

INVESTIGATIVE REPORT

OFFICE OF THE CHILD ADVOCATE
MAY 2022

A MULTI
SYSTEM
INVESTIGATION
REGARDING
HARMONY
MONTGOMERY

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“Each of us, as citizens, has a role to play in creating a better world for our children.”

Nelson Mandela

ABOUT HARMONY



The OCA’s knowledge about Harmony Montgomery as a person is largely, if not exclusively, based on the excellent court investigation reports completed as part of her Juvenile Court Care and Protection case. This means that the OCA can only really see Harmony through descriptions of her at specific moments in time, like her photographs that are widely distributed in the media. Harmony’s personality, interests, and life experiences after she left Massachusetts are unknown to us.

What we know is that Harmony’s medical conditions were not completely clear to her medical providers at birth. Medical experts believed that Harmony would never be able to see or that she would be severely disabled. However, Harmony defied expectations. Although blind in one eye, she grew stronger with each passing week. As she grew into a toddler it was clear that although she had visual disabilities, she had developed superior coping mechanisms as well as a knack for overcoming challenges.

What we also know is that Harmony was independent as a toddler and very young child. She liked books, playing with dolls, and playing with her peers. She is described as both “charming” and “very active.” Harmony had very well-developed language skills and was known to be very empathetic. Also, as a toddler she loved to eat! She loved all types of foods including fruits, vegetables, and even onions. As a young child she had the opportunity to play in a vegetable garden and would pick the cherry tomatoes and cucumbers.

The OCA shares the public’s concern for the safety and wellbeing of Harmony. We ask that anyone with information about her disappearance or whereabouts immediately contact the City of Manchester New Hampshire police 24-hour tip line at 603-203-6060.

ABOUT THE OFFICE OF THE CHILD ADVOCATE

The [Office of the Child Advocate \(OCA\)](#) is an independent executive branch agency with oversight and ombudsperson responsibilities, established by the Massachusetts Legislature in 2008.¹ The OCA's mission is to ensure that children receive appropriate, timely and quality state services, with a particular focus on ensuring that the Commonwealth's most vulnerable and at-risk children have the opportunity to thrive. Through collaboration with public and private stakeholders, the OCA identifies gaps in state services and recommends improvements in policy, practice, regulation, and/or law. The OCA also serves as a resource for families who are receiving, or are eligible to receive, services from the Commonwealth.

Investigation Purpose and Process

The OCA's enabling statute, [M.G.L. c. 18C § 2](#), provides the OCA authority to investigate and ensure that high quality state services and supports are provided to safeguard the health, safety and wellbeing of all Massachusetts children. The OCA is mandated to examine systemic issues related to the provision of services to children and provide recommendations to improve the quality of those services to give each child the opportunity to live a full and productive life.

The purpose of this investigation is to determine what happened in Massachusetts and why, and whether the actions or services provided to Harmony Montgomery and her family were adequate and appropriate, in accordance with agency policies, and in compliance with state and federal law. The OCA's recommendations focus on whether policies, regulations, training or delivery of services or state law can be improved.² The scope of the OCA investigation is different from the criminal investigation now underway in New Hampshire, which will address any individual responsibility for the disappearance of Harmony.

This investigation is based on a review of confidential electronic and physical records, as well as correspondence and interviews with individuals from the Massachusetts state entities that were responsible for providing services to Harmony and her family between 2014 and 2019. These individuals include direct service and management personnel from the Department of Children and Families (DCF), the Juvenile Court, and the Committee for Public Counsel Services (CPCS). The OCA's statutory oversight responsibilities only extend to executive branch agencies, which includes DCF.³ The OCA wishes to acknowledge with gratitude the individuals from all these entities for their cooperation and collaboration on this investigation. As required by our statute, the OCA notified the Manchester New Hampshire District Attorney's office of this investigation.

This investigation is unique because it is the first time the OCA has initiated an investigation of a missing child rather than a child who has suffered a fatality or near fatality. This investigation is also unique in that it centers not just on the actions of the child protective service agency, but also focuses heavily on

¹ The Office of the Child Advocate Statute is [M.G.L. c. 18C](#).

² The Office of the Child Advocate Statute is [M.G.L. c. 18C § 5](#).

³ [M.G.L. c. 18C § 1](#).

the proceedings in the Juvenile Court, and the legal decisions about Harmony’s custody. The OCA has statutory authority to review information from individual legal cases, and we reviewed both the court file and some court recordings in this case. As the details of Harmony’s Care and Protection case are critical to understanding how custody was awarded to her father, and essential to support the OCA’s recommendations in this report, the OCA will share some of this information in this report.

Confidentiality

The OCA is required by law, [MGL c. 18C § 12\(a\)](#), to ensure that no information submitted for review is disseminated to parties outside the office, except where disclosure may be necessary to enable the Child Advocate to perform their statutory duties. The Child Advocate’s decision to publicly release its findings and recommendations after it has reviewed a case is informed by weighing several factors including, but not limited to: (1) whether the case has received sufficient public interest that transparency and accountability require public disclosure; (2) whether public disclosure of the OCA’s recommendations contributes to the public’s understanding of state services; and (3) whether the OCA believes that the insights from the case are so significant that the benefit to the public policy discussion is substantial. The OCA attempts to limit the release of confidential information, and many protected details are not included in this report.

INTRODUCTION

Harmony Montgomery was born in Massachusetts to Crystal Sorey and Adam Montgomery in 2014, an unmarried couple who were not together at the time of her birth. Harmony was solely in Ms. Sorey's care after her birth as Mr. Montgomery was incarcerated. At two months old, Harmony was removed from the care and custody of Ms. Sorey and placed in foster care by the Massachusetts Department of Children and Families (DCF). Harmony remained in the custody of DCF until February 2019, when Mr. Montgomery was awarded custody of Harmony pursuant to a Care and Protection case in Juvenile Court. Mr. Montgomery was living in New Hampshire when he was awarded custody of Harmony. Mr. Montgomery is Harmony's last known caregiver and the City of Manchester, New Hampshire is her last known residence.

The information below regarding New Hampshire's involvement with Harmony, Mr. Montgomery and Kayla Montgomery, his wife, is based on the [New Hampshire Comprehensive Update on the Ongoing Case Involving Harmony Montgomery and Recommended Systemic Improvements, February 25, 2022.](#)

In July 2019, the New Hampshire Department of Children, Youth and Families (NH DCYF) received a report of abuse of Harmony. The reporting individual alleged that Harmony had a black eye which Mr. Montgomery admitted to causing. NH DCYF screened-in the report, assessed the family, and in October 2019 unfounded the allegations of harm to Harmony.

In January 2020, NH DCYF received a report about the Montgomery household which did not reference Harmony. When NH DCYF asked Mr. Montgomery about Harmony, he reported that she was living with Ms. Sorey in Massachusetts and had been living with Ms. Sorey since Thanksgiving 2019. NH DCYF reportedly attempted to confirm this information with Ms. Sorey, but she was unresponsive to their phone call.

In January 2021 and March 2021, NH DCYF received additional reports concerning the Montgomery household which were unrelated to Harmony. When NH DCYF asked Mr. Montgomery about Harmony, he again reported she was living with Ms. Sorey in Massachusetts, and he had not seen her in a year.

In September 2021, NH DCYF received a report from an individual close to Crystal Sorey, the mother of then seven-year-old Harmony Montgomery. The individual was concerned that Harmony had not been seen by any adult since 2019. Harmony was last known to be living in Manchester, New Hampshire with Mr. Montgomery. NH DCYF confirmed that Harmony had never been registered for school in Manchester and began attempts to locate the Montgomery family.

On November 18, 2021, Ms. Sorey contacted the Manchester New Hampshire police to report that she had not seen Harmony since a Facetime call in April 2019, two and a half years prior. Five weeks later, on December 27, 2021, NH DCYF informed Manchester police that they were unable to locate Harmony and the police began a search for Mr. Montgomery. On December 29, 2021, Ms. Sorey sent a letter to Manchester Mayor Joyce Craig requesting help in finding Harmony.

On December 31, 2021, the Manchester police publicly announced Harmony's disappearance and their search for her. That same day, Manchester police located Mr. Montgomery living in a car with a girlfriend. He was described by police as uncooperative and provided conflicting information about Harmony's whereabouts. On January 3, 2022, Mr. Montgomery was arrested and charged with second-degree assault, interference with custody and endangering the welfare of a child in connection with the disappearance of Harmony. On January 6, 2022, Kayla Montgomery, Mr. Montgomery's wife, was arrested and charged with felony welfare fraud for allegedly receiving food stamp benefits for Harmony long after Harmony supposedly went missing. On January 11, 2022, prosecutors dropped the felony welfare fraud charge against Mrs. Montgomery and added a new felony charge of theft. According to media reports, on or about April 5, 2022, Mr. Montgomery was additionally charged with two counts each of being an armed career criminal, felon in possession of a firearm, and theft by unauthorized taking or transfer and receiving stolen property. Also, according to media reports, on or about April 7, 2022, Mrs. Montgomery was additionally charged with two counts of receiving stolen property related to a gun theft that took place in September or October 2019. At the time of the release of this report, both Mr. and Mrs. Montgomery remain in jail facing their respective criminal charges. Harmony remains missing.

Within days of the public announcement of Harmony's disappearance, details emerged about Harmony and her parents' history of involvement with Massachusetts DCF and the Juvenile Court. These details included Mr. Montgomery's criminal history, both parents' history of substance use disorder, and a Juvenile Court Judge's decision to place Harmony in the custody of Mr. Montgomery in February 2019. There was swift local and national public concern for Harmony and an immediate and heightened public outrage directed not only at Mr. Montgomery, but also at the decision to place Harmony with Mr. Montgomery in 2019. New Hampshire Governor Sununu accused Massachusetts of failing in its obligation to keep Harmony safe because she was placed in Mr. Montgomery's care pursuant to a Care and Protection proceeding in Massachusetts.⁴

The OCA is statutorily authorized to initiate an inquiry into any concerns regarding a child who received state services that are brought to our attention, including through media outlets. When information regarding Harmony's disappearance indicated that she had prior Massachusetts child protective service involvement, the OCA immediately reviewed the information available in the DCF electronic case file. As the OCA considered the available case information as well as the media reports, it became evident that a deeper understanding of the circumstances of Harmony's care while in Massachusetts was required. The OCA initiated a full-scale multi-system investigation to explore the decision-making in Harmony's case, including the placement of Harmony in the custody of Mr. Montgomery. The key themes identified across this investigation are described below.

⁴ ["N.H. governor questions Mass. Court's handling of Harmony Montgomery case"](#) Boston Globe, January 18, 2022.

Family Involvement in State Services

Harmony, Ms. Sorey, and Mr. Montgomery were under the supervision of DCF and had Juvenile Court involvement between June 2014 and February 2019, when Mr. Montgomery was awarded custody of Harmony. Harmony was removed from the care and custody of Ms. Sorey at two months old and spent most of her young life in foster care before going to live with Mr. Montgomery in New Hampshire. The family's long history with child protective services is relevant to understanding the complexity of child protective services state systems and the impact of the decision-making of these systems on the life of Harmony. **Detailed information about Harmony, Ms. Sorey and Mr. Montgomery and their child protective services history is provided in the *Family Background and Child Protective Services Involvement* section of this report.**

The Role of Ms. Sorey and Mr. Montgomery's Substance Use Disorder

The OCA recognizes that Ms. Sorey and Mr. Montgomery's struggles are shared among the thousands of parents in Massachusetts and nationally who wrestle with, and receive services for, substance use disorder. Substance use disorders are complex brain diseases that profoundly impact the way people think, feel, and act. While substance use disorders can be successfully treated and managed, a relapse is a common experience for many people, and parents are no exception. The OCA identified that Harmony's case, much like David Almond's and many others that the OCA reviews, demonstrates the devastating consequences a parent's substance use disorder can have on the lives of their children. Further, this investigation identifies the effect that substance use disorder, and specifically relapse, can have on a child's ability to achieve permanency in a safe and supportive home. The recommendations in this report take into consideration the complexity of substance use disorder and the other challenges parents face in providing their children a safe and supportive home.

The Importance of Permanency for a Child

All children deserve a permanent home that promotes their safety, stability, and wellbeing. DCF strives to establish a child(ren)'s permanency⁵ and wellbeing by providing support and services to families so that children can remain at home when it is safe. When necessary, DCF removes children from their home with Juvenile Court approval and provides foster care for child(ren). DCF seeks to return removed children to their families when reunification is possible. When reunification with a parent is not possible, DCF seeks to find a new permanent family for a child(ren). Harmony's case reflects the difficult nature of child protective services work and the inherent tension of the mission: a simultaneous requirement to protect children and to preserve families.

Delays in permanency for children, like Harmony, are traumatic in part because children experience time differently than adults do. Much of Harmony's trauma was a result of the inconsistent planning about whether she was going to "go home" to Ms. Sorey or be adopted. The stress of that experience was so

⁵ Massachusetts Department of Children and Families Annual Report FY2021: "Permanency" is defined as ensuring a nurturing family – preferably one that is legally permanent – for every child within a timeframe supportive of their needs.

destabilizing for Harmony that her behavior significantly deteriorated and compromised her foster care placement, the only long-term safe and stable home she had known since birth. Every aspect of the child protective system needs to be evaluated for how it works to promote successful permanency for a child in a manner and timeframe that ensures their safety and wellbeing.

The Complexity of Harmony's Juvenile Court Case

Harmony's Care and Protection case in Juvenile Court began in 2014 when she initially came into DCF's care and custody and ended in 2019 when she was placed in the custody of Mr. Montgomery. The sequence of events in the hearing that resulted in Mr. Montgomery obtaining custody of Harmony are complex for several reasons. These include the cross-border issues with Mr. Montgomery living in New Hampshire and the legal standards for determining his fitness to parent Harmony. Our ability to understand all the nuances of this case is also challenged by the confidentiality protections of attorney-client privilege which prevents the OCA from fully investigating the significant role of the various attorneys in this case and their advocacy strategies. The legal case regarding Harmony's placement with Mr. Montgomery is a critical piece to the puzzle of what happened to Harmony while she was in Massachusetts. The OCA has sought to untangle these complexities to the extent we are able.

The DCF case management teams that evaluate and work with families operate on a timeline and trajectory that reflects compliance with DCF policies but may not reflect or perfectly align with the trajectory of the DCF legal case which must meet federal standards for child protective services work. This misalignment reflects the complexity of overcoming familial challenges, such as substance use disorder, and the need to prioritize timely permanency for children. The complexity can result in a rush to placement with families who are not ready or not well supported for reunification.

At the heart of the OCA's analysis of Harmony's legal case is a finding that Harmony's safety was not placed at the center of the legal proceedings. Harmony's unique and individual needs, strengths, and vulnerabilities are all relevant to an understanding of what Harmony needed to be safe and the caregiver capacity needed to keep her safe. Because in Harmony's case her needs were not presented in court by any of the attorneys, they could not be adequately considered by the Judge. This lack of a focus on Harmony resulted in a miscalculation of the risks to Harmony when she was placed in Mr. Montgomery's custody.

The Role of the Interstate Compact on the Placement of Children

In order to understand the complications of the cross-border issues in this case, it is imperative to understand the role of the Interstate Compact of the Placement of Children (ICPC). The ICPC is a statutory agreement that has been entered into by all fifty United States as well as Washington, D.C., and the U. S. Virgin Islands. The agreement governs the permanent placement of children over the border from one state into another state. The purpose of the ICPC is to ensure that children who are placed out-of-state are cared for by safe caregivers in an environment that meets that child's needs. The ICPC is necessary because an individual state's laws are applicable only within that state's borders. The

ICPC creates reasonable expectations for interstate relations and establishes a system that clarifies state responsibility and oversight of children.

The ICPC is relevant to Harmony's case because, pursuant to the decision by the Juvenile Court Judge in February 2019, Harmony was placed from Massachusetts DCF custody into the custody of Mr. Montgomery who was living in New Hampshire. Harmony was therefore placed by a Juvenile Court Judge across a state border.

The ICPC is intended to be both a procedural tool and a substantive tool. Procedurally, it ensures that states are provided adequate notice of the placement of children in their borders, that they have the opportunity to exercise their statutory right to approve or deny that placement, and that responsibility for ongoing supervision of the placement is adequately assigned between the two states. Substantively, the ICPC process requires an investigation into the fitness of a proposed cross-border placement of the child. This investigation, through a home study, provides for detailed information about the physical home and the caregivers that is not possible for an out-of-state child protective agency to do on its own.

Harmony was placed in the custody of Mr. Montgomery without a completed ICPC. The information and safeguards that the ICPC can provide were not available for Harmony. The decision to provide Mr. Montgomery custody of Harmony without an ICPC was based on constitutional considerations and the application of New Hampshire rather than Massachusetts caselaw. The Judge in this case determined that the ICPC could not be constitutionally applied to a fit parent and that Mr. Montgomery had been legally determined to be a fit parent in February 2019. Courts in other states have also determined that the ICPC cannot be constitutionally applied to a fit parent. This approach is not in line with Massachusetts caselaw.

OCA Statement About the Investigation

Nothing that the OCA can discern from its investigation sheds any light on what happened to Harmony after she left Massachusetts in 2019. This report is solely focused on what happened to Harmony and her family when she lived in Massachusetts.

The key and central finding in this investigation and report are that Harmony's individual needs, wellbeing, and safety were not prioritized or considered on an equal footing with the assertion of her parents' rights to care for her in any aspect of the decision making by any state entity. This includes the work that the DCF case management did with the family as they prioritized multiple reunifications of Harmony with Ms. Sorey. The result, however, was significant placement instability for Harmony, as she was moved back and forth between Ms. Sorey's home and the home of her foster parents' multiple times, causing significant trauma and delaying permanency for Harmony. The DCF case management team was unable to secure Mr. Montgomery's agreement for a complete assessment of him and his ability to care for Harmony in light of her unique needs.

Harmony was also not prioritized in the legal case regarding her own care and protection. The Judge and the attorneys in the case did not put Harmony's needs, safety, or wellbeing at the center of the

discussion of custody nor was there a discussion on how Harmony could safely transition to Mr. Montgomery's care. The court awarded cross-border custody without the compliance with the requirements of the ICPC, relying on New Hampshire caselaw over Massachusetts caselaw. Harmony's strengths and vulnerabilities should have been the central focus of the case given the prior finding of the father's unfitness and his absence from Harmony for most of her life. There were miscalculations of the safety and risk to Harmony when she was placed in Mr. Montgomery's custody, and there was no planning to ensure that the custody arrangement would be successful.

When children are not at the center of every aspect of the child protective system, when their unique individuality is not used to inform an understanding of parental capacity to care for them, then the system cannot truly protect them. This report describes the ripple effect of miscalculations of risk and an unequal weight placed on parents' rights versus a child's wellbeing.

The disappearance of Harmony is one of several public investigative reports released by the OCA, most recently a report on the death of 14-year-old [David Almond](#) in October 2020, that have cast a spotlight on the difficult nature of the work that DCF and the Juvenile Court undertake with children and families. The OCA recognizes that in conducting its investigations, it has the benefit of hindsight. In reviewing DCF case practice and Juvenile Court proceedings, details that appear clear now may not have been as clear at the time decisions were made and actions were taken.

The OCA's investigations can be further complicated by the passage of time. In this investigation, Harmony's involvement with the Massachusetts child protection system began in 2014, shortly after her birth, and lasted until she was placed with Mr. Montgomery in 2019, three years ago. During this period, the Massachusetts Legislature and Governor Baker have made substantial investments in DCF and initiated sweeping reforms that have reduced social worker caseloads, revised policies, and stabilized the agency's operations.

The decisions made in Harmony's case occurred over a year before the OCA's multi-system investigation into the death of David Almond. Harmony's case and David Almond's case happened in the same time-period, so many of the findings in this report parallel the themes in the OCA's [Multi-System Investigation into the Death of David Almond](#) released on March 31, 2021. In the past year, there have been extensive improvements to both DCF and the Juvenile Court policy and practice. Both the DCF administration and the Juvenile Court have worked diligently to implement the recommendations from the investigation into the death of David Almond. This information is highlighted in the OCA's [Investigation Status Report Regarding the Multi-System Investigation into the Death of David Almond](#) released on March 24, 2022.

FAMILY BACKGROUND AND CHILD PROTECTIVE SERVICES INVOLVEMENT

Harmony was born in Massachusetts in June 2014 to Crystal Sorey and Adam Montgomery, who were not married. Harmony was solely in Ms. Sorey's care as Mr. Montgomery was incarcerated at the time of Harmony's birth. Harmony was diagnosed at birth with a visual disability and is blind in her right eye. She also had additional medical concerns as an infant. Due to her visual disability, Harmony received early intervention services until age three from the Department of Public Health (DPH) and then received special education services from her local Massachusetts school district until she went to live with Mr. Montgomery in February 2019.

In June 2014, the DCF Haverhill Area Office⁶ received three reports alleging neglect of newborn Harmony. Ms. Sorey was allegedly abusing substances and there was concern for the safety and wellbeing of Harmony in her care. The DCF Haverhill Area Office investigated and supported the allegations of neglect,⁷ opened a case,⁸ and began providing services to the family. At this time, Harmony remained in the care and custody of Ms. Sorey. Mr. Montgomery remained incarcerated and was not involved in Harmony's life.

In August 2014, the DCF Haverhill Area Office received two additional reports alleging neglect of Harmony, who was two months old. Despite Ms. Sorey's attempts to engage in substance use disorder treatment, she continued to struggle with substance use and Harmony's safety and wellbeing continued to be at risk. The DCF Haverhill Area Office investigated and supported the allegations of neglect. The DCF Haverhill Area Office also filed a Care and Protection petition in Juvenile Court, and Harmony was legally removed from the care and custody of Ms. Sorey and Mr. Montgomery (who was still incarcerated). Harmony was placed in a foster home for the first time.

Shortly after Harmony's removal, the DCF case management team provided Ms. Sorey with an **action plan**. The action plan sought to address the concerns that brought the family to the attention of DCF. The action plan identified that Ms. Sorey should participate in individual therapy to address mental health concerns and engage in substance use disorder treatment. In addition, the action plan required random drug testing, participation in parenting aid services, and required Ms. Sorey to attend scheduled supervised visits with Harmony.

⁶ The chain of command in all 29 DCF area offices, in order of increasing authority, is the social worker, supervisor, area program manager, area clinical manager and area director. In this report, references to the "DCF Haverhill Area Office" or "DCF Jackson Square Area Office" mean the social worker, supervisor, area program manager, area clinical manager, and area director. References to the "DCF case management team" mean the social worker and/or supervisor responsible for this case.

⁷ [Massachusetts Department of Children and Families Protective Intake Policy](#): "**Supported allegations**" is defined as reasonable cause to believe that a child(ren) was or is at substantial risk of being abused and/or neglected and the actions or inactions by the parent(s)/caregiver(s) place child(ren) in danger or present substantial risk to the child(ren)'s safety or wellbeing.

⁸ [Massachusetts Department of Children and Families Annual Report FY2021](#): "**Open case**" is defined as a child/family in the process of a family assessment or with an active action plan.

In September 2014, the DCF case management team mailed Mr. Montgomery an action plan while he was incarcerated. The action plan indicated that Mr. Montgomery should engage in and comply with all programs available to him that would promote positive change, including parenting programs, substance use disorder programs, and anger management. Mr. Montgomery was also tasked with gaining an understanding of Harmony's medical needs.

Between September 2014 and November 2014, the DCF case management team tried multiple times to reach Mr. Montgomery in prison to discuss Harmony, the action plan, and to gather assessment information, but he did not respond. When the DCF case management team finally reached Mr. Montgomery in December 2014, he expressed support for Harmony's return to Ms. Sorey's care and asked for a visit with Harmony. **In January 2015, Harmony met Mr. Montgomery for the first time, in prison, supervised by the DCF case management team. She was six months old.**

Immediately following Harmony's first visit with Mr. Montgomery, she was returned to the care of Ms. Sorey but remained in the legal custody of DCF.⁹ Ms. Sorey was compliant with her substance use disorder treatment for several months, and in the weeks leading up to Harmony's return she had many successful overnight visits with Harmony. To keep Harmony in her care, the DCF Haverhill Area Office required Ms. Sorey to continue to comply with her substance use disorder treatment and ensure Harmony received her early intervention and medical services.

Harmony was removed by the DCF Haverhill Area Office from Ms. Sorey's care approximately four months later, in April 2015, due to Ms. Sorey's substance use. Harmony was placed back in her previous foster home for the second time. Harmony was 10 months old.

What is an Action Plan?

When a child is removed from their caregiver, DCF is mandated to provide reasonable efforts to help the family resolve the concerns that led to removal and make efforts to reunify that child with his/her family.

In 2014, DCF utilized Service Plans to outline the path toward reunification. In 2017, DCF updated the Service Plan policy and practice and replaced it with the Family Assessment and Action Plan (FAAP) policy and practice.

An Action Plan identifies the needs to be addressed and the actions, tasks, services, and supports that family members will participate in to accomplish the goals identified to achieving safety, permanency, and wellbeing of the child.

[DCF Family Assessment and Action Planning Policy](#)

⁹ Because DCF retained legal custody of Harmony, this meant that the DCF case management team determined who she lived with, who she was permitted to visit with, what medical care she received, and so on.

A **Foster Care Review** was held in June 2015.¹⁰ The Foster Care Review panel determined that despite Harmony’s removal two months prior, Ms. Sorey was making efforts to stabilize herself in treatment and was working toward having Harmony return to her care. Mr. Montgomery remained in prison and was noted to be more agreeable to meeting with the DCF case management team in recent months after initially declining all contact with DCF. Harmony’s permanency¹¹ goal remained reunification with her mother.

In July 2015, the DCF case management team convened a **Permanency Planning Conference** on behalf of Harmony. At the Permanency Planning Conference, the DCF Haverhill Area Office **changed Harmony’s permanency goal from reunification to adoption because of the length of time she had been in foster care, a total of seven months of the first year of her life.**

Also, in July 2015, a “hearing on the merits” on Harmony’s Care and Protection petition was held in Juvenile Court, where the Judge determined that she needed care and protection.¹² There are several possible outcomes when a judge determines that a child needs care and protection;¹³ in Harmony’s case the outcome was that the Judge awarded DCF “permanent” custody of Harmony. The term “permanent” is in quotes because although that is the term used to describe the legal outcome, the parents/legal caregivers of the child can petition the court for a review and redetermination every six months to have a child placed back in their care even after a hearing on the merits.¹⁴

What is a Foster Care Review?

DCF is mandated by federal and state law to have an independent Foster Care Review Unit that operates outside of DCF’s daily delivery of casework services and provides quality oversight of case decisions.

The purpose of a Foster Care Review meeting is to determine the progress a family is making to resolve the reasons for DCF involvement and to make recommendations for a child to safely achieve permanency.

Foster Care Reviews are chaired by a three-person panel whose members are not responsible for case management, oversight or service delivery of the case being reviewed. They are held every six months for the duration a child is in out-of-home placement and compliments the oversight role of the juvenile court.

[DCF Foster Care Review Policy](#)

¹⁰ The DCF record reflects that DCF invited Ms. Sorey and Mr. Montgomery to the Foster Care Reviews held in June 2015, December 2016, June 2018, and December 2018. Neither parent attended any foster care review.

¹¹ [Massachusetts Department of Children and Families Annual Report FY2021](#): “**Permanency**” is defined as ensuring a nurturing family, preferably one that is legally permanency, for every child within a timeframe to support their needs.

¹² At a hearing on the merits the judge determines whether DCF has proved the allegations in the petition and whether the child who is the subject of the petition needs care and protection. The health and safety of the child is a paramount concern in determining whether the child needs care and protection. See Juvenile Court Rules for the Care and Protection of Children: Rule 15(C) Scheduling a Hearing on the Merits “At the pretrial conference, unless previously scheduled, the court shall schedule a hearing on the merits to be heard within twelve months of the filing of the petition unless a later date is necessary in the interests of justice.” Available at: [Juvenile Court Rules for the Care and Protection of Children effective November 5, 2018 \(mass.gov\)](#)

¹³ For more information, the applicable statute is: [General Law - Part I, Title XVII, Chapter 119, Section 26 \(malegislature.gov\)](#)

¹⁴ Custody of a child is only permanently removed from parents when parental rights have been “terminated” by the Juvenile Court. This is one of the possible legal outcomes of a Care and Protection case, but there was never a hearing on the termination of either Ms. Sorey or Mr. Montgomery’s parental rights in this case.

At the end of July 2015, one year old Harmony visited with Mr. Montgomery in prison for the second time.¹⁵ During this visit, Mr. Montgomery informed the DCF case management team of his expected release from prison in September 2015.

Another Foster Care Review was held in June 2016. The Foster Care Review panel determined that in the year since the June 2015 Foster Care Review, Ms. Sorey had not fully participated in her action plan tasks. She was inconsistent with individual therapy and substance use disorder treatment and was not regularly attending supervised visits with Harmony. Mr. Montgomery's limited cooperation made it difficult to confirm if he addressed or was addressing any of the tasks that the DCF case management team proposed in his action plan. He had not been in contact with the DCF case management team since July 2015. The DCF record reflects that between July 2015 and September 2016, the DCF case management team attempted to contact Mr. Montgomery once, via telephone, in March 2016. At this Foster Care Review, it was determined that Harmony's permanency goal should remain adoption.¹⁶

In September 2016, Mr. Montgomery initiated telephone contact with the DCF case management team. He acknowledged that it had been over a year since his release from prison and that this was his first attempt to contact DCF since his second visit with Harmony in July 2015. Mr.

Montgomery reported he was living in New Hampshire with his girlfriend, was sober and was working full-time. Mr. Montgomery asked the DCF case management team what he needed to do to be a part of Harmony's life. This is the first documented instance of Mr. Montgomery requesting to be a part of Harmony's life.

In early October 2016, Mr. Montgomery met with the DCF case management team. The DCF case management team offered Mr. Montgomery supervised visits with Harmony. **In mid-October 2016, Harmony had her third supervised visit with Mr. Montgomery. She was two years old.** Between October 2016 and early February 2017, the DCF case management team offered Mr. Montgomery frequent supervised visits with Harmony. Mr. Montgomery often cancelled these visits citing family

What is a Permanency Planning Conference (PPC)?

The Permanency Planning Conference (PPC), separate from the Foster Care Review, is DCF's primary internal planning vehicle for reviewing the clinical and legal issues related to permanency decision-making.

Permanency planning begins with the goal of safely maintaining a child at home. If placement becomes necessary to ensure safety, the child's first goal is reunification with his/her family. If the risk posed to the child's safety by his/her family remains high and prognosis for reunification is poor, an alternative plan for permanency is also developed with the family.

As soon as DCF determines that reunification is not in the child's best interests, an alternative permanency plan is established. One type of permanency plan, or goal, is adoption.

[DCF Permanency Planning Policy](#)

¹⁵ The DCF electronic case record reflects that between Harmony's first visit with Mr. Montgomery in January 2015 and second visit in July 2015, the DCF case management team scheduled a supervised visit between Harmony and Mr. Montgomery in February 2015, March 2015, and June 2015. There is no further information in the record that reflects whether these visits occurred.

¹⁶ Adoption is only possible as a permanency option if both parents' rights are terminated through a judicial proceeding or a parent voluntarily gives up their rights to their child.

matters or transportation issues – but he was able to visit with Harmony at least once a month. During these visits, Mr. Montgomery was highly attentive to Harmony, but sometimes did not have age-appropriate expectations or responses to her. Kayla Montgomery, Mr. Montgomery’s girlfriend at this time, frequently attended visits but there is no documentation in the case record that describes whether she interacted with Harmony or how those interactions went.

A Foster Care Review was held in December 2016. The Foster Care Review panel determined Ms. Sorey was making efforts to stabilize and improve her situation. She was participating in a parenting class and visiting consistently with Harmony at the DCF Haverhill Area Office. The Foster Care Review report stated that Mr. Montgomery met with the DCF case management team in October 2016 and was open to working with DCF. **The Foster Care Review reports also stated that Mr. Montgomery received his action plan in November 2016 but had not completed the required DCF comprehensive assessment. There is no information in the Foster Care Review report about why the comprehensive assessment was not completed.** Mr. Montgomery reportedly was living in New Hampshire with his girlfriend, working full-time, participating in substance use disorder treatment and was consistently attending monthly supervised visits with Harmony. Harmony’s permanency goal remained adoption.

In January 2017, the family’s case transferred from the DCF Haverhill Area Office to the Jackson Square Area Office (Boston) because Ms. Sorey relocated.¹⁷ Mr. Montgomery continued to reside in New Hampshire.

In February 2017, the Jackson Square Area Office held a Permanency Planning Conference and changed Harmony’s permanency goal from adoption back to reunification with Ms. Sorey because she was participating in her services, appeared to be more stable, and was consistently visiting Harmony. In March 2017, after approximately two years in foster care, the DCF case management team returned Harmony to the care of Ms. Sorey for the second time. Harmony remained in the legal custody of DCF.

In this same time frame, Mr. Montgomery stopped responding to the DCF case management team’s efforts to contact him. A month later, Ms. Sorey informed the DCF case management team that Mr. Montgomery contacted her, and she permitted him to speak with Harmony on the telephone. The DCF case management team informed Ms. Sorey that all contact between Harmony and Mr. Montgomery should be monitored by the DCF case management team because although the DCF Jackson Square Area Office allowed Harmony to be in the care of her mother, DCF retained legal custody of Harmony and was the sole decision-maker about who could have contact with her.

On two separate occasions in May 2017, Ms. Sorey informed the DCF case management team of her ongoing communication with Mr. Montgomery. The DCF case management team again reminded Ms. Sorey that all contact between Mr. Montgomery and Harmony must be arranged, approved, and

¹⁷ DCF’s practice is for the clinical case to follow the biological mother. When Ms. Sorey moved, the case was transferred to the area office where she resided. This practice is followed even when biological parents live separately from one another and are not planning to parent together.

supervised by DCF. During this time Mr. Montgomery did not respond to the DCF case management team's outreach to him.

In September 2017 the DCF case management team spoke with Mr. Montgomery for the first time since February 2017. The DCF record reflects that between February 2017 and September 2017, the DCF case management team attempted to contact Mr. Montgomery by telephone in June 2017 and sent him a letter in July 2017 asking that he contact DCF. Mr. Montgomery denied receiving any voice mail or mail from DCF in that communication lapse. During this telephone call, Mr. Montgomery reported having weekend overnight visits with Harmony for the past four weeks, picking her up from Ms. Sorey on Fridays and returning her on Sundays. The DCF case management team informed Mr. Montgomery that all visitation with Harmony must be arranged and supervised by DCF, and he did not have the authority to have overnight visits with Harmony. The DCF case management team informed Mr. Montgomery that all unsupervised visits with Harmony should stop. The DCF case management team also requested a meeting to assess Mr. Montgomery's current situation and participation in the required action plan services and to arrange supervised visits with Harmony. A few days later, the DCF case management team mailed Mr. Montgomery another copy of his action plan, the most recent Foster Care Review report, and a letter reconfirming the visitation expectations. When the DCF case management team confronted Ms. Sorey about allowing overnight visits between Harmony and Mr. Montgomery, Ms. Sorey reported that Mr. Montgomery threatened her with seeking sole custody of Harmony if she did not provide him with visitation.

Mr. Montgomery met with the DCF case management team at the end of September 2017. The DCF case management team reviewed the action plan with Mr. Montgomery. He expressed frustration with both his assigned tasks and the need for supervised visits with Harmony. Mr. Montgomery provided documentation of sobriety and compliance with his substance use disorder treatment in New Hampshire. Mr. Montgomery also signed releases for the DCF case management team to verify his housing and agreed to provide pay stubs to prove stable employment. He additionally informed the DCF case management team that he had completed a parenting class and an anger management class while incarcerated in 2015.¹⁸ The DCF case management team informed Mr. Montgomery that he needed to complete a DCF approved parenting class and anger management class because his last reported parenting class was in 2015 when he was in prison and not visiting with Harmony. The DCF case management team offered Mr. Montgomery weekly supervised visits with Harmony at an DCF area office closer to New Hampshire so Mr. Montgomery would not have to travel to the DCF Jackson Square Area Office in Boston each week. Immediately following this meeting Mr. Montgomery had a supervised visit with Harmony. **Despite being offered further supervised visits, he did not visit with her again until August 2018, almost a full year later.**

In late September and early October 2017, two reports of neglect were filed with the DCF Jackson Square Area Office alleging neglect of Harmony by both Ms. Sorey and Mr. Montgomery. The concerns were related to the unsupervised visits Mr. Montgomery had with Harmony while she was in Ms. Sorey's

¹⁸ There is no evidence in the DCF case record to support Mr. Montgomery's completion of a parenting class or anger management class while in prison in 2015.

care. The DCF Jackson Square Area Office investigated and supported allegations of neglect of Harmony by both parents.

In January 2018, Harmony, now three and a half years old, was removed for the third time from the care of Ms. Sorey due to Ms. Sorey's substance use. Harmony was placed in the same foster home she was in during the two prior removals from Ms. Sorey. Shortly after this placement, the foster parents expressed concern to the DCF case management team about the impact to Harmony of the repeated reunification attempts with Ms. Sorey. The foster parents believed Harmony was experiencing trauma from the repeated return and removal from Ms. Sorey's care. Harmony had been in the legal custody of DCF since she was two months old and in foster care for a total of approximately two and a half years of her life.

In April 2018 Ms. Sorey sought a **Review and Redetermination** hearing seeking to have Harmony placed in her care. The law allows for DCF, parents, persons having legal custody of a child, a probation officer, a guardian of a child, a child's attorney, and any guardian ad litem for a child to submit a Review and Redetermination motion stating that the needs of the child have *changed* since the judge last made a determination on whether the child is in need of care and protection and last made a determination on the legal custody of the child.¹⁹ Ms. Sorey's Review and Redetermination hearing was scheduled for February 2019.

A Foster Care Review was held in June 2018. The Foster Care Review panel determined Ms. Sorey was participating in most of her recommended services and that she was consistent and appropriate in her scheduled visits with Harmony. Despite consistent efforts by the DCF case management team since September 2017 to contact Mr. Montgomery to discuss services and arrange visits with Harmony, his response had been minimal. The Foster Care Review panel determined that the DCF case management team should continue to contact Mr. Montgomery to discuss services and arrange visits with Harmony.

In August 2018, Mr. Montgomery resumed supervised visits with Harmony. She was four years old. He resumed visits with Harmony after having not visited with her for the prior eleven months. Between the initial visit in August and early December 2018, Mr. Montgomery attended approximately eight two-hour visits with Harmony, supervised by the DCF case management team. As with prior visits with Harmony, Mr. Montgomery was attentive to her, but continued to sometimes not have age-appropriate expectations or responses to her. Kayla Montgomery, now married to Mr. Montgomery, frequently attended visits but her interactions with Harmony, if any, were not documented.

In October 2018 Mr. Montgomery sought a Review and Redetermination hearing seeking to have Harmony placed in his care. His Review and Redetermination hearing was also scheduled for the same date as Ms. Sorey's hearing in February 2019.

A Foster Care Review was held in early December 2018. The Foster Care Review panel determined Ms. Sorey was now unstable in her sobriety and inconsistent with visits with Harmony. Starting in August 2018, Mr. Montgomery maintained consistent communication with the DCF case management team and

¹⁹ See [M.G.L. c. 119 § 26\(b\)\(5\)\(c\)](#).

attended all scheduled supervised visits with Harmony. As a result of Mr. Montgomery's recent compliance with supervised visits and his reported stability, the Foster Care Review panel kept a permanency goal of reunification for Harmony but for the first time changed their focus of reuniting Harmony with Ms. Sorey to placing her with Mr. Montgomery. The Foster Care Review panel set a projected date of placement with Mr. Montgomery for December 2019, one year after the foster care review. **The Foster Care Review panel indicated that Mr. Montgomery needed to participate in an Interstate Compact Placement of Children (ICPC)²⁰ home study and, if approved, the DCF case management team would develop a transition and reunification plan and place Harmony with Mr. Montgomery.** The Foster Care Review panel also recommended the DCF case management team convene a Permanency Planning Conference because Harmony had spent most of her four years in foster care without achieving permanency either by returning to her family or through adoption or guardianship. One week later at a Permanency Planning Conference Harmony's permanency goal was changed to adoption. This change of goal reflected DCF's concern about the significant delay in Harmony achieving permanency.

In December 2018, at a Juvenile Court hearing, a Judge issued an order for an expedited ICPC to explore placing Harmony in Mr. Montgomery's care in New Hampshire.²¹ This was the first indication that the expectations of the DCF case management team and the legal timelines were not aligned.

Between the end of December 2018 and early February 2019, Mr. Montgomery visited with Harmony three more times. Consistent with the DCF case management team's observations in prior visits, Mr. Montgomery was attentive to Harmony but continued to sometimes not have age-appropriate expectations or responses to her. Kayla Montgomery also frequently attended these visits but there is no documentation that describes whether she interacted with Harmony or how those interactions went.

In February 2019 Mr. Montgomery's Review and Redetermination hearing took place in Juvenile Court. Ms. Sorey's Review and Redetermination hearing did not take place that day because she was not present in court. Ms. Sorey was not present for the hearing regarding Harmony because of a scheduling conflict. Ms. Sorey was in a different court on a Care and Protection case involving Harmony's half-sibling. Mr. Montgomery's court hearing proceeded without her.

Mr. Montgomery was seeking immediate custody of Harmony with the intention of taking her to live with him in New Hampshire. The DCF attorney objected to the placement of Harmony with him. Even though a Juvenile Court Judge had previously ordered an expedited ICPC in December 2018 to assess the appropriateness of placement with Mr. Montgomery in New Hampshire, the New Hampshire ICPC Compact Administrator had not acted on the ICPC request by the date of the February 2019 hearing. The

²⁰ The ICPC is a statutory agreement that has been entered into by all fifty United States as well as Washington, D.C., and the U. S. Virgin Islands. This agreement consists of ten [articles](#) and twelve [regulations](#). The agreement governs the permanent placement of children over the border from one state into another state. The purpose of the ICPC is to ensure that children who are placed out-of-state are cared for by safe caregivers in an environment that meets that child's needs. For more information about the ICPC, see **Appendix B: Interstate Compact on the Placement of Children**.

²¹ The Judge that issued the order for the expedited ICPC was not the same Judge who presided over the Review and Redetermination hearing in February 2019. Several judges presided over several aspects of Harmony's case over the four and a half years that the case was in Juvenile Court— this is not unusual or out of the ordinary.

Massachusetts ICPC Compact Administrator provided the New Hampshire ICPC Compact Administrator with all the relevant information they had about the case. However, despite repeated attempts, the Massachusetts DCF case management team was unable to get updated information about Mrs. Montgomery's participation in substance use disorder treatment in New Hampshire. As a result, the New Hampshire ICPC Compact Administrator did not proceed with the home study because they felt they did not have sufficient information about Mrs. Montgomery.

The DCF attorney opposed the placement of Harmony in Mr. Montgomery's custody at the Review and Redetermination hearing. However, the factual circumstances of Mr. Montgomery's parental capacity were not adequately explored, nor was the link to Harmony's needs and his ability to provide for them. Mr. Montgomery's housing or employment stability was not confirmed, and there was no exploration of Mrs. Montgomery's fitness or willingness to care for Harmony. More importantly, there was almost no evidence presented about Harmony and her needs. No attorney explored Mr. Montgomery's understanding of Harmony's visual impairment, her behavioral health and medical needs, or her special education services. The physical safety of the home for Harmony, who is visually disabled, was also not explored. Despite the absence of this information, at the end of the hearing the Judge determined that Harmony was no longer in need of care and protection and that Mr. Montgomery was not an unfit parent. **The Judge then awarded Mr. Montgomery, who was living in New Hampshire, full custody of Harmony and determined that the ICPC did not apply. As a result, the ICPC was not completed and therefore, New Hampshire did not conduct a comprehensive evaluation of Mr. Montgomery's parental capacity. This decision was not appealed by the DCF legal team and the DCF attorney was the only attorney that argued that the ICPC applied to Harmony's case.**

Approximately one-week later Mr. Montgomery took Harmony from Massachusetts to New Hampshire. Because the Care and Protection case had been terminated by the Judge, the DCF involvement with Harmony ended. Between birth and February 2019, when Harmony went to live with Mr. Montgomery, she had inconsistent contact with Mr. Montgomery. Except for a brief period in September 2017 when Ms. Sorey allowed Mr. Montgomery to have unapproved unsupervised weekend overnight visits with Harmony, all contact between Harmony and Mr. Montgomery was approved, arranged, and supervised by the DCF case management team. Before living with Mr. Montgomery in New Hampshire, Harmony had approximately 20 supervised visits with Mr. Montgomery – with 11 of these times being in the six months leading up to Mr. Montgomery receiving custody. **The OCA estimates that Harmony spent approximately a total of 40 hours in supervised visits with her father from her birth to age four and a half.**

Almost three years later, on December 31, 2021, the city of Manchester New Hampshire police announced seven-year-old Harmony's disappearance and their search for her. They estimate her disappearance to have taken place in early December of 2019.

For a timeline of Harmony's child welfare involvement, refer to **Appendix C: Harmony Montgomery Timeline (2014-2021)**.

FINDINGS AND RECOMMENDATIONS

It is the OCA's obligation to critically examine state services provided to children and families and ask how we, as a Commonwealth, can do better. All children deserve a permanent home that promotes their safety, stability, and wellbeing. The state can interfere in the parent-child relationship only in extraordinary circumstances. A parent's right to raise their own child is constitutionally protected under both federal and Massachusetts law. One of the reasons child protective services work is so difficult is that it requires a balancing of the parent's rights to raise their children as they see fit, and the child's right to be protected from abuse or neglect. The OCA has determined that the key finding of this investigation is that there was an insufficient balancing of Ms. Sorey and Mr. Montgomery's rights with Harmony's wellbeing.

While the findings presented in this report are representative of the OCA's analysis of the missed opportunities for prevention and intervention with Harmony and her family by both DCF and the Juvenile Court, the OCA's statutory oversight authority is limited to executive branch agencies only. It is critical to understand that the OCA does not have statutory authority or oversight of any aspect of the judicial branch, including the Committee for Public Counsel Services (CPCS). The appropriateness of decisions in individual legal cases are the domain of the Massachusetts Appeals and Supreme Judicial Courts. The recommendations below are intended to assist DCF, the Juvenile Court and CPCS in improving their policies and practices to collectively promote and support child safety and family success.

DEPARTMENT OF CHILDREN AND FAMILIES

The Department of Children and Families (DCF) is the child protective service agency for Massachusetts. DCF is the state agency responsible for receiving and responding to allegations of child maltreatment, for providing services to children and their families that enable caregivers to safely care for their children, and when that is not possible to assume custodial care as authorized by the Juvenile Court. DCF provides services to more children and families than any other Executive Office of Health and Human Services child-serving agency. At the end of Fiscal Year 2021, DCF served 93,802 families and young adults involved in 26,307 protective cases that included 44,465 children aged 0-17. Of those 44,465 children, 81% (36,000) were maintained at home with services as needed.²²

DCF has one central office, five regional offices, and 29 area offices. The area offices are responsible for the intake and response to neglect and abuse allegations, and case management and decision-making about a family. The DCF Haverhill Area Office was responsible for the oversight, monitoring, and management of the family's case between June 2014 and January 2017, when the case transferred to the Jackson Square Area Office in Boston. The Jackson Square Area Office was responsible for the oversight, monitoring, and management of the family until custody of Harmony was awarded to Mr. Montgomery by the Juvenile Court, in February 2019.

The OCA was able to review the entire DCF record for the period between 2014-2019 when DCF had an open case for Harmony. The findings reveal that there were missed opportunities to ensure that Harmony achieved permanency. Harmony was in foster care for nearly all the four and a half years DCF was involved with Harmony, beginning when she was two months old. Harmony was repeatedly returned to and removed from Ms. Sorey's care. Mr. Montgomery was absent at her birth and did not inquire about her for most of her life, despite efforts of the DCF case management team to engage him. When Mr. Montgomery did visit with Harmony, it was only for several brief and limited periods of time.

A decision to explore adoption for Harmony should have been pursued earlier. The delays in achieving Harmony's permanency resulted in emotional trauma, which led to the disruption of her pre-adoptive foster placement. As the DCF case management teams focused on assisting Ms. Sorey with her substance use and mental health issues, and on trying to connect with Mr. Montgomery, Harmony's need for safety and stability did not receive the necessary attention.

For detailed information about the Sorey/Montgomery family and their Massachusetts child protective services involvement, refer to ***Family Background and Child Protective Services Involvement*** section on page 13.

²² [Massachusetts Department of Children and Families Annual Report FY2021](#)

THEME AND FINDINGS

THEME: The clinical formulation for this family was incomplete in that it centered primarily on Ms. Sorey.

DCF social workers, under the support of a supervisor and other area office managers, must use a “holistic approach for developing the most effective interventions, services and supports to meet the child and family’s needs.”²³ This process, often referred to as a “**clinical formulation**,” is the ability to synthesize information about a family to inform case planning and decision-making, and create an achievable [Family Assessment and Action Plan \(FAAP\)](#) that is intended to promote the safety, permanency, and wellbeing of a child and family. A clinical formulation is not stagnant; it continually evolves based on new and available information throughout the life of a case. DCF social workers also must have a task-oriented approach to their case planning and management to ensure that cases move steadily toward a permanent resolution.

During the DCF Haverhill Area Office and Jackson Square Area Office involvement with the family between 2014-2019, Ms. Sorey was the central focus of the DCF case management team’s support and services. Ms. Sorey was challenged by substance use disorder, mental health concerns, and housing instability while intermittently responsible for the care of Harmony, who is visually disabled and has special needs. Both the DCF Haverhill Area Office and the Jackson Square Area Office case management teams showed a high level of task-oriented competence in the case management and support of Ms. Sorey, and an equally high-level of competence in their clinical formulation of Ms. Sorey. Both DCF case management teams continuously and adequately assessed and evaluated Ms. Sorey and provided her the individual support and access to services necessary to achieve reunification with Harmony.

Mr. Montgomery was in prison when DCF’s involvement with Harmony began. Although he was non-responsive for long periods of time, during the times when he appeared to be in communication with the DCF case management team, they were not able to engage him, except to facilitate his supervised visits with Harmony. No assessment was ever completed on Mr. Montgomery, and he was not held accountable for starting and completing the tasks on his action plan. The DCF case management team had no understanding of his family or personal history with which to develop an action plan and from which they could assess his capacity to parent Harmony.

The DCF record contains very little about Harmony as a person, her on-going medical needs, special education needs, personality, strengths, and trauma and behavioral health needs. At the time custody was awarded to her father she had been on a wait list for therapy for several months. The lack of a comprehensive picture of Harmony and what she needed to thrive impacted the both the DCF case management team’s decision-making about Harmony and the legal case as described in *The Massachusetts Legal Process* section below.

²³ [Massachusetts Department of Children and Families Family Assessment and Action Plan Policy](#)

The goal of a clinical formulation is to synthesize the *totality* of information about a family to inform case planning and decision-making. Having a solid understanding of the individual needs of each family member is critical to this formulation. Any disparity of information collection, or a lack of focus on each member of the family unit, can lead to a misunderstanding and misperception of the needs of the family and ultimately, the best interest of the child involved. The following findings demonstrate how the absence of an equal clinical formulation about Harmony and Mr. Montgomery as that of Ms. Sorey impacted key decision-making for Harmony and compromised her stability and wellbeing.

Harmony Montgomery

FINDING # 1: Harmony's individual medical and special needs were not central to the decision-making in her two reunifications with Ms. Sorey in 2015 and 2017, nor when Mr. Montgomery was awarded custody of her in 2019.

Harmony was diagnosed with a visual disability at birth. As a result, Harmony requires extra time and adult support to navigate her physical surroundings and interpret social cues, particularly in new and unfamiliar environments. During Harmony's DCF involvement, these needs were compounded by the trauma she experienced from neglect and the repeated attempts to reunify her with Ms. Sorey. By the time Harmony was placed with Mr. Montgomery in February 2019, the impact of her trauma was evident in both her emotional instability and dysregulated behavior, for which she needed treatment but was on waiting list.

Although the DCF case management teams were aware of Harmony's visual disability and special needs, there was no central focus on Harmony, her needs, and the specific standard of parental capacity that was necessary to successfully care for her as an individual. Neither Ms. Sorey nor Mr. Montgomery were required to demonstrate their individual understanding of Harmony's physical limitations, ongoing medical needs, or emotional needs. Neither parent's capacity to meet Harmony's needs was evaluated prior to the repeated reunification attempts with Ms. Sorey, nor the placement of Harmony in Mr. Montgomery's custody.

There is no doubt that between 2014 and 2019 Ms. Sorey wanted Harmony in her care and worked hard towards that goal. For several months at a time Ms. Sorey achieved sobriety and stability and as a result, the DCF Haverhill Area Office or DCF Jackson Square Area Office placed Harmony back in her care. Ultimately, Ms. Sorey was unable to provide Harmony with a safe environment due to her substance use disorder and this resulted in Harmony's removal from Ms. Sorey in 2014, only to be placed back with her twice, and removed twice more before January 2018.

Mr. Montgomery was in and out of Harmony's life since birth, not consistently visiting with her for more than four to six months at a time, with long periods of no-contact. In August 2018 Mr. Montgomery visited with Harmony for the first time since September 2017, 11 months prior. Between August 2018 and when he received custody in February 2019, Mr. Montgomery visited with Harmony approximately 11 times at a DCF area office for two-hour visits supervised by the DCF case management team. While Mr. Montgomery was observed to be consistently attentive to Harmony during these visits, at times he

displayed inappropriate expectations of her given her age. There was insufficient information in the record about his ability to understand or accommodate Harmony's visual disability needs. There is also no evidence Mr. Montgomery ever sought to understand Harmony's disabilities by attending doctors' appointments or speaking with her medical providers, nor is there evidence that he attended any special education meeting for her or sought information from her school. Additionally, there is no evidence Mr. Montgomery sought information about Harmony's social and emotional needs or spoke with her foster caregivers to develop a deeper understanding of Harmony's strengths and challenges.

At the time of Harmony's Massachusetts case, she required primary caregivers who were well equipped to understand and provide for her complex medical needs and capable of fostering a home environment that promoted a high level of safety and security. **Harmony's unique needs, strengths, and vulnerabilities should have directed the DCF case management team's understanding of what parental capacities Ms. Sorey and Mr. Montgomery needed to be successful in parenting her.**

[FINDING # 2: The delay in achieving permanency for Harmony impacted her wellbeing.](#)

When a child needs to be removed from their parent's custody due to maltreatment, the goal of child protective services is to provide services and support to the parents so that they can address the issues that caused the child to come into state custody. Parents should be given a reasonable opportunity and services to address the risks to the child's safety. However, the reasonableness of these opportunities must be informed by the needs and wellbeing of the child and the child's need to achieve permanency within a realistic time frame.

Repeated reunifications and removals can be disruptive for several reasons, including that they upend the stability children need to feel safe, supported, and securely form attachments to caregivers. Shortly after Harmony was reunified with Ms. Sorey in March 2017, at age three, the DCF case management team identified that Harmony would benefit from individual therapy to process the transition to Ms. Sorey and the loss of her foster family with whom she held a deep emotional relationship. While Harmony had supervised visits with Ms. Sorey while in foster care, she had only lived with Ms. Sorey for approximately six months in her life.

Harmony participated in individual therapy for approximately 10 months, up until her third removal from Ms. Sorey's care in January 2018. Harmony's emotional needs and behavior leading up to and after this removal had intensified. Although placed in the same foster home after each removal, each time Harmony returned she struggled with more challenging behavior and increasing feelings of insecurity. While the foster parents provided exceptional care and were committed to Harmony, with each subsequent placement the scope and depth of her behavioral and emotional needs grew. The foster family felt that after Harmony had been removed from Ms. Sorey's care for the last time, they were no longer able to provide for her increased needs. Several months into her third placement, Harmony's foster parents determined that it was in Harmony's best interest to be placed in a therapeutic foster home where she would receive the specialized and dedicated attention she needed. It is evident in the record this was an extraordinarily difficult decision for the foster parents as they consistently expressed their love for Harmony.

It appears the permanency goals for Harmony did not consider the recurring nature of substance use disorder and the need for Ms. Sorey to show a permanent change of circumstance or capacity to provide Harmony with a safe home. This resulted in multiple reunification attempts instead of a timeline to permanency that would have better promoted Harmony's wellbeing through a termination of parental rights. Delays in permanency for children are traumatic, in part because children experience time differently than adults do. Much of Harmony's trauma was a result of the inconsistent planning about whether she was going to "go home" or be adopted. The stress of that experience was so destabilizing for Harmony that her behavior significantly deteriorated and compromised her foster placement, the only long-term safe and stable home she had known since birth.

Adam Montgomery

FINDING # 1: Mr. Montgomery did not participate in the Family Assessment and Action Planning process, as required by DCF when there is a supported finding of abuse and/or neglect and DCF opens a case.

The [Family Assessment and Action Plan \(FAAP\)](#) is the DCF "family-focused collaborative process of engaging families, collaterals and family supports in providing information about the family's history, functioning, strengths and needs about how well the safety, permanency and wellbeing needs are being met for the child."²⁴ The FAAP is a structured framework which the DCF administration requires their workforce to use to gather information about a family, synthesize that information into a clinical formulation, and together, with the parent(s), develop the action plan goals and tasks that will assist the family to resolve the concerns that led to DCF involvement.

A foundational component to the FAAP process is the initial assessment of the family. This assessment is the DCF case management team's opportunity to gather historical and current information from the parent(s) about themselves and their children so the DCF case management team can develop a family profile that describes the way the family functions. This information from the parent(s) allows the DCF case management team to assess parental capacities as well as the safety, permanency, and wellbeing of the children involved, and develop their clinical formulation to focus on the action plan development with the family.

While the DCF case management team completed an initial assessment and all subsequent required assessment updates of Ms. Sorey, the DCF case management team was unable to complete an assessment of Mr. Montgomery from when the case opened in July 2014 to his obtaining custody of Harmony in February 2019. It is unclear from the DCF case record at which points Mr. Montgomery was not cooperative with the assessment process and at which points the DCF case management team did not attempt to engage Mr. Montgomery in this process. However, there is evidence that the assessment was not completed because of a combination of Mr. Montgomery's long periods of being out of contact

²⁴ [Massachusetts Department of Children and Families Family Assessment and Action Plan Policy](#)

with the DCF case management team, his overall lack of cooperation, and the DCF case management team's focus on Ms. Sorey, who was actively planning to parent Harmony.

Mr. Montgomery was in prison when the DCF Haverhill Area Office opened the case regarding Harmony. The DCF case management team sent Mr. Montgomery a proposed action plan in prison without the benefit of any initial assessment or contact of any kind due to his unwillingness to speak with them at this time. That first action plan asked him to participate in courses, some of which may have been offered in his prison, that pertained to parenting and self-regulation as well as substance use disorder as Mr. Montgomery was in prison for a shooting that involved illicit substances.

When Mr. Montgomery was in contact with the DCF case management team, there were times when he appeared open to discussing the tasks on his action plan, and there were other times when he was oppositional. During the uncooperative times, he objected to the need for any assessment or parenting class. He was only interested in securing his visitation with Harmony. Mr. Montgomery's inconsistent level of cooperation likely at times prevented the DCF case management teams from assessing him. There is no evidence available to the OCA to suggest that in the five years of DCF involvement, the DCF case management team ever sought to explore with Mr. Montgomery if he had any child welfare involvement in New Hampshire as a child or as an adult, his childhood history, education, or any concerns related to domestic violence, mental illness, trauma, substance use, and criminal involvement. Additionally, Mr. Montgomery's access to community based and family and natural supports was not explored.

Since the DCF case management team did not assess Mr. Montgomery, it is unclear how the goals and tasks on his action plan were identified and developed. There is no evidence to suggest that Mr. Montgomery participated in the action planning development process throughout his entire DCF involvement. During a meeting with Mr. Montgomery in October 2018, the DCF case management team reviewed the goals and expected tasks on his action plan and provided him with a copy. Mr. Montgomery expressed frustration with the tasks assigned to him, believing they were unnecessary for him to provide care for Harmony, but during this meeting he did sign an acknowledgment that he received the action plan.

The lack of assessment of Mr. Montgomery was a missed opportunity to calculate his strengths and existing supports, as well as to assess his personal and parenting vulnerabilities and place them in the context of his ability to provide for Harmony as an individual child with individual strengths and needs. Understanding Mr. Montgomery's history and current barriers to stability, if any, was critical to the DCF case management's teams' clinical formulation of safety and risk to Harmony and the development of his action plan. The absence of an assessment of Mr. Montgomery also hampered the DCF case management team and the DCF attorney's ability to articulate and justify their legal position in court objecting to Mr. Montgomery's current fitness to parent Harmony at Mr. Montgomery's Review and Redetermination hearing.

FINDING # 2: Mr. Montgomery did not participate in most of the services required by his Family Assessment and Action Plan.

When a DCF case management team completes their initial assessment of a family, they then work in partnership with that family to develop the action plan. Based in part on the information learned during the initial family assessment, the action plan identifies the needs to be addressed and the actions, tasks, services and supports that family members will participate in to accomplish the goals identified to achieving safety, permanency, and wellbeing of the child.²⁵

Mr. Montgomery's action plan goals were to provide safety for Harmony and cope with stressful situations in healthy ways. To show observable change in meeting these goals, Mr. Montgomery was to comply with his visitation schedule with Harmony and engage in and complete DCF approved services to address concerns about his parental capacities, mental health, substance use disorder, and anger. The DCF approved parenting class was aimed at helping Mr. Montgomery understand child development and age-appropriate expectations and discipline techniques and develop insight into how family dynamics and abuse and/or neglect impact a child. Mr. Montgomery was also asked to complete a psychological evaluation to fully assess his areas of strength and need to ensure that he had the appropriate services to support him in achieving the goals in the action plan.

Between October 2018 and December 2018, Mr. Montgomery was consistently visiting with Harmony, and the DCF case management team verified that he had been sober for three years and compliant with his substance use disorder treatment in New Hampshire. For these reasons, during a Foster Care Review in December 2018, for the first time in five years the Foster Care Review panel changed their focus of reuniting Harmony with Ms. Sorey to placing her with Mr. Montgomery. Mr. Montgomery was viewed as a *potential* placement for Harmony despite his lack of participation in the other services on his action plan, including parenting and anger management classes or a psychological evaluation. The Foster Care Review panel indicated that Mr. Montgomery needed to participate in an Interstate Compact Placement of Children (ICPC) home study and if approved, the DCF case management team would develop a transition and reunification plan and place Harmony with Mr. Montgomery.

In December 2018, in preparation for the scheduled February 2019 Review and Redetermination hearing, a Juvenile Court Judge ordered an *expedited ICPC* to explore placing Harmony in Mr. Montgomery's care in New Hampshire. The ICPC home study would assess whether the placement of Harmony with Mr. Montgomery would meet Harmony's needs. This assessment would take into consideration whether Mr. Montgomery had participated in the services on his action plan as well as any concerns the DCF case management team had with his ability to provide care for Harmony. The DCF case management team believed they would be provided more information about Mr. Montgomery through the results of this ICPC as the ICPC home study could better evaluate the reality of the family and home environment in New Hampshire.

²⁵ [Massachusetts Department of Children and Families Family Assessment and Action Plan Policy](#)

When an ICPC home study is underway it does not absolve a parent from participating in the services required in their action plan, nor does it absolve the DCF case management team from holding a parent accountable to those tasks. There is no evidence to suggest that Mr. Montgomery participated in any services in his action plan between August 2018 and February 2019, other than substance use disorder treatment which he engaged of his own initiative. There is also no evidence that during these six months the DCF case management team held Mr. Montgomery accountable to participate in any of the services other than substance use disorder treatment. **Because Mr. Montgomery did not engage in his action plan services other than substance use disorder treatment, it prevented the DCF case management team from assessing his parental capacity, which resulted in a weak legal case for DCF to oppose placing Harmony in Mr. Montgomery's custody at his Review and Redetermination hearing in February 2019.**

[FINDING # 3: Mr. Montgomery's wife, Kayla Montgomery, was not assessed as part of the permanency planning process for Harmony.](#)

Mrs. Montgomery is noted in the DCF case records to be present during Mr. Montgomery's visits with Harmony between 2017 and 2019. The DCF case management team had knowledge that Mrs. Montgomery lived with Mr. Montgomery, that she and Mr. Montgomery have two young children together, and that she would naturally be a primary caretaker of Harmony should Mr. Montgomery obtain custody. However, DCF did not assess Mrs. Montgomery's ability or willingness to care for Harmony. DCF also did not explore whether Mrs. Montgomery had concerns regarding bringing a young girl with disabilities and significant trauma into her household. Critically, Mrs. Montgomery also had substance use disorder, which the DCF case management team did not explore. Although Mrs. Montgomery was not biologically related to Harmony, she would be a part of Harmony's new family configuration. DCF should have evaluated the entire family unit for safety and risk to Harmony.

RECOMMENDATIONS

This investigation demonstrates the critical need for a child's safety, wellbeing, and permanency to be a central focus of all DCF decision-making about a child and their family members. This investigation highlights the critical need to understand how a child's strengths and needs should inform decisions regarding the evaluation of caregiver capacity. The challenges Harmony's parents both faced with substance use disorder, and the possibility of relapse, were not balanced by the vulnerability of a very young child, with physical limitations, and her own increasing behavioral health needs.

These findings are consistent with the OCA's findings in the [Multi-System Investigation into the Death of David Almond](#) released on March 31, 2021. The David Almond investigative report provided recommendations to improve DCF policy and practice, including five that also address some of the key findings in this investigation involving clinical formulation, family assessment and action planning, children with disabilities, reunification and permanency, and risk and safety planning. While reiterating the importance of the recommendations from the David Almond report, the OCA is not repeating these recommendations in this report because since the OCA's release of the David Almond investigation

report approximately one year ago, the DCF administration²⁶ has worked expeditiously towards the implementation of these recommendations. The OCA [Investigation Status Report Regarding the Multi-System Investigation into the Death of David Almond](#) released on March 24, 2022 and **Appendix A: David Almond Investigation DCF Recommendations** provides a detailed summary of the DCF administration's specific efforts in these areas.

RECOMMENDATION # 1: DCF should develop a comprehensive plan to ensure both parents are adequately assessed and receive the support and access to services needed so that their child(ren) can achieve permanency.

Both parents are equally important in the lives of their children as they have a critical role to play in their child's physical, emotional, and social development, and in the prevention of maltreatment.²⁷ The parents of children who come to the attention of the child protective service system may not be in a marital relationship, living together, or in a continued relationship. Under Massachusetts caselaw, custody of children of unmarried parents is presumed to belong to the mother. The biological mother is often viewed as the primary parent, and therefore, support, services and case management often center on them. As a result, fathers are often not provided the same level of consideration and attention.

Since the goal of child protective services to provide the child with permanency, the obligation to provide services to each parent is a critical and equitable component of the work. DCF should conduct a quality assurance review to identify gaps in policy or practice in individual cases that are impacting a child's time to successful permanency.

²⁶ In this report, references to "DCF administration" mean the DCF Central Office which oversees the entire DCF workforce.

²⁷ <https://www.casey.org/engaging-fathers-prevention/>

THE MASSACHUSETTS LEGAL PROCESS

The Massachusetts Juvenile Court Department has statewide jurisdiction over civil and criminal matters involving children including Youthful Offender, Care and Protection, Child Requiring Assistance, and Delinquency cases. A Care and Protection petition is the beginning of a legal case in which a Juvenile Court judge determines whether a child is at risk of being, or has been, abused or neglected by a parent or caregiver. If a Juvenile Court judge determines that a child is at risk of abuse or neglect, or has been abused or neglected, then the judge may find that a child needs care and protection and has the authority to determine the permanent legal custody of that child.

Legal Representation and the Adversarial Process

Care and Protection proceedings are adversarial, and because parental rights to custody of children are at stake, parents are provided with their own attorneys. The DCF case management team is represented by its own legal counsel. States also provide attorneys or other representation to ensure that the child's voice is also presented. Our adversarial system rests on the fundamental premise that a rigorous presentation of the positions of the parties will present the judge or jury with the evidence, and various lenses through which that evidence could be evaluated, which will lead the judge or jury to make the correct decision about the evidence under the law.

The OCA's understanding of what happened during the court proceedings in Harmony's case is limited by the information that the OCA can legally obtain. Although the OCA was able to listen to the tapes of relevant court proceedings and examined the court file, due to the constitutional protections granted by attorney-client privilege, the OCA was unable to uncover the rationale for the positions taken by the attorneys in this case. What communications the DCF case management team, Ms. Sorey, Mr. Montgomery, or Harmony had with their respective attorneys, the advice given, and the rationale behind the trial strategy are critical pieces of information that are barred from disclosure without the client's permission.

The OCA's presentation of information in the sections below reflects the information that the OCA was able to gather which support the OCA's findings that a rigorous presentation of the needs of the child were not represented in court and that the standard of advocacy by both the DCF attorney and the attorney for Harmony was not, in the OCA's view, sufficient. Although not all the OCA's questions regarding this case could be answered, the OCA stands behind the analysis below that is supported by the court record.

Detailed Summary of the Legal Proceedings in Harmony Montgomery's Care and Protection Case

As described in the Family Background and Child Protective Services Involvement section of this report ([insert hyperlink](#)), Harmony Montgomery's Care and Protection case history spans approximately four and a half years. In August 2014, the DCF Haverhill Area Office filed a Care and Protection petition in

Juvenile Court alleging the neglect of Harmony by both Ms. Sorey and Mr. Montgomery. Ms. Sorey and Mr. Montgomery were never married.²⁸ DCF was awarded temporary custody of Harmony and she was placed in a DCF foster home in 2014. This was the same foster family that she lived with for much of her time in foster care. Harmony had family members other than her parents who maintained visitation and positive relationships with her during her time in foster care and who expressed appreciation for the care she received in her foster home.

In 2015, a “hearing on the merits” on the DCF petition was held. This hearing was held within the expected time frame for expediency on Care and Protection cases.²⁹ At a hearing on the merits the judge determines whether DCF has proved the allegations in the petition regarding parental unfitness and whether the child who is the subject of the petition needs care and protection. The health and safety of the child is a paramount concern in determining whether the child needs care and protection. At the hearing in July 2015 DCF met its legal burden and the Judge determined that Harmony needed care and protection. There are several possible outcomes when a judge determines that a child needs care and protection;³⁰ in Harmony’s case the outcome was that the Judge awarded DCF “permanent” custody of Harmony. **The term “permanent” is in quotes because although that is the term used to describe the legal outcome, the parents/legal caregivers of the child can petition the court for a review and redetermination every six months to seek to have a child placed back in their care even after a hearing on the merits.**³¹ **This is what happened in Harmony’s case.**

Harmony remained in DCF’s legal custody until February 2019. For several periods the DCF case management team placed Harmony with Ms. Sorey as part of a reunification plan. DCF retained legal custody of Harmony at all times, meaning that the DCF case management team determined who she lived with, who she was permitted to visit with, what medical care she received, what education she received, and so on.

The law allows for DCF, parents, persons having legal custody of a child, a probation officer, a guardian of a child, a child’s attorney, and any guardian ad litem for a child to submit a **Review and Redetermination** motion saying that the needs of the child have *changed* since the judge last made a determination on whether the child is in need of care and protection and last made a determination on the legal custody of the child.³² **In April 2018 Ms. Sorey sought a Review and Redetermination hearing seeking to have Harmony placed in her care. This was approximately four months since DCF had removed Harmony from Ms. Sorey for the third time. In October 2018 Mr. Montgomery also sought a**

²⁸ This fact is relevant for discussion in the following sections about custody of Harmony.

²⁹ See Juvenile Court Rules for the Care and Protection of Children: Rule 15(C) Scheduling a Hearing on the Merits “At the pretrial conference, unless previously scheduled, the court shall schedule a hearing on the merits to be heard within twelve months of the filing of the petition unless a later date is necessary in the interests of justice.” Available at: [Juvenile Court Rules for the Care and Protection of Children effective November 5, 2018 \(mass.gov\)](https://www.mass.gov/info-details/juvenile-court-rules-for-the-care-and-protection-of-children-effective-november-5-2018)

³⁰ M.G.L. c. 119 § 26 available at: [General Law - Part I, Title XVII, Chapter 119, Section 26 \(malegislature.gov\)](https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVII/Chapter119/Section26)

³¹ Custody of a child is only permanently removed from parents when parental rights have been “terminated” by the Juvenile Court. This is one of the possible legal outcomes of a Care and Protection case but there was never a hearing on the termination of either Ms. Sorey or Mr. Montgomery’s parental rights in this case.

³² See M.G.L. c. 119 § 26(b)(5)(c).

Review and Redetermination hearing seeking to have Harmony placed in his care. This was approximately two months after Mr. Montgomery resumed visitation with Harmony after an absence of eleven months. Both hearings for Review and Redetermination were ultimately scheduled for the same date in February 2019. Both parents, who had not lived together since before Harmony’s birth, were seeking custody: Ms. Sorey wanted Harmony to be with her, and Mr. Montgomery wanted Harmony to be with him.

Although Ms. Sorey lived in Massachusetts, Mr. Montgomery was living in New Hampshire when he sought custody of Harmony through a Review and Redetermination hearing. There is a statutory agreement that governs some aspects of how children legally move across state boundaries. This agreement is called the **Interstate Compact on the Placement of Children (“ICPC”)**. The ICPC is a statutory agreement that has been entered into by all fifty United States as well as Washington, D.C., and the U. S. Virgin Islands. This agreement consists of ten [articles](#) and twelve [regulations](#).³³ The agreement governs the permanent placement of children over the border from one state into another state.

The purpose of the ICPC is to ensure that children who are placed out-of-state are cared for by safe caregivers in an environment that meets that child’s needs. Broadly, the ICPC requires that a state that is sending a child (“sending state”) into a placement in another state (“receiving state”) must request that the receiving state complete a home study report. The home study report includes a visit to the home where the child will be placed, information gathered at meetings with everyone in the home, and information from background screenings of relevant persons in the home. The home study is usually done by the child protective agency in the receiving state. The receiving state has the authority to approve or deny a caregiver who is the subject of the home study and the placement request based on the information in the home study. If a placement request is approved by a receiving state, then a child may be placed in that home but there is no legal requirement that the sending state place the child in that home. The sending state is responsible for providing background information about the child, the reason for the placement request, information regarding the relevant caregivers, and any relevant information about ongoing legal cases in the request packet.

In anticipation of Mr. Montgomery’s Review and Redetermination hearing, a Judge ordered an expedited ICPC in December 2018 to explore placing Harmony in Mr. Montgomery’s care in New Hampshire.³⁴ This order for an expedited ICPC was issued by a Judge who was not the Judge who presided over the Review and Redetermination hearing in February 2019.³⁵ An expedited ICPC through ICPC [Regulation 7](#) is a procedure within the ICPC process that speeds up the typical timelines to

³³ The “articles” are the text of the ICPC itself. The “regulations” are created by a rule-making process and operate like implementation instructions to describe how the law of the ICPC should be applied. Regulations have the force of law unless they are determined by a court to be unenforceable.

³⁴ DCF, per the Foster Care Review in December 2018, was planning on placing Harmony with her father if an ICPC was approved.

³⁵ The Judge who presided over the Review and Redetermination hearing in February 2019 was the primary Judge on Harmony’s case. However, several judges presided over several aspects of Harmony’s case over the four and a half years that the case was in Juvenile Court. This is not unusual or out of the ordinary.

minimize the potential trauma to children who may go through multiple placements while waiting for an ICPC approval or for the purpose of letting the receiving state know quickly whether they should explore alternative placement resources.³⁶ Specifics of the timelines are available in the text of the regulations, but in summary, the timeline for a receiving state to make their determination on the child's placement should be no later than 20 business days from the date that the forms and materials are obtained by the receiving state. However, a receiving state can determine if the ICPC request documentation is "substantially insufficient" and can require additional information from the sending agency before continuing with the assessment process. For more detailed information about the ICPC please see **Appendix B: Interstate Compact on the Placement of Children.**

On the court date in February 2019 when both Ms. Sorey and Mr. Montgomery's Review and Redetermination hearings were set to take place, the expedited ICPC request had not been acted on by New Hampshire because the New Hampshire ICPC office had determined that the documentation sent by DCF was substantially insufficient. Mr. Montgomery's Review and Redetermination hearing went forward without the New Hampshire ICPC office having acted on the Massachusetts DCF's home study request.

Ms. Sorey was not present for the February 2019 hearing regarding Harmony because she was in another court on a different Care and Protection case involving Harmony's half-sibling. The Judge, the DCF attorney, Ms. Sorey's attorney (after consultation with Ms. Sorey), Mr. Montgomery's attorney, and Harmony's attorney all agreed to move forward with Mr. Montgomery's Review and Redetermination hearing on that day without Ms. Sorey present.

The DCF attorney opposed placing Harmony in Mr. Montgomery's care on grounds that he was unfit and that Harmony should remain in DCF custody at least until the ICPC was completed. Mr. Montgomery's attorney presented evidence of Mr. Montgomery's fitness at the hearing. Ms. Sorey's attorney, Mr. Montgomery's attorney, and Harmony's attorney were all in favor of Mr. Montgomery receiving custody of Harmony. Mr. Montgomery's attorney was the only attorney that explicitly argued that this case did not require compliance with the ICPC, while Ms. Sorey's attorney and Harmony's attorney did not object to Harmony being returned to Mr. Montgomery's care without an ICPC.

The Judge determined that Harmony was no longer in need of care and protection and that Mr. Montgomery was not an unfit parent. The Judge then awarded Mr. Montgomery full custody of Harmony. **The Judge awarded Mr. Montgomery custody of Harmony across state borders without an ICPC. The Judge determined that the ICPC did not apply in this case because Mr. Montgomery's constitutional right to parent his child could not be infringed, meaning it could not be delayed or prevented, by the requirement of ICPC. The Judge also dismissed the Care and Protection proceeding.**

The Judge was concerned that Mr. Montgomery and Harmony might face legal challenges in New Hampshire because of the Judge's determination that the ICPC did not apply. Out of caution, and in an

³⁶ [ICPC | Regulations \(aphsa.org\)](#)

effort to ensure that Mr. Montgomery would not face a legal challenge to his custody and could secure needed services for Harmony, the Judge delayed the effective date of his decisions on the Care and Protection case so that the Judge could reach out to the New Hampshire ICPC office and explain the orders and why the Judge determined the ICPC did not apply. The Judge contacted the NH ICPC Office. Once the Judge confirmed that the New Hampshire ICPC received the information the Judge provided to them that Harmony was in the custody of Mr. Montgomery and that Harmony and Mr. Montgomery were going to immediately begin living together in New Hampshire, the Judge's orders became effective, and the Care and Protection case ended. Approximately one week later, Harmony moved from her foster home placement into the home of Mr. and Mrs. Montgomery in New Hampshire. This ended DCF involvement with Harmony and Mr. Montgomery as the DCF case automatically closed when custody was awarded to Mr. Montgomery and the Care and Protection case was dismissed.

In-depth Description and Discussion of the February 2019 Review and Redetermination Hearing resulting in Mr. Montgomery obtaining Custody of Harmony

The following sections of the report discuss the details of the decisions made at Mr. Montgomery's Review and Redetermination hearing in February 2019. Mr. Montgomery had met his burden of convincing the Juvenile Court Judge that circumstances had changed since Harmony's placement in DCF's custody and that the Judge should review whether Mr. Montgomery was **currently fit** to care for Harmony and whether Harmony was still in need of **care and protection**. At the hearing, DCF had the burden of proving by **clear and convincing evidence** that Mr. Montgomery was currently unfit to care for Harmony and that Harmony still required care and protection in the form of custody to DCF.

DCF Legal Representation at Mr. Montgomery's Review and Redetermination Hearing

The DCF attorney's role in all Care and Protection cases is to advocate for the position of DCF as an agency. DCF legal advocacy takes direction from the "clinical" decision-makers (DCF case management team) on the case which means that the social worker, their supervisor, the area office managers, and the area directors determine the clinical outcome that they want from a case and the DCF attorney determines how to achieve that outcome given the confines of the legal system. The DCF attorneys provide consultation on the legal aspects of the case, on the strength of DCF's legal position and the legal position of other attorneys or parties, and determines the best way to achieve the desired result.

When Mr. Montgomery sought a Review and Redetermination hearing in October 2018, the DCF legal case was not well developed because of the failure to properly assess Mr. Montgomery. The legal position relied heavily on the DCF case management team's work. In the two to three months since Mr. Montgomery began re-engaging with supervised visits, the DCF case management teams was unable to secure Mr. Montgomery's cooperation in completing the needed assessments, including a psychological evaluation, or the tasks in his action plan which would have provided additional information on his strengths and areas of need. The DCF case management team also did not have the benefit of knowing New Hampshire's assessment of the placement through an ICPC as the ICPC was stalled. As a result, the

DCF case management team did not have a clear picture of Mr. Montgomery when he began engaging in visits with Harmony nor did they have an adequate understanding of his capacity to care for Harmony in light of her specific strengths and vulnerabilities. The DCF case management team also did not evaluate Mrs. Montgomery who would eventually become one of the caregivers for Harmony and Harmony's half-siblings living in the home in New Hampshire.

Mr. Montgomery had a comparatively strong case to prove that he was a fit parent judging by the standard of *current fitness* for two reasons: he was participating in substance use disorder treatment with documentation of three years of sobriety, and he was consistently visiting with Harmony.³⁷ Even though he had only been consistently visiting for a few months and had a history of long lapses with no contact with Harmony, the legal standard of current fitness does not take into consideration prior history unless attorneys make arguments to connect past behavior to current concerns. Mr. Montgomery asserted that he had stable employment and housing, although he provided no proof and this was never confirmed.

DCF's legal representation in court at the Review and Redetermination hearing fell short on multiple fronts. Due to attorney-client privilege, which is constitutionally protected, the OCA cannot investigate how closely the DCF case management team and the legal team worked together regarding this case or what strategy was devised to litigate this case. DCF legal objected to Mr. Montgomery obtaining custody of Harmony. However, DCF legal did not have a significant amount of evidence to support its legal position to oppose placement with her father because they did not have information about Mr. Montgomery's parental capacity from either an assessment of Mr. Montgomery or his participation in most of his action plan tasks. DCF also objected to the placement of Harmony in Mr. Montgomery's custody without an ICPC. The evidence and arguments that DCF legal did have available to them to oppose custody were not effectively or persuasively presented in court. Both the clinical side of DCF and the legal side of DCF missed the opportunity to effectively advocate for safety for Harmony.

FINDING # 1: The DCF attorney did not present a strong legal case for opposing placing Harmony in Mr. Montgomery's care. DCF's legal case did not address Mr. Montgomery's parental capacity to care for Harmony in the context of Harmony's unique needs.

The evidence that DCF had about Mr. Montgomery at the February 2019 hearing was incomplete but included concerns for Mr. Montgomery's historical lack of commitment to caring for Harmony, his unwillingness to address DCF concerns through engaging in his action plan tasks other than substance use disorder treatment, his lack of understanding of Harmony as a unique individual, and his inexperience in caring for her particularly in light of her disability, unique needs, and the effects of her trauma on her behavior and functioning. By February 2019, Harmony had been in foster care for most of her life. Mr. Montgomery had failed to seek to care for her for much of her life. He had a history of

³⁷ "In addition to being child-specific, a determination of unfitness must be based on current evidence. While a judge may rely upon a parent's prior pattern of behavior in determining parental unfitness, the judge is required to assess whether a parent is currently unfit. This inquiry requires the judge to focus on the present." *In re Adoption of Ramona*, 61 Mass. App. Ct. 260, 264 (2004) (internal citations omitted).

intermittent visitation with her. There was no evidence from the records that he sought to understand any of her needs. Mr. Montgomery was aware of Harmony's visual disability. He did not seek to understand her medical history, her recent behavioral issues, or the reasons she required special education services or the scope of those services from the DCF case management team. Mr. Montgomery only began consistently visiting Harmony starting in August 2018 when she was four years old. Those visits were every other week and were supervised by the DCF case management team. Although Mr. Montgomery signed his DCF action plan in October 2018, he had never agreed that he needed to complete the services on his action plan to become a parent who could be successful in parenting Harmony, nor did he complete the services on his action plan. Mr. Montgomery had a history of violent and criminal behavior. He had substance use disorder that began when he was a teenager, and his relationship with Ms. Sorey appeared complex and at times volatile and coercive.

The evidence in Mr. Montgomery's favor in February 2019 included that he was consistently attending substance use disorder services in New Hampshire. He was also consistently visiting with Harmony and the DCF case management team did not have significant concerns about those supervised visits. He self-reported that he had a stable job with stable income, and stable housing. He also had no recent significant criminal history. Mr. Montgomery had completed a parenting class sometime in 2014 or 2015 while incarcerated in Massachusetts, and he had two children he was parenting in his home, one of whom was a newborn. The plausible narrative that he presented was that he had turned his life around, that he was married with children, and that he was ready to care for Harmony.

Due to information discussed at previous court appearances, the DCF attorney was on-notice starting in December 2018 that the Juvenile Court felt that DCF's case was weak because there was little evidence of current unfitness in the face of Mr. Montgomery's apparent rehabilitation. On the day of trial for Mr. Montgomery's Review and Redetermination the DCF attorney opposed placing Harmony with her father on the facts of the case as well as the fact that the ICPC had not been completed. However, during trial, there was very little exploration of any of the relevant issues that would have supported the position to oppose custody.³⁸

The DCF legal case did not have a well-developed approach linking Mr. Montgomery's parental capacity to Harmony's unique needs. Harmony's specific medical needs, special education needs, personality, history in care, strengths, and experience of trauma should have been at the center of the clinical case and should have dictated the DCF case management team's understanding of the parental capacity that Mr. Montgomery needed in order to successfully parent her. This key understanding of parental

³⁸ It appears that, particularly when children are in foster care for a significant period of time as Harmony was, any level of perceived compliance with services is seen as possibly "enough" because it appears that the parent has turned a corner. (See Finding #1 "Mr. Almond and Ms. Coleman did not adequately complete their action plans and, despite some engagement with services for a period of time, no evidence was submitted to the Court that engagement with services resulted in any meaningful change to their ability to successfully parent these children." Page 85 of the Multi System Investigation into the Death of David Almond: [INVESTIGATIVE REPORT \(mass.gov\)](https://www.mass.gov/info-details/investigative-report)). The long-term success of that compliance, particularly of visitation with Harmony, appeared not to factor heavily into an evaluation of whether Mr. Montgomery was currently fit to parent Harmony.

capacity specific to Harmony's needs was not developed in the clinical case so it was also lacking from the DCF legal strategy.

Although Harmony's medical needs were mentioned in testimony at the court hearing, there was no in-depth discussion about Mr. Montgomery's lack of engagement with those medical needs including communication with medical providers, no exploration of his understanding of how Harmony's medical needs affected her, nor any exploration of his understanding of the frequency and scope of her current medical services. Although Harmony's educational needs were mentioned in testimony at the court hearing, there was no testimony regarding her special education services in Massachusetts nor that she was not of the age of compulsory education in New Hampshire. Whether DCF found Mr. Montgomery's past criminal behavior relevant to his parental capacity is shielded from the OCA's review by attorney-client privilege. The testimony in court did not compellingly link Mr. Montgomery's past violent and criminal behavior to any current risks to his ability to care for Harmony. There was very little information presented about Mrs. Montgomery and her ability and willingness to care for Harmony, the status of her services for substance use disorder, any potential risk of substance use relapse, or her parental capacities.³⁹ The DCF case management team member testified that the only service DCF was requesting of Mr. Montgomery was a parenting class because the last parenting class he took was when he was not actively parenting. This parenting class request was not linked to improving any specific parental capacity but appeared to simply be a task that might better Mr. Montgomery's parenting. There was no testimony about the multiple other services on Mr. Montgomery's action plan that he failed to complete.

The inadequacies of the DCF case management team's case practice may have prevented the DCF attorney from properly presenting the issues outlined above. The DCF attorney may also have determined that advocacy on the topics outlined above would have not assisted DCF's legal case opposing placement of Harmony in Mr. Montgomery's care. It is impossible to determine what were strategic decisions by DCF legal versus the shortcomings of the case management team's efforts. The information and evidence presented to the court by the DCF attorney appeared to solely focus on Mr. Montgomery, his current life experiences, and his interest in caring for Harmony. **There was no presentation of what Harmony needed to be happy and safe and no presentation of how Mr. Montgomery's skills or parental abilities could meet Harmony's unique needs.**⁴⁰

³⁹ It is important to note that the legal standard is whether Harmony's father was "currently unfit" to parent, there is no specific legal standard that applied to Mrs. Montgomery as she was not Harmony's biological parent and would not have legal custody of Harmony. However, the safety and stability of what would be Harmony's home life and family arrangement are relevant to whether Mr. Montgomery could effectively care for Harmony.

⁴⁰ See for example: "Because parental fitness must be evaluated in context of particular child's needs, parents might be fit to bring up one child, yet not fit to bring up another, in light of fact that needs of one child may be different from those of another." Adoption of Warren, 44 Mass. App. Ct. 620, 626 (1998).

FINDING # 2: The DCF attorney did not effectively argue for the application of the ICPC to this case, nor was the ICPC linked to any protective concerns.

The ICPC is both a procedural and a substantive tool. As a procedural tool, it meets the obligations that states owe to each other via the interstate compact and is a mechanism for information sharing and effective transition planning through ongoing case supervision. As a substantive tool, it provides a level of insight and family analysis that is impossible for a DCF case management team to effectively complete because they are prevented from physically moving across state borders.

The DCF attorney argued that compliance with the ICPC was necessary in this case. The OCA believes that the argument was based solely on a procedural understanding of the ICPC. The argument appeared to focus primarily on the fact that the ICPC, according to the Regulations, applied to Harmony's situation, as she was in state custody and would be placed across state lines. The DCF attorney did not go a step further and argue why an ICPC would have been necessary from a safety and risk analysis perspective.

All child protection agencies have an extraordinarily difficult task when faced with the need to assess caregivers and placements across borders. The state line is a line that must be respected, and state employees cannot cross to the border to conduct state business unless expressly authorized to do so. If a person seeking custody in another state wants to shield information from DCF, they are incentivized to cooperate as little as possible with DCF's efforts to evaluate them and their home environment. The ICPC is intended to resolve this complication by determining the safety of a potential placement: "The primary purpose of the ICPC is to ensure that children placed out-of-state are placed with caregivers who are safe, suitable and able to meet the child's needs. The ICPC requires an assessment of these factors before a child is placed out-of-state."⁴¹

The DCF attorney could have argued that an ICPC was necessary in this case because there was too little information known about Mr. Montgomery or his wife to be able to assess the risk of the placement to Harmony or assess the fitness of the caregivers. Importantly, New Hampshire was not progressing on the ICPC request because New Hampshire did not feel that they could adequately assess the safety of the placement without updated information about Mrs. Montgomery's substance use disorder services. There was no argument made in court that if New Hampshire determined that the information was so lacking that they could not effectively analyze the safety of the placement, then Massachusetts should not proceed without some confirmation that Mr. Montgomery could provide a safe home for Harmony. DCF failed to explicitly make the critical arguments in court including that the DCF case management team had repeatedly sought the relevant information about Mrs. Montgomery from her service provider in New Hampshire and had not been provided that information. Therefore, the Judge was not provided

⁴¹ American Public Human Resources Association "ICPC FAQ's" available at: [ICPC](#) | [FAQ's](#) | [AAICPC](#) | [APHSA](#).

with all the information necessary to evaluate the possible risks to Harmony in Mr. Montgomery's care.⁴²

Additionally, DCF had the strength of caselaw on its side. Massachusetts caselaw in February 2019 and today supports a legal conclusion that the ICPC applied to the placement of Harmony with Mr. Montgomery.⁴³ Although the DCF attorney verbally argued that the ICPC applied, they did not cite relevant Massachusetts caselaw or DCF regulations.⁴⁴ Mr. Montgomery's attorney submitted written motion papers in advance of the hearing arguing that the ICPC should not apply and cited New Hampshire caselaw. The DCF attorney did not submit any written motion papers in opposition, nor did they argue for written closing arguments to make a legal case for the application of the ICPC. As discussed further herein, the Judge decided to apply New Hampshire caselaw instead of Massachusetts caselaw to their decision.⁴⁵ DCF did not adequately argue the existence and significance of Massachusetts caselaw on this issue.

DCF's legal position regarding the application of the ICPC to this case was not presented with the same level of detail and strategy that Mr. Montgomery's legal position was.

Harmony's Legal Representation at Mr. Montgomery's Review and Redetermination Hearing

Attorneys are appointed to represent children in every Massachusetts Care and Protection case.⁴⁶ The appointment of counsel for children in these cases is recommended best practice by the American Bar Association,⁴⁷ however there are many models used by states in ensuring that the child's rights are protected.⁴⁸

⁴² The OCA does note however that additional information regarding Mr. Montgomery and his past relationship with Harmony was available in the court case file through the court investigator reports, but these reports were not current to 2019.

⁴³ For a more detailed discussion about caselaw see page 47.

⁴⁴ See 110 CMR 7.500-7.523 generally and specifically 110 CMR 7.5.7(2) "If a court enters an order which alters custodial rights which had been previously adjudicated in a divorce, separation or other legal proceeding, and such order places a child with a previously non-custodial parent in a state other than the one in which the child currently resides, there is a placement within the meaning of the Compact."

⁴⁵ Nothing in this paragraph is meant to suggest that there would have been an alternative legal outcome if the DCF attorney had argued differently. It is impossible to know if there could have been a different outcome in the case, the OCA is primarily concerned that the full picture of the family and the risks to Harmony were not adequately presented.

⁴⁶ M.G.L. c. 119 § 29.

⁴⁷ See generally "American Bar Association Standards of Practice for Lawyers who Represent Children in Abuse and Neglect Cases" (1996) and specifically the Appendix relating to "Previous American Bar Association Policies Related to Legal Representation of Abused and Neglected Children" starting on page 23, available at: [untitled \(americanbar.org\)](#).

⁴⁸ States have varying models of representation. In some states attorneys for children represent the children's best interests, in some states they represent the child's stated interests, and in some states there is a hybrid approach. See for more information: [Right to Counsel Map – Counsel for Kids](#).

Attorneys for children are overseen by the Committee for Public Counsel Services (CPCS).⁴⁹ Judges can assign an attorney to a case either by selecting an attorney from a list of private bar attorneys who have received training and who are certified by CPCS for Care and Protection cases or from attorneys who work directly for CPCS. Harmony was represented by the same private bar attorney for the full length of her experience with Juvenile Court.

In February of 2019 Harmony was approximately four and a half years old. Harmony's attorney was basing Harmony's legal representation on a substituted judgment model. In this instance, this means that Harmony was able to express her wishes to her attorney, which were that she wanted to live with Mr. Montgomery, but her attorney felt that Harmony could likely not make a reasoned decision regarding the legal matters in her case. Substituted judgement requires the attorney to determine what the child would decide, if they were capable of making a reasoned decision, and align the legal representation strategy accordingly.⁵⁰ Harmony's attorney used Harmony's expressed preference to inform the attorney's substituted judgement which was that Harmony should be placed in the custody of Mr. Montgomery.

According to the CPCS Assigned Counsel Manual, attorneys must represent their client's wishes in court even if the child cannot make a reasoned decision regarding the legal matters in the case so long as the client's position would not put them at risk of substantial harm: "If a child can verbalize a preference with respect to a particular matter, but counsel reasonably determines...that the child is not able to make an adequately considered decision regarding the matter and if representing the child's expressed preferences does not place the child at risk of substantial harm, then counsel shall represent the child's expressed preferences."⁵¹

The CPCS Assigned Counsel Manual gives the attorney for the child several options of how to proceed in cases when the attorney for the child determines that a child's preferences would place the child at risk of the harm. **Nothing in these standards requires the attorney for the child to indicate to the judge any concerns or advocate for the child's best interest in a case:**

If the child is not able to make an adequately considered decision regarding the matter and if counsel determines that pursuing the child's

⁴⁹ Committee for Public Counsel Services <https://www.publiccounsel.net/> is a publicly funded entity consisting of "...a 15-member body appointed by the Governor, the Speaker of the House of Representatives, the President of the Senate, and the Massachusetts Supreme Judicial Court, oversee[ing] the provision of legal representation to indigent persons in criminal and civil cases and administrative proceedings in which there is a right to counsel. Most representation is provided by approximately 3,000 private attorneys trained and certified to accept appointments. Support for and supervision of these attorneys is provided by the Private Counsel Division (for criminal cases and related matters), the Children and Family Law Division (for child welfare cases), the Youth Advocacy Division (for delinquency, youthful offender, and GCL revocation cases), and the Mental Health Division (for guardianships and mental health/substance abuse commitments). Approximately 500 staff attorneys, working in offices located across Massachusetts, provide representation to clients in Superior, District, Juvenile, and Probate and Family Court cases and in appeals of those cases." See more information at: [Our Structure | Human Resources \(publiccounsel.net\)](#).

⁵⁰ CPCS Assigned Counsel Manual page 4.198 available at: [Assigned-Counsel-Manual.pdf \(publiccounsel.net\)](#)

⁵¹ CPCS Assigned Counsel Manual page 4.199 available at: [Assigned-Counsel-Manual.pdf \(publiccounsel.net\)](#)

expressed preferences would place the child at risk of substantial harm, counsel may choose one of the following options:

- i. represent the child's expressed preferences regarding the matter;
- ii. represent the child's expressed preferences and request the appointment of a guardian ad litem/investigator to make an independent recommendation to the court with respect to the best interests of the child;
- iii. inform the court of the child's expressed preferences and request the appointment of a guardian ad litem/next friend to direct counsel in the representation; or
- iv. inform the court of the child's expressed preferences and determine what the child's preferences would be if he or she was able to make an adequately considered decision regarding the matter and represent the child in accordance with that determination.⁵²

The attorney for the child indicated in court that their legal position aligned with Mr. Montgomery's. Though this is not an outright statement of Harmony's preference, the OCA understands this to mean that the attorney for the child was indicating that Harmony wanted to live with Mr. Montgomery, that the attorney's substituted judgment was informed by and aligned with Harmony's preference, and the attorney was pursuing that legal result.⁵³ The OCA has no way of knowing whether Harmony's attorney believed that Harmony's preference would place her at substantial risk of harm as the attorney was not required to change their legal strategy or the information they presented to the court if they did believe that Harmony's preference placed her at risk of substantial harm.

Even without the benefit of hindsight, it would have been reasonable at the time of the Review and Redetermination hearing to believe that Harmony's express wish to live with Mr. Montgomery placed her at risk of substantial harm. Placement with Mr. Montgomery would mean that Harmony would be joining a new family who had never cared for her full-time. Harmony would be joining a family that included a toddler and a newborn. Both Mr. Montgomery and Mrs. Montgomery had substance use disorder and would, for the first time, be parenting three children under five years old. Harmony had never even had an extended visit⁵⁴ with Mr. and Mrs. Montgomery. The limited amount of two-hour supervised visits that Mr. Montgomery had from August 2018 to February 2019 could not provide the

⁵² [Assigned-Counsel-Manual.pdf \(publiccounsel.net\)](#) page 4.199.

⁵³ Many children who have been removed from the care of their parents or caregivers want to return home. They often want to return home even when it was not a safe or supportive place. This desire to return to normalcy with family members whom children love and depend upon is completely natural and though some attorneys for children may disagree with their client's wishes, they are bound to advocate for those wishes in the courtroom.

⁵⁴ "Extended visit" in this sentence is meant to be longer than the unsupervised and unapproved single overnights that Harmony had for a few weeks in 2017. The ICPC permits extended visits of up to 30 days in another state without an ICPC home study.

family with insight into Harmony's daily routine or needs. Harmony was experiencing behavioral dysregulation from trauma, she required a consistent level of care due to her medical conditions, and she would be transitioning to a home where she would need to adjust to a new physical environment. As a further pressure on the family, Harmony would be moving to Mr. Montgomery's care without any transition plan or connections to community support in New Hampshire. Mr. Montgomery had not sought any information about how to safely transition Harmony, given her unique needs, to his home. This pressure on the family had the potential to exacerbate any gaps in the parental capacities of Mr. Montgomery and Mrs. Montgomery – parental capacities that had not yet been adequately assessed by DCF either through Mr. Montgomery's cooperation or through the ICPC home study.

Harmony's attorney advocated for Harmony to be placed with Adam Montgomery in New Hampshire, was in favor of a finding that the ICPC was not required in her case and was in favor of the dismissal of the Care and Protection case.

FINDING # 1: Harmony's best interests and welfare were not presented to the Juvenile Court Judge by her attorney.

The in-court advocacy by the attorney for Harmony was based on the attorney's exercise of substituted judgment on behalf of Harmony and Harmony's wish to live with her father. Due to the constitutionally guaranteed protections of confidentiality of attorney-client privilege, the OCA is barred from asking questions about the scope of client counseling in this case. The OCA was also unable to confirm the contacts between Harmony and her attorney because the OCA has no legal authority to request that documentation of CPCS. Although the OCA is barred from exploring the rationale behind Harmony's attorney's legal strategy, the OCA believes that even without the benefit of hindsight, and with the information known at the time, this strategy placed Harmony at risk.

What the OCA can state from the record is that Harmony's attorney did not present any evidence of Harmony's needs including her strengths and vulnerabilities. There was never a statement about Harmony's specific desired legal outcome, why she wanted that legal outcome, or what she needed to feel safe and to thrive. Harmony's attorney asked very few and very simplistic questions at the trial. The testimony in the case only touched on Harmony's needs in a cursory way and Harmony's attorney, because they agreed with Harmony being placed in Mr. Montgomery's custody, did not present any evidence or question Mr. Montgomery on Harmony's specific medical needs, her educational needs, her behavioral needs, nor Harmony's daily routine or support system. **Harmony's attorney advocated for the trial to go forward without Ms. Sorey's presence which would leave Harmony's continued relationship with her mother and visitation with her mother and half-sibling in jeopardy. The attorney also did not state any opposition to proceeding with custody without an ICPC knowing that DCF was never able to conduct a proper assessment of the Montgomery family.**

Harmony's attorney also did not advocate for any type of transition plan to ensure a safe and successful transition from Harmony's foster parents' home to the home of Mr. Montgomery in New Hampshire. A transition plan may have provided the family with safeguards and may have helped to evaluate whether

the transition was successful. It may have also connected Harmony and the family with valuable community supports.

As discussed later in this report, the Judge in Harmony's case also dismissed the Care and Protection case once full custody had been awarded to Mr. Montgomery. Dismissing this Care and Protection resulted in there being no pending case against Ms. Sorey, and therefore nothing preventing Ms. Sorey from seeking to challenge the father's custody of Harmony. The attorney for the child made no arguments regarding this legal outcome even though this placed Harmony's custody arrangement in limbo.

Harmony's attorney did not put Harmony's individual needs front and center in the Judge's consideration of Mr. Montgomery's parental fitness, the consideration of custody, the applicability of the ICPC, nor the dismissal of the Care and Protection case. Nor was the attorney required to do so under the CPCS standards of representation. In the current model of representation in Massachusetts, the attorney for the child is required to advocate for the client's express wishes (see page 41 for a more nuanced discussion of this topic) but is not required to change or alter their legal representation even if they believe that a child's express wishes would put them at risk for repeat maltreatment.

The attorney for Harmony's position was that Harmony should be placed in the custody of Mr. Montgomery, and in the OCA's opinion the attorney sought to achieve that goal as expeditiously as possible. They did not take steps to ensure that goal was achieved in a manner that was as safe and sustainable as possible. This approach is similar to the approach of the attorney for the child in the OCA's report [Multi System Investigation into the Death of David Almond](#) regarding a transition of the children to the temporary custody of the caregivers in that case. In each of these cases the attorney for the child's focus was on the **what** and not the **how**. The **what** is the legal position of the attorney for the child(ren) supporting reunification with the parent, but in both cases there was no consideration as to **how** to achieve that goal. A primary focus of child protective services should be the successful reunification of children with their families after removal. Consideration of supports that the child or parents may need to support family safety and unity should be in the forefront of decisions regarding the return to custody.

When a parent is seeking to have a child transferred from the custody of DCF to the custody of that parent, the legal standard is whether the parent is "currently unfit." The standard of unfitness for each individual parent is informed by the welfare of the child: "The welfare of the child is the most important consideration when determining parental fitness...The parental unfitness test and the best interests of the child test are not mutually exclusive, but rather reflect different degrees of emphasis on the same factors."⁵⁵ Even though the legal standard in the Review and Redetermination hearing takes into account the best interests of the child, the attorney for the child has no obligation under CPCS's standards of representation to consider a child's best interest or welfare in determining what legal strategy to pursue in court, no obligation to factor the child's welfare into how legal goals may be achieved (for example only supporting transfer of custody with a detailed transition plan and period of ongoing supervision),

⁵⁵ [Adoption of Lisette](#), 93 Mass. App. Ct. 284, 293 (2018) (internal citations omitted).

and no obligation to present the child's strengths, vulnerabilities, and unique characteristics to the court as part of the attorney's representation.

Although nothing prevented Harmony's attorney from presenting an individualized picture of Harmony, her needs, her strengths, and her vulnerabilities, as part of the legal advocacy strategy, the attorney did not do so in this case. Because neither the DCF attorney nor Harmony's attorney elevated Harmony's best interest or welfare in the court proceedings, the Judge in this case was not presented with an accurate balancing of Mr. Montgomery's parental capacity in light of, and in connection to, Harmony's needs.

Legal Representation for Ms. Sorey

The attorney for Ms. Sorey was also a private bar attorney who was certified by CPCS. At the time of the trial in February 2019, Ms. Sorey had also filed a motion for a Review and Redetermination hearing, hoping to have Harmony placed in her care yet again. On the court date in February 2019, both Mr. Montgomery's and Ms. Sorey's Review and Redetermination hearings were scheduled to take place, but Ms. Sorey was in another courthouse on a Care and Protection case regarding her other child. The court cases regarding her two children were proceeding separately and the hearings had essentially been double-booked. She had one attorney representing her in Harmony's case, and a different attorney representing her on the case related to her other child.

Ms. Sorey's attorney in Harmony's case sought to delay the trial regarding Mr. Montgomery's ability to care for Harmony so that Ms. Sorey could be present. All of the attorneys were on notice that the Judge would likely make a critical decision on Harmony's custody. However, the Judge, the father's attorney, and Harmony's attorney all placed pressure on Ms. Sorey's attorney to reach out to Ms. Sorey via telephone and get her consent for Mr. Montgomery's hearing to move forward without her. Ms. Sorey's attorney did reach her at the other courthouse. The attorney then informed the Judge that Ms. Sorey agreed to Mr. Montgomery's hearing proceeding without her.

Although Ms. Sorey may have missed previous court dates on Harmony's case without valid excuses, on the day of trial in February 2019 she did have a valid excuse. It is concerning to the OCA that after four and a half years of Ms. Sorey continually seeking to parent Harmony, and after Ms. Sorey having expressed at times sincere concern for Mr. Montgomery's past behavior towards her, the case regarding custody of Harmony to Mr. Montgomery would move forward without her present. Not only did Ms. Sorey's attorney agree to proceeding without her, but with no explanation Ms. Sorey's attorney informed the Judge that Ms. Sorey supported Harmony being placed in the custody of Mr. Montgomery. Afterwards, Ms. Sorey's attorney did not actively participate in the hearing regarding Mr. Montgomery's custody request.

Legal Representation for Mr. Montgomery

The attorney for Mr. Montgomery was a CPCS staff attorney. From the OCA's review of the trial record it is evident that Mr. Montgomery's attorney had a well-planned legal strategy to secure Harmony's

custody for Mr. Montgomery. His attorney argued zealously for his position, which included that the ICPC should not apply to his case, including through written motion papers. The father's attorney was compelling in their direct and cross examinations. Although the OCA feels that the lack of the ICPC in this case made Harmony less safe, Mr. Montgomery's legal position was clearly well thought out and presented, Mr. Montgomery was well prepared for in-court testimony, and his attorney adequately and expertly represented him in court.

The Juvenile Court Decisions in Mr. Montgomery's Review and Redetermination Hearing in February 2019

The following section details the decisions that the Judge made in this Care and Protection case in February 2019. Several judges presided over the case throughout its history though the primary Judge in the case was the Judge that decided Mr. Montgomery's Review and Redetermination hearing in February 2019. Judges are required, in this setting, to determine the relevant facts of a case based on the testimony and evidence presented to them by the attorneys. They are required to apply the law to those facts. A judge's decisions therefore are necessarily influenced by the information presented to them.

The Judge's Decision on Parental Fitness

The Judge determined at Mr. Montgomery's Review and Redetermination hearing that he was a fit parent and that Harmony was no longer in need of care and protection. This decision was based on the testimony presented by Mr. Montgomery and the DCF case management team, as well as documentary exhibits.

The totality of the facts rested on Mr. Montgomery's oral testimony that he was sober and stable and not on any other supporting evidence. There were no detailed plans to provide Harmony with medical care, there were no detailed plans to enroll Harmony in school, there was no photographic evidence of what the home looked like and whether it was safe for a child with a visual impairment to live there, and there was no documentary evidence supporting Mr. Montgomery's claims of stable employment or ability to maintain housing. There was also very little evidence about Mrs. Montgomery's willingness or ability to care for Harmony. She was not called to testify. There was no relevant evidence about how the family planned to cope with the stress of the sudden life changes they were experiencing of adding another child to their household.

There was also no evidence presented that suggested that Mr. Montgomery was not prepared to care for Harmony. No attorney raised concerns about the very limited time that Mr. Montgomery had been visiting with Harmony, that Mr. Montgomery had a long history of inconsistent visitation, or that these visits were supervised and that there had been no unsupervised visits nor any overnight visits monitored by DCF. No one probed Mr. Montgomery's understanding of Harmony's medical, educational, or emotional needs. Mr. Montgomery's testimony regarding Harmony's needs was very vague and he was not pressed to explain his understanding or apply his understanding to the larger context of how he could effectively parent Harmony. Mr. Montgomery's lack of full cooperation with DCF was not

presented to the Judge.⁵⁶ The Judge, without any significant evidence presented to the contrary, credited Mr. Montgomery's testimony that he was ready and able to care for Harmony.

The Judge also appeared to believe Mr. Montgomery's narrative that he had turned his life around from his previous criminal activities, that he was not using drugs, and that he was willing and able to care for Harmony. Neither the DCF attorney nor Harmony's attorney undertook efforts to present Harmony's unique and specific needs for the Judge's consideration. The OCA has concluded that Mr. Montgomery's parental fitness appeared to be solely about Mr. Montgomery and not about his ability to specifically parent Harmony and her needs.

As noted previously, Mr. Montgomery's attorney, Ms. Sorey's attorney, and Harmony's attorney were all in favor of Mr. Montgomery being found by the Judge to be a fit parent and to have Harmony placed in his custody.

The ICPC: Caselaw and the Judge's Decision

The DCF attorney orally argued against removing Harmony from DCF's custody and placing her with Mr. Montgomery without an ICPC. The DCF attorney primarily argued that an ICPC was required by law and DCF regulation, but their argument was not bolstered by citing the law, the regulation, or the relevant Massachusetts caselaw.

The Massachusetts caselaw on the ICPC that was most relevant to this case was Adoption of Warren.⁵⁷ In Warren, the Massachusetts Appeals Court held that the ICPC applied when a child is in the custody of DCF⁵⁸ and the placement resource was a parent in another state because DCF, as a state agency, would be the "sending agency" under the ICPC:

Contrary to the assertions of the father, the limitations on the application of the Interstate Compact, as set forth in Article VIII, do not preclude its application in the present case. Warren was not being sent into or brought into New York by his father because his father did not have custody of Warren. DSS had been granted temporary custody of Warren, and the limitations set forth in Article VIII of the Interstate Compact do not preclude its application to the sending or bringing of a child into a receiving State by a State agency.⁵⁹

The Appeals Court also held that the ICPC applied to the Warren case because DCF had requested it, holding that the Massachusetts regulation stating that the ICPC shall apply whenever the sending agency requests a home study or supervision in a receiving state applied.⁶⁰ In Warren the state of New

⁵⁶ It is possible and may be likely that the DCF attorney did not know that this was the case.

⁵⁷ Adoption of Warren, 44 Mass. App. Ct. 620 (1998).

⁵⁸ This case refers to DCF as "DSS" Department of Social Services. DSS was renamed DCF sometime after this case.

⁵⁹ Warren, at 623.

⁶⁰ 110 CMR 7.503(8).

York “...recommended that Warren not be placed in the custody of his father because of his father’s poor living conditions, his father’s extensive criminal history, and his father’s inability fully to understand and to address his son’s significant emotional and behavioral problems.”⁶¹

The Warren case was directly on-point for Harmony’s case because she was also in the care and custody of DCF. Any placement with the father would be from a “state agency” to the father in another state. Further, the ICPC had already been requested by DCF so the ICPC applied per Massachusetts regulations. This Massachusetts caselaw was not presented in court in Harmony’s case. Although a judge may be presumed to be aware of the relevant Massachusetts caselaw, because such caselaw is controlling in Massachusetts attorneys should make detailed legal arguments that support their client’s position. Attorneys should not assume that a legal issue is so clear that they are exempt from advocacy on that issue, particularly when opposing counsel is zealously advocating otherwise. The DCF attorney should have made detailed legal arguments based on the available Massachusetts caselaw.

Mr. Montgomery’s attorney argued, both in written motion papers submitted in advance of the hearing and orally in court, that the Judge should apply New Hampshire caselaw regarding the applicability of the ICPC to Mr. Montgomery’s case through following a case called In re Alexis O.⁶² This case was decided by the Supreme Court of New Hampshire in 2008 and was about whether New Hampshire could place a child who was in New Hampshire’s child protective custody into the custody of her mother in another state. The Supreme Court of New Hampshire held that:

... given the plain language of the ICPC and its legislative history, which demonstrate that its drafters intended to limit its reach to foster care/adoption situations, we hold that the trial court erred when it ruled that the ICPC applied to its decision to transfer the child to her natural mother.⁶³

Therefore, according to New Hampshire’s caselaw, the ICPC should never apply to placement of a child with a natural (biological) parent in another state. The Supreme Court of New Hampshire based part of its reasoning for this decision on the fundamental liberty interest that parents have in raising their children, a liberty interest that is in the New Hampshire Constitution, and which is protected by the Due Process Clause of the Federal Constitution.⁶⁴ The majority decision in Alexis O. case determined that an ICPC was not required even when a parent had been previously found to be unfit as Mr. Montgomery had been.⁶⁵

⁶¹ Warren, at 621-622.

⁶² In re Alexis O., 157 N.H. 781 (2008).

⁶³ Id. at 791.

⁶⁴ Alexis O., at 789.

⁶⁵ The concurrence in the Alexis O. decision states that “The majority is concerned about conflicting language in the statute and the ICPC Regulations, particularly the potential of Regulation No. 3 to expand the application of the ICPC. The majority reasons that the Regulations’ inclusion of parental placements within the ambit of those covered by the ICPC conflicts with the language

The Massachusetts Judge was persuaded by the caselaw in New Hampshire and applied the analysis of Alexis O. to Harmony's case. The Judge found that an ICPC was not necessary in this case because, consistent with the New Hampshire Supreme Court's interpretation of the ICPC, the ICPC does not apply when a child is returning to the care of her natural/biological parent and if the ICPC were to apply, it would impose an undue hardship on a fit parent and a child who wished to be in that parent's care. **Because the Judge in this case did not believe the ICPC could be constitutionally applied to a fit parent, the moment that the Judge determined Mr. Montgomery was fit to parent Harmony, the Judge also simultaneously determined the ICPC did not apply.**

This result in Harmony's case aligns with some interpretations of the ICPC in other states but is out of alignment with caselaw in Massachusetts. For example, a 2021 Memorandum and Order from a Single Justice of the Massachusetts Appeals Court in a case titled Care and Protection of Elizabeth,⁶⁶ found that the ICPC does not apply (1) to a parent who has never been deemed by a court to be unfit and (2) when DCF has not been properly adjudicated the legal custodian of the child. Accordingly, this recent Massachusetts case supports a determination that the ICPC applied to Harmony's case because (1) Mr. Montgomery had been previously deemed by a court to be unfit in 2015, and (2) DCF did have custody of Harmony at the time the placement was made across state lines.⁶⁷ The Judge's decision goes on to reference several other states' cases that confront the issue of whether the ICPC applies to placement with parents.⁶⁸ Therefore, although this most recent case does not support the Judge's decision in Harmony's case, there appears to be some suggestion that the ICPC's application to placement with parents across state lines may be an issue that is not entirely settled by current Massachusetts caselaw.

The Judge decided that the ICPC did not apply to placing Harmony with her father across state lines because it would be unconstitutional to limit a fit parent's access to their own child through an ICPC. Although this was not in line with the caselaw in Massachusetts, and although the Judge chose to apply caselaw from another state, without an appeal of the Judge's decision there is no legal ruling that the Judge was incorrect in their application of the constitution to this case.

Judges are required to interpret the laws of a state and apply those laws to the scenarios that are in front of them. It is not the role of the OCA to pass judgement on a legal determination that has been decided by a judge. Legal parties have the right to appeal to challenge a judge's ruling. DCF's legal unit had the opportunity to appeal the Judge's application of the law to Harmony's case. There are many

of the statute, which the majority reads to apply only to non-parental placements. I read the ICPC to apply to out-of-state parental placements in very limited circumstances. If the purpose of the compact is to ensure that each child is placed in a suitable environment, it would make no sense, as more fully explained below, to read the ICPC to exempt from ICPC requirements the placement of a child with a non-custodial parent who is actually unfit to care for the child or who has previously been deprived of custody for neglect or abuse." Alexis O., at 791-2.

⁶⁶ Care and Protection of Elizabeth, Memorandum and Order, 21-J-534 (2021). Single Justice orders, such as this one, are not published and are not precedent setting.

⁶⁷ However, it is notable that the Judge in Care and Protection of Elizabeth indicated that they were "passing" on the question of whether Regulation 3 of the ICPC has the force of law in Massachusetts. Care and Protection of Elizabeth, Memorandum and Order, 21-J-534 (2021), page 6. Single Justice orders, such as this one, are not published and are not precedent setting.

⁶⁸ Care and Protection of Elizabeth, Memorandum and Order, 21-J-534 (2021), page 6. Single Justice orders, such as this one, are not published and are not precedent setting.

reasons why a party may choose whether to appeal or not appeal. That DCF did not appeal this case does not mean that they agreed with the results. However, by not filing an appeal, the Judge's ruling was the final decision in this case. The OCA notes that it is a judge's solemn duty to faithfully apply federal and state laws and if a judge determines that a law or regulation is superseded by a constitutional right, such as the constitutional liberty interest a fit parent has to raise their own child, then the judge is bound by their duty to make that decision.

The OCA believes that the procedures outlined in the ICPC, if applied in Harmony's case, would have helped to address safety and risk concerns for Harmony in Mr. Montgomery's care. This would have included confirming the family's living situation and Mrs. Montgomery's sobriety, continued oversight of the placement by New Hampshire DCYF, and ensuring that Harmony was connected to services and resources in New Hampshire, including school. The Judge's ruling that the ICPC was unconstitutional as applied to fit parents discounts the substantive role of the ICPC which is to determine the potential risks to a child if moved to a placement out of state; this risk analysis would inform an understanding of Mr. Montgomery's current fitness.⁶⁹ For more detailed information about the ICPC please see Appendix B: Interstate Compact on the Placement of Children.

Custody: The Judge's Decision

Mr. Montgomery's Review and Redetermination hearing consisted of testimony by Mr. Montgomery and the assigned DCF social worker. Reports and other documents were entered into evidence. Based on the evidence presented in the hearing, the Judge found that Mr. Montgomery was currently fit to care for Harmony, and then awarded him full legal custody of Harmony.

There was no discussion about whether the final custody order would contain any specific conditions. The OCA's understanding is that most final custody orders to parents in Juvenile Court do not usually contain conditions.⁷⁰ The custody order was necessary because Harmony's parents were not married when she was born. Custody of children born out of wedlock is presumed to rest with birth mother. The Judge wanted to ensure that Mr. Montgomery, not Ms. Sorey, retained custody of Harmony now that DCF no longer had custody of Harmony.⁷¹

Upon the issuance of the custody order, the Judge ordered that the Care and Protection be dismissed. Dismissal of a Care and Protection case supersedes any prior findings of unfitness made in that case; an order of dismissal implicitly vacates the findings.⁷² This would likely include the vacating of any orders issued under the Care and Protection including a permanent custody order. Usually, a parent will file for

⁶⁹ A parent's constitutional right to raise their children can be interfered with only when the parent subjects that child to abuse or neglect or substantial risk of harm due to abuse or neglect. Therefore, a child's safety and wellbeing is of equal weight to the parent's right to raise that child.

⁷⁰ It is the OCA's understanding that conditions on final custody orders are more often considered when custody orders are made by the Probate Court rather than the Juvenile Court.

⁷¹ In 2021, the Juvenile Court issued Standing Order 5-21 which requires consideration of conditions for temporary custody orders returning a child to a parent. See: [Juvenile Court Standing Order 5-21: Return of custody in care and protection proceedings | Mass.gov](#).

⁷² Care and Protection of Joselito, 77 Mass. App. Ct. 28 (2010).

a custody order in the Probate and Family Court in Massachusetts if the status of the custody order issued in the Care and Protection matter is in question once the Care and Protection matter is dismissed. Mr. Montgomery was not able to file for a custody order in the Probate and Family Court because he was a New Hampshire resident. Once the Care and Protection case for Harmony was dismissed, the order of final custody to the father by the Juvenile Court became unenforceable in Massachusetts.

It was the Judge's understanding, based on the information presented by the attorney for Mr. Montgomery, that Mr. Montgomery would use the February 2019 custody order issued by the Judge to go to the Family Court in New Hampshire to obtain a New Hampshire custody order that would provide him with full legal custody of Harmony. The Judge dismissed the Care and Protection case because the Judge was concerned that the New Hampshire Family Court would not issue Mr. Montgomery a custody order if the Care and Protection case was still "open" in Massachusetts. The OCA has no information that indicates whether Mr. Montgomery sought a custody order for Harmony from New Hampshire Family Court.

Once Harmony was placed in Mr. Montgomery's custody by the Court, and the Care and Protection case was dismissed, and prior to any custody order being issued in New Hampshire, there was a question as to who had legal custody of Harmony: Ms. Sorey or Mr. Montgomery.⁷³ Although the DCF attorney indicated that based on Massachusetts law custody would revert to Ms. Sorey,⁷⁴ the Judge and the attorney for Mr. Montgomery both believed it was possible that Mr. Montgomery would retain custody in light of caselaw on the matter.⁷⁵ Given that Mr. Montgomery had just been adjudicated a currently fit parent at the court hearing, neither the DCF attorney nor Ms. Sorey's attorney objected to the custody order and the attorney for Harmony supported both the awarding of custody to Mr. Montgomery and the dismissal of the Care and Protection case. The DCF attorney objected to the dismissal of the Care and Protection case due to the well-grounded belief that dismissal of the Care and Protection case invalidated the custody order, and that Harmony would be technically in the custody of Ms. Sorey whose fitness had not been adjudicated at this Review and Redetermination hearing.

Staying the Court Order: Precautions

As a result of the legal complexities of the case, and the lack of any form of official coordination of court systems across state lines, the Judge in this case was concerned that New Hampshire would not recognize Mr. Montgomery's custody of Harmony. If New Hampshire did not recognize custody, Mr. Montgomery would likely have had trouble seeking financial support for Harmony, medical care for Harmony, education for Harmony, and other critical services.

⁷³ The DCF attorney also expressed this concern to the Judge.

⁷⁴ M.G.L. c. 209C § 10(b): "Prior to or in the absence of an adjudication or voluntary acknowledgment of paternity, the mother shall have custody of a child born out of wedlock. In the absence of an order or judgment of a probate and family court relative to custody, the mother shall continue to have custody of a child after an adjudication of paternity or voluntary acknowledgment of parentage."

⁷⁵ Dep't of Revenue v. C.M.J., 432 Mass. 69 (2000).

This concern was based in the precedent of a Massachusetts legal case called Custody of Quincy which is a case from 1990.⁷⁶ In Quincy, there was a Care and Protection case in Massachusetts against the mother of Quincy; there was never a finding of unfitness against the father who was living in New Hampshire. The child was placed with his father in New Hampshire by Massachusetts DCF without an ICPC.⁷⁷ When the Care and Protection case was dismissed in Massachusetts and the child was living in New Hampshire with his father, there was an informal agreement that Massachusetts would continue to pay for services for the child. However, when the child needed a higher level of treatment than DCF was providing, the father was unable to secure such treatment. The father sought to reopen the Care and Protection case in Massachusetts and have an ICPC filed to assist him in getting the needed services for his son, but he was unsuccessful. He was told by New Hampshire that they could not assist him in obtaining services for his son unless New Hampshire had sole legal custody of the child. The father was put in the counter-intuitive position of having to choose to neglect his son, by abandoning him at a hospital, in order to give New Hampshire a legal basis to take custody of his son and provide for the services his son needed.

A final point, and of particular regret, is that the father was obliged to engage in a fabrication with the New Hampshire authorities by leaving the child at a hospital in order to obtain services in New Hampshire for his son. Had there been verification of residency by the department and an initial referral through the Interstate Compact, this unfortunate pretense and the undeserved stigma of being a neglectful parent could have been avoided.⁷⁸

The Judge in Harmony's case was concerned that a situation like this would happen to Mr. Montgomery and Harmony even though it was New Hampshire's caselaw that was the foundation of the Judge's determination that an ICPC was not necessary in this case. As the Judge did not want any barriers to Harmony receiving services in New Hampshire if she needed them, the Judge (on their own, not pursuant to any motion by any attorney) decided to "stay"⁷⁹ their order of permanent custody to Mr. Montgomery and "stay" the dismissal of the ICPC in order to provide the Judge the opportunity to directly communicate with New Hampshire's ICPC office.

The Judge wrote out the legal decision that Mr. Montgomery was found to be a fit parent and that the Judge was issuing him a permanent custody order for Harmony. The Judge also said in the written decision that the Judge determined that an ICPC was not necessary and that the Judge was basing the ruling on New Hampshire's case In re Alexis O. The Judge sent this written order to the ICPC Compact Administrator in New Hampshire and called the ICPC compact office in New Hampshire. The Judge's intention in doing this was to put New Hampshire on notice that the Judge was sending Harmony across

⁷⁶ Custody of Quincy, 29 Mass. App. Ct. 981 (1990).

⁷⁷ "No one disputes, indeed the department now concedes, that an Interstate Compact referral should then have been made by Massachusetts to New Hampshire." Id. at 981.

⁷⁸ Id. at 982.

⁷⁹ A "stay" means that a legal decision has been made, but the implementation of that decision will be delayed.

state lines, that Massachusetts intended Mr. Montgomery to have custody of Harmony, and to provide New Hampshire with an opportunity to object to this arrangement or object to the application of the In re Alexis O. caselaw to this case if they wanted to do so. In this way, the Judge felt like they did everything they could do without an ICPC in place to set Mr. Montgomery and Harmony up for legal success in New Hampshire. The New Hampshire ICPC Compact Administrator's Office did not substantively reply to the Judge but did clarify with the Massachusetts ICPC Compact Administrator's office that they had a correct understanding that Mr. Montgomery was no longer charged with being unfit. Having not heard from the New Hampshire ICPC office but knowing that they did receive the Judge's written order, the Judge lifted the stay and their orders of permanent custody of Harmony to Mr. Montgomery and dismissal of the Care and Protection case took effect. The DCF Compact Administrator withdrew the ICPC request once the Judge's order became effective.

Conclusion

The OCA is gravely concerned that all relevant parties in this case focused on the parents' constitutional rights more heavily than Harmony's safety and best interests. As a result, there was not an appropriate balancing of these rights and interests. Government agency interference in the family unit, particularly when courts remove children from the care and custody of their parents, must only be done when a parent is found unfit which means that the parent has "grievous shortcomings or handicaps" that put the child's welfare "at serious risk of peril from abuse, neglect, or other activity harmful to the child."⁸⁰ This is a deservedly high standard, as there is no doubt that the best place for children in the Commonwealth is with their families except when those families present serious risk of harm.

The Massachusetts legal standard that a parent must be "currently unfit" for a child to be taken from their custody is based on the liberty interest that parents have in the care, custody, and control of their children including the presumption that fit parents will act in their children's best interest.⁸¹ This right is fundamental, guaranteed by both the U.S. and Massachusetts Constitutions. The law is clear that the fundamental liberty interest a parent has to raise their own child must be **evaluated through the lens of the child's needs** and must be **balanced by the best interest of the child**. In this context, the best interest standard is grounded in law at the outset of the Care and Protection case:

If the court finds the allegations in the petition proved within the meaning of this chapter [M.G.L. c. 119 § 26], it may adjudge that the child is in need of care and protection. In making such adjudication, **the health and safety of the child shall be of paramount concern**. If the child is adjudged to be in need of care and protection, the court may commit the child to the custody of the department until he becomes an adult or until, in the opinion of the department, the object of his commitment has been accomplished, whichever occurs first...The court also may make any other

⁸⁰ Adoption of Zoltan, 71 Mass. App. Ct. 185, 187-188 (2008) (citations omitted).

⁸¹ See for example the plurality decision in Troxel v. Granville, 120 S.Ct. 2054, 2059-63 (2000).

appropriate order, including conditions and limitations, about the care and custody of the child as **may be in the child's best interest...**⁸²

The OCA is concerned that too often in Massachusetts legal practice parental rights are given significantly more weight than the child's best interests or welfare. As the United States Supreme Court Justice Stevens stated in a dissenting opinion (an opinion that does not hold the force of law):

A parent's rights with respect to her child have thus never been regarded as absolute, but rather are limited by the existence of an actual, developed relationship with a child, and are tied to the presence or absence of some embodiment of family. These limitations have arisen, not simply out of the definition of parenthood itself, but because of this Court's assumption that a parent's interests in a child must be balanced against the State's long-recognized interests as *parens patriae*...and, critically, the child's own complementary interest in preserving relationships that serve her welfare and protection...At a minimum, our prior cases recognizing that children are, generally speaking, constitutionally protected actors require that this Court reject any suggestion that when it comes to parental rights, children are so much chattel. The constitutional protection against arbitrary state interference with parental rights should not be extended to prevent the States from protecting children against the arbitrary exercise of parental authority that is not in fact motivated by an interest in the welfare of the child. (internal citations omitted.)⁸³

Although Justice Steven's opinion stated above was in reference to a case about grandparent visitation, and although such interpretation is not currently the law of the land in Massachusetts, the premise is what the OCA finds encouraging: that a child's substantive due process rights are not wholly dismissed in service to a parent's substantive due process rights.

The OCA believes there is room to consider how a child's own rights and fundamental aspects of the child's welfare and well-being are affected by a transfer of custody and that the current Massachusetts law supports this interpretation. However, there appears to be a gap between the law's focus on the child's welfare and the current attorney practice in Massachusetts, which seems to treat parental rights as paramount to children's best interests. **In essence, the OCA believes that there is or should be room within the law to address how a child's rights are affected by a parent's rights and that a child has a liberty interest in not being thrust into a vulnerable position without some level of supervision and support.**⁸⁴

⁸² M.G.L. c. 119 § 26(b).

⁸³ *Troxel v. Granville*, 120 S.Ct. 2054, 2072 (2000) (Stevens, J. dissenting).

⁸⁴ The Juvenile Court works to protect the best interests of children and uphold the statement of M.G.L. c. 119 § 1 that "the health and safety of the child shall be of paramount concern and shall include the long-term well-being of the child."

RECOMMENDATIONS

Questions that the OCA wanted to explore in this case were blocked by the confidentiality requirement of the attorney-client privilege as well as the limitations of the OCA's statutory authority. The OCA believes Care and Protection proceedings need to balance the rights of the parents with the need to ensure the child's safety and wellbeing. The OCA has not hesitated to define this problem of the lack of balance for the rights of children in this report. Recognizing that the OCA cannot direct changes at how the legal system addresses this balance, the OCA's recommendations outline next steps towards reaching consensus on needed changes rather specific solutions. Without these next steps, the OCA fears that the errors in Harmony's case will be repeated and children's wellbeing will not be elevated to be on equal footing to the consideration parent's current fitness.

RECOMMENDATION # 1: There should be a Working Group established to hold policy discussions that map how a child's welfare and best interest considerations are currently presented in Care and Protection cases and what changes may be needed so that a parent's rights are appropriately balanced with a child's needs.

We recommend that a Working Group be established to engage in this fundamental policy discussion. The OCA recognizes that the child protective system disproportionately impacts children of color, immigrant, and poor children. Given our national renewed focus on matters of equity, this is an ideal time to ask the child protective system to undertake such an examination. The Working Group, comprised of experts in the field, should consider how our state statutory scheme can adequately balance the constitutional rights of parents with the best interest, wellbeing, safety, and risk to children, particularly children who have experienced trauma and for whom careful transition periods are paramount. The OCA believes that the policy discussion should include, at minimum, the following members: the Juvenile Court, DCF, CPCS, the OCA, members of the Legislature including members of the Joint Committee on Children, Families, and Persons with Disabilities, the Joint Committee on the Judiciary, and the Black and Latino Legislative Caucus.

When a child is taken into custody at the filing of the petition in a Care and Protection case, DCF must show that the child is suffering from serious abuse or neglect or is in immediate danger of serious abuse and neglect and that immediate removal of the child is necessary to protect the child.⁸⁵ At the hearing on the merits in a Care and Protection case, a child may only be placed in DCF permanent custody if a parent is found to be "currently unfit" and the child is "in need of care and protection."⁸⁶ Parental unfitness means "grievous shortcomings or handicaps" that put the child's welfare "at serious risk of

⁸⁵ M.G.L. c. 119 § 24.

⁸⁶ M.G.L. c. 119 § 26.

peril from abuse, neglect, or other activity harmful to the child.”⁸⁷ “The welfare of the child is the most important consideration when determining parental fitness.”⁸⁸

The DCF attorney has the legal burden in a Care and Protection case to link parental fitness to the welfare of the child and there is no doubt that this did not occur effectively in Harmony’s case. However, the OCA does not believe that the child’s welfare should be the sole responsibility of DCF as the child protective system must keep the protection of children at the core of the legal decision-making at all stages of the legal case. The Juvenile Court has a role to play in ensuring that there is a balancing of the child’s welfare and the rights of parents, particularly when there is a possibility that a Care and Protection case will be dismissed and DCF will no longer have a role to play in a child’s life.⁸⁹ The OCA also believes that the attorney for the child should play a role in ensuring that their in-court advocacy expressly takes into consideration a child’s welfare and that attorneys for the child should be required to present a full picture of their clients to the judge in any case regardless of the legal outcome the attorney is seeking to achieve.

It is paramount that the judge in any case understand the full scope of the child’s needs, the unique aspects of the child’s position, and the potential contingencies that a child may have or not have concerning their position. In child protective cases the children are typically not in the courtroom and do not have a chance to be heard directly. The OCA believes that a child’s position must be elevated in these cases and fully presented in all its complexity. The children in these cases are the most vulnerable parties, the prime issues in these cases are about the most intimate aspects of their lives, and they are the ones who will most likely suffer if the family is not successfully unified, sometimes suffering serious bodily injuries or death. **The OCA believes that children’s attorneys should be expected to present their client’s positions in court in a way that captures the complexity of child protective cases and accounts for the limitations in a child’s ability to fully advocate for themselves.** This position is nuanced, as the OCA does not want to undermine sound legal practice. The OCA wants to expand that sound legal practice to require consideration of **how** court orders are executed, not just whether or not the court orders the client’s desired result.

⁸⁷ *Adoption of Zoltan*, 71 Mass. App. Ct. 185, 187-8 (2008) (citations omitted).

⁸⁸ “The welfare of the child is the most important consideration when determining parental fitness...The parental unfitness tests and the best interests of the child test are not mutually exclusive, but rather reflect different degrees of emphasis on the same factors.” *Adoption of Lisette*, 93 Mass. App. Ct. 284, 293 (2018) (internal citations omitted).

⁸⁹ In 2021 Juvenile Court took the exceptional step of instituting the *Juvenile Court’s Standing Order 5-21: Return of Custody in Care and Protection Proceedings* ([Juvenile Court Standing Order 5-21: Return of custody in care and protection proceedings | Mass.gov](#)) which was issued, in part, to implement the recommendations from the [Multi System Investigation into the Death of David Almond](#), and which requires judges must consider whether conditions are necessary for the child’s care and safety in temporary custody orders. In issuing this Standing Order the Juvenile Court required explicit consideration of a child’s needs and welfare when issuing temporary custody orders. The OCA believes this has created a safer child protective system in Care and Protection proceedings. The Juvenile Court has shown its commitment in this regard and the OCA believes now is the time to move this discussion beyond temporary custody orders and into other considerations and legal standards in Care and Protection cases.

If there is no agreement in the Working Group that the attorney for the child holds the responsibility to present their client’s position in a manner that accounts for the reality of the risks that children face, then there should be discussions regarding whether the direct representation model and the standards supporting that model are what is best for the children of the Commonwealth. There are other state models that should be explored and debated including state models that have a system where attorneys represent a hybrid of a child’s expressed preference and best interests, state models that split representation where a guardian ad litem represents a child’s best interests and an attorney represents a child’s express preference, and state models where attorneys represent a child’s best interest in certain situations such as when a child is eight years old or younger and represents a child’s express wishes when they are older. For more information, see **Appendix D: National Association of Counsel for Children: State Models of Children’s Legal Representation**.

Further, if there is no agreement among the Working Group members about the role of the attorney for the child, then the Governor’s proposal for a guardian ad litem appointment in every Care and Protection case becomes an even more critical recommendation to be considered. In 2022, Governor Baker introduced a proposal in [H.4479](#), the Governor’s budget proposal, which would require the appointment of a guardian ad litem (GAL) in every proceeding in the Juvenile Court where it is alleged that a child has been subject to abuse and neglect. A GAL is a neutral professional who participates in court proceedings on behalf of a child.⁹⁰

The OCA recommended, in the [Multi-System Investigation into the Death of David Almond](#), that Judges appoint GALs when the Judge is considering transferring custody of a child from DCF to another person in order for the GAL to speak to the safety and risk to the child and the family. The OCA indicated that the Court in the case of David Almond and his brother would have benefitted from an on-the-record unequivocal statement about safety and risks to the child that is unencumbered by the adversarial posture of the legal case.⁹¹

Governor Baker’s proposal goes a step further than the OCA’s previous recommendation as it would require that a GAL who will advocate for the child’s best interests be appointed to a child in all Care and Protection cases, not just in anticipation of a change of custody. The proposal requires that the best interest evaluation take into consideration the physical safety of the child (including medical conditions or disabilities), need for permanency, stability, and continuity of relationships, the child’s age and sense of time, the child’s maturity level, the child’s language, culture, and ethnicity, attachment to family members including siblings, and a child’s sense of belonging and identity. A GAL under this proposal

⁹⁰ A guardian ad litem can also be appointed to represent persons who are legally incompetent.

⁹¹ The Juvenile Court addressed this recommendation in their contributions to the [Investigation Status Report Regarding the Multi-System Investigation into the Death of David Almond](#) released on March 24, 2022, which noted that the Juvenile Court *Standing Order 5-21: Return of Custody in Care and Protection Proceedings* outlines that a Judge may appoint a GAL or Court Appointed Special Advocate (CASA) prior to issuing a custody order to a parent, custodian, or guardian.

would keep these elements of a child’s life and personhood front and center in the Juvenile Court process.⁹²

This recommendation, that there be a Working Group established to take these issues head-on and to make recommendations to ensure that a child’s welfare is not overshadowed and outweighed by the constitutional rights of that child’s parents, is a next step in this discussion. This is not a solution to the problem; this is a policy discussion that seeks to bring expert voices to the table to determine how to move forward in a manner that may require policy or statutory change in order to better protect the Commonwealth’s children and to set families up for success.

RECOMMENDATION # 2: DCF and CPCS should identify Care and Protection cases where a party is involved in more than one Care and Protection case in different divisions of the Juvenile Court and each agency should develop an internal process of review to determine under what circumstances a request for consolidation of the Care and Protection cases is appropriate on their clients’ behalf. Juvenile Court judges should consider what information must be presented to the court to ensure that there is adequate consideration of the scope of a child’s family composition and support system to inform judicial decision-making in Care and Protection cases.

Ms. Sorey had two cases pending in Juvenile Court at the same time. She had two CPCS attorneys assigned to her and two Judges in two different courthouses. Ms. Sorey and her children were not treated as one family unit but as two unconnected families. It is reported that Harmony had a relationship with her younger sibling, and that she visited with her mother and sibling.

In Harmony’s case, the Judge did not have the full picture of what was happening with Ms. Sorey’s corollary Care and Protection case and Harmony’s relationship with her mother and sibling was not a central issue when considering a final custody order to her father. It would be beneficial to children if their family configuration, however complex, were considered in decision-making in all Care and Protection cases even when such cases are not consolidated.⁹³

The OCA acknowledges that modern family configurations take many forms, and in some cases there are multiple parents and siblings who may not be related by blood. There are likely substantial logistical

⁹² The OCA does not believe that the appointment of GALs should eliminate or undermine the court investigation process as the in-depth analysis done by the court investigators remains a critical piece of the court process. The OCA believes a GAL appointed pursuant to Governor Baker’s proposed legislation and informed by court investigator reports, can vocalize the best interest of a child at each necessary juncture while court investigation reports are, by nature, a snapshot of a moment in time. The OCA also believes that Court Appointed Special Advocates have been providing a best-interest approach to cases in Care and Protections for some time in Massachusetts and this has shown that the model can work. It is critical that the state put resources behind this model so that it can be expanded and sustained so that all children have the benefit of an advocate for their best interest.

⁹³ Cases in Juvenile Court can be consolidated upon written request. The consolidation requests can come from Juvenile Court judges, DCF, or an attorney representing a party on the case. The consolidation request must be made in writing to the Chief Justice of the Juvenile Court, copied to the First Justices of the affected counties, and also copied to all parties on the case. The request must detail the reason why the cases should be consolidated. The Chief Justice of the Juvenile Court then approves or denies the request through a written order. See M.G.L. c. 211B § 10(v).

challenges to consolidating some cases including difficulty with court scheduling, difficulty with family members and attorneys having to travel long distances to reach court houses. Further, there may be valid reasons not to consolidate cases which may include safety concerns for some of the parties. However, complex family configurations are common across the Commonwealth and such families should be treated as a “unit” if feasible. If case consolidation is in the best interest of the child, such interest should be weighted more heavily than logistics in the Juvenile Court’s review of the consolidation request. Further, information about a parent’s ability to adequately care for one child may reflect on their ability to adequately parent another child who may be the subject of a separate Care and Protection case. Sibling relationships should also be prioritized as much as possible.

The OCA recommends that both DCF and CPCS create a process that ensures that attorneys review families that have multiple Care and Protection cases simultaneously and explicitly determine whether those cases are appropriate for consolidation and record that decision-making. This process should also prompt DCF and CPCS to determine how their legal advocacy will take into account complex family configurations and how familial relationships affect the child(ren) at the center of each Care and Protection case. Though there may be complexity with sharing confidential information about family members in multiple court cases, Juvenile Court judges should also consider how a child’s support system and relationships should be factored into how legal decisions, such as transition plans, are executed. Also, if a party is scheduled by the court to appear in two courthouses on the same day, as Ms. Sorey was in this case, the OCA recommends that one court appearance be rescheduled so that a party has a reasonable opportunity to attend.

RECOMMENDATION # 3: DCF should conduct a comprehensive review of their legal advocacy, with a focus on a continuous quality improvement system for the training, on-going litigation support, and supervision of their attorneys.

The DCF legal advocacy in this case failed to effectively present the position of the agency including the need for an ICPC, or adequately communicate Harmony’s needs and the gravity of the risk to Harmony in light of the lack of assessment of Mr. Montgomery’s parental abilities. It is unclear if there would have been a different legal outcome if DCF had presented a stronger case. DCF may still not have met their legal burden of proving by clear and convincing evidence that Mr. Montgomery was currently unfit to care for Harmony. **If DCF had presented a comprehensive picture of Mr. Montgomery’s parental capacity as it related directly to Harmony’s individual needs and presented a fuller picture of Harmony’s strengths and vulnerabilities to the court, there may have been more of an opportunity to advocate for a transition period for Harmony that would better ensure her safety even if DCF could not successfully oppose custody.**

It is difficult to step back in time to review DCF’s legal processes and procedures from 2019, as DCF has made significant strides in addressing their legal advocacy since the time of Harmony’s case. In January 2021, DCF created a position within its General Counsel’s office to assist DCF attorneys with legal strategy and advocacy. This role is to provide guidance to DCF attorneys on recent caselaw, provide sample motions, and write quarterly newsletters with updates that are relevant for DCF attorneys’ work.

The DCF administration should conduct a comprehensive review of their legal services unit to determine how case practice can be improved and standardized across the state. Notably, the majority of the training that DCF attorneys receive is on-the-ground training which may have the benefit of being uniquely responsive to the practice issues in each region but may also result in inconsistent advocacy standards and expectations depending on how the training is conducted and supervised. The OCA recognizes that in January 2022, the DCF legal management team began work on identifying a uniform training curriculum based on required competencies.

DCF legal advocacy is dependent on the strength of the DCF clinical case and the skill of the clinical team to communicate the risks and strengths of the family. The collaboration between DCF legal and DCF clinical teams is a critical piece of this recommendation. Prior to this investigation, the DCF leadership team identified that there was a need to improve the collaboration between the DCF clinical and legal teams. DCF instituted a legal strategies workgroup in March 2021 with the goal of developing a process to enhance the communication between the DCF clinical teams and legal teams with a particular focus on complex cases. Additionally, DCF held a Clinical Legal Leadership forum in September 2021 to introduce the work of the legal strategies' workgroup to the clinical and legal leadership. This was followed by a Clinical Legal Leadership Forum in March of 2022 to model and practice collaboration using case examples. The OCA applauds this work and suggests that it be integrated into a program of continuous quality improvement.

The DCF leadership team should also consider creating and instituting uniform practice standards for all DCF attorneys. DCF attorneys work with high caseloads. When the Review and Redetermination motion was heard in Harmony's case in 2019, DCF attorneys in the north region averaged about 88 cases per attorney. Since 2019, DCF attorney caseloads have hovered around 90 cases per attorney statewide.⁹⁴ A portion of the recommended legal advocacy review should focus on the appropriate weighted case load for DCF attorney to ensure that the OCA-recommended uniform practice standards can be met. The OCA also urges the DCF leadership team to consider whether additional administrative support for attorneys would result in increased capacity for legal advocacy.

The uniform practice standards for DCF attorneys should include expectations for the practice of written motion papers, written closing arguments, consultation on potential appeals, preserving issues for appeal, trial preparation, and other relevant topics. The DCF legal management team should consider what information about safety and risks to children should be communicated to the judge and other parties when DCF does not meet its legal burden or does not expect to be able to meet its legal burden.

The OCA recommends that DCF infuse legal case-practice with relevant data available from DCF's ongoing work. For example, any available data regarding risks and safety such as data about potential for substance use relapse, evidence-based services to address allegation-types, repeat maltreatment data, and so on, should be infused into DCF legal advocacy. Basing safety decisions and legal advocacy on Massachusetts DCF case data will support better decisions at all levels of the system.

⁹⁴ According to the CPCS [Assigned-Counsel-Manual.pdf \(publiccounsel.net\)](#) Section V. Children and Family Cases: Pending Caseload Limit, CPCS attorneys have a cap of 75 child welfare cases.

RECOMMENDATION # 4: CPCS should conduct a comprehensive review of the suitability of the standards of advocacy provided to children in Care and Protection cases, and the adequacy of CPCS’s supervision over the quality of this representation.

The OCA believes that CPCS’s current standards of advocacy for children’s attorneys should be revised. In each of the two cases that the OCA has now released within approximately one year of each other (this case and the [Multi-System Investigation into the Death of David Almond](#)) the OCA has expressed substantial concerns about the legal representation of the child(ren). Based on the OCA’s review of these cases and the results of those legal cases, the OCA supports a change in the standard of advocacy for children’s attorneys to ensure that the best interests of children are presented to the court in addition to direct advocacy to support the child’s wishes. This is addressed under Recommendation 1 in this section on page 55.

The recommendation here focuses on what the OCA believes to be a potential pattern of attorneys for the child failing to zealously advocate their client’s position by assuming a more passive approach in court. It has been reported to the OCA that the child’s attorney often defers to the parent’s or DCF’s attorney’s position without any additional substantive advocacy. If the adversarial system is to work effectively, the OCA believes that the child’s attorney must be a more active litigator by presenting an independent theory of the case by placing the child front and center, and by calling and adequately questioning witnesses, entering exhibits into evidence, and putting their client’s position clearly on the record.

CPCS has a robust training for all attorneys, whether on-staff or members of the private bar. In addition to the initial multi-week certification training program, CPCS requires an additional of eight hours of continuing legal education per year to maintain certification. CPCS also has specific performance standards which intend to promote individualized and client-centered representation.⁹⁵ The OCA recognizes that CPCS takes complaints about attorneys and investigates those complaints, and that CPCS conducts supervision over certified panel attorneys through case reviews. Even with this robust training and CPCS’s oversight, the OCA is concerned that attorneys do not meet the standard of quality of client advocacy that the OCA expects, and which would support a more balanced adversarial system.

The National Association of Counsel for Children (NACC)⁹⁶ recently published updated “Recommendations for Legal Representation of Children and Youth in Neglect and Abuse Proceedings.”⁹⁷ These recommendations echo the OCA’s position that the attorney for the child should be expected to independently advocate for their position in court:

Even if aligned with another party, an attorney for a child or youth has the obligation to independently investigate and litigate the client’s

⁹⁵ See [Assigned-Counsel-Manual.pdf \(publiccounsel.net\)](#) for more details.

⁹⁶ The NACC is a non-profit professional membership and advocacy organization dedicated to advancing justice for children, youth, and families. The organization provides attorney trainings and certifications and publishes guidance relevant to the field. For more information see: About the NACC - National Association of Counsel For Children (naccchildlaw.org)

⁹⁷ NACC Recommendations Final.pdf | Powered by Box

position. This duty extends from the initiation of representation to its conclusion. To conduct a comprehensive investigation, attorneys cannot simply rely on the agency's representations. They must independently gather information from multiple sources (while diligently protecting client confidentiality), verify all information, and assess for bias. In addition to routinely inquiring with the client regarding their safety and well-being, attorneys should collect information from other parties, witnesses, case professionals, and collateral contacts (such as parents, kin, teachers, resource parents, caseworker, service providers, medical providers, and faith community). They should also conduct records requests to gather and verify information from relevant sources (such as schools, service providers, related court proceedings). Comprehensive investigation includes exploration of the client's cultural identity (including foods, music, dress, religious practices, family traditions, holidays, etc.).⁹⁸

The OCA recognizes that CPCS has a sincere commitment to its own quality assurance. The OCA recommends CPCS engage in an evaluation of the quality and sufficiency of advocacy of attorneys for the child with a particular focus on in-court performance. CPCS has informed the OCA that because of statutory barriers, there is no supervision, observation, or review of in-court advocacy provided by private panel attorneys. The OCA would support such in-court observation for purposes of oversight and training. CPCS should consider what additional measures can be added to strengthen their oversight over the quality of the representation of children.

RECOMMENDATION # 5: DCF should review a statistically significant sampling of children who have been in the custody of DCF for more than two and a half years who have not achieved permanency to determine the barriers to permanency that can be addressed through policy, practice, or legal advocacy.

AND

RECOMMENDATION # 6: Through the *Pathways* initiative, the Juvenile Court should review and determine the length of time from permanent custody to a final adjudication of adoption, guardianship or return to parent for a child in order to ensure that the case achieves a safe and expedient resolution.

⁹⁸ NACC Recommendations Final.pdf | Powered by Box page 20-21; see also "American Bar Association Standards of Practice for Lawyers who Represent Children in Abuse and Neglect Cases" (1996) available at: [untitled \(americanbar.org\)](https://www.americanbar.org/untilled).

Time to permanency for a child in a Care and Protection proceeding is a complex issue and entirely case specific.⁹⁹ Reducing the time to permanency is critical to the welfare of a child and it must be a central issue of concern for DCF and for the Juvenile Court. Although in Harmony’s case a “hearing on the merits”¹⁰⁰ was held within a reasonable timeframe, and permanent custody of Harmony was given to DCF, there was nothing that is actually “permanent” about that arrangement. Harmony was reunified with her mother two times and her permanency goal was changed to adoption two times, yet she remained in state custody in foster care until she was four and a half years old. Harmony achieved legal permanency when she was placed in the custody of Mr. Montgomery in February 2019, but that permanency also cannot be considered “permanent” as she is currently missing and presumed to have experienced some form of maltreatment.

Delays in permanency for children are traumatic. Children experience time differently than adults do. Harmony was in foster care for almost her entire life. Much of Harmony’s own trauma was a result of the changes in her permanency plans and confusion about whether she was going to “go home” to Ms. Sorey or be adopted. The stress of that experience was so destabilizing for Harmony that her behavior significantly deteriorated.

From the time Harmony came into DCF’s custody, Mr. Montgomery and Ms. Sorey were never planning to parent Harmony together. Ms. Sorey actively hoped to have Harmony returned to her care throughout the case. In contrast, it was only in the last few months of the case that Mr. Montgomery sought to have Harmony in his care. Yet, DCF’s legal advocacy never put the parents on two separate tracks. After Mr. Montgomery had made it clear in the beginning of the case that he was not interested in having Harmony in his care or that he was unable to care for her, DCF legal could have sought to terminate his rights while simultaneously continuing to work with Ms. Sorey to see if she could be the permanency resource for Harmony. This legal strategy would have been a more appropriate way for DCF to take one step closer to permanency for Harmony, even if the permanency goal was still yet to be achieved. This legal strategy might not be appropriate in all instances but should be explored in determining how to reduce time to permanency for children in DCF’s custody.

Many of the neglect cases that are substantiated by DCF involve parents with either substance use disorder or mental health issues or both. These challenges to parental capacity have a recurring nature. There may be times of sobriety and stability but, especially in the cases of substance use disorder,

⁹⁹ Massachusetts Department of Children and Families Annual Report Fiscal Year 2021: “**Permanency**” is defined as ensuring a nurturing family, preferably one that is legally permanency, for every child within a timeframe to support their needs. Permanency can be legally achieved by a return of custody to a child’s biological parent/s, the biological parents consent to the adoption of the child by a third party, a termination of parental rights that leads to the adoption of the child by a third party, a third party is awarded legal guardianship of a child, or a child becomes an adult (noting that young adults can consent to continue to be in DCF’s custody to the age of 22). For more information see the DCF Permanency Planning Policy: [SECTION II – POLICY AND PROCEDURES \(mass.gov\)](#).

¹⁰⁰ [M.G.L. c. 119 § 25](#); Juvenile Court Rules for the Care and Protection of Children: Rule 15(C) Scheduling a Hearing on the Merits “At the pretrial conference, unless previously scheduled, the court shall schedule a hearing on the merits to be heard within twelve months of the filing of the petition unless a later date is necessary in the interests of justice.” Available at: Juvenile Court Rules for the Care and Protection of Children effective November 5, 2018 (mass.gov)

recurring relapses are common. The longer that a child waits for permanency the less clear that permanency solution may become.

Children who can be reunified with their families should be reunified expeditiously; any unnecessary delay will damage the parents and the child and there will be days and months and years of unnecessary separation that the family will never get back. For children whose parents will not accept services or to whom children cannot be safely returned to their home within the first two years of their removal, DCF should expeditiously move toward another permanency plan and the Juvenile Court should consider, through their *Pathways* initiative,¹⁰¹ expediting court appearances for those cases to effectuate permanency for those children.

It is important to note that there may be challenges to familial reunification because of lack of available services. The OCA welcomes any information from this review that would point to a service-availability issue so that such issues can be brought to the attention of the Legislature. This review should also consider whether certain challenges to parental capacity, such as substance use disorder, have statistically significant patterns of repeat maltreatment that could inform DCF case practice. DCF should also consider how its review will account for the perspectives of the families studied and incorporate their voices as part of the discussion regarding barriers to permanency.

[RECOMMENDATION # 7: DCF and CPCS should engage in a facilitated discussion about how to support children and families when a child’s legal custody is transitioning from DCF to another custodian.](#)

The transition of the legal custody and/or physical custody of a child from DCF to a caregiver is a joyous time for the family as it is either a reuniting of family members or it is the establishment of a new stable home environment for a child (for example: adoption, kinship guardianship etc.). However, the transition of custody can also be a time of heightened stress and pressure for a family. In a sense, the transfer of custody can be a pressure-test of whether the family can be successful together as a unit.

Once there is a transfer of custody it is in everyone’s best interest that the family is safe and successful.

DCF, as the clinical experts in the case and as the agency with expertise and data about risks to child safety, should analyze the transition of custody, temporary or permanent, in terms of the unique clinical formulation of each family member and design a safety and support plan that will help support the family in a successful reunification. In response to the recommendations of the [Multi-System Investigation into the Death of David Almond](#), on May 28, 2021 the DCF administration issued an [DCF Interim Reunification Policy Guidance](#) with the purpose of providing guidance about clear expectations on reunification decision making. The extensive work done on this topic, as discussed in the OCA

¹⁰¹ “Pathways is a court-wide differentiated case management initiative for improving legal permanency by ensuring fair, just, and prompt resolution of cases through individualized assessment of each case, each child, and each family along with development of dynamic and responsive multi-disciplinary systems to support children and families.”

[Investigation Status Report Regarding the Multi-System Investigation into the Death of David Almond](#), has improved state services for children in the Commonwealth.

The work that DCF has done thus far regarding reunifications does not appear to address what the best practices for DCF social work should be when a judge returns custody of a child to a caregiver over DCF's objection and dismisses the Care and Protection case. DCF may no longer have legal standing to be involved with the family, but DCF holds information about the child's time in state custody that is relevant to the transition period and to the long-term successful reunification of the family unit. DCF should determine what information it has, such as information about the child's education, special needs, medical history and appointments, other services such as therapy, supports such as connections to caring adults and peer groups, and other information gathered about the child's experience while in the care of DCF and determine how best to communicate this information to caregivers so that the information can support a successful transfer of custody. Transition planning could assist in connecting a family to community-based services, provide them with a family-centered safety plan that they can turn to in times of stress, and connect them with community supports which can offer advice or assistance when necessary.

As CPCS represents both parents and children in Care and Protection proceedings, they too should critically evaluate what transition planning would assist their clients through a holistic approach to representation. Although some clients may simply want DCF out of their lives completely, that does not mean that they don't want to be set-up to be successful in both the short and long-term. CPCS has a broad clientele across the entire state and has a working understanding of what services may be available and helpful to families. There may be short-term and long-term approaches and solutions to this recommendation that DCF and CPCS should explore. CPCS should take an active role in counseling their clients about the reality of the risks and pressure that a change in custody can bring and actively advocate for *safe* reunifications when that is the advocacy goal.

OTHER RECOMMENDATIONS

[RECOMMENDATION # 1: The Juvenile Court judges and all attorneys who practice in Care and Protection cases should be offered trainings on the ICPC.](#)

The OCA strongly recommends that no child should be returned across state borders in review and determination matters without an ICPC. The ICPC and its mandated home study are for the protection of the child and are not optional. It is critical for everyone involved in Care and Protection cases to understand the ICPC process, to understand the nuances of an ICPC such as what could delay an expedited ICPC, the substantive and procedural aspects of the ICPC, and the possibility under the ICPC for state agencies to evaluate extended overnight visits with placement resources across state borders. Massachusetts shares its borders with New Hampshire, Vermont, New York, Connecticut, and Rhode Island, while Maine is a relatively short car ride away. It is not uncommon for families to straddle state borders or move over borders on a regular basis. Understanding how the ICPC process works and the valuable information provided by the ICPC home study recommendations is especially needed in the

New England Context. The ICPC should be a focus of regular trainings. The Juvenile Court should consider whether policy or procedure changes in the court system are needed to monitor and evaluate compliance with the ICPC to ensure children's safety.

RECOMMENDATION # 2: DCF should continue to engage with our neighboring New England states to determine where there are gaps in information sharing across borders that could be rectified by a multi-state Memorandum of Understanding (MOU).

In this case, Massachusetts had faithfully supplied New Hampshire with a wealth of information about Harmony, her needs and services, and her parents and their services. The ICPC stalled in New Hampshire because New Hampshire sought further information on Mr. Montgomery's wife's substance use disorder treatment from her New Hampshire Provider. It appears that New Hampshire DCYF did not have access to the information provided by Massachusetts when concerns arose about Harmony when she was living in New Hampshire after February 2019. One of the recommendations from New Hampshire's [Comprehensive Update on the Ongoing Case Involving Harmony Montgomery and Recommended Systemic Improvements issued on February 25, 2022 states](#) that their child protective agency's case management system be updated to ensure that users have the ability to see all history related to a family, including information received by other states. Massachusetts DCF should consider how information from other states is categorized and available in its case management system as well and how such information can be legally and effectively utilized. As always, DCF must ensure that family history, a critical part of a clinical formulation, is not utilized in a prejudicial manner; the OCA believes DCF can and does do this effectively.

DCF should also work with other states to determine what information sharing and professional courtesies across state lines can help secure the safety of children and their families. Cross-border discussions should result in multi-faceted approaches to interstate collaboration. One example of this type of work comes from the Office of the Child Advocate in New Hampshire who made the following recommendations in 2020 because of a case-review involving a child moving across state borders:

The SLR team identified the following as recommendations stemming from the review. These considerations are directed at both NH DCYF and border states to undertake:

- Both State child welfare agencies: establish proactive, communicating relationships
 - Identifying a point of contact in each state's central office to coordinate exchange of information between all district offices
 - Routinely share contact sheets for district offices and any specialists that may be useful (nurses, parent aids, domestic violence specialists, etc.)

- Holding periodic interstate-agency meetings to nurture relationships, update new programs and resources, and discuss trends in cross-border issues
- Establishing procedure of holistic planning and sharing local resources with any crossborder transition (e.g. family resource centers, child care, parenting support, after school programs and school contacts)
- NH DCYF and bordering state child welfare agencies: establish policy for cross-border cases to
 - Invite both state’s teams to family treatment meetings. Be all-inclusive according to children’s needs (GAL, providers, schools, etc.)
 - Require a “warm hand-off” or assist with access and introduction for services to child development/parenting support/voluntary services for all reunification cases involving new parent-child relationships across borders

Legal counsel for each State’s child welfare agencies: clarify information each State can share with the other and disseminate among field staff.¹⁰²

Although these recommendations were made by the New Hampshire OCA in 2020, the year after Harmony moved to New Hampshire, it is the OCA’s understanding that none of these recommendations have been implemented in New Hampshire. The OCA recommends that Massachusetts and its bordering states take the step now to act on these recommendations or determine their own recommendations that will help to support children and families who move between state borders or who straddle state borders.

The New England Association of Child Welfare Commissioners and Directors (NEACWCD),¹⁰³ which includes Massachusetts, has already taken the first step in this cross-border effort by facilitating a work group to discuss these issues which met on March 11, 2022, and which plans to have future meetings. The work group is comprised of ICPC Compact Administrators and Child Protective Services General Counsels from each state. The goal of the work group is to adopt a multi-state MOU to share information across borders when a child is placed with kin, including parents. The OCA supports this effort.

Some advocates criticize child protective services as a “family surveillance system” and may argue that this proposal will further widen that “surveillance system.” The OCA believes that sharing information about child protective concerns between child protective agencies in nearby states is an appropriate recognition that we live in a time when families and children cross borders regularly. Information

¹⁰² [OCA 2020 SLR SUMM REP.pdf](#) page 9.

¹⁰³ For more information see: [New England Association of Child Welfare Commissioners and Directors \(NEACWCD\) | Judge Baker Children's Center \(harvard.edu\)](#)

sharing across state borders helps other states to see warning signs when they arise and to connect families with needed services to help support them in their effort to care for their children in a manner that is safe and that will keep the family together. The OCA also notes that there are other interstate agreements that provide for valid information sharing across borders as well as collaboration among states in recognizing and respecting each other's court orders.¹⁰⁴ Any MOU should be carefully considered for unintentional consequences particularly through the lens of potential disproportionate effects on Black and Brown children and families.

RECOMMENDATION # 3: Massachusetts should consider adopting the *NEW* Interstate Compact on the Placement of Children.

The ICPC discussed at length in this report is the 1960 version which was enacted across the country and is the version enacted in Massachusetts. A newer version of the ICPC has been drafted due to “[c]oncerns about the timeliness of the ICPC process and its ‘overly broad’ application coupled with an outdated administrative process and procedures...” The American Public Human Services Association (APHSA) which is the Secretariat of the Association of Administrators of the Interstate Compact on the Placement of Children, recommended fundamental and structural changes to the ICPC in 2004.¹⁰⁵ The New ICPC will not be in effect until 35 states enter it into law. According to the most current information, 11 states have fully passed the new version. Neither Massachusetts nor New Hampshire has done so.¹⁰⁶ As with the current ICPC, under the New ICPC, an ICPC would have been required for Harmony to be placed with Mr. Montgomery in New Hampshire. The New ICPC would not resolve the issue raised in Harmony's case if a judge determined again that the ICPC's application to a biological parent in another case violated that parent's constitutional rights. However, the Massachusetts Legislature should still consider whether the updates to the New ICPC would be beneficial to Massachusetts and whether it would resolve some of the outstanding concerns with the ICPC, particularly timeliness.¹⁰⁷

¹⁰⁴ See for example the Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA) which is a series of laws designed to deter interstate parental kidnapping and promote enforcement of child-custody and visitation orders across states. For more information, see: [The Uniform Child-Custody Jurisdiction and Enforcement Act \(ojp.gov\)](#). The UCCJEA has been enacted in every U.S. state except for Massachusetts. See also the Interstate Compact for Adult Offender Supervision (ICAOS) which "...provides states the authority, accountability and resources to track the supervision of offenders who move across state lines, thereby enhancing public safety and offender accountability" ([About | ICAOS \(interstatecompact.org\)](#)). The monitoring mechanism for this interstate compact provides extensive resources including best practice guidance, on demand training, and webinars. States are also regularly provided with data dashboards that track that state's compliance with the compact against the national average.

¹⁰⁵ [APHSA ICPC Policy Resolution \(1\).pdf](#)

¹⁰⁶ Though New Hampshire may be in the process of doing so.

¹⁰⁷ See additional resources such as: [HIGHLIGHTS OF PROPOSED COMPACT PROVISIONS \(1\).pdf](#), [NewICPCSidebySide \(1\).pdf](#), [PROPOSED LEGISLATIVE LANGUAGE.pdf](#).

CONCLUSION

Harmony Montgomery has been at the center of the New England news cycle for the past several months. With the issuance of this report, the OCA hopes to shed necessary light on what happened to Harmony while she was in Massachusetts. As with other OCA-issued reports, the OCA identifies systemic weaknesses in the Commonwealth's system of services for children that can result in tragedy.

Although the details of Harmony's legal case are complex, her parents' history of substance use disorder, her experience in DCF custody, and the fact that her needs and wellbeing were not prioritized in the court case about her care and protection are not uncommon experiences for children in the Massachusetts child protective system. We as a Commonwealth must take this opportunity to look deeply and critically at the events described in this report and determine how we, as a society, want to balance parents' rights, family unity and stability, and the wellbeing and safety of children. The OCA urges the entities in this report and the public to consider whether the child protective system, as it is currently designed and as it currently operates, accurately reflects our ideals and meets our goals. We owe it to Harmony that we see her now, perhaps more clearly than we ever have, and use that insight to move the conversation about child protective services forward in a productive manner.

The mission of the Office of the Child Advocate is to ensure that children receive appropriate, timely and quality services, with a particular focus on ensuring that the Commonwealth's most vulnerable and at-risk children can thrive. One way we accomplish this is through tireless advocacy for policy, practice, and legislative change that we believe will improve the state systems on behalf of all the Commonwealth's children. This report asks that every Commonwealth agency take steps to ensure that the safety and wellbeing of every child that comes to the attention of the child protective service system is the primary focus of our efforts. Every citizen of the Commonwealth bears the responsibility to ensure that our children have the opportunity to grow into healthy adults.

We also continue to hope, deep in our hearts, that Harmony is found soon and found safe. We hope for all our children that we, as a Commonwealth, do our best by them.

Appendix A: David Almond Investigation DCF Recommendations

The following recommendations from the OCA [Multi-System Investigation into the Death of David Almond](#) address the findings and five key areas of need identified in this investigation: clinical formulation, family assessment and action planning, children with disabilities, reunification and permanency, and risk and safety planning. Below is a summary of these related recommendations and DCF's own statements efforts in the past year to implement these recommendations (DCF agency statements are italicized). For more detailed information, refer to the OCA's [Investigation Status Report Regarding the Multi-System Investigation into the Death of David Almond](#) released on March 24, 2022.

Clinical Formulation

RECOMMENDATION # 1: The DCF administration should revise the DCF *Supervision Policy* and workforce training curriculum to ensure all levels of the DCF workforce receive frequent and structured supervision that supports the development of task-oriented skills, but also the essential clinical formulation skills needed to accurately assess the safety and risks to a family.

ACTION TAKEN BY DCF #1: *The Department's first-ever Supervision Policy was established in 2016 as part of the first phase of the Department's agency reform. The goal of the policy was to strengthen regular supervisory support of social workers by reviewing casework activities, identifying practice areas requiring attention, and ensuring safe decision-making. This includes understanding parental history, the parent's ability to care safely for the child, and present factors affecting child safety such as substance use, mental health challenges, or domestic violence. Supervision and other supports assist frontline social workers in making informed decisions about their cases.*

Immediate Response & Staff Training – *Immediately following the death of David Almond, DCF senior leadership conducted a review of all cases open with the Fall River Area Office. While no child's safety was determined to be at imminent risk, approximately a dozen cases were referred to our substance abuse, mental health, domestic violence, and medical specialists for consultation. In conjunction with this October 2020 review, the Department took immediate action to conduct intensive supervision training at the Fall River Area Office on the fundamentals of supervisory practices to ensure that staff had the necessary tools to improve supervision procedures. The training of staff in the Fall River Area Office was completed in January 2021.*

Following the local area office training, more than 300 supervisors statewide were trained on topics that covered assessing child safety, risk, and parent capacities, continuing our efforts to ensure consistent supervisory oversight for social workers across all offices.

Between February and April 2021, the DCF Child Welfare Institute (CWI), the unit responsible for the Department's professional development, also offered a re-training for all supervisors on assessing child safety, risk, and parent capacities.

Revised Supervision Policy - The revised Supervision Policy went into effect on August 31, 2021. In April 2021, DCF established a policy workgroup and conducted a comprehensive review of current policy, national standards, and best practices. In June 2021 the Department completed revising the Supervision Policy and negotiated the terms with SEIU Local 509. Staff statewide received training on the revised policy in the summer of 2021.

The revised [Supervision Policy](#) adds the following requirements and guidance for staff:

- Supervisory expectations for managers.
- Guidance on when social worker supervisors should notify managers of complex cases that may require additional review.
- Guidance on when staff should consult specialty social workers with expertise in a specific subject matter such as substance use, mental health, domestic violence, or disability.
- Involvement of Area Office leadership when differences arise regarding case direction among DCF social workers, managers, DCF staff, and other professional service providers.

Family Assessment and Action Planning

RECOMMENDATION # 2: The DCF [Ongoing Casework and Documentation Policy](#) and [Family Assessment and Action Planning Policy](#) should be revised to expand guidance and direction regarding social workers' contact with caregivers, service providers, educators, other professionals, and natural family supports.

ACTION TAKEN BY DCF #2: In order to make the best decisions for children, social workers must use all information available from every person who plays a role in the child's life including those at schools, courts, service providers, medical professionals, and law enforcement. Accessing this information requires strengthened communication with one another and, critically, an understanding of each other's role in child safety. By adding specific guidance and direction on effective case consultation and communication to the Protective Case Practice Policy (formerly called the Ongoing Case Practice Policy) and the Family Assessment and Action Planning Policy, the department is better able to ensure that social workers have vital input from specialists, collateral contacts, and service providers to make critical decisions about child safety, case direction (including reunification) and a family's service needs.

Area Clinical Review Team (ACRT) Pilot - In May 2021, the Department piloted a new protocol to enhance ACRT, creating a structure that supports clinical decision-making and helps the department flag high-risk cases. The pilot was launched in five DCF Area Offices. ACRTs are convened when there is a complex case or a difference of opinion surrounding a case. These team meetings are conducted by area office leadership and consist of the casework management team and other subject matter experts, depending on case characteristics. The ACRT participants together take a comprehensive look at factors impacting child safety risks and disabilities, along with unresolved mental health, substance misuse, or domestic violence concerns.

Initial Placement Reviews - Once a child has been in care for six weeks, an Initial Placement Review occurs to ensure they are in the most appropriate placement setting that meets their needs, and immediate supports are identified and in place. In May 2021, the Department expanded its existing pilot on the Initial Placement Review process from 10 offices to 20, and by June 2021 the new Initial Placement Review process was implemented in all 29 DCF offices.

Congregate Care Network – DCF launched its new congregate care services network in January 2022. The Network uses multi-disciplinary team meetings with DCF senior managers and providers to identify and address issues that may arise while serving children in group care. In procuring these services, an emphasis was placed on providers’ processes for conducting and sharing assessments, treatment planning, and incident reports for children in congregate care.

Protective Case Practice Policy – The revised Protective Case Practice Policy is scheduled to go into effect in April 2022. It requires social workers to make collateral contacts in conjunction with monthly visits and sets requirements for documenting case activities, including social worker dictation and referrals to services in the community, in the electronic case record. The Department developed initial training materials for the revised Protective Case Practice Policy in June 2021. Orientation for managers began in September 2021. Practice training conferences were held for managers in December 2021 and for supervisors in February 2022. The policy will take effect in April 2022.

Family Assessment and Action Planning Policy – The revised Family Assessment and Action Planning Policy is scheduled to go into effect in May 2022. The revised Family Assessment and Action Planning Policy adds guidelines for evaluating child safety risk for children with disabilities and requires social workers to conduct outreach to collateral contacts in conjunction with monthly home visits. Training and implementation of the updated Family Assessment and Action Planning Policy began in July 2021. The final technical training on the new policy will be held in April 2022.

Disabilities

RECOMMENDATION # 5: The DCF administration should conduct a comprehensive review of DCF practices related to individuals with disabilities and develop a policy that promotes (1) workforce development and training; (2) evidenced-based best practices for effective case management and safety and risk assessment and planning; and (3) requirements for case documentation about an individual’s disability.

Immediately following David Almond’s tragic death, the Department identified the need for additional expertise in the field of disabilities. Staff has been hired as resources to the field for consultation on cases with complex family dynamics impacted by disabilities where children are especially vulnerable. The creation of the [Disability Policy](#) to ensure that DCF-involved parents with disabilities are provided an equal opportunity to benefit from and participate in DCF services, programs, and activities is consistent with the requirements of the Americans with Disabilities Act (ADA).

Disability Coordinators - In December 2020, the department appointed Disability Coordinators in each regional counsel office and one in DCF's central office in the General Counsel's office, as part of the DOJ Agreement to identify regional points of contact for ADA accommodations for parents and caregivers.

Case Reviews – Between June and August 2021, in preparation for new policy development, DCF conducted a continuous quality improvement (CQI) review of a sample of cases involving children with disabilities based on criteria and definitions used by the children's bureau, DESE, and DCF Health/Behavior conditions data. The review helped to ensure that the new policy was informed by an understanding of the unique concerns of children with disabilities in child welfare. Research shows children with disabilities carry an even higher risk of being abused or neglected by a caregiver and the risks differ based on the child's disability. Children with disabilities have greater needs and require specialized services or educational supports often obtained through tireless advocacy. Financial stress and feeling isolated or overwhelmed can frustrate even the most resourced, dedicated, and knowledgeable of parents.

Disability Training & Disability Policy – The new Disability policy took effect on January 18, 2022. In April 2021 disability training was provided to DCF legal staff on Title II of the ADA and sec. 504 for child welfare. A policy workgroup was established during this time, which completed a comprehensive review of national best practices involving accommodations policies and children with disabilities in child welfare to prepare for writing the Department's first Disability Policy. In May 2021, DCF submitted to DOJ and implemented revisions to the Family Assessment and Action Planning, Family Resource, and Permanency Planning policies to ensure that each policy addresses ADA principles.

DCF's i-FamilyNet case record system was updated in September 2021 and now requires the documentation of disabilities. By October 2021, DCF developed and implemented a training plan to support practice improvement for agency staff working with individuals with disabilities. Online training on the intersection of the ADA and Child Welfare was made available to all staff on October 31, 2021. With final input from the U.S. Department of Justice and other disability specialists, the Department finalized its new policy and began training in December 2021.

Director of Disability Services - On December 6, 2021, the Department hired a new Director of Disability Services. Duties of this position include accessing and overseeing timely one-on-one case consultations and ensuring that staff has in-house access to an expert with a thorough understanding of the complex dynamics of families impacted by disabilities where children are especially vulnerable. The Department also developed positions for regional disability specialists and, as of the beginning of March 2022, all five regions were conducting interviews. Their primary role is to act as a consultant to DCF's regional and area office staff; to build capacity and expertise in the field; and to create linkages to the provider community that services the disabled population, particularly in the areas of parenting children with Autism, Intellectual Disabilities or Developmental Disabilities. The Department hopes to onboard these specialists in the spring of 2022.

Reunification and Permanency

RECOMMENDATION # 6: The DCF administration should develop a reunification policy that includes, at a minimum (1) an assessment of safety and risk using a research or analytical based or actuarial tool that is used prior to a child’s return and as a support in DCF’s reunification decision-making; (2) area office management administrative case record review prior to any internal case review meeting (e.g. Foster Care Review, Permanency Planning Conference); (3) area office management consultations with the DCF case management team, educational provider, probation officer, relevant service providers and subject matter experts prior to any internal case review meeting; (4) area office management discussions with the caregiver(s) to elicit their input and participation in formulating a reunification transition plan that takes into considerations their strengths and needs; and (5) a documented family-centered transition plan that takes into consideration the individual needs of the child and caregiver, outlines the pre-and-post reunification caregiver expectations, and the DCF oversight and monitoring of the family to ensure child safety.

DCF developed a new stand-alone Reunification Policy that will strengthen the department’s practice and reinforce critical steps in the process to achieve successful reunifications. The new policy emphasizes that reunification is a process and not simply a decision that:

- *Prioritizes safety. The period when a child transitions home is one of heightened risk and stress for both children and parents, so it’s important to continuously assess child safety and risk during this time, paying special attention to a child’s vulnerability and factors that can increase stress.*
- *Begins before a child enters care. The department explores potential caregivers and supports for a child anytime we work with a family. If family separation becomes necessary to keep a child safe, our work to explore safe reunification begins immediately.*
- *Involves gathering information from multiple sources that informs our understanding of a parent or caregiver’s progress towards providing a safe environment for their children, including safety and risk present in a family.*
- *Demands active collaboration with parents/caregivers, children, placement providers, and collaterals to help determine a family’s readiness for reunification.*
- *Requires a plan and the ability to adjust that plan, as needed. It is common for clinical challenges to arise as the department works towards reunification. These challenges are expected and are opportunities for readjusting our plan and goals through team decision-making.*

Immediate Response: Implemented Reunification Reviews & Interim Reunification Policy - In March 2021, DCF began routine reunification-focused meetings between DCF managers, staff, and contracted providers. In May 2021, the Department implemented an Interim Reunification Policy which calls for tri-level (social worker, supervisor, and manager) reviews of all cases with an anticipated reunification date that is within 120 days. This team-based review approach emphasizes improved parental capacities, rather than completion of tasks in an action plan, to determine if reunification is safe and appropriate.

Subsequent to each review, legal and clinical managers are required to address disagreements and approve case recommendations.

Reunification Conferences - DCF developed and hosted multiple Statewide Reunification Conferences for supervisors and area program managers throughout the spring and early summer, beginning in May 2021, at which the Interim Reunification Policy was introduced and officially rolled out in the days that followed. This Interim Reunification Policy formally established the new reunification review process DCF developed in March, and it was implemented at all area offices across the state by the end of June 2021. This review process ensures that managers are actively involved in evaluating the family's readiness to reunify.

Reunification Policy - The new policy is scheduled to go into effect in April 2022. Beginning in April 2021, a policy workgroup was established to conduct a comprehensive review of national standards and best reunification practices in child welfare. Once research and review had been completed, the workgroup proceeded to draft, negotiate and finalize DCF's new Reunification Policy in September 2021. Technical policy training is scheduled for completion in March 2022.

In addition to the themes outlined above, the new Reunification Policy focuses on assessing indicators of a parent's capacity to safely care for a child, such as mental health, coping skills, and sobriety. The policy requires:

- *A reunification plan for every child and a reunification review at the managerial level before a child can return home.*
- *Social workers to contact collaterals who work with parents and children or see them regularly (e.g., service providers, schools, and family members) and to document the conversations in the electronic case record system before meeting with their supervisors to discuss and finalize the reunification plan.*
- *Social workers, supervisors, and managers to consider whether the parent has the capacity and willingness to make appropriate educational decisions for the child upon reunification. If it is determined the parent does not, the clinical team must consider retaining custody after the child is reunified and ensuring the Educational Decision Maker (EDM) continues in their role or a new EDM is established.*
- *DCF staff directly involve parents and other family members in reunification planning to help prepare parents to transition back to a full-time caregiving role. Once the child returns home, social workers will conduct in-person visits according to the specific needs of the family and maintain regular contact with collaterals.*

Risk and Safety Planning

RECOMMENDATION # 7: The DCF administration should review their current processes for safety assessment and develop an evidenced-based process for assessing safety that includes (1) a structured framework for examining the potential safety of a child within a family unit; (2) the actions that should be taken because of the safety assessment; (3) how the findings will be communicated to the family; and (4) how and when safety assessment should be used as a tool for monitoring.

Risk assessment helps analyze the strengths of the family, and the needs of the family, in order to keep children safe. Therefore, the review to determine if reunification should occur should include the use of an evidence-based reunification assessment tool. Based on the outcome on the risk assessment tool, along with information about the family history, and participation in the services outlined in the action plan, DCF can determine whether the caregivers have shown measurable progress and change to mitigate the abuse and neglect concerns that initially led to the removal of the child from their care. If this progress and change have been shown, and reunification is deemed appropriate, DCF can develop and document realistic and individualized pre-and-post reunification transition plans.

Initial Re-Training - *Between October 2020 and January 2021, more than 300 supervisors in all 29 DCF area offices participated in mandatory training on assessing child safety, risk, and parenting capacities and were retrained on the department's existing risk assessment and reassessment tools. The risk assessment and reassessment tools work similarly to the instruments used by the criminal justice system to predict the likelihood of reoffending. In child protection, DCF seeks to identify children who are more likely to be abused or neglected again to engage families in ongoing services to reduce the potential for future harm.*

Assessment Tools – *Beginning in May 2021, DCF began the development of an RFR for new Structured Decision-Making (SDM) tools, DCF looked to hire a vendor to design, validate and implement nationally recognized, research-based actuarial tools, including a reunification tool. This research-based actuarial tool will be used to assess child safety and risk before reunification, using the same evidence-based approach as introduced in DCF's Protective Intake Policy. The tool will incorporate specific factors in child welfare cases in Massachusetts, validated by DCF data.*

In July 2021, DCF contracted with Evident Change, a nationally recognized leader in child safety and risk assessment. DCF and Evident Change conducted a series of five core team meetings with internal and external stakeholders to inform the development of the SDM tools. As a part of discovery activities, the Department concurrently worked with Evident Change to identify administrative data elements required for informing SDM tool development. DCF policies were also forwarded to Evident Change to inform SDM tool development. Evident Change is now engaged in SDM discovery activities. These include DCF policy and practice review, data analysis of the de-identified administrative data, and focus groups with DCF social workers, supervisors, managers, specialists, and external stakeholders to better understand policy and practice—especially as they relate to the assessment of safety. Findings from these in-depth

discovery activities will inform SDM tool design and these activities are anticipated to be completed by August 2022.

Timelines for completion of work products:

- *SDM Safety Assessment and Substitute Care Provider Safety Assessment design is anticipated to be completed in September 2022.*
- *SDM Reunification Assessment design and customization are scheduled to be completed by February 2023.*
- *SDM Assessment Curriculum development and training is anticipated to be completed by June 2023.*

Appendix B: Interstate Compact on the Placement of Children

Mr. Montgomery was incarcerated in Massachusetts when Harmony was born in 2014 and was released from incarceration in September 2015. Immediately upon release from incarceration Mr. Montgomery returned to his home state of New Hampshire where he continued to reside. Harmony lived in Massachusetts, either in the care of her mother or in foster care, from when she was born in 2014 to 2019. In February 2019 she was placed in the custody of Mr. Montgomery in New Hampshire; this was the first time she had ever lived with Mr. Montgomery and the first time she ever had lived in New Hampshire.

In 2014, Harmony was placed in the custody of DCF and remained in DCF custody until 2019 when Mr. Montgomery was awarded custody by a Judge in the Juvenile Court. In 2019, when the Juvenile Court Judge awarded custody to Mr. Montgomery Harmony moved across state lines, from DCF in Massachusetts to her father in New Hampshire. There is a federal statutory agreement that governs some aspects of how children legally move across state borders. This agreement is called the **Interstate Compact on the Placement of Children (“ICPC”)**. The purpose, content, and role of the ICPC is explained in this appendix in general terms. **To read about how the issue of the applicability of the ICPC played out in Harmony’s legal case, refer to *The Massachusetts Legal Process* section of this report.**

What is the ICPC?

The ICPC is a statutory agreement that has been entered into by all fifty United States as well as Washington, D.C., and the U. S. Virgin Islands. This agreement consists of ten [articles](#) and twelve [regulations](#).¹⁰⁸ The agreement governs the permanent placement of children over the border from one state into another state. The purpose of the ICPC is to ensure that children who are placed out-of-state are cared for by safe caregivers in an environment that meets that child’s needs. “Placement” under the agreement covers a wide range of scenarios that are further discussed below. The ICPC is necessary because an individual state laws are applicable only within that state’s borders. The ICPC creates reasonable expectations for interstate relations and establishes a system that clarifies state responsibility and oversight of children.

¹⁰⁸ The “articles” are the text of the ICPC itself. The “regulations” are created by a rule-making process and operate like implementation instructions to describe how the law of the ICPC should be applied. Regulations have the force of law unless they are determined by a court to be unenforceable.

What is an ICPC?

“As a legally binding agreement between all states, the ICPC ensures that children enjoy a uniform set of protections and benefits regardless of which state they are moving to or from.

Another critical function of the ICPC is to ensure that the person or entity that places a child out-of-state retains legal and financial responsibility for the child after the placement occurs. This directly benefits children by eliminating any question of who is ultimately responsible for the child’s wellbeing and for meeting the child’s needs following placement. The ICPC also protects the interests of states by ensuring that individual states are not put in the position of having to take on the legal and financial burden of caring for children placed within their borders from other states.”

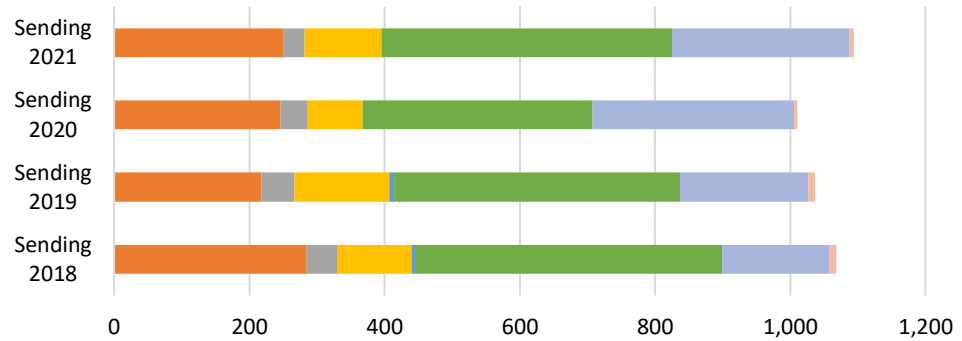
What is the ICPC Process?

Broadly, the ICPC requires that a state that is sending a child (“sending state”) into a placement in another state (“receiving state”) must request that the receiving state complete a home study report. The home study report includes a visit to the home where the child will be placed, information gathered at meetings with everyone in the home, and information from background screenings of relevant persons in the home. The home study is usually done by the child protective agency in the receiving state. The receiving state has the authority to approve or deny a caregiver who is the subject of the home study and the placement request based on the information in the home study. If a placement request is approved by a receiving state, then a child may be placed in that home but there is no legal requirement that the sending state place the child in that home. The sending state is responsible for providing background information about the child, the reason for the placement request, information regarding the relevant caregivers, and any relevant information about ongoing legal cases in the request packet.

Massachusetts ICPC Data

The ICPC is applicable to several scenarios when children are moving across state lines and is therefore responsible for hundreds of requests a year. **Figure 1** shows the extensive and expansive work done by the Massachusetts ICPC office per calendar year (January – December) 2018-2021. Massachusetts sent over 1,000 ICPC requests, with *foster home studies* being the highest category of request. A *parent home study* was the second most ICPC request in 2018 and 2019 and *no home study required* was the second highest category in 2020 and 2021.

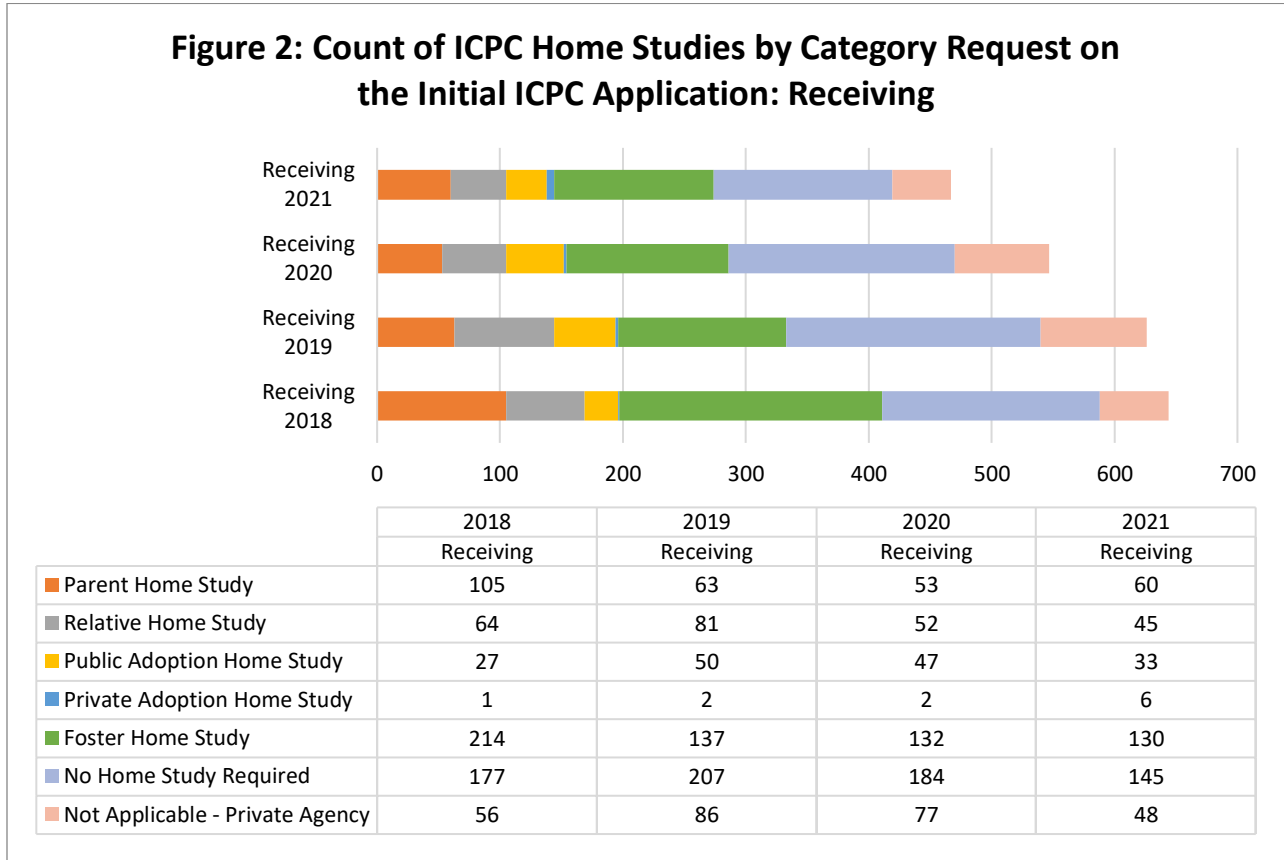
Figure 1: Count of ICPC Home Studies by Category on the Initial ICPC Application: Sending



	2018 Sending	2019 Sending	2020 Sending	2021 Sending
Parent Home Study	285	218	246	251
Relative Home Study	45	49	40	31
Public Adoption Home Study	110	140	82	113
Private Adoption Home Study	5	7	0	1
Foster Home Study	454	423	340	429
No Home Study Required	159	190	298	263
Not Applicable - Private Agency	10	10	5	6

Data Source: Massachusetts Department of Children and Families, March 2022

Figure 2 shows that in calendar years (January – December) 2018-2021 the Massachusetts ICPC Administrator received between 467 (2021) and 644 (2018) requests for a home study. In 2018 *foster home study* was the most requested category, but between 2019-2021 *no home study required* was the most common.



Data Source: Massachusetts Department of Children and Families, March 2022

Structure of the ICPC: Articles and Regulations

Articles

The ICPC consists of [10 articles](#)¹⁰⁹ that are the substance of the interstate agreement. They (1) lay out what information is necessary for a sending state to tell a receiving state about a child or family; (2) indicate that states may be subject to punishment or penalty for violating the ICPC if a sending state or receiving state have laws establishing punishments or penalties; (3) establish that the sending state retains jurisdiction for the child in the receiving state until the child is adopted, reaches the age of majority, becomes self-supporting, or is discharged from the sending state’s jurisdiction *with the concurrence of the appropriate authority in the receiving state*; (4) indicate that children who are adjudicated delinquent not be placed out of state unless it can be shown that there are not equivalent facilities in the sending state and institutional care in the receiving state is in the best interest of the child and will not produce an undue hardship; (5) require that compact administrators be appointed; (6) and state that the compact shall not apply to some scenarios where children are placed across state lines including “the sending or bringing of a child into a receiving state by his parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or non-agency guardian in the receiving state.”¹¹⁰ The compact also makes clear that the articles shall be “liberally construed” to affect the purpose of the compact.¹¹¹

Article I. Purpose and Policy

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

- (a)** Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.
- (b)** The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.
- (c)** The proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made.
- (d)** Appropriate jurisdictional arrangements for the care of children will be promoted.

Available at: [ICPC | Text of Interstate Compact on the Placement of Children \(aphsa.org\)](#)

¹⁰⁹ Ten articles: (1) Purpose and Policy, (2) Definitions, (3) Conditions for Placement, (4) Penalty for Illegal Placement, (5) Retention of Jurisdiction, (6) Institutional Care of Delinquent Children, (7) Compact Administrator, (8) Limitations This Company Shall Not Apply To, (9) Enactment and Withdrawal, (10) Construction and Severability.

¹¹⁰ Article VIII available at: [ICPC | Text of Interstate Compact on the Placement of Children \(aphsa.org\)](#)

¹¹¹ Full text available at: [ICPC | Text of Interstate Compact on the Placement of Children \(aphsa.org\)](#)

Regulations

There are [12 regulations](#)¹¹² of the ICPC. The regulations are promulgated by the American Public Human Services Association¹¹³ and lay-out the operational standards and expectations of the ICPC. The regulations are extensive and provide detailed guidance on how the ICPC operates and how it applies.

How does the ICPC apply to Harmony's case?

The ICPC is a complex system that deals with many scenarios in which children move across state lines. The purpose of the ICPC is to ensure that children are placed in safe environments and that states are aware of, and willing to accept, the responsibilities of children residing within their boundaries. Two of the ICPC's 12 regulations are central to understanding the course of events in this case: Regulation 3 and Regulation 7. For the purpose of clarity, we will discuss them in reverse chronological order in this report.

Regulation No. 7: Expedited Placement Decisions

[Regulation 7](#) is a procedure within the ICPC process that speeds up the typical timelines to minimize the potential trauma to children who may go through multiple placements while waiting for an ICPC approval or for the purpose of letting the receiving state know quickly whether they should explore alternative placement resources.¹¹⁴ Regulation 7 requires that the relevant court in the sending state request the expedited method through a written court order. This initiates a tight timeline for the receiving state to complete the ICPC or to, upon request, provide provisional approval or provisional denial – neither of which are the final decision by the receiving state. A provisional approval would permit a child to be transferred to the receiving state pending final approval.

Specifics of the timelines are available in the text of the regulations, but in summary, the timeline for a receiving state to make their determination on the child's placement should be no later than 20 business days from the date that the forms and materials are obtained by the receiving state. Regulation 7 is explicit about what information must be obtained by the sending state to effectuate the expedited process. This includes:

¹¹² 12 Regulations: (.01) Forms, (1) Conversation of Intrastate Placement Interstate Placement; Relocation of Family Units, (2) Public Court Jurisdiction Cases: Placements for Public Adoption or Foster Care in Family Settings and/or with Parents, Relatives, (3) Definitions and Placement Categories: Applicability and Exemptions, (4) Residential Placement, (5) Central State Compact Office, (6) Permission to Place Child: Time Limitations, Reapplication, (7) Expedited Placement Decision, (8) Change of Placement Purpose, (9) Definition of a Visit, (10) Guardians, (11) Responsibility of States to Supervise Children, (12) Private/Independent Adoptions.

¹¹³ American Public Human Services Association (CPHSA) is a bipartisan, nonprofit membership organization representing state and local health and human service agencies through their top-level leadership. Through their member network and three national collaborative centers, APHSA seeks to influence modern policies and practices that support the health and wellbeing of all children and families that lead to stronger communities. <https://www.aphsa.org/>

¹¹⁴ [ICPC | Regulations \(aphsa.org\)](#)

(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 childcare, 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.

Available at: [ICPC | Regulations \(aphsa.org\)](https://www.aphsa.org/ICPC-Regulations)

However, a receiving state can determine if the ICPC request documentation is “substantially insufficient” and can require additional information from the sending agency before continuing with the assessment process. A receiving state could also determine that the ICPC request documentation is “lacking” but not “substantially insufficient” and, in such cases, the receiving state can require additional information before continuing with the assessment process unless the sending state is seeking a provisional placement evaluation, in which case that provisional placement evaluation shall go forward.

How does Regulation 7 apply to Harmony?

DCF can initiate non-expedited ICPC requests without a court order. In October 2018 the DCF case management team indicated that it would pursue an ICPC for placement of Harmony with Mr. Montgomery in New Hampshire. The DCF case management team may have worked on compiling necessary information during the period of October 2018 to December 2018, but no ICPC request was made to the Massachusetts ICPC Compact Administrator Office¹¹⁵ until the Juvenile Court ordered an expedited ICPC on December 20, 2018.

On December 20, 2018, the Juvenile Court ordered an expedited ICPC for New Hampshire to evaluate the placement of Harmony with Mr. Montgomery. This order included a request for a provisional approval of the home. If New Hampshire had deemed that they had enough information, this court order would have started the timeline, resulting in a New Hampshire determination about the suitability of the placement within 20 business days. On December 20, 2018, the same day the judge made the order, the New Hampshire ICPC office indicated to the Massachusetts ICPC office that they required more information about Mr. Montgomery’s action plan requirements and would like *more recent* information about Mrs. Montgomery’s ongoing substance use disorder treatment. Presumably, the New Hampshire ICPC office determined that this gap in information made the ICPC request “substantially insufficient”¹¹⁶ because New Hampshire, to the OCA’s knowledge, did not take any steps to conduct the ICPC assessment without the updated information.

The Massachusetts ICPC office immediately replied to the New Hampshire ICPC office’s request, providing relevant information and context for the family, thereby providing some of necessary information to New Hampshire. On December 26, 2018, the father’s action plan was provided to New Hampshire, but the DCF case management team, through the DCF compact administrative staff, told the New Hampshire ICPC office that they reached out to Mrs. Montgomery’s service provider for updated information and had not received any updated information from that provider. From December 2018 to February 2019 the DCF case management team reached out to Mrs. Montgomery’s service provider multiple times and did not receive any updated information that they could send to New Hampshire. **Therefore, a process that should have taken New Hampshire 20 business days had not even begun by**

¹¹⁵ The Massachusetts ICPC office processes ICPC requests from MA DCF Area Office Staff and from all 50 states for foster and adoption assessments, parental assessments, and Regulation 7 assessments. They also process private adoption cases and conduct trainings on the ICPC for DCF staff.

¹¹⁶ See page 35.

February 2019 when the time the Juvenile Court Judge awarded Mr. Montgomery full custody of Harmony with the understanding that he would be taking her to New Hampshire.

New Hampshire refused to pursue the expedited ICPC with a provisional placement request due to the lack of updated information about Mrs. Montgomery's participation in substance use disorder treatment. Mrs. Montgomery would be living in the home and would be a caregiver for Harmony, and presumably New Hampshire determined that they could not make an assessment on the safety of the placement without more information. Of note, DCF case management teams have no authority to require timely compliance with information requests from any service provider in any state, including Massachusetts, unless such an authority is built into a contract with that provider. **In this case the DCF case management team diligently sought the information from the out of state New Hampshire provider and was unable to obtain that information and unable to provide that information to New Hampshire to complete the ICPC packet to the satisfaction of New Hampshire.** That a receiving state can refuse to take any steps to complete a home study pending additional information even when that additional information may not be possible for the sending state to obtain is a significant challenge to the effectiveness of the ICPC.

As noted previously, expedited ICPC requests pursuant to Regulation 7 require a court order from the sending state. Regulation 7 states specifically that it does not apply to situations in which "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."¹¹⁷ Pursuant to the Care and Protection case, Harmony had been legally removed from her parents' custody in 2014 and both parents had been found unfit to care for her in 2015. Therefore, according to the text of this Regulation, the ICPC should have applied to Harmony's case. Notably, this regulation also contemplates that the sending state court can use the ICPC as a substantive process to learn if a parent is fit or unfit.

In December 2018 a Juvenile Court Judge issued an order requesting an expedited ICPC to evaluate the potential placement of Harmony with her father in New Hampshire. In February 2019, however, a different Juvenile Court Judge determined that the ICPC would not apply if the court granted custody of Harmony to Mr. Montgomery and issued the custody order without the ICPC. The record does not reflect why one Juvenile Court Judge determined that the ICPC applied, and another determined that it did not apply in this case.

¹¹⁷ [ICPC | Regulations \(aphsa.org\)](https://www.aphsa.org/regulations) reg 7.4(c) emphasis added.

Regulation No. 3: Definitions and Placement Categories: Applicability and Exemptions

The express intent of [Regulation 3](#) is to assist in understanding which interstate placements are governed by the ICPC and which interstate placements are exempt from the ICPC. The Regulation is extensive, and this section will only discuss the portions of the Regulation that are relevant to this case. Regulation 3 states that one of the four types of placement categories that requires compliance with the ICPC is “Placements with parents and relatives when a parent or relative is not making the placement.”¹¹⁸ The regulation states that in cases, such as this one, where there is an open court case for abuse and/or neglect, the case is considered a “court jurisdiction” case and requires compliance with the ICPC. There is a caveat to this “court jurisdiction” category in that there are exceptions to the applicability of the ICPC in cases where the court is placing a child with a parent *from whom the child was not removed*.

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.

Regulation No.3(3)(a) available at: [ICPC | Regulations \(aphsa.org\)](#)

In 2014 a Care and Protection was filed in Juvenile Court and Harmony was legally removed from the custody of Ms. Sorey and Mr. Montgomery and placed in temporary DCF custody. In 2015, the Juvenile Court found Ms. Sorey and Mr. Montgomery unfit and Harmony in need of care and protection, resulting in a permanent custody order to DCF.¹¹⁹ Harmony remained in the permanent custody of DCF for approximately four and a half years. Not only had Harmony been removed from Mr. Montgomery, but the Juvenile Court had sought evidence from the receiving state about his parental fitness by ordering the expedited ICPC. **Regulation 3 of the ICPC states that an ICPC was required to place Harmony from the care of DCF to the care of her father in New Hampshire.**

Questioning the Validity of Regulation 3

There is a general rule, applicable in all states, that an agency or administrative body, such as the Association of Administrators of the Interstate Compact on the Placement of Children (AAICPC),¹²⁰ cannot enact regulations that conflict with the law or that are unconstitutional. If an ICPC regulation is

¹¹⁸ Regulation No. 3(2)(a)(2) available at: [ICPC | Regulations \(aphsa.org\)](#)

¹¹⁹ See M.G.L. c. 119 § 26.

¹²⁰ [Association of Administrators of the Interstate Compact on the Placement of Children](#)

contrary to purposes of the ICPC itself or if it is contrary to the U.S. or state Constitution, then that regulation is not operative or enforceable.

Many courts in other states have considered whether Regulation 3 of the ICPC as it pertains to the placement of a child with a parent when there is no current legal finding of unfitness, is operative or enforceable and states have come to varying conclusions. For example:

- New York: “In recognizing fundamental constitutional principles of due process and protected privacy, New York courts have consistently held that the State ‘may not deprive a natural parent of the right to care and custody of a child absent a demonstration of abandonment, surrender, persisting neglect, unfitness or other like behavior evincing utter indifference and irresponsibility to the child’s wellbeing.’ The burden of establishing a parent’s fitness or other like extraordinary circumstances rests with ‘the party seeking to deprive the natural parent of custody.’ Unless the Family Court has cause to believe a nonrespondent parent in another state might not be fit, or some other extraordinary circumstances exist, presupposing a parent is unfit pending completion of the ICPC infringes upon that parent’s constitutional rights.”¹²¹
- Maryland: “Similarly, the application of the ICPC to T.S. resulted in the denial of the protections afforded to him by the Fourteenth Amendment, simply because he was an out-of-state parent who did not have an established parent-child relationship with R.S. As a matter of public policy, any reading of the ICPC, which concludes that the compact applies to placements with biological parents (who have not been deemed unfit), would conflict with state and federal constitutional law. Subjecting a biological parent—who has not relinquished his parental rights, had those rights been extinguished by a juvenile court, or has otherwise been determined to be unfit as a parent—to the procedural hurdles and delays associated with an ICPC investigation unnecessarily deprives the individual of the fundamental right to parent.”¹²²
- Arizona: “The ICPC is designed to provide a free exchange of information between participating states in order to serve its primary goal—finding a safe placement for children across state lines by enlisting the assistance of the receiving state, which is in a better position than the sending state agency to investigate the out-of-state placement to ensure that it is safe, to make certain that necessary services are provided, and to monitor the child's welfare. Narrowly tailored as it is by rendering the ICPC applicable to placement with parents whose rights have been terminated or diminished, Regulation 3 is all the more consistent with the ICPC. It is in the best interests of a child who is the subject of a dependency proceeding and in the custody of protective services to require an investigation by a receiving state on the suitability of a parent who does not have full custodial rights before placing the child with that parent.”¹²³

¹²¹ Matter of Emmanuel B., 175 A.D.3d 49, 59 (2019) (internal citations omitted).

¹²² In re R.S., 470 Md. 380, 414 (2020).

¹²³ Arizona Dep’t of Econ. Sec. v. Leonardo, 200 Ariz. 74, 83 (Ct. App. 2001).

When a court determines that a regulation violates a law or is in opposition to the state law it seeks to regulate, then a court is not required to, and should not, apply that regulation. If one of the legal parties to the case believes the court is wrong in its interpretation, that legal party has the right to appeal the court's determination to a higher court. **The issue of providing custody of Harmony to Mr. Montgomery hinged on the Massachusetts Juvenile Court's determination regarding the validity of ICPC Regulation 3.**

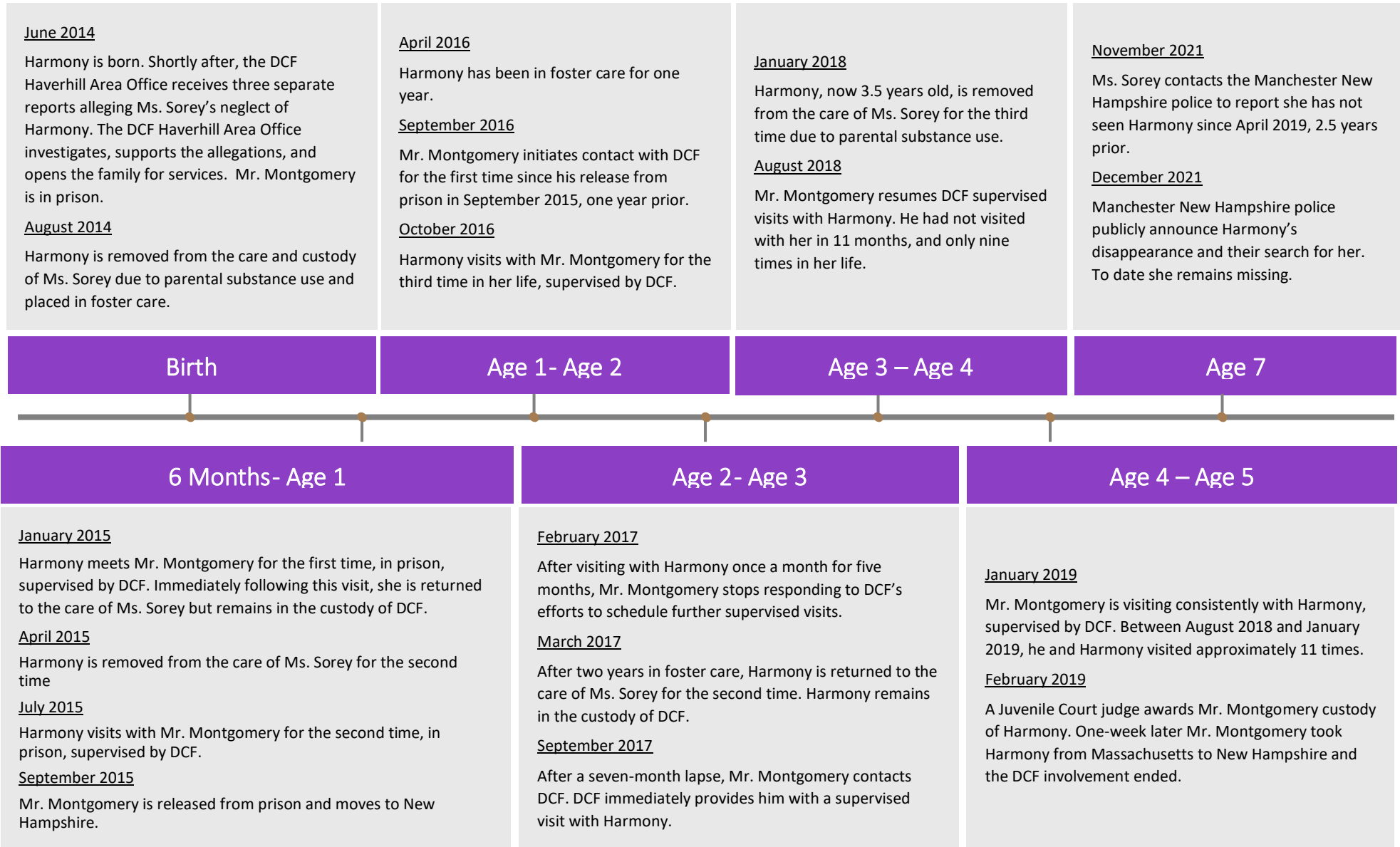
How does Regulation 3 apply to Harmony?

Mr. Montgomery had been found in 2015 to be an unfit parent (though he was found by the court to be "currently fit" in February 2019) and the Massachusetts Juvenile Court had ordered an expedited ICPC and thus had sought information from New Hampshire about the suitability of the potential placement of Harmony with her father. **According to the text of Regulation 3 of the ICPC, the ICPC did apply to Harmony's case and would have been required to place her in the care of her father in New Hampshire.**

However, in February 2019 the Judge in Harmony's case determined that Regulation 3 was unconstitutional in that it placed undue barriers on the constitutional rights of fit parents to have their children in their care. This is a position and understanding of the law that is shared by other states, notably one that is shared by the courts in New Hampshire. In ruling that Regulation 3 when applied to Harmony's situation was unconstitutional, the Judge determined that the ICPC was not required for Harmony to be placed in the care of her father in New Hampshire.

Had the Judge determined that Regulation 3 was not unconstitutional, it is unclear how long the family would have had to wait for the expedited ICPC as the DCF case management team continued to be unable to compel additional information from Mrs. Montgomery's service provider which was the apparent "missing" information that New Hampshire required to proceed with the ICPC.

Appendix C: Harmony Montgomery Timeline (2014-2021)



STATE	RTC Guaranteed?	SCOPE OF REPRESENTATION	REPRESENTATION MODEL FOR CHILDREN AND YOUTH	RELEVANT STATE STATUTE
Alabama	Yes, by statute ¹²⁴	Limited	Attorney Best Interest	Ala. Code §12-15-102(10) ; Ala. Code §12-15-304
Alaska	No	Discretionary	Attorney Best Interest	AS § 47.10.050
Arizona	Yes, by statute	Mandatory	Expressed/Stated-Interest (Updated 2021 Legislative Session)	Ariz. Rev. Stat. § 8-221 2021 Legislation SB 1391 required the appointment of Expressed/Stated-Interest legal counsel in all dependency cases
Arkansas	Yes, by statute	Mandatory	Attorney Best Interest	Ark. Code Ann. § 9-27-316 (f)(1) and (5)
California	Yes, in practice	Mandatory	<ul style="list-style-type: none"> • Attorney Best Interest • Hybrid 	Cal. Welf. & Inst. Code § 317 (c)(1-2) Cal. Welf. & Inst. Code § 317 (e)(1-3)
Colorado	Yes, by statute	Mandatory	<ul style="list-style-type: none"> • Attorney Best Interest • Expressed/Stated-Interest(For youth age 18 and up) (Updated 2021 Legislative Session)	C.R.S.A. § 19–3–203 C.R.S.A. § 19–7–308 (Updated by HB 21-1094 (2021))
Connecticut	Yes, by statute	Mandatory	Expressed/Stated-Interest	Conn. Gen. Stat. § 46b-129a (2)(c) and § 46b-135
District of Columbia	Yes, by statute	Mandatory	Hybrid	D.C. Code § 16-2304 (a)
Delaware	Yes, by statute	Mandatory	Attorney Best Interest	Del. Code Ann. tit. 29, § 9007A (c)

¹²⁴ RTC guaranteed by statute, but in practice doesn't continue after permanent custody awarded to state agency.

Florida	No	Discretionary (Mandatory for Select Case Types)	<ul style="list-style-type: none"> Lay-GAL (Non-Attorney) Select 	Fla. Stat. § 39.01305(3), § 39.4085
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STATE	RTC Guaranteed?	SCOPE OF REPRESENTATION	REPRESENTATION MODEL FOR CHILDREN AND YOUTH	RELEVANT STATE STATUTE
Georgia	Yes, by statute	Mandatory	<ul style="list-style-type: none"> Hybrid Varied Representation 	O.C.G.A. § 15-11-103; O.C.G.A § 15-11-104 (b)
Hawaii	No	Discretionary	<ul style="list-style-type: none"> Lay-GAL (Non-Attorney) Expressed/Stated-Interest 	Haw. Rev. Stat. Ann. § 587A-3.1(b) (4)
Idaho	No	Limited	Split: Lay-GAL's for children 11 and under; Expressed/Stated-Interest age 12 and up	Idaho Code § 16-1614
Illinois	No	Limited (Counsel is not required if a CASA is appointed and represented by counsel)	<ul style="list-style-type: none"> Hybrid (Cook County) Lay-GAL (Non-Attorney) Varied Access to Counsel 	705 Ill. Comp. Stat. Ann. 405/1-5 (1)
Indiana	No	Discretionary	<ul style="list-style-type: none"> Lay-GAL (Non-Attorney) Varied Access to Counsel 	Ind. Code Ann. § 31-32-4 (2)(b)
Iowa	Yes, by statute	Mandatory	Hybrid	Iowa Code § 232.89
Kansas	Yes, by statute	Mandatory	Attorney Best Interest	K.S.A. § 38-2205(a)
Kentucky	Yes, by statute	Mandatory	Attorney Best Interest	KRS § 620.100
Louisiana	Yes, by statute	Mandatory	Expressed/Stated-Interest	LSA-Ch.C. Art. 607; LSA-Ch.C. Art. 551

Maine	No	Discretionary	<ul style="list-style-type: none"> • Attorney Best Interest • Lay-GAL (non-Attorney) • Expressed/Stated-Interest 	22 M.R.S. § 4005(b)
Maryland	Yes, in practice	Mandatory	<ul style="list-style-type: none"> • Expressed/Stated-Interest (when client determined to have considered judgement) • Attorney Best Interest when client lacks considered judgement) 	Md. Code, Courts and Judicial Proceedings, § 3-813 (d)

STATE	RTC Guaranteed?	SCOPE OF REPRESENTATION	REPRESENTATION MODEL FOR CHILDREN AND YOUTH	RELEVANT STATE STATUTE
Massachusetts	Yes, by statute	Mandatory	Expressed/Stated-Interest	M.G.L.A 119 § 29
Michigan	Yes, by statute	Mandatory	Attorney Best Interest	MCLS § 722.630 ; MCLS § 712A.17d
Minnesota	No	Limited	Split: Lay-GAL's for children 9 and under; Expressed/Stated-Interest age 10 and up	Minn. Stat. § 260C.163 Subd. 3
Mississippi	Yes, by statute	Mandatory	Varied Representation	Miss. Code Ann. §43-21-121 (1) and (4)
Missouri	Yes, by statute	Mandatory	Attorney Best Interest	Mo. Ann. Stat. § 211.211
Montana	No	Discretionary	<ul style="list-style-type: none"> • Lay-GAL (Non-Attorney) • Varied Access to Counsel 	Mont. Code Anno., § 41-3-425(3)(b) ; Mont. Code Anno., § 41-3-112 2021 Legislation HB 90 requires the appointment of legal counsel for children at the initial hearing in all dependency cases, but is not effective until July 1, 2023.
Nebraska	Yes, by statute	Mandatory	Hybrid	NE ST § 43-272

Nevada	Yes, by statute	Mandatory	Expressed/Stated-Interest	Nev. Rev. Stat. Ann. § 432B.420(2) ; Nev. Rev. Stat. Ann. § 128.100(2)
New Hampshire	No	Discretionary	<ul style="list-style-type: none"> • Attorney Best Interest • Lay-GAL (non-attorney) 	N.H. Rev. Stat. § 169-C:10
New Jersey	Yes, by statute	Mandatory	Expressed/Stated-Interest	N.J. Stat. § 9:6-8.23 ; NJ Stat. §9:6-8.21(d)
New Mexico	Yes, by statute	Mandatory	Split: Expressed/Stated-Interest for age 14 and up; Attorney Best Interest for children age 13 and under	N. M. S. A. 1978, § 32A-1-7.1 ; N. M. S. A § 32A-4-10-
New York	Yes, by statute	Mandatory	Expressed/Stated-Interest	NY CLS Family Ct Act § 241
North Carolina	Yes, by statute	Mandatory	Attorney Best Interest	N.C. Gen. Stat. § 7B-601

STATE	RTC Guaranteed?	SCOPE OF REPRESENTATION	REPRESENTATION MODEL FOR CHILDREN AND YOUTH	RELEVANT STATE STATUTE
North Dakota	No	Limited	<ul style="list-style-type: none"> • Expressed/Stated-Interest • Lay-GAL (non-attorney) (Updated in 2021 Legislative Session) 	N.D. Cent. Code, § 27-20.2-12 (2021 Legislation HB 1035 (2021) Guarantees right to counsel for children of sufficient age and competency to assist counsel

Ohio	Yes, by statute	Mandatory	<ul style="list-style-type: none"> • Attorney Best Interest • Hybrid 	ORC 2151.352 <p><i>NOTE: In re Williams</i>, 805 N.E.2d 1110, 1111, 1113 (Ohio 2004): The Williams Court explained that the juvenile <u>may</u> have a right to appointed counsel separate from that provided to his or her parents "in certain circumstances". The court presiding over the proceeding has the authority to make a case-by-case determination whether independent counsel for the juvenile is necessary, based on the maturity of the juvenile and whether the juvenile's guardian <i>ad litem</i> can serve as both guardian <i>ad litem</i> and attorney without conflict.</p>
Oklahoma	Yes, by statute	Mandatory	<ul style="list-style-type: none"> • Expressed/Stated-Interest • Attorney Best Interest (when client has diminished capacity) 	10A Okl. St. § 1-4-306
Oregon	Yes, by statute	Mandatory	Expressed/Stated-Interest	O.R.S. § 419B.195
Pennsylvania	Yes, by statute	Mandatory	Hybrid	42 Pa.C.S.A. § 6337.1
Rhode Island	Yes, in practice	Mandatory	Attorney Best Interest	Gen.Laws 1956, § 40-11-14
South Carolina	No	Discretionary	<ul style="list-style-type: none"> • Lay-GAL (non-attorney) • Expressed/Stated-Interest 	S.C. Code Ann. § 63-7-1620
South Dakota	Yes, by statute	Mandatory	Attorney Best Interest	S.D. Codified Laws § 26-8A-18

STATE	RTC Guaranteed?	SCOPE OF REPRESENTATION	REPRESENTATION MODEL FOR CHILDREN AND YOUTH	RELEVANT STATE STATUTE
Tennessee	Yes, by statute	Mandatory	Best Interests	Tenn. Code Ann. § 37-1-126

Texas	No	Limited (duration of appointment)	<ul style="list-style-type: none"> Expressed/Stated-Interest Hybrid 	Tex. Fam. Code § 107.012 Tex. Fam. Code § 107.016 (Updated by HB 1315 (2021))
Utah	Yes, by statute	Mandatory	Attorney Best Interest	Utah Code Ann. § 78A-6-902(2) ; Utah Code Ann. § 78A-6-317
Vermont	Yes, by statute	Mandatory	Expressed/Stated-Interest	33 V.S.A. § 5112
Virginia	Yes, by statute	Mandatory	Attorney Best Interest	Va. Code Ann. § 16.1-266
Washington	No	Limited/ Discretionary	<ul style="list-style-type: none"> Split- Lay GAL¹²⁵ for children under 8; Expressed/StatedInterest age 8 and up Select (0-8 when TPR filed) Select (All children 6 months post-TPR) Select (When youth is in extended foster care) Select (When youth files a petition to reinstate parental rights) (Updated in 2021 Legislative Session)	Wash. Rev. Code Ann. § 13.34 HB1219 (2021) ²
West Virginia	Yes, by statute	Mandatory	Hybrid	W. Va. Code § 49-4-601
Wisconsin	Yes, by statute	Mandatory	Split: Attorney Best Interest for children under 12; Expressed/Stated-Interest age 12 and up	Wis. Stat. Ann. § 48.23 (3m)

¹²⁵ The 2015-2016 monitoring report published by The Access to Counsel Project at the Children and Youth Advocacy Clinic, University of Washington School of Law demonstrates that 23% of children in observed hearings in Washington were not appointed a lay GAL or attorney, despite a federal mandate. Additionally, Washington's Juvenile Court Rule 9.2 requires an attorney appointment when a GAL is not appointed.

Wyoming	Yes, by statute	Mandatory	Attorney Best Interest	Wyo. Stat. Ann. § 14-3-211
STATE	RTC Guaranteed?	SCOPE OF REPRESENTATION	REPRESENTATION MODEL FOR CHILDREN AND YOUTH	RELEVANT STATE STATUTE
Puerto Rico	Yes, by statute	Mandatory	Children appointed a Family Advocate (Individual represents the child and the Commonwealth in the pertinent actions ensuing from investigations conducted on alleged child abuse pursuant to the effective legislation on that matter)	PR ST T. 8 § 447a
US Virgin Islands	Yes, by statute	Mandatory	Attorney Best Interest	VI ST T. 5 § 2542
American Guam	No	Discretionary	Lay-GAL (non-attorney)	GU ST T. 19, § 13308
Northern Mariana Islands	No	Discretionary	Lay-GAL (non-attorney)	Commonwealth Code Tit. 8, §§ 1982; 1983

Glossary of Terms

NACC recognizes that the terms used here may not be the same terms used locally but has endeavored to develop consistent terminology for the purposes of this document.

Term	Description
Practice	Customary action in a jurisdiction.
Statute	Legal mandates found in the codification of state law
Mandatory	Right to counsel (RTC) guaranteed to all children during all stages of the dependency proceeding.
Discretionary	The decision to appoint legal counsel for children involved in child welfare proceedings is left to the discretion of the hearing officer

Limited	Age/Competency: Legal counsel appointed to children of a certain age or competency. Or Duration: Hearing officers have discretionary authority to appoint or remove legal counsel at a certain phase of case (i.e. when the government agency has permanent custody of a child or termination of parental rights is granted)
Expressed/Stated Interest	Jurisdiction requires a Expressed/Stated-Interest lawyer owing the same duties of undivided loyalty, confidentiality, and competent representation to the child as is due an adult client. Child’s counseled-expressed wishes guide the representation. May also be described as a “client-directed” model of legal representation. If the child is pre-verbal or has diminished capacity making her unable to direct the representation, the attorney proceeds according to the rule, ethics, and practice standards of their jurisdiction.
Attorney Best Interest	Jurisdiction requires a lawyer charged with representing the best interest of the child, as determined by the advocate who is responsible for conducting an independent investigation to determine what is in the child’s best interest. Advocates for a child’s best interest are not bound by the expressed wishes or litigation objectives of the child, though in most jurisdictions have a concomitant responsibility to inform the court of the child’s wishes.
Split	Jurisdiction permits either a lay volunteer, Expressed/Stated-Interest attorney, or attorney-directed/ best interest model of representation depending on a specific factor (Ex. child’s age).
Select	Jurisdiction mandates legal counsel for children in select circumstances usually based on case type (Ex. Florida’s statute provides that attorneys must be appointed to children who are diagnosed with a developmental disability, victims of human trafficking, placed in skilled nursing or residential treatment facilities, or who decline prescribed psychotropic medication.)
Varied Representation	Children and youth have a statutory right to counsel, but the model of representation may vary by jurisdiction. (Ex. In Georgia, right to counsel is guaranteed to all children, but the model of representation varies by county)
Varied Access to Counsel	State statute or rule does not guarantee children and youth the right to counsel, but in practice, certain jurisdictions operating under local rule or hearing officers exercising discretion may appoint legal counsel at their discretion.
Hybrid	Jurisdiction permits one individual to serve in the dual role of Expressed/Stated-Interest attorney and guardian <i>ad litem</i> . If a conflict arises between the attorney’s duty to a child and the attorney’s determination of what is in the child’s best interest, the role of guardian <i>ad litem</i> and attorney are separated.