

# Chapter 3 - Jurisdiction

## 3.1 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 belonging to 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 and regulations may be found in Chapter 20: Overview of Federal and State Child Welfare Legislation.)

## 3.2 Dependency Jurisdiction in General

Juvenile courts are given authority to hear proceedings 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 3 years preceding this child’s birth.

### **3.3 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.) Because only 20 of Pennsylvania’s 60 judicial districts have Orphans’ Court Divisions,<sup>1</sup> 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 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)).

---

<sup>1</sup> 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.

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 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 master 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.

### **3.4 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.

**\*Best Practice - Case Transfers\***

When cases are being transferred from county to county, the court and agency should consider the resources of the receiving county and needs of the child/family. Some children/families may require a specific service that may not be available in the receiving county. The loss of such a service may delay progress and create a barrier which may hinder the child/family's long-term goal. In these situations, it may be beneficial for the sending county to maintain jurisdiction and cross county lines to provide the service. A judge should exercise caution in these cases.

It can also be beneficial for a judge to make a courtesy call to the judge in the receiving county to provide some background on the case. Consideration should be given whether judicial calls should be on the record with notice to counsel.

### **3.4.1 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 shall 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. The electronic transfer of cases must also be accompanied by copies of physical documents.

### **3.4.2 Interstate Transfer**

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 cards, 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 placing 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 (ASPHA, 2002, p. 4):

- placement 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 (ASPHA, 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” (ASPHA, 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 14: Termination of Court Supervision - Transfer of Court Supervision section.

### **3.4.3 International Transfers**

Placement of children from other countries in 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>.

## **3.5 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.

ICWA defines an “Indian child” as any unmarried person who is under age eighteen 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. 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.

If it is believed that a child could have ties to an 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 be found at the National Indian Child Welfare Association website at <http://www.nicwa.org/> or U.S. Department of the Interior, Bureau of Indian Affairs at <http://www.bia.gov/>.