s rights to safe, timely permanency. (A more complete explanation of the federal and state statutes may be found in Chapter 21: Overview of Federal and State Child Welfare Legislation.)

4.2 Dependency Jurisdiction in General

Juvenile courts are given authority to hear and make dispositions in cases in which children are alleged to be dependent. A multi-part definition of “dependent child” is provided in 42 Pa.C.S. § 6302. A dependent child is one who:

- lacks “proper parental care and control, subsistence, education as required by law, or other care or control necessary for his physical, mental, or emotional health, or morals”;
- has been placed for care or adoption illegally;
- has been abandoned, or otherwise lacks a parent, guardian or legal custodian;
- is habitually truant without justification while subject to compulsory school attendance;
- has committed a delinquent act and is under ten;

- has habitually disobeyed reasonable parental commands and is ungovernable and in need of care, treatment or supervision;
- was adjudicated dependent previously, remains under the court’s jurisdiction, and has committed acts qualifying him as ungovernable;
- has been referred pursuant to an informal adjustment and has committed acts qualifying him as ungovernable; or
- was born to a parent whose current conduct poses a risk to the child’s health, safety or welfare and whose parental rights with regard to another child were involuntarily terminated within the three years preceding this child’s birth.

4.3 Divisional Responsibilities

Juvenile courts operate under the guidelines established in the Juvenile Act, 42 Pa.C.S. § 6301 *et seq.* Juvenile dependency proceedings are governed by the Pennsylvania Rules of Juvenile Court Procedure, Rule 1100 through Rule 1800.

Juvenile courts hear all phases of a dependency action, including shelter care, adjudication, disposition and permanency hearings. However, under 20 Pa.C.S. § 711, the jurisdiction of the Court of Common Pleas over adoption petitions and related matters, including voluntary and involuntary termination of parental rights, must be formally exercised through the Orphans’ Court Division. (The only exception is for Philadelphia, where 20 Pa.C.S. § 713 entrusts these matters to the Family Court Division.) As only 20 of Pennsylvania’s 60 judicial districts have Orphans’ Court Divisions,¹ 42 Pa.C.S. § 951 provides that, in any judicial district that lacks such a division, “there shall be an Orphans’ Court Division composed of the Court of Common Pleas of that judicial district.”

What this means is that, at least in districts with separate divisions, if a dependency case progresses to the point that parental rights must be terminated and the child is placed for adoption, the matter must be taken up in the Orphans’ Court Division for separate termination and/or adoption proceedings. The juvenile dependency case is not transferred to the Orphans’ Court, but rather a separate file is opened and the case proceeds independently and concurrently. For the sake of continuity, however, the judge who adjudicated the child dependent or conducted permanency or other dependency court hearings in the matter may be administratively assigned by the President Judge to preside in Orphans’ Court over these separate proceedings. (42 Pa.C.S. § 6351(i)).

In addition to Juvenile and Orphans’ Court Divisions, Allegheny and Philadelphia Counties have separate Family Court Divisions established pursuant to the authority of 42 Pa.C.S. § 951. In some cases, tension may arise between juvenile court dependency

¹ Under 42 Pa.C.S. § 951(a)-(c), Orphans’ Court Divisions are established in Allegheny, Beaver, Berks, Bucks, Cambria, Chester, Dauphin, Delaware, Erie, Fayette, Lackawanna, Lancaster, Lehigh, Luzerne, Montgomery, Philadelphia, Schuylkill, Washington, Westmoreland, and York Counties.

proceedings and custody actions, which may be filed or pending with the Family Court Division. In any case, there should be coordination between court divisions, with the best practice being the assignment of one judge to preside over any proceeding involving a family, regardless of the division in which it is heard.

Best Practice — One Judge/One Family

The broad concept behind the One Judge – One Family Model is that the same judge or judge/hearing officer team that hears a family’s dependency case also hears delinquency, custody or even criminal matters involving the same family. While this is not practical in all jurisdictions, application of the One Judge – One Family principle within the dependency sphere requires that the same judicial officer who adjudicates a case continues to hear proceedings involving that family up through and including termination of parental rights and adoption proceedings. This practice provides stability and continuity throughout the case, reduces confusion and the possibility of conflicting orders and puts the judge in a better position to make appropriate decisions.

4.4 Jurisdiction in Cases that Cross Borders

Sometimes dependency cases originate in one county, state or country and end with services and court supervision being provided in another. These cases can often be frustrating and time-consuming, but despite these challenges families must receive appropriate services and have their needs met.

4.4.1 Inter-County Transfer Cases

Under Pa.R.J.C.P. 1302, a court has the authority to transfer a dependency case at any time. Upon transfer of a case, the transferring court must transmit certified copies of all documents, reports and summaries in the child’s court file. CPCMS allows for electronic case transfer from county to county; however this is not considered the “official record”. The electronic transfer of cases must also be accompanied by the official case record which includes all physical documents contained within the court record.

While Pa.R.J.C.P. 1302 does not specifically state how a transfer is to occur, there are essentially three steps to a transfer including: (1) the transfer order transferring the case to the receiving county; (2) the acceptance of the case in the receiving county and the initiating of services in the receiving county; and (3) the termination of the case and services in the transferring county.

It is important to keep in mind the need for service continuity during the transfer process. Without communication between the courts and the agencies of the two counties involved, there could be a delay and/or disruption of services or even risk that the case could be lost for a period of time. Time is critical in dependency cases as children

and families continue to grow and experience changing dynamics in their circumstances. In addition, the timeline constraint of the Adoption and Safe Families Act (ASFA) continue to apply. (See Chapter 21 for more information on ASFA).

Ultimately, it is the court's decision regarding whether a case should be transferred or whether services and supervision should be retained in the original county. Almost always, transferring and receiving child welfare agencies have discussed the possibility of transfer before the matter presents to the court. However, all transfer decisions are solely the judge's responsibility.

In making any transfer determination, there are multiple factors a court should consider. While there are likely to be considerations unique to each child and family's circumstance and the complexity of each case varies, the following is a suggested list of general factors, albeit not exhaustive, for courts to consider:

1. What is the status or stage of the case? Consider not transferring cases that have significant hearings or decisions in the imminent future.
2. Whether the transfer is in the child's best interest?
3. What is the permanency goal? A goal other than reunification may lessen the need for transfer.
4. What is the age and status of the child? In-home, nearing reunification, in a long-term placement, with pre-adoptive parents?
5. How close to termination of court supervision is the case?
6. Where is the child physically residing? How would a transfer impact placement?
7. Where are the parents/guardians residing and how long have they resided at their current location?
8. Is the new residence stable or do the parents have a history of frequent moves?
9. What is the reason the parents relocated?
10. What connections do the child or parents have to the receiving and transferring county?
11. Where are the child's kin/family located and to what extent do kin/family have contact with the child? How might a transfer impact this contact?
12. Where are the child's services being provided? How long has the child been with a particular service provider? How might a transfer impact a particular service?
13. How will the transfer affect continuity of services? Will transfer disrupt the services and what impact any disruption will have on the child?
14. How will the transfer impact the child's school?
15. Whether there are other ongoing proceedings involving the child (i.e. delinquency, child support, paternity) and the impact transfer would have on those proceedings?

When deciding the issue of transfer, a judge may be faced with resistance. The agency may be concerned with costs, resources, increases in placement data and a number of other issues. Parents, children and caretakers too may have specific concerns. Ultimately, the decision regarding the propriety of case transfer must be driven by the effect upon the best interest of the child and must be made by the judge.

If the originating court determines that transfer of a case may be appropriate, the judge should contact the dependency court judge of the county to which the transfer is to occur. Initiating this communication is critical to avoid complications in the transfer and continuity of services. Parties should be notified regarding the timing of this conversation and allowed to be present. In addition, a record of the conversation should be made and shared with the parties.

After this conversation between transferring and receiving county judges, and an agreement to transfer the case has been reached, the transferring court should enter an order transferring the case to the receiving court. The order should include direction for the transfer of the official court record with a timeframe for such to occur. The order should also direct the transferring county's child welfare agency to transfer their entire case record to the receiving county, again within a specified timeframe. ***In addition, the order should direct the transferring county's child welfare agency to continue services until such time that the receiving county has assumed responsibility for the ongoing services or has initiated other services in the receiving county.*** A copy of this transfer order should be provided to all parties, the receiving county court and the receiving county child welfare agency.



While not specified in Pa.R.J.C.P. 1302, upon receipt of the order transferring the case, the receiving county's court should enter an order accepting the case and directing the assignment of a docket number. The receiving county should assign appropriate counsel for the parties (parents and children), providing notice to each and the agency solicitor. The receiving county should schedule a hearing to review the child and family's circumstances and ensure the case is progressing without interruption of services.

Finally, while this should never happen given the transferring and receiving judges have come to an agreement prior to the transfer order, in the rare event a transfer order is entered and the receiving county refuses to accept the case being transferred, the court in the receiving county should enter an order indicating the transfer will not be accepted. The order should provide a detailed statement of the reasons why the transfer is being rejected. A copy of this order should be forwarded to the originating county court and all parties.

4.4.2 Interstate Transfers

Most transfers of children across state lines in the child welfare arena are governed by three interstate compacts:

- The **Interstate Compact on Adoption and Medical Assistance** provides legal guidelines and requirements for ensuring that adopted special needs children are provided medical assistance in a timely manner when they move from one state to another. This Compact also ensures that children who are placed into foster or residential care and are Title IV-E eligible receive medical assistance, either in Pennsylvania or the state in which they are placed.
- The **Interstate Compact on Juveniles** coordinates the interstate movement of delinquent juveniles who are being referred between courts on a probationary status. This compact allows for courtesy supervision to be provided in another jurisdiction in order to carry out the orders of a home jurisdiction. This Compact also returns runaways and arranges transportation for the juveniles served by this compact. Pennsylvania's Interstate Compact for Juveniles Act can be found at 62 P. S. § 731.
- The **Interstate Compact on the Placement of Children (ICPC)** governs the transfer and continued supervision of children who are moving between states for the purpose of adoption, foster care or institutional placement. This Compact also assures that all Pennsylvania requirements are met prior to the placement of a foreign child in Pennsylvania for the purpose of adoption. The majority of dependency cases that cross state lines will involve the ICPC. The Pennsylvania ICPC law can be found at 62 P. S. § 761.

The ICPC applies to four primary situations in which children may be sent to other states (APHSA, 2002, p. 4):

- 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; or
- placements of adjudicated delinquents in institutions in other states.

The Compact clearly spells out who must use the Compact when they “send, bring, or cause a child to be brought or sent” to another party state. These persons and agencies, called “sending agencies,” are the following (APHSA, 2002, p. 4):

- a state party to the Compact, or any officer or employee of a party state;
- a subdivision, such as a county or a city, or any officer or employee, of the subdivision;
- a court of a party state; and

- any person (including parents and relatives in some instances), corporation, association or charitable agency of a party state.

While the majority of placements that cross state lines are governed by the ICPC, not all placements of children in other states are subject to the Compact, nor are all persons who place children out of state. The Compact does not include placements made in medical and mental health facilities or in boarding schools, or “any institution primarily educational in character” (APHS, 2002, p. 4) (see Article II(d); see also Regulation No. 4). 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 guardian. For more information about ICPC see Chapter 15: Termination of Court Supervision, Section 15.4.4: Transfer of Court Supervision.

4.4.3 International Transfers

Placement of children from other countries to Pennsylvania for the purpose of adoption may be subject to the requirements of the ICPC, the Interstate Compact on Adoption and Medical Assistance or the Interstate Compact on Juveniles. In addition, the Pennsylvania Refugee Resettlement Program, which is funded by the US Department of Health and Human Services, Administration for Children and Families, Office of Refugee Resettlement, provides a continuum of employment, educational, case management, health and financial support services to newly arrived refugees in Pennsylvania, including potential supports for children. More information on programs and community service providers for refugees can be found at <http://www.refugeesinpa.org>.

4.5 The Indian Child Welfare Act (ICWA)

ICWA is a federal law that seeks to keep American Indian children with American Indian families. Congress passed ICWA in 1978 in response to the alarmingly high number of Indian children being removed from their homes by both public and private agencies. The intent of Congress under ICWA was to “protect the best interests of Indian children and to promote the stability and security of Indian tribes and families” (25 U.S.C. § 1902). ICWA sets federal requirements that apply to state child custody proceedings involving Indian children.

“The Department of Interior, Bureau of Indian Affairs (BIA) promulgated federal regulations governing ICWA in 2016. These binding regulations provide additional definitions, timelines and required judicial findings that must be made on the record in an effort to create more consistency in ICWA implementation. The statute and regulations together create the minimum federal requirements for Indian families.” (NCJFCJ; *ICWA Benchbook*, 2017, p. 1)

ICWA defines an “Indian child” as any unmarried person who is under age eighteen and is either (a) a member of a federally recognized Indian tribe or (b) is eligible for membership in a federally recognized Indian tribe and is the biological child of a member/citizen of a federally recognized Indian tribe. Under ICWA, individual tribes have

the right to determine both membership and eligibility for membership. However, in order for ICWA to apply, the tribe must be federally recognized.

ICWA applies to all child dependency proceedings if the court knows or has reason to know that the child is an “Indian child.” If it is believed that a child could have ties to a federally recognized American Indian tribe or if someone alludes to the child having ties, it is the child welfare agency’s responsibility to make efforts to determine the ties and to contact the tribe or tribes. While Pennsylvania does not have any federally recognized Indian tribes, the ICWA legislation remains applicable to children coming before Pennsylvania courts. In all cases involving 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 have a right to intervene at any point in the proceedings.

More information on American Indian tribes and ICWA can also be found at the National Indian Child Welfare Association website at <http://www.nicwa.org/> , the U.S. Department of the Interior, Bureau of Indian Affairs at <http://www.bia.gov/> or the National Center for Juvenile and Family Court Judges website at <https://ncjfcj.org/ICWABenchbook>.