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The
INTERSTATE COMPACT
on the PLACEMENT *of*
CHILDREN:

A MANUAL *and* INSTRUCTIONAL
GUIDE *for* JUVENILE *and* FAMILY
COURT JUDGES

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THE INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN: A Manual and Instructional Guide for Juvenile and Family Court Judges

A Collaboration of the National Council of Juvenile and Family Court Judges and the
American Public Human Services Association
Fall 2001

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*Approved by the National Council of Juvenile and Family Court Judges
Permanency Planning for Children Committee, July 2001*

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Note:

This publication is designed to provide accurate information about the Interstate Compact on the Placement of Children (ICPC) and related issues for judges and other members of juvenile and family court systems. Its content is not intended as legal advice or services. If legal advice or other expert assistance is required, the services of a competent professional should be sought. In matters of judicial responsibility, judges of the juvenile and family courts should consult and rely on their states' respective Codes of Judicial Conduct, Canons of Judicial Ethics, or other applicable professional rules. Unless otherwise indicated, references to the canons of judicial conduct are to the 1990 American Bar Association Model Code of Judicial Conduct, as amended in 2000.

INTRODUCTION¹

I. WHAT IS THE INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN?

The Interstate Compact on the Placement of Children (ICPC) is the only statutory mechanism juvenile and family court judges and human services agencies have to ensure protection and services to children who are placed across state lines for foster care² or adoption. The Compact is a law that has been enacted verbatim by all 50 states, the District of Columbia, and the U.S. Virgin Islands.³ It establishes orderly procedures for the interstate placement of children and fixes responsibility for those involved in placing children. Generally, any time a juvenile or family court sends or causes a child to be sent to another state, the law *requires* that the court follow the provisions and procedures of the ICPC.⁴ Courts must use the ICPC *in all instances where the ICPC provisions say that the Compact applies*. This is not a *choice* between applying the Compact and applying some other provision of the state's statute—it is a *legal requirement*.

The ICPC covers children who courts have found to be neglected and abused and adjudicated delinquent children who are placed in private residential treatment facilities. According to the American Public Human Services Association (APHSA), the majority of children placed through the ICPC are placed with relatives.

When children are placed out-of-state, they need to be assured of the same protections and services they would receive if they remained in their home state. If the placement fails to

¹ Includes excerpts from the *Guide to the Interstate Compact on the Placement of Children*, American Public Human Services Association, 2000 Revision; and *APHSA Training Manual for Administrators & Liaisons of the Interstate Compact on the Placement of Children*, AAICPC, 2000.

² As used in this document foster care includes “care of a child on a 24-hour a day basis away from the home of the child’s parent(s). Such care may be by a relative of the child, by a non-related individual, by a group home, or by a residential facility or any other entity. In addition, if 24-hour a day care is provided by the child’s parent(s) by reason of a court-ordered placement (and not by virtue of the parent-child relationship), the care is foster care.”

³ Puerto Rico is in the process of enacting the ICPC.

meet a child's needs, or should the need for out of state placement cease, judges must be confident that a system exists to return the child to his or her original jurisdiction. The ICPC provides a statutory means to ensure that the jurisdictional, administrative, and human rights obligations of all parties involved in an interstate placement can be protected.

The ICPC makes it illegal for one state to "dump" a child into another state without following Compact law. It prevents the unfair financial burden to states of having children with severe needs placed into their state without appropriate financial support.

The Compact ensures that when a child is placed in another state:⁵

- the child is placed in a suitable environment;
- the receiving state has the opportunity to assess the proposed placement;
- the sending state obtains enough information to evaluate the placement; and
- the care of the child is promoted through appropriate jurisdictional arrangements including appropriate financial support.

II. PURPOSE OF THIS MANUAL AND INSTRUCTIONAL GUIDE

The purpose of the ICPC is to ensure that necessary interstate placements are investigated, implemented, supervised, and completed in a thorough and timely fashion. For the ICPC to accomplish this purpose effectively, judges of juvenile and family courts, personnel from local and state public human services agencies, prosecutors, probation officers, public defenders, guardians *ad litem* (GALs), and court appointed special advocates (CASAs) must understand the Compact and know how to effectively carry out their roles in relation to it.

The purposes of this *Manual and Instructional Guide* are to:

1. present information about the Compact that is necessary for juvenile and family courts to effectively implement the ICPC; and

⁴ See Chapter I for more detail on who must use the Compact and under what circumstances.

⁵ *Interstate Compact on the Placement of Children: Implementation*, Department of Health and Human Services, Office of Inspector General, June Gibbs Brown, Inspector General, March 1999, OEI-02-95-00044.

2. provide instructional information that will assist judges and court staff to teach others within the juvenile and family court system about the Compact.

If courts and other professionals involved in interstate placements understand what the Compact requires and how to implement it in an effective and timely way, then the number of placements that courts make in violation of the Compact will decrease, and the children for whom courts are responsible will be better served.

This Manual and Instructional Guide for Juvenile and Family Court Judges encourages judges to utilize their knowledge and experience in providing leadership to improve the legal system and the administration of justice relating to the implementation of the Interstate Compact on the Placement of Children in the juvenile and family courts.

More frequently, judges are being asked to provide leadership to change the legal system and to improve justice in an ethical manner. Such requests present a considerable challenge to the judiciary and come from many different segments of the judicial system, including justices of the highest state courts. In his call for action, one state Supreme Court Justice stated:⁶

As the public and legislatures, not to mention the federal government, increasingly demand more participation and coordination by the judiciary in addressing social problems that are presented, the judiciary is going to have to face a new cultural reality. The model of detached magistrates from the days of law school will no longer be the preferred model in the trial courts. Trial judges are going to have to become more adept at managing social problems and coordinating social services to address those problems. And more judiciary resources are going to have to be committed to supervising and providing such social services—a fact that has large implications for the ability of judges to handle their more traditional work in the old, somewhat hands-off manner

Justice Michael D. Zimmerman
Utah Supreme Court⁷

⁶Hornsby, Thomas E., (1999) *Ethical Considerations for Juvenile and Family Court Judges*, Synergy, Vol. 4, No.1, p.2-4, Summer 1990

⁷Judicature, 82(3) (Nov.-Dec. 1998)

In order to address the increased demand to provide leadership in their communities, judges have several resources from which to help them determine whether they are in compliance with their respective state Codes of Judicial Conduct.⁸

The resource usually referred to in determining ethical conduct in leadership activities is the ABA Canons of Judicial Conduct including:

- **ABA Canon 2:** A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.
- **ABA Canon 4:** A judge shall conduct the judge's extra-judicial activities so as to minimize the risk of conflict with judicial obligations.
- **ABA Canon 4A:** relating to Extra-judicial Activities in General.
- **ABA Canon 4B:** relating to Avocational Activities.
- **ABA Canon 4C:** relating to Governmental, Civic or Charitable Activities.

Judges also may look to their state's Judicial Advisory Opinions, in those states that have bodies that issue such opinions. When in doubt, judges may request an advisory opinion prior to engaging in a particular activity. However, judges should be aware that these opinions are not binding on the disciplinary body of the state.⁹ Moreover, the judicial

⁸The American Bar Association (ABA) Commentaries to the respective ABA Canons of the ABA Model Code of Judicial Conduct are helpful in interpreting the meaning of the Canons even though not all states have adopted the ABA Code, and it is not binding on judges in their respective states. A judge should examine her jurisdiction to determine to what extent her state Code varies from the ABA Code. Judges also may refer to published opinions of state Judicial Disciplinary Agencies and Decisions of State Courts having jurisdiction.

⁹For example, the Florida Judicial Ethics Advisory Committee and operational guidelines state: "The Committee shall render opinions to inquiring judges relating to the propriety of contemplated judicial and non-judicial conduct, but all opinions shall be advisory in nature only. No opinions shall bind the Judicial Qualifications Commission in any proceeding before that body. An opinion of the Committee may, however, be considered a good faith effort to comply with the Code of Judicial Conduct; provided that no opinion issued to one judge or justice shall be authority for the conduct or evidence of good faith, of another judge or justice unless the underlying facts are identical. All opinions, together with the request thereof, shall be filed with the Clerk of the Supreme Court and with the chairman of the Judicial Qualifications Commission. All references to the name of the judge shall be deleted."

advisory opinions and decisions interpreting their respective Codes of Conduct vary from state to state.”¹⁰

III. HISTORY OF NCJFCJ AND APHSA COLLABORATION REGARDING THE ICPC

This *ICPC Manual and Instructional Guide* is a collaborative effort between the Permanency Planning for Children Department of the National Council of Juvenile and Family Court Judges (NCJFCJ) and the American Public Human Services Association (APHSA).¹¹ Both organizations have worked together for many years to make the ICPC a more timely and effective tool for children. In 1996, the Association of Administrators of the Interstate Compact on the Placement of Children (AAICPC), an affiliate of APHSA, and the NCJFCJ worked cooperatively to address the issue of delay, which was the primary and universal complaint about the ICPC. In cooperation with APHSA’s National Council of State Human Service Administrators and National Association of Public Child Welfare Administrators, NCJFCJ and APHSA created a new expedited process, adopted as ICPC Regulation 7, for courts to use in making a finding of a need for priority placement of certain children.¹²

For several years, APHSA and AAICPC representatives have participated in the NCJFCJ Permanency Planning for Children Department’s Advisory Committee. Through this committee, they have worked with juvenile and family court judges across the country to monitor the effectiveness of ICPC Regulation 7 and discuss issues of mutual concern regarding the Compact. APHSA staff served as advisors and contributing authors on the recent NCJFCJ publication *ADOPTION AND PERMANENCY GUIDELINES: Improving Court Practice in Child Abuse and Neglect Cases*,¹³ which includes information on Regulation 7.

¹⁰See Synergy, *supra* at 2

¹¹ Founded in 1930, APHSA was known as the American Public Welfare Association until 1998.

¹² *Interstate Compact on the Placement of Children, The Final Report of the Joint Committee on ICPC Improvement, ICPC Regulation No. 7 and Recommendations*, December 1996.

¹³ *ADOPTION AND PERMANENCY GUIDELINES: Improving Court Practice in Child Abuse and Neglect Cases*, NCJFCJ, Reno, Nevada, 2000. For copies of this publication, call (775) 784-1652.

IV. WHY THIS MANUAL AND INSTRUCTIONAL GUIDE IS NEEDED

In 1999, the Office of Inspector General of the U.S. Department of Health and Human Services reviewed state implementation of the ICPC. It found that the Compact facilitates interstate placements by increasing placement options available for children and guarding the child's safety through services and protections from the receiving state. It also found, however, that there were four main weaknesses regarding the Compact's implementation, specifically:¹⁴

- lack of knowledge about the Compact among judges, attorneys and caseworkers;
- placements in violation of the Compact, particularly in regard to home studies;
- the lengthy approval process; and
- differing adoption laws among states that may hinder placements.

These issues are of concern to juvenile and family court judges because of their potential to cause significant delays in the court process and impede permanency for children. In addition to these concerns, the advent of Internet electronic adoption exchanges is expected to increase the number of special needs children who are placed in out-of-state adopting families. This could increase the demand on ICPC resources, potentially causing further delay in the adoption process.

This combination of the weaknesses of the current system, potential increase in demand for out-of-state adoptions, and new licensing requirement for relatives imposed by the Adoption and Safe Families Act of 1997 (ASFA) creates the immediate need for renewed NCJFCJ and APHSA collaboration. Both organizations have begun new efforts to provide training and education on the ICPC to public human services agencies, judges, and other professionals in the juvenile and family court system. During 2000, through funding from a grant from the U.S. Department of Health and Human Services Administration on Children, Youth, and

Families, APHSA developed a *Training Manual for Administrators & Liaisons of the Interstate Compact on the Placement of Children*¹⁵ and initiated a training plan for public human services associations regarding the ICPC. Working with APHSA, the NCJFCJ has developed this *Manual and Instructional Guide for Juvenile and Family Court Judges* to serve as a foundation for a training initiative across the country over the next several years.

APHSA has also developed a companion document to both manuals, *Court Cases of the Interstate Compact on the Placement of Children: Briefs & Legal Analysis*.¹⁶ Rather than insert case law into this *Manual and Instructional Guide*, references will be made where pertinent to the cases contained in the APHSA companion document.

V. HISTORY OF THE ICPC

The need for a compact to regulate the interstate movement of children was recognized in the 1950s. At that time, a group of East Coast social service administrators and state legislators joined informally to study the problems of children moved out of state for foster care or adoption.

Among the problems identified was the failure of importation and exportation statutes enacted by individual states to protect children. They recognized that a state's jurisdiction ends at its borders and that a state can only compel an out-of-state agency or individual to discharge its obligations toward a child through a compact. The administrators were also concerned that a state to which a child was sent was not required to follow through with the provision of supportive services even though it might agree to do so on a courtesy basis.

¹⁴ *Interstate Compact on the Placement of Children: Implementation*, Department of Health and Human Services, Office of Inspector General, June Gibbs Brown, Inspector General, March 1999, OEI-02-95-00044.

¹⁵ *Training Manual for Administrators & Liaisons of the Interstate Compact on the Placement of Children*, AAICPC, and APHSA, 2000. For copies of this publication, contact APHSA, c/o ICPC Secretariat (202) 682-0100.

¹⁶ Published in 2000 by the AAICPC, an affiliate of APHSA. An order form for this publication is included as Appendix B.

In response to these and other problems, the Interstate Compact on the Placement of Children was drafted. New York was the first state to enact it in 1960. By 1990, all 50 states, the District of Columbia, and the U.S. Virgin Islands had become members of the Compact. (Puerto Rico and Guam are not currently parties to the ICPC although Puerto Rico is in the process of enacting the Compact into law.)

VI. ADMINISTRATIVE STRUCTURE OF THE ICPC

The structure of the ICPC can be divided into two categories—content and administration.

The content of the ICPC is divided into 10 Articles and 11 Regulations. The 10 Articles are:

- Article I. Purpose and Policy
- Article II. Definitions
- Article III. Conditions for Placement
- Article IV. Penalty for Illegal Placement
- Article V. Retention of Jurisdiction
- Article VI. Institutional Care of Delinquent Children
- Article VII. Compact Administrator
- Article VIII. Limitations
- Article IX. Enactment and Withdrawal
- Article X. Construction and Severability

The 11 Regulations are:

- Regulation No 0.01. Forms
- Regulation No. 1. Conversion of Intrastate Placement into Interstate Placement; Relocation of Family Units
- Regulation No. 2. Repealed
- Regulation No. 3. Placements with Parents, Relatives, Non-agency Guardians, and Non-family Settings
- Regulation No. 4. Residential Placement
- Regulation No. 5. Central State Compact Office
- Regulation No. 6. Permission to Place Child; Time Limitations, Reapplication
- Regulation No. 7. Priority Placement
- Regulation No. 8. Change of Placement Purpose
- Regulation No. 9. Definition of a Visit
- Regulation No. 10. Guardians

ICPC *content* will be covered in Chapter I. The state and national supportive mechanisms that make up the *administrative structure* of the ICPC are described in this section.

The success of the ICPC rests on a multi-layered interstate process of communication, investigation, support, and case monitoring. When a court orders an interstate placement, the following steps must occur *prior to making the interstate placement*. Generally, the steps occur in the following order.

1. The local human services agency sends the required paperwork to the sending state ICPC Office.
2. The sending state ICPC Office sends the required paperwork to the receiving state ICPC Office.
3. The receiving state ICPC Office sends the required paperwork to the receiving state's local human services agency.
4. The receiving state local human services agency conducts a home study within specified time limits.
5. The receiving state local human services agency sends the results of the home study to the receiving state ICPC Office.
6. Receiving state ICPC Office, based on the results of the home study and pertinent receiving state law and policy, makes the social work determination whether the placement "does not appear to be contrary to the interests of the child."
7. Receiving state ICPC Office forwards its decision and the results of the home study to the sending state ICPC Office.
8. The sending state ICPC Office sends the receiving state's determination and the results of the home study to the local child-serving agency in the sending state that initiated the placement request. Social work determination made in sending state whether to request placement in the receiving state.

9. The sending state court determines whether placement in the receiving state is in the best interests of a child. Normally, this legal decision is based partly on the results of the home study conducted by the receiving state. If the court approves the placement, the local agency arranges transportation of the child to the out-of-state placement, notifies the receiving state of its intention to place the child, and, when appropriate, the need for the receiving state to begin supervision.

Once the child is placed, similar lines of communication must be followed for case monitoring and support until the child returns to the sending state or agreement is reached for the child to remain in the receiving state on a permanent basis.¹⁷ For the public human services agency, with limited resources and competing demands for those resources, the challenge of working across state lines is immense. For the Compact to work in a timely and effective manner, supportive structures must be in place at the state and national levels.

A. State Compact Administrators

Each state appoints a Compact Administrator and one or more Deputy Administrators who oversee or perform the day-to-day tasks associated with the administration of the Compact. In every state, the Compact Office and personnel are located in the offices of the state department of human services or equivalent agency. Compact Administrators are responsible for:

- processing requests for interstate placements in a prompt and timely manner and communicating with other ICPC administrators to resolve problematic situations;
- ensuring that all staff who act in the capacity of sending agency–state agency personnel, county and private agency staff, attorneys, juvenile court representatives, as well as all ICPC staff—are thoroughly trained;
- enforcing the ICPC, including advising sending agencies of the requirements of the ICPC and the liabilities for noncompliance, initiating corrective action when a

¹⁷ See Chapter I for more information on when the sending state can close an ICPC case.

violation occurs and, if appropriate, referring violations to legal staff and licensing departments;

- maintaining and enhancing relations with all parties directly or indirectly involved in the interstate placement of children; and
- ensuring that accurate statistics regarding ICPC children are maintained and forwarded to the AAICPC Secretariat.

A list of Compact Administrators for each state is included in Appendix A.¹⁸

B. The Association of Administrators of the Interstate Compact on the Placement of Children (AAICPC)

Each Compact Administrator is responsible, acting jointly with Compact Administrators of other jurisdictions, for promulgating the rules and regulations necessary to effectively carry out the provisions of the Compact. All Compact Administrators are members of the Association of Administrators of the Interstate Compact on the Placement of Children (AAICPC).

AAICPC was created as a mechanism to facilitate the cooperative interstate relationships necessary to effectively carry out the procedures of the Compact. Its officers are elected by the membership at elections held every two years at the association's annual meeting.¹⁹ AAICPC provides a continuing forum for the examination of matters of public policy and administration relating to the interstate placement of children.

AAICPC became an affiliate of the American Public Human Services Association in the mid-1970s.

¹⁸ The Secretariat has available a two-volume *Compact Administrator's Manual* containing detailed information on each state, including state contacts and relevant state laws. This information is updated quarterly. For order form, please see <http://icpc.aphsa.org> or contact APHSA, c/o ICPC Secretariat (202) 682-0100.

¹⁹ For information on AAICPC officers, contact APHSA, c/o ICPC Secretariat (202) 682-0100.

C. The Secretariat of the ICPC

The Secretariat of the AAICPC provides administrative, legal, and technical services necessary to support individual state operation of the Compact. Services provided by the Secretariat have a threefold objective:

1. to ensure the provision of protections on a uniform and consistent basis to children placed interstate into relative, foster, and adoptive homes and group and residential care by regulating the activities of persons who place these children;
2. to provide ongoing administrative, legal, and technical assistance to individual states that administer the ICPC; and
3. to provide ongoing administrative, legal, and technical assistance to the network of ICPC member states for the purpose of resolving problems of mutual concern and formulating common policies, practices, and goals.

APHSA provides the resources to staff the Secretariat.

The Secretariat ensures that the *Compact Administrator's Manual* is current, prepares quarterly and annual ICPC statistical reports, and provides staff support to the committees and annual meeting of the AAICPC. It also prepares and distributes Secretariat Opinions to Compact Administrators and others officially involved in the operation of the ICPC and mediates disputes between member states. Secretariat Opinions are advisory comments developed in response to questions posed by the party states. They do not have the force of law but are often consulted by courts, private and agency attorneys, and other interstate parties. The topics of existing Secretariat Opinions are listed in Appendix C.

VII. COLLABORATING TO MAKE THE ICPC WORK FOR CHILDREN

A. Why It Is Important to Children that the ICPC Be Followed

Making an inter-jurisdictional compact work, where resources are often strained, is a challenge. When a juvenile or family court judge is faced with a child lingering in foster care who has, based on what the court knows, an appropriate relative in another state who is willing to take the child immediately, the judge may be inclined to go ahead and place the child without waiting for the ICPC process to be completed.

However, when courts place children out-of-state without following the ICPC, home assessments are not completed and follow-up supports and services are not provided. Consequently, children may be placed at risk without adequate services. This is not only harmful to the child, but could potentially disrupt a placement that, with the proper services, could become a permanent home.

The following is an abbreviated summary of a case that shows the potential harm that can occur when the ICPC is ignored:²⁰

A juvenile judge wanted to place several children who were in agency custody with an aunt in another state. The caseworker had some information about the aunt from local relatives and had talked with the aunt by telephone. The aunt appeared to be an appropriate caretaker for the children. The court decided to proceed with the placement without going through the ICPC. The children arrived with inadequate clothing, no medical, dental, or school records, and without Social Security cards and birth certificates. This information was required to enroll the children in school. One child had medical problems, and all of the children had numerous dental problems. The children who had untreated problems and who could not be enrolled in school began to display inappropriate behaviors. After several months, the aunt became frustrated because she had

²⁰ Refer also to Custody of Quincy, 29 Mass. App. Ct. 981, 562 N.E.2d 94 (Mass. App. Ct. 1990) which describes placement of a child with a father in violation of the ICPC. After the child began acting out, the child was without services from the sending state. The receiving state would not offer services unless the child was brought into care in the receiving state. The court noted that sending state would have been

no financial support or assistance with services. She felt she could no longer care for the children and sent the children back to the mother. At this point, both the court and the agency had closed their cases and did not know the children had been returned to the mother. Unfortunately, the aunt did not know that the children had been removed from the mother because of sexual and physical abuse by the mother's boyfriend who was still in and out of her home.

In another example, however, with similar dynamics, a very different outcome was achieved:

A caseworker recommended to a court, and the court approved, a plan to place a sibling group with a relative in another state. Parental rights had been terminated because of the parents' extensive criminal histories, severe domestic violence, and physical and sexual abuse of the children by both parents. The sending state followed ICPC procedures and the receiving state completed a home study. After the children were placed with the relative pursuant to the ICPC, the public human services agency in the receiving state provided supportive services to the relative, the sending state provided financial support, and initially the placement went smoothly. However, when the children outgrew their "honeymoon" period, they began to exhibit behavior problems that were consistent with the trauma they had experienced with their parents. The caseworker from the receiving state worked with the relative to obtain appropriate services to address these needs and made sure the relative received the supportive services required to make the placement a success. After many months, the children's behavior began to improve, and the relative felt confident that she could succeed in providing a permanent home for the children. Appropriate adoption subsidies were arranged, and with the support of both the sending and receiving states, an adoption was finalized.

B. How Judges Can Help Make the ICPC Work for Children

The judicial role in cases involving the ICPC, as in all cases, is to:

- follow the law and protect the rights of all parties;
- make sure that children and the community are safe;
- make sure that each child has a safe, permanent, and nurturing home; and

required to provide services if authorities had complied with the ICPC. From *Court Cases of the ICPC: Briefs & Legal Analysis*, page I-18, APHSA, 2000.

- identify barriers that impede timely permanency through frequent case review and make appropriate orders that will surmount the barriers.

In 1999, the Board of Trustees of the NCJFCJ approved 11 *Key Principles for Permanency Planning for Children*.²¹ The following excerpts from these Key Principles are particularly pertinent to judges in helping to make the ICPC work for children:

- **Judicial Leadership** – Judges must ensure that the courts they administer provide efficient and timely justice for children and their families. Judges must convene and engage the community in meaningful partnerships to promote the safety and permanency of children.
- **Judicial Oversight of Children and Families** – Judges must exercise their authority to order state/local agencies to provide reasonable and necessary services to children and families under court jurisdiction to ensure safe, permanent outcomes for children and a fair opportunity for parents to become competent and safe caretakers.
- **Collaboration** – The juvenile court must encourage and promote collaboration and mutual respect among all participants in the child welfare system. The court should regularly convene representatives from all participants in the child welfare system to improve the operations of the system. Judges should encourage cross training among all members of the child-serving system.

The topic of collaboration is covered in more detail in Chapter III.

C. The Value of Team Training

As previously discussed, the Office of Inspector General of the U.S. Department of Health and Human Services found that one of the main weaknesses regarding the Compact's implementation was lack of knowledge about the Compact among judges, attorneys, and

²¹ The *Key Principles for Permanency Planning for Children* can be found in Appendix D.

caseworkers. Consequently, one of the purposes of this *Manual and Instructional Guide* is to provide information that will assist judges and court staff to teach others within the juvenile and family court system about the Compact.²²

When a process must have the cooperation of individuals in many different roles to work effectively, team training is the best method of training. Ideally, training on the ICPC would involve *both as participants and trainers*, representatives from the juvenile court, including judges, probation officers, other appropriate court staff, the local public human services agency, the state ICPC Office, prosecutors, public defenders, guardians *ad litem*s, and court appointed special advocates (CASAs).

Team training accomplishes several goals that cannot be accomplished when only one segment of professionals in the child-serving system is involved. Team training:

- provides the opportunity for participants to understand the roles, limitations, needs, and challenges from the viewpoints of all of the professionals in the system;
- creates an atmosphere of cooperation and encourages all involved to put aside blaming and turf issues and instead focus on how the best possible system for the children we serve can be created;
- brings together different perspectives, experience, and knowledge that can be used to design a better process, demonstrating that the combined knowledge and expertise of the group is greater than that of any one individual or system segment; and
- provides the opportunity to build effective working relationships with other professionals in the system in order to best serve children in need.

When a judge determines that a child's case is not proceeding in a timely manner through the ICPC process, one of the most effective ways to surmount this barrier is to draw on relationships that the judge has previously established through collaboration and team

²² This material is covered in Chapter III.

training with the public child-serving system and with judges of other jurisdictions. Relying on relationships formed during team training, when an ICPC case is being delayed at either the local level or state level of the sending or receiving state, the judge can often effectively get the case moving by contacting a person in the public human services system or judiciary. The combination of knowledge of how the ICPC is supposed to work, plus the relationship with the professionals at the various steps of the Compact, or a relationship with a judge in the receiving state, can bring the appropriate attention necessary to resolve the bottleneck.

To ensure timely permanency in ICPC cases, judges must work with the public human services agency to:

- use team training to ensure all parties involved in the system understand the ICPC and their role in its effective implementation;
- improve inter- and intrastate relationships between the judiciary, public human services agencies, and Compact Administrators; and
- exercise their authority in individual cases to order timely and appropriate action on the part of the child-serving system when necessary to ensure the child's best interests.

Team training is discussed in more depth in Chapter III.

D. Comments on *Ex Parte* Communication

Some judges express concern that it may not be appropriate to participate in team training or to intervene in individual cases by contacting agency personnel or other judges. Most often the concern is over engaging in *ex parte* communication. Although there are clearly circumstances under which *ex parte* communication is totally inappropriate, and judges must be diligent regarding protection of the rights of all parties in a case, there are times when *ex parte* communication is appropriate.

The NCJFCJ teaches the following information in the course *Judicial Ethics & Responsibilities for Juvenile and Family Court Judges*²³ as part of the curriculum of the NCJFCJ Judicial College in Reno, Nevada:

- *Ex Parte* information is defined as both public and private information or communication that a judge receives when one or both parties are not present.
- According to ABA Canon 3B(7), a judge shall not initiate, permit, or consider *ex parte* communications made to the judge outside of the presence of the parties, *except that:*

Where circumstances require, *ex parte* communications for scheduling, administrative purposes, or emergencies that do not deal with the merits are authorized, provided the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the *ex parte* communication, and the judge makes provision promptly to notify all other parties of the substance of the *ex parte* communication and allows an opportunity to respond.

A judge may consult with other judges or with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities.

A judge may initiate or consider *ex parte* communications when expressly authorized to do so.

Consequently, when a judge makes an *ex parte* contact with an agency in a sending or receiving state or a juvenile judge in the receiving state regarding a stalled ICPC case, *and* when the investigation of the out-of-state placement is part of a court-approved plan of which all parties are knowledgeable, *and* when the judge makes both the plan to make the

²³ Thomas E. Hornsby, Circuit Court Judge, (Ret.), Associate Professor of Law, Florida Coastal School of Law, © 2000. All rights reserved.

contact and the results from the contact available to all parties, the *ex parte* communication *does not appear* to violate ABA Canon 3B(7). Judges should, however, consider having all parties and their attorneys present during any communications with agency personnel or judges in the sending or receiving state. If possible, the contact communication should be made by speaker telephone in the presence of the parties and their respective counsel. Likewise, in team trainings, when judges insist that no discussions will occur regarding pending cases, and any case examples used in training protect the confidentiality of the parties and are not cases impending, pending before, or likely to be heard by the judge, the restriction against *ex parte* communications in ABA Canon 3B(7) and the requirement of impartiality in ABA Canon 2A *do not appear to be violated*.

However, judges should examine their jurisdictions to determine if, and to what extent, their respective codes of judicial conduct deviate from or are inconsistent with the ABA Model Code of Judicial Conduct. Judges should also examine their respective Judicial Ethics Advisory Committee Opinions, if available, and any court decisions interpreting state judicial conduct codes as to the propriety of judicial and non-judicial conduct before engaging in *ex parte* communications.

Judges should be aware that judicial advisory ethical opinions are advisory in nature only and do not bind judicial disciplinary agencies or courts in any proceeding before that body. An opinion of the respective committee may, however, be considered as evidence of a good faith effort to comply with the Code of Judicial Conduct in Florida, for example. Also in Florida, to be considered as authority for the conduct, or evidence of good faith, the underlying facts must be identical to those considered in an opinion issued to another party. See Petition of the Committee on Standards Examples of Conduct for Judges, 327 So.2d 5 (Fla. 1976).

To clarify expectations of juvenile judges in the area of community involvement and collaboration, and to make clear that such interaction was not in violation of judicial ethics, the California Judicial Council adopted Rule 24 in 1992 that states that juvenile court judges are encouraged to:

- (1) provide active leadership within the community in determining the needs and obtaining and developing resources and services for at-risk children and families (At-risk children include delinquent, dependent, and status offenders);
- (2) investigate and determine the availability of specific prevention, intervention, and treatment services in the community for at-risk children and their families;
- (3) exercise their authority by statute or rule to review, order and enforce the delivery of specific services and treatment for children at risk and their families;
- (4) exercise a leadership role in the development and maintenance of permanent programs of interagency cooperation and coordination among the court and the various public agencies that serve at-risk children and their families;
- (5) maintain close liaison with school authorities and encourage coordination of policies and programs;
- (6) educate the community and its institutions through every available means, including the media, concerning the role of the juvenile court in meeting the complex needs of at-risk children and their families;
- (7) evaluate the criteria established by child protection agencies for initial removal and reunification decisions and communicate the court's expectations of what constitutes "reasonable efforts" to prevent removal or hasten return of the child;
- (8) encourage the development of community services and resources to assist homeless, truant, runaway, and incorrigible children;
- (9) be familiar with all detention facilities, placements, and institutions used by the court; and

(10) act in all instances consistently with the public safety and welfare.²⁴

VIII. CURRENT JUDICIAL PERCEPTIONS OF THE ICPC

To better understand the perceptions and training needs of juvenile and family court judges regarding the ICPC, a survey was distributed to members of the National Council of Juvenile and Family Court Judges in December 2000 in conjunction with the preparation of this *Manual and Instructional Guide*. A copy of the survey is included in Appendix E. The complete results of this survey will be available in a *Technical Assistance Bulletin* from NCJFCJ.

Over 200 judges completed surveys representing 45 different states. Non-participating states were Delaware, Kentucky, Minnesota, Vermont, and Wyoming. States with the highest rate of participation were Georgia (7% of responses), Indiana (7% of responses), Louisiana (8% of responses), and Ohio (12% of responses). Other demographic information regarding survey respondents includes:

- respondents were generally from smaller jurisdictions—47% were from jurisdictions with a population of less than 100,000, and 72% were from jurisdictions with a population of less than 300,000;
- 100% of respondents handled abuse and neglect cases, 99% handled delinquency cases, 90% handled domestic relations cases; and
- only 13% of respondents indicated an increase in interstate adoptive placements in the last year.

A. Knowledge of the ICPC

Judges and judicial officers responding to this survey concurred with the findings of the 1999 Office of Inspector General of the U.S. Department of Health and Human Services

²⁴ Standards of Judicial Administration recommended by the Judicial Council, Rule 24, Juvenile Matters, West (1991).

regarding lack of knowledge about the Compact among judges, attorneys, and caseworkers. Using a scale of 0 to 10, with 0 meaning “no knowledge” and 10 meaning “a great deal of knowledge,” respondents reported:

- agency attorneys had the most knowledge but rated their knowledge only slightly above 5;
- agency social workers’ knowledge was rated slightly below 5;
- judges/judicial officers rated their knowledge at approximately 4.5;
- knowledge of child attorneys, probation officers, and guardians *ad litem* was rated just below 4; and
- prosecuting attorneys and CASAs’ knowledge was rated the lowest, at just above 3.0.

Across all of these professionals involved in the juvenile and family court system, approximately one-third were believed by judges to have *little to no knowledge* of the ICPC, approximately one-third were believed to have *some knowledge* of the ICPC, and approximately one-third were believed *to be knowledgeable* regarding the ICPC.

B. Timeliness

When respondents rated timeliness of implementing ICPC procedures by their local human services agency, their state human services agency, and the receiving state human services agency, the ratings were as follows:

	Very Timely	Somewhat Timely	Not at all Timely
Local Agency	25%	37%	18%
Sending State Agency	12%	36%	28%
Receiving State Agency	3%	22%	52%

Regarding Regulation 7, 60% of judges reported they had *never used Regulation 7*. Only 55 respondents indicated they *had used Regulation 7*. Of the judges who had used Regulation 7, over 50% indicated the expedited time frames were rarely met and an equal number indicated problems with Regulation 7. The most commonly reported problems included:

- time frames;
- lack of proper documentation and supporting documents;
- difficulties in communication and coordination between states;
- issues of court orders and court jurisdiction; and
- issues of training and knowledge.

Chapter II examines a number of best practices that can help reduce time delays, including form court orders, paying for home studies under certain circumstances, and border state agreements. Respondents to the survey indicated that:

- Of those judges who had used Regulation 7, almost 60% used Regulation 7 standard form court orders.
- Only 9 judges indicated their state would pay for a home study if the receiving state did not have the resources to complete the home study within required time frames.

- Only 17 judges were from jurisdictions with a border state agreement. On a scale from 0 to 10, with 0 representing “never works well” and 10 representing “always works well,” the mean rating for effectiveness of border state agreements was 5.5. The states with the most effective ratings for border state agreements were Arkansas/Missouri and North Carolina/South Carolina.

C. Training Needs

The survey asked judges whether they had attended training on the ICPC in the last five years; if they attended the training, if it was helpful; and whether they would attend ICPC training if it were offered. Responses were:

- 79% had not attended ICPC training in the last five years.
- Of those that had attended training, 83% said it was helpful.
- 81% indicated that if ICPC training were offered, they would attend.

In summary, the judicial survey on the ICPC revealed important information for juvenile and family court judges as they plan strategies to improve implementation of the Compact. First, the survey results support the need for training on the ICPC for *all segments* of professionals in the child-serving system. Second, survey results indicate the need for the child-serving system to improve implementation of the ICPC in order to provide timely interstate placements for children. Finally, survey results indicate a willingness on the part of judges to participate in training regarding the ICPC.

CHAPTER I: ICPC PROCEDURES

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VI. ADDITIONAL INFORMATION ON ICPC PROCEDURES

CHAPTER I: ICPC PROCEDURES¹

The Introduction explained that lack of knowledge about the ICPC prevents children from receiving the services and protections of the Compact. This lack of knowledge also leads to placements that are in violation of Compact law. This chapter discusses the procedures that must be followed to be in compliance with Compact law, specifically:

- when the Compact does and does not apply;
- when courts must retain jurisdiction in ICPC Cases;
- the time frames of the ICPC; and
- the Articles and Regulations of the ICPC.

I. WHEN THE COMPACT DOES AND DOES NOT APPLY TO A CASE

In order to make the proper distinction between when the Compact does and does not apply to a child moving between states, it is important to understand and analyze the following three questions:

- 1) Who must use the Compact?
- 2) What types of cases are subject to the ICPC?

¹ Substantial portions of this chapter are excerpted from the *APHSAs Training Manual for Administrators & Liaisons of the Interstate Compact on the Placement of Children*, AAICPC, 2000 and the *Guide to the Interstate Compact on the Placement of Children*, American Public Human Services Association, 2000 Revision.

3) What cases are not subject to the ICPC?

This section looks at each of these questions and presents clarifying examples and additional information pertinent to these questions.

A. Who Must Use the Compact

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

- a state party to the Compact or any officer or employee of a party state;
- a subdivision, such as a county or a city, or any officer or employee of the subdivision;
- a court of a party state;²
- any person (including parents and relatives in some instances),³ corporation, association, or charitable agency of a party state.

It is not necessary for a sending agency to have *custody* of a child for the child’s proposed placement to be subject to the Compact. Article II(d) defines “placement” as being “the arrangement for the *care* of a child” and Article III(b)(4) requires the sending agency to “furnish to the appropriate public authorities in the receiving state...a full statement of the reasons for such proposed action and evidence of the *authority* pursuant to which the placement is proposed to be made.” Consequently, a court must ensure that interstate placement of a child who is under the court’s jurisdiction for any reason (i.e., abuse, neglect, delinquency, or other status offenses) follows ICPC requirements, even if custody has not been removed from the parent(s).

² *In re Paula G.*, 672 A.2d 872, (R.I. 1996). Issue became moot because child had already been returned to the sending state, but court reminded lower court of “its responsibility to observe and fulfill the purpose and the policy of ICPC by ensuring that its procedural provisions are effectively adhered to in the future.” From *Court Cases of the Interstate Compact on the Placement of Children: Briefs & Legal Analysis*, page I-10, APHSA, 2000. To order, see Appendix B.

B. Types of Cases that Are Subject to the ICPC

The following case circumstances are subject to the ICPC:

- Birth parent unification or reunification in another state whenever a court has jurisdiction over a child who is being placed.⁴
- Kinship care by a relative(s) in another state whenever a court has jurisdiction over a child who is being placed.⁵
- Foster family care in another state when the placement duration is more than 30 days.
- Foster group home care in another state when the placement duration is more than 30 days.
- Placement in a residential treatment facility in another state by a parent, agency, or court.⁶ Article VI of the Compact states that a child adjudicated *delinquent* may be placed in an institution in another party jurisdiction pursuant to the Compact, but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard prior to being sent to the other party jurisdiction for institutional care *and* the court finds that: 1) equivalent facilities for the child are not available in the sending agency's jurisdiction; and 2) institutional

³ See Chapter I, Section I C and D for detail regarding in which instances parents and relatives are and are not required to use the Compact.

⁴ *State ex. rel. Juvenile Dept. of Clackamas County v. Smith*, 107 Or. App. 129, 811 P.2d 145 (Or. App. 1991). The court noted that the ICPC does apply to a child who is sent to another state for placement with parents or relatives when someone other than a parent or designated relative makes the placement. From *Court Cases of the Interstate Compact on the Placement of Children: Briefs & Legal Analysis*, page I-18, APHSA, 2000. To order, see Appendix B.

⁵ *Ibid.*

⁶ *Cornhusker Children's Home, Inc. v. Department of Social Services of State of Neb.*, 229 Neb. 837, 429 N.W.2d 349 (Neb. 1988). Court interpreted statutory language of ICPC to include parent in the definition of sending agency. Because parents were sending agencies under the Compact, the court ordered that all children placed in the Children's Home by their parents be processed through the ICPC. From *Court Cases of the Interstate Compact on the Placement of Children: Briefs & Legal Analysis*, page I-22, APHSA, 2000. To order, see Appendix B.

care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

- Placement preliminary to domestic adoption between states (within the United States or its territories) by a public agency, private licensed child-placing agency, or by an independent/private attorney, parent, or intermediary.
- International adoption when: 1) a child is adopted abroad by a single adoptive parent or by both adoptive parents *and* the Immigration and Naturalization Service (INS) has issued an IR-4 visa for the child; 2) a child is adopted abroad by “proxy”; or 3) a child is adopted within the United States.

It is important to emphasize that *private placements must comply* with the ICPC. Although the majority of private placements do not come before courts, it is important for judges to know that the law in these cases requires ICPC compliance.

C. Types of Cases That Are not Subject to the ICPC

Under certain circumstances, the placement of a child across state lines is *not* subject to compliance with the ICPC. These circumstances are:

- Birth parent to birth parent placements, when no court has assumed jurisdiction of the child to be placed.
- Birth parent to relative⁷ placements, when no court has assumed jurisdiction of the child to be placed.
- Relative⁸ to birth parent, when no court has assumed jurisdiction of the child to be placed.

⁷ Article VIII of the Compact states that the Compact shall not apply to: (a) 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 guardians; and (b) any placement, sending or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law.

⁸ *Ibid.*

- Relative⁹ to relative,¹⁰ when no court has assumed jurisdiction of the child to be placed.
- A child who is admitted to any hospital or other medical facility; to any institution that cares for the mentally ill, mentally defective, or epileptic; or to a school.
- Divorce, custody investigations involving home studies.
- International adoption when Immigration and Naturalization Service (INS) has issued an IR-3 visa for the child being adopted in the child's country of origin.
- Requests received through International Social Services (ISS) or any of its branch offices for home studies or social services.
- Tribal placements (See Appendix H, The Indian Child Welfare Act).
- Visits¹¹
- Placement of a child into or out of Canada, Puerto Rico,¹² Guam, or American Samoa.

It is important to emphasize that only those relative placements specifically enumerated—parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt are exempt. Other relatives (e.g., cousins, great grandparents, etc.) are not exempt. Further, the exempt parties must be on both sides of the placement transaction—an individual of the exempt class must be the sending party as well as the placement recipient.

⁹ Ibid.

¹⁰ Ibid.

¹¹ See Section I.D.3. for the definition of a visit.

¹² It should be noted that as of the writing of this manual, Puerto Rico is in the process of becoming a member of the ICPC. At the point that it becomes a Compact member, Compact law would cover placement into or out of Puerto Rico.

D. Regulations, Secretariat Opinions, and Case Examples that Help Clarify when the ICPC Does and Does not Apply

1. Placements with parents and “family free” homes¹³

Two unsuccessful arguments have been proposed which claim that the ICPC does not apply to interstate placements with parents because: 1) parents are excluded in Article VIII of the Compact; and 2) the Compact covers placements in institutions, placements preliminary to adoption, and placements in foster care, and a placement with a parent is none of these.

These arguments fail for the following reasons. When a parent has custody of a child in the normal way (status conferred by childbirth or adoption), the condition is not that of a placement, nor is it one of foster care. However, when a court takes jurisdiction and determines who is to receive a child, who retains the authority to continue the child with that custodian or to remove the child, and when the court may prescribe supervision or other conditions, the child’s living status is that of a *placement*. In such circumstances, the parent’s situation is not custody or possession as a matter of parental right, but rather it is the same as the position of a foster parent. In both instances they are caregivers only because of the authority conferred to them by the state acting through the court. When a child is with a caregiver under these circumstances, the child is in foster care.

Another unsuccessful argument is that parental care cannot be foster care because it is assumed that foster care means foster care payments made by the state to persons who are recruited to serve as foster parents. But not all persons who care for children receive compensation. Article II(d) of the Compact includes “family free homes” in the definition of “placement.” Regulation 3, as amended in May 2001 defines “family free or boarding home” as:

¹³ Excerpted in part from Definition of “Family Free or Boarding Home”, AAICPC Secretariat Position Paper, November 1996.

...the home of a relative or unrelated individual whether or not the placement recipient receives compensation for care or maintenance of the child, foster care payments, or any other payments or reimbursements on account of the child's being in the home of the placement recipient.¹⁴

ICPC applicability is not conditional on whether or not the home receives payment for the care of the child.

Consequently, the ICPC applies to interstate placements with parents if a child is under the jurisdiction of the juvenile or family court, the court has assumed responsibility to determine where the child will reside, and until such time as the interrupted parent-child relationship is restored and the state's intervention is ended.¹⁵

It should be noted that a family with a child under protective supervision that relocates to another state may not be required to comply with the ICPC. These cases involve families for which a court has ordered services but has left legal and physical custody of the child with his or her parents. If the court chooses not to assume jurisdiction in the case and the family relocates to a new state, there is no enforceable mechanism to require the family to continue with services in the new state. State authorities may notify their colleagues of these cases through a child protective services alert system or protocol.

2. Exempt and non-exempt relatives¹⁶

If neither parent is able or willing to care for their children, they may choose to place the children with other close relatives who may volunteer to care for them, for example, a grandparent, uncle, or aunt. Depending on the circumstances, such an

¹⁴ See Section V. D. in this chapter.

¹⁵ *Adoption of Warren*, 44 Mass. App. Ct 620, 693 N.E.2d 1021 (Mass. App. Ct. 1998). Court found that placement with a natural father was not exempted from Compact coverage because the sending agency would have been the public child welfare agency. From *Court Cases of the Interstate Compact on the Placement of Children: Briefs & Legal Analysis*, page 1-6, APHSA, 2000. To order, see Appendix B.

¹⁶ This question is discussed in ICPC Secretariat Opinion 45, which was issued May 25, 1982.

arrangement with out-of-state relatives may or may not fall under the ICPC. Two issues must be considered in determining ICPC applicability.

First, Article VIII of the Compact exempts placements made by certain close relatives of a child with other enumerated close relatives. The policy underlying this Article is that the care of children is basically a family matter, and that state intervention should occur only when parental rights have been duly limited or terminated, or when those to be involved in the care and custody of the child are outside the close circle of family members.

The second issue comes under consideration in determining ICPC applicability when a court is requested to grant custody of a child to a relative who will care for the child, in order to allow the relative certain rights necessary to provide for the expeditious and convenient care of the child. The court is specifically recognized and identified in the ICPC Article II definition of a “sending agency” when the court performs actions that constitute the making of a *placement*.

So the key question becomes whether a *court* or a *relative* is making a placement when the court grants custody to the relative. If a *court* is making the placement, then the Compact applies. If it is a *parent or close relative*, then the Compact does not apply.¹⁷

The Secretariat previously determined that even though a court is involved when it grants a relative legal custody, such actions do not involve the Compact. The reason is that a parent or close relative making the decision to assign a close relative the primary care of and responsibility for the child does not constitute a placement. Unless one of the parents is found to be unfit and deprived of parental rights, the court’s granting of custody to another party may not itself abrogate the right of either parent to perform the functions of a father or mother with respect to their children. In most instances, the court is merely faced with the practical necessity of deciding if the relatives will be able to raise the children, and if so, whether legal

¹⁷ Matter of Tsapora Z., 195 A.D.2d 348, 600 N.Y.S.2d 224 (N.Y.A.D. 1 Dept, 1993). Court could not grant direct and final custody of child to out-of-state relative without ICPC compliance. From *Court Cases*

custody should be granted to those relatives.¹⁸ Regulation 3 was amended in May 2001 to clarify that:

*The Compact does not apply whenever a court transfers the child to a non-custodial parent with respect to whom the court does not have evidence before it that such parent is unfit, does not seek such evidence, and does not retain jurisdiction over the child after the court transfers the child.*¹⁹

The specific example from Secretariat Opinion #45 is as follows:

Upon a divorce, it was agreed that the paternal grandmother would take the child. This arrangement was desired and made by the parties and not by the court. The court merely allowed it to occur in order to solve a family problem incident to the divorce. This action, even if it may be described as “ratification” of the arrangement by the court did not make the court a sending agency under the Compact.

Some time later, the grandmother became unable to care for the child. The child’s maternal uncle and aunt volunteered to care for him. The matter was negotiated between the grandmother and the uncle and aunt. Upon hearing the request that legal custody be given to the maternal uncle and aunt, the court requested a home study of the maternal uncle and aunt. Presumably, if the study were favorable, the court would approve the arrangement for transfer of custody worked out by the family members involved. This degree of court involvement does not make the court the placer of the child. Since the actual parties to the transaction were all exempt relatives under Article VIII, the Compact did not apply.

Again, it is important to note that only those relative placements specifically enumerated—parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt—are exempt. Other relatives (e.g., cousins, great grandparents, etc.) are not exempt. Further, the exempt parties must be on *both sides* of the placement

of the Interstate Compact on the Placement of Children: Briefs & Legal Analysis, page I-15, APHSA, 2000.

¹⁸ It should be noted, however, that interstate placement of a child with *any other person* who is not a close relative *does* constitute a placement within the meaning of the Compact.

¹⁹ See Section V. D. in this chapter.

transaction—an individual of the exempt class must be the sending agency as well as the placement recipient.

3. Differences between placement of a child and allowing a child to visit in another state

ICPC Regulation 9²⁰ defines a visit, which does not require ICPC approval, as follows:²¹

- A visit is not a placement within the meaning of the Interstate Compact on the Placement of Children (ICPC). Visits and placements are distinguished on the basis of purpose, duration, and the intention of the person or agency with responsibility for planning for the child as to the child's place of abode.
- The purpose of a visit is to provide the child with a social or cultural experience of short duration, such as a stay in a camp or with a friend or relative who has not assumed legal responsibility for providing child care services.
- It is understood that a visit for 24 hours or longer will necessarily involve the provision of some services in the nature of child care by the person or persons with whom the child is staying. The provision of these services will not, of itself, alter the character of the stay as a visit.
- If the child's stay is intended to be for no longer than 30 days and if the purpose is as described in Paragraph 2, it will be presumed that the circumstances constitute a visit rather than a placement.
- A stay or proposed stay of longer than 30 days is a placement or proposed placement, except that a stay of longer duration may be considered a visit if it

²⁰ This regulation as first adopted by resolution of the AAICPC April 26, 1983, was readopted pursuant to Article VII of the ICPC by action of the AAICPC at its annual meeting of April 1999.

²¹ *In re Luke L.*, 44 Cal. App.4th 670, 52 Cal. Rptr.2d 53 (Cal. App. 3 Dist. 1996). ICPC applies to placements out-of-state, but not visits. A visit is temporary in nature with a definite end. From *Court Cases of the Interstate Compact on the Placement of Children: Briefs & Legal Analysis*, page I-10, APHSA 2000.

begins and ends within the period of a child's vacation from school as ascertained from the academic calendar of the school. A visit may not be extended or renewed in a manner that causes or will cause it to exceed 30 days or the school vacation period, as the case may be. If a stay does not from the outset have an express terminal date, or if its duration is not clear from the circumstances, it shall be considered a placement or proposed placement and not a visit.

- A request for a home study or supervision made by the person or agency that sends or proposes to send a child on a visit will conclusively establish that the intent of the stay or proposed stay is not a visit.

4. Determining if the placement is a “residential” placement

ICPC Regulation 4²² speaks to the issue of what is a residential placement and what is not. Residential placements are subject to the ICPC; however, Article II(d) exempts certain classes of institutions from the ICPC. In determining whether the sending or bringing of a child to another state is exempt from the provisions of the ICPC by reason of the exemption for various classes of institutions in Article II(d), the following concepts and terms are defined:

- a. “Primarily educational institution” means an institution that operates one or more programs offered in satisfaction of compulsory school attendance laws, in which the primary purpose of accepting children is to meet their educational needs; and which does *not do one or more* of the following:
 - accept responsibility for children during the entire year;

²² Regulation 4 was made effective by the AAICPC April 20, 1982, readopted pursuant to Article VII of the ICPC by action of the AAICPC at its annual meeting in April 1999, and revised at its annual meeting in May 2001.

- provide or hold itself out as providing child care constituting nurture sufficient to substitute for parental supervision, control, or foster care; nor
 - provide any other services to children, except for those customarily regarded as extracurricular or cocurricular school activities, pupil support services, and those services necessary to make it possible for the children to be maintained on a residential basis in the aforementioned school program or programs.
- b. “Hospital or other medical facility” means an institution for the acutely ill, which discharges its patients when they are no longer acutely ill, which does not provide or hold itself out as providing child care in substitution for parental care or foster care, and in which a child is placed for the primary purpose of treating an acute medical problem.
- c. “Institution for mentally ill or mentally defective minors” means a facility that is responsible for treatment of acute conditions, both psychiatric and medical, as well as such custodial care as is necessary for the treatment of such acute conditions of minors who are either voluntarily committed or involuntarily committed to reside in it by a court of competent jurisdiction. “Developmentally disabled” has the same meaning as the phrase “mentally defective.”
- d. Treatment for a chronic mental or behavioral condition, as described in this Regulation, that is 24-hour care away from the child’s parental home is foster care as such term is used in Article III of ICPC.

Because of confusion regarding what is and is not a residential placement and when the ICPC does and does not apply to a placement, the following definitions and clarifications were made to Regulation 4 at the AAICPC annual meeting in May 2001, and became effective July 2, 2001.

- Admission for treatment of an acute condition includes the treatment and care of minors who are mentally ill or developmentally disabled and who require stabilization of such condition for short-term treatment. Such short term treatment is exempt from the ICPC.
- Placement for treatment of a chronic condition includes the treatment and care of minors who may be mentally ill, emotionally ill, or developmentally disabled and require treatment beyond what was required for stabilization of the underlying acute condition. Treatment modalities for chronic conditions may include psychotherapy and psychopharmacology.
- Any placement of a minor for treatment of that minor's chronic mental or behavioral condition into a facility having treatment programs for acute and chronic conditions must be made pursuant to the ICPC. The ICPC becomes applicable once the minor is placed for treatment of a chronic condition regardless of whether that child was originally placed in the same facility for treatment of an acute condition.
- A minor may be accepted into a residential treatment center without first having been in that facility for the treatment of an acute condition. An interstate placement of a minor into such a facility must be made pursuant to the ICPC.
- An institution for the mentally ill or developmentally disabled may accept a child for treatment and care without complying with the ICPC, if the treatment and care and other services are entirely out-patient in character.
- The type of funding source or sources used to defray the costs of treatment or other services does not determine whether the ICPC applies. Such determination is made on a case-by-case basis.

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

5. ICPC and the Indian Child Welfare Act ²³

Congress enacted the Indian Child Welfare Act of 1978 (ICWA) in response to requests from Indian tribes for assistance in regaining control over Indian children who were being removed from their homes for foster, adoptive or institutional placements by public and private child welfare agencies. At the time that Congress passed this statute, evidence demonstrated that state child welfare practices had resulted in the separation of an alarmingly high percentage of Indian families by often unwarranted removals of Indian children from their homes, communities, and cultures. Statistics showed that between 25% and 35% of all Indian children were being removed from their families for permanent placement elsewhere. In Minnesota, for example, one in every eight Indian children under 18 years of age was living in an adoptive home, and one in every four Indian children under one year of age was adopted. The staggering removal rates for Indian children were as high as *19 times* that of all other non-Indian children.²⁴

The ICWA applies to any child, including Alaska Natives, who is either a member of a federally recognized Indian tribe, or eligible for membership and the biological child of a member of a tribe. It imposes procedural safeguards and substantive standards on state child welfare proceedings, establishing a best interest standard for Indian children which recognizes that maintaining cultural continuity between the child and his or her tribal community is of critical importance to the essential, long-term well-being of the child.

²³ This section was written by Donna J. Goldsmith, Special Assistant Attorney General, Office of the Attorney General, Juneau, Alaska.

The Act requires, among other things: state recognition of a child's determination of membership by a tribe; full tribal participation in planning and decision-making in the child protection case; placement priorities that identify extended family members, other tribal members, or other Indian families as the preferred placements for a child who must be placed out of home; and, when requested, transfer of the child protection case to the child's tribal court unless there is good cause not to do so, opposition by the child's parent, or the tribal court declines to accept transfer. The ICWA also guarantees the child's tribe full party status in state child protection proceedings if requested by the tribe.

Federal law clearly establishes that because federally recognized Indian tribes exercise powers of self-government over their members and their territory, states lack jurisdictional authority over child welfare matters arising within most Indian reservations. It is well established that federal law enacted for the benefit of Indian people preempts any state law that conflicts with that federal law.

Consequently, the Compact *does not apply* to interstate placements of an Indian child *if the placement is being made within an Indian reservation* unless:

- the tribal government requests ICPC services;
- the tribe has adopted the ICPC or incorporated its provisions into its own laws;
or
- the tribe has an existing Title IV-E agreement with the state requiring ICPC compliance.

If an Indian child (as that term is defined in the ICWA) is being placed interstate but *not within a reservation*, the ICPC applies to that placement. However, the placement requirements of the ICWA preempt any ICPC requirements that interfere with, or impede, the implementation of the placement required by the ICWA. Thus, if a state

²⁴ See Legislative History to ICWA, H.R. Rep. No. 1386, 95th Cong., 2d Sess. (1978), *reprinted in* 1978

agency seeks to place an Indian child in a relative or other priority foster, pre-adoptive or adoptive placement pursuant to the *preference requirements* of the ICWA, any procedural or substantive requirements of the ICPC that conflict or interfere with effectuation of that placement *are preempted* by the requirements of the ICWA. Refer to Appendix H for additional information on the ICWA.

In summary, whether the ICPC applies to a case depends on several factors. A tribe may exercise jurisdiction over a case involving an Indian child (the tribe may have exclusive jurisdiction over the case, or may seek transfer of jurisdiction from the state court), in which case the ICPC does not apply unless the tribe has entered an agreement with the state that requires it to apply the ICPC or tribal law incorporates the provisions of the ICPC. Alternatively, a child's tribe may not exercise jurisdiction over the case and may instead intervene as a party to the state proceedings. In this case, the ICPC will apply to state proceedings unless implementation of any of the requirements of the ICPC conflict with the ICWA placement requirements. If ICPC implementation will interfere with placement of the Indian child pursuant to placement requirements of the ICWA, the ICWA preempts the ICPC.

6. Pregnant women giving birth in hospitals in other states and surrendering the infant for adoption by persons in the state where the birth occurred

Secretariat Opinion #49 concludes that the ICPC applies in the situation where a pregnant woman travels from her home to a hospital in another state, gives birth, surrenders the infant for adoption by a person in the state where the birth occurred, and then leaves the state, usually to return home. It appears that the reason the question continues to recur is that persons and agencies wishing to avoid compliance with the Compact look for ways to make this type of interstate placement without the need for compliance.

The purpose of the Compact is to assure that children are not placed from one state into another without receiving the protections of the Compact. It intends to see that

children are not placed interstate until the placement recipients have been evaluated to determine the suitability and safety of the placement, that there is provision for proper supervision during the continuance of placement, and that receiving states are not subjected to undue risks of later having to assume financial or other burdens because of interstate placements that are poor prospects for success. To make the applicability of ICPC depend solely on the logistics of transportation and physical transfer of the child, and to ignore the express definition of “placement” as an “arrangement for the care of a child” is not consistent with the purposes or the language of the Compact.

Refer to Appendix F: *Birthmothers and Secretariat Opinion #49* for the full text of the April 1997 memorandum on this topic and for the full text of Secretariat Opinion #49.

7. Inter-country placements

With international adoptions becoming more frequent, the question of the applicability of the ICPC to inter-country placements has been frequently raised and states continue to interpret the matter differently. Secretariat Opinion #67 issued in September 1996 consolidates several previous Opinions on this matter. In addition, an April 1997 memorandum, *Inter-country Placements: Legal Custody and Differences of Opinion as to ICPC Coverage*, provides additional information on the topic.

Some of the issues of importance on this matter include:

- whether possession of legal custody by a placer is a requirement for the ICPC to apply; and
- whether a placement involves a non-party jurisdiction to party jurisdiction, or involves a non-party jurisdiction to a party jurisdiction to another party jurisdiction.

Regarding the issue of whether possession of legal custody by a placer is required, two ICPC requirements are pertinent. First, the ICPC does not make the possession of legal custody by the placer a condition precedent to the making of placement. Secondly, however, it does require compliance with the applicable placement laws of the receiving state, as well as with the ICPC, as a requirement for a lawful placement. Consequently, if the receiving state requires legal custody for a lawful placement, then legal custody is required by the ICPC. Legal custody of minors who come into the United States for pre-adoptive placement is a confusing subject because “legal custody” does not necessarily mean the same thing under the laws and practices of a foreign country as it does under laws of U.S. jurisdictions.

Regarding the question of whether a placement involves a non-party jurisdiction to party jurisdiction, or whether it involves a non-party jurisdiction to a party jurisdiction to another party jurisdiction, the ICPC applies only to a placement that can be said to be from one party jurisdiction into another party jurisdiction. However, since the Compact is a multilateral statute and contract, it can apply to *activities* in one or more party jurisdictions. No foreign jurisdictions are parties to the ICPC. However, if the journey of a child is significantly interrupted between the foreign point of origin and the ultimate destination within a party state, and the interruption occurs in a party jurisdiction, then the placement is from a non-party jurisdiction to the party jurisdiction where the interruption is made to the receiving state and the ICPC applies. Also, when a person or placement agency located in one state places a foreign child into another state, the ICPC applies. Article III(a) of the Compact describes placements to which the Compact applies as those “into another party state.” The fact that some or all of the preplacement arrangements are often made between the person or inter-country adoption agency in one state and the placement recipient in another party state is significant in determining the applicability of ICPC because of the Article II(d) definition of the term “placement.”

Appendix G contains the full text of Secretariat Opinion #67 and the April Memorandum on this topic. These items should be reviewed in full to appreciate the complexities of these issues.

It should be noted that the Hague Convention on the Protection of Children and Cooperation in Respect of Inter-country Adoption was recently adopted by the United States.²⁵ Once the treaty is fully implemented, adoptions between countries that are both party to the Hague Convention on Inter-country Adoption will require specific procedures and reporting. Although the Hague treaty will not *directly* affect the ICPC, its requirements will impact the handling of international adoptions.

8. Residency of military personnel²⁶

Because of the transitory nature of military personnel, it may become confusing when the ICPC must be used. When individuals enter any branch of military service, they are required to identify their “home of record,” which may be any state in the nation, whether the individual lives or has ever lived in that state. Throughout a person’s military services, the “home of record” remains constant unless the individual elects to change it. Assignment to any military base, whether within or outside the United States, has no impact on the individual’s “home of record.”

However, to determine ICPC applicability, an individual’s actual location must be considered, not his or her official resident as established by the “home of record.” The ICPC requires that “no sending agency shall send, bring, or cause to be sent or brought into any other party state any child” for placement. The Compact makes no reference to an individual’s official residency. For example, a citizen of another country can be subject to the ICPC if he or she is located in Pennsylvania and places a child in Ohio. Similarly, military personnel with a home of record in Delaware can be subject to the ICPC if the individual is located in Pennsylvania and places a child in Ohio.

When military families choose to adopt or receive a child, the ICPC may also become involved if the child is being sent or brought from another state. In this scenario, a military family stationed in Hawaii that chooses to adopt a child from a

²⁵ Public Law 106-279, Inter-country Adoption Act of 2000, passed October 6, 2000.

²⁶ Information provided by the American Public Human Services Association, Washington, DC.

Kansas birth mother must comply with the ICPC because a child is being “sent or brought into any other party state . . . for placement.”

9. Determining whether to use the ICPC or the ICJ for out-of-state confinement of adjudicated delinquents

Some states (e.g., Minnesota, Arizona, and Colorado) have refused in the past to accept placements for the confinement of adjudicated delinquents through the ICPC, instead requiring that the placements be made under the Interstate Compact on Juveniles (ICJ). As a result of this dispute, a memorandum was issued by the Secretariat of the AAICPC in 1997. The full text of this memorandum appears in Appendix I.

To compare the ICPC and ICJ as they relate to the question of out-of-state confinement of adjudicated delinquents, it is necessary to know the intent of both Compacts and to analyze the relevant provisions of each. After doing so, the Secretariat of the AAICPC concluded:

- *Under Article VI of ICPC, adjudicated delinquents can be placed in private institutions. Conceivably, they could also be placed in public institutions, but this is not the present practice, nor to the best of our knowledge is it being considered.*
- *Article X of ICJ could be used to place adjudicated delinquents in public institutions, if appropriate steps were taken. The use of the ICJ for placements in private institutions might be possible, but it would be more difficult.*

A summary of the points leading to this conclusion follows:

- The ICJ was developed to address the confinement of adult prisoners out-of-state in state owned and operated facilities. It does not provide for the out-of-state confinement of delinquent juveniles but does authorize “supplementary agreements” for this purpose. In order to use the ICJ for the out-of-state confinement of a delinquent youth, a supplementary

agreement must be in place between the two states. Consent of the parent or guardian also is required in order to make an out-of-state placement through the ICJ.

- Article VI of the ICPC was designed to facilitate and directly authorize the out-of-state confinement of adjudicated delinquents in private institutions. No supplementary agreements are required. It does require a court hearing, at which the court must make a finding that equivalent facilities for the child are not available within the state, the placement into another state is in the best interests of the child, and the placement will not cause undue hardship. With such court findings, the placement can be made through the ICPC with or without the consent of the parent or guardian.

It is important to note that unless the procedures and requirements of the Compact chosen to make the placement are followed, the placement will not be lawful. It is vital that for placement of a delinquent who is still subject to the jurisdiction of the court under the delinquency matter, that the courts' authority be continued in force. If the juvenile is sent out of state improperly, this jurisdiction will be lost. As a result, the juvenile will no longer be subject to the compulsory jurisdiction of the state that made the adjudication and ordered the confinement and care. The receiving state will not have any compulsory jurisdiction. The juvenile's presence in the institution will be on nothing more than a voluntary basis.

10. Relationship between the ICPC, UCCJA, UCCJEA, and the PKPA²⁷

When an allegation is made that brings a matter before a juvenile or family court, the question of jurisdiction will *always precede* the question of whether the ICPC applies to a child custody case in the juvenile or family court. The Uniform Child Custody Jurisdiction Act (UCCJA), the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), and the Parental Kidnapping Prevention Act of 1980 (PKPA) must

be applied to determine whether or not the court and child welfare agency have ongoing jurisdiction over a child's custody, which is a precedent to having the authority to "send, bring, or cause a child to be brought or sent" to another party state. The Hague Child Abduction Convention may also be pertinent to inter-country custody disputes.

Although the immediate presence of a child within a court's jurisdiction may be satisfactory for the court to act on an *emergency* basis, if the question pertains to the child's custody, the court must establish that no other court has jurisdiction over the matter of the child's custody before determining it will maintain ongoing involvement in the matter. This section is intended to give a *brief* overview of the UCCJA, UCCJEA, and PKPA issues that may relate to effective implementation of the ICPC. A comparison of the ICPC, UCCJA, UCCEA, and PKPA is included as Appendix J.²⁸

The UCCJA, and subsequently the PKPA, were enacted to prevent jurisdictional gridlock in child custody and abduction cases and to facilitate interstate enforcement of custody and visitation decrees. The National Conference of Commissioners on Uniform State Laws drafted the UCCJEA in 1997 to make the UCCJA consistent with the PKPA. When a state enacts the UCCJEA, it replaces the UCCJA as state law.

There are four jurisdictional bases under the UCCJA: home state, significant connection, emergency, and no other state having jurisdiction. The jurisdictional analysis is made at the time the proceeding commences, which is the date of filing of a proceeding.

The PKPA generally requires states to enforce, without modifying, the custody and visitation orders of other states, authorizes federal assistance in locating abducted

²⁷ This section is excerpted to a significant degree from: Ann M. Haralambic, "Handling Child Custody, Abuse and Adoption Cases, *Family Law Series*," Clark Boardman Callaghan, publishers.

²⁸ For more information on jurisdiction, see Hoff, Volenik, Girdner, "Jurisdiction in Child Custody and Abduction Cases: A Judge's Guide to the UCCJA, PKPA and the Hague Child Abduction Convention," American Bar Association Center on Children and the Law, 1996.

children, and makes the Fugitive Felon Act applicable to abducting parents who cross state lines to avoid prosecution for felony custodial interference. It is similar in many ways to the UCCJA; however, there are some significant differences:

- The PKPA establishes priority for home state jurisdiction over the other three bases for jurisdiction.
- The PKPA provides that as long as the child, or at least one contestant, resides in that state and that state has jurisdiction under local law, that state's jurisdiction continues. Even though another state may have become the home state, the original state remains the only state with modification jurisdiction unless and until it declines to exercise that jurisdiction.
- The PKPA does not recognize modification authority based on emergency jurisdiction for permanent or temporary orders.

Only orders rendered consistently with the PKPA are entitled to full faith and credit. Because it is a federal act, insofar as its provisions conflict with state law, the state law will be preempted. So long as the rendering court acted in compliance with the PKPA, other courts must enforce its order without modifying it unless the rendering state declines jurisdiction.

An actual case example of ICPC and jurisdictional statutes being misapplied is as follows:

A court placed a neglected child with a grandmother in an adjoining state on a temporary basis while the mother worked on reunification. The child was in the temporary custody of the sending state's child welfare agency. All ICPC procedures were properly followed. The mother successfully remedied the circumstances that led to the child's neglect, and the court ordered the child returned to her care. The grandmother refused to return the child and petitioned the court in her jurisdiction for legal custody. She provided incomplete information, and the judge either was unfamiliar with or chose to ignore the ICPC and UCCJA. The judge took jurisdiction and granted legal custody to the grandmother.

Given these facts, the court that heard and acted on the grandmother's petition had no basis on which to establish jurisdiction.

Most interstate placements do not involve the UCCJA or PKPA because they do not involve custody disputes that would allow for proceedings to be instituted or contemplated in the courts of more than one state. When a custody dispute does arise, the UCCJA and PKPA may be relevant to determining jurisdiction to hear and decide the case on the merits. Once this is done, the court should apply the law of its own state. The ICPC is the law of every state and so should be applied to the extent that it is relevant.

In summary, if a matter pertaining to a child's custody is filed in the juvenile or family court, at the first hearing on the matter, the court must determine jurisdiction. If applying the UCCJA/UCCJEA and the PKPA determines that the court has jurisdiction, then the court proceeds to consider the matter of the child's custody. If applying the UCCJA/UCCJEA and the PKPA determines that another court has jurisdiction, then the matter must be transferred to the other court. Only after jurisdiction is established does the court proceed to the stages in the case in which the ICPC may apply.

II. WHEN COURTS MUST RETAIN JURISDICTION IN ICPC CASES AND WHEN JURISDICTION CAN BE DISMISSED OR TERMINATED

Making timely decisions in child abuse and neglect cases is a key principle for judges that is discussed in the NCJFCJ publications *RESOURCE GUIDELINES: Improving Court Practice in Child Abuse & Neglect Cases* and *ADOPTION AND PERMANENCY GUIDELINES: Improving Court Practice in Child Abuse and Neglect Cases*. Judges are responsible to use effective, timely case flow management practices to ensure that the prolonged uncertainty for children

who have not yet achieved permanency is kept to the minimum necessary to ensure safe, permanent, and nurturing homes.

When hearing ICPC cases, judges can become frustrated with the additional time that may be required before case termination is acceptable to the receiving state. Judges must resist the practice of illegally closing or dismissing ICPC cases before all requirements of the Compact are met. Instead, they must actively seek to expedite the ICPC process while staying within Compact law. Innovative practices to expedite cases are discussed in Chapter II.

A. Retention of Jurisdiction

Article V of the Compact speaks to the issue of retention of jurisdiction. It states:

The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting, or is discharged with the concurrence of the appropriate authority in the receiving state.

Such jurisdiction shall also include the power to effect or cause the return of the child or his or her transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein.

Key language in this article requires that jurisdiction be retained until:

- the child is adopted;
- reaches majority;
- becomes self-supporting; or

- is discharged with the concurrence of the appropriate authority in the receiving state.²⁹

Post-placement supervision by an appropriate agency or person in the receiving state is required until one of these events occurs. In the case of the final option—concurrence of the receiving state—post-placement supervision is required for a period of time sufficient to determine that the placement is stable and that the child is receiving appropriate care. The generally accepted time frame for this determination is 3 to 12 months, depending on specific circumstances and the complexity of the child's needs.

B. Unilateral Dismissal of Jurisdiction

A memorandum prepared by the Secretariat to the AAICPC in November 1996³⁰ speaks to the issue of inappropriate case dismissal. It states:

A practice that is unfortunately widespread is for a court to make an interstate placement, approve the placement or direct another entity such as a public welfare agency to make it, and then unilaterally dismisses its jurisdiction. Such dismissals are unlawful because Article V(a) of the ICPC sets forth the only circumstances under which termination of the interstate placement status is to occur. The circumstance relevant here, which is expressly enumerated in Article V(a), is concurrence of the receiving state.

These unilateral dismissals in violation of the ICPC are known to occur in at least two kinds of situations. One type is that in which the court believes that it has made a good placement (either on

²⁹ Williams v. Glass, 664 N.Y.S.2d 792, 245 A.D.2d 33, order clarified 684 N.Y.S.2d 771, 249 A.D.99 (N.Y.A.D. 1 Dept. 1997). Jurisdiction, including financial responsibility, can only be terminated in the manner described by Article V of the Compact.

In re Tiffany P., 1995 Neb. App. LEXIS 394 (Neb. App. 1995) UNPUBLISHED OPINION. A court cannot terminate jurisdiction in violation of the ICPC.

In the Matter of H.M., 634 N.Y.S.2d 675 (N.Y. App. Div. 1995). Court can only terminate jurisdiction as specifically listed in Article V of the ICPC. Any termination based on another reason is a violation of the ICPC.

In the Matter of Shaida W., 85 N.Y.2d 453, 649 N.E.2d 1179, 626 N.Y.S. 2d 35 (N.Y. 1995). Jurisdiction can only be terminated by the reasons listed in Article V of the ICPC. Any other termination is a violation of the ICPC.

In the Interest of B.J.A., 539 So.2d 540 (Fla. Dist. Ct. App., 1989) Trial court violated the ICPC when it relinquished jurisdiction in violation of Article V of the ICPC. From *Court Cases of the Interstate Compact on the Placement of Children: Briefs & Legal Analysis*, pages I-7, I-11, I-12 and I-21, APHSA, 2000.

such facts as it may itself acquire or because consent of the receiving state to the placement has been given pursuant to Article III(d) of the ICPC). The other situation is that after the placement has continued for a time, the court considers that continuing responsibility should now be with the receiving state.

Sometimes the court does not inquire of the receiving state Compact Administrator whether concurrence in termination of the interstate placement status is acceptable. Sometimes there is a disagreement as to whether dismissal by the court in the sending state is appropriate. The propriety of dismissal of jurisdiction with its resultant termination of the interstate placement status is not susceptible to measurement by a mechanical yardstick. Elements of professional evaluation and judgment are involved and there is often room for reasonable differences of opinion. In enacting the ICPC, the states purposely required concurrence of the sending agency and the receiving state. They did so in order to impose a greater degree of caution and care in ending state responsibility and supervision in order to provide greater protection for the child. The states also agreed to the necessity for concurrence to protect receiving states from having children “dumped” on them.

III. TIME FRAMES AND PRIORITY PLACEMENTS

The ICPC sets time frame expectations in three areas: routine processing of referrals, home studies, and Regulation 7 Priority Placements. The *APHSA Training Manual for Administrators and Liaisons of the ICPC*, emphasizes that:

All ICPC correspondence should be processed as quickly as possible, keeping in mind that time frames for a child have a far different connotation than for an adult. It is the responsibility of the worker, supervisor, and ICPC Administrator to facilitate timely decision-making, which must occur in order for placement of a child to happen. Expedient processing of ICPC materials is consistent with the purpose of the Compact.

Time frames present a significant challenge for courts and agencies in the successful implementation of the Compact. Strategies to deal with this problem will be discussed in

³⁰ *Dismissal of Jurisdiction*, AAICPC Secretariat Position Paper, November 1996.

Chapter II. The first step, however, in dealing with the issue of timely implementation of the Compact is to know what the Compact says about time frames.

A. Routine Processing of Referrals

The AAICPC has agreed that agencies should process all ICPC referrals in a timely manner. If at all possible, the ICPC administrator should process referrals *within three working days* of receipt from either the local sending office, the sending state ICPC Office, or the local receiving office. This expectation applies to all referrals except Regulation 7 Priority Placements (see section C).

B. Home Studies

1. Completion

It is generally agreed among the member states to the Compact that a home study is to be completed within 30 working days from the date the worker receives the request for the home study.

If it appears that the home study cannot be completed within the allotted time period, a brief note explaining the delay and stating the expected completion date should be sent by the local worker to the ICPC Office for forwarding to the sending state ICPC and local offices.

The sending state ICPC Office should maintain a reminder file showing the anticipated completion date for a home study so that appropriate follow-up can be initiated.

2. Permission to make a placement

Per Regulation 6, adopted in May 1991 and revised in May 2001 (effective July 2, 2001), approval to make the placement of a child is valid for *six months* commencing on the date when the receiving state ICPC Administrator signs the notice required by Article III(d).

If the placement is to be made after the six-month period:

- The sending agency may reapply. Upon such reapplication, the receiving state may require the updating of documents submitted on the previous application, but shall not require a new home study unless the laws of the receiving state provide that the previously submitted home study is too old to be currently valid.
- If a foster care license, institutional license, or other license, permit, or certificate held by the proposed placement recipient is still valid and in force, or if the proposed placement recipient continues to hold an appropriate license, permit, or certificate, the receiving state shall not require that a new license, permit, or certificate be obtained in order to qualify the proposed placement recipient to receive the child in placement.
- Upon reapplication by the sending agency, the receiving state shall determine whether the needs or condition of the child have changed since it initially authorized the placement to be made. The receiving state may deny the placement if it finds that the proposed placement is contrary to the interests of the child.

If a foster family moves to another state, the new state of residence needs to complete a home study *immediately* and issue a license, if appropriate, that is based on their foster home licensing standards.

An adoptive home study that was originally completed for a domestic adoption must be *updated immediately* if the child who is to be placed in the home is a child from a country other than the United States. Such update will include factors regarding an international adoption such as parents' motivation to adopt a child from another country and the parents' cultural sensitivity to the child's country of origin, languages, customs, etc. The home study must satisfy INS requirements.

C. Time Lines for Non-Priority Placements

In terms of time frames, there are two categories of non-priority placements—those that do not involve foster home licensing or adoption and those that do. The time lines are significantly different for these two categories.

1. Placements that do not involve foster home licensing or adoption

When a placement request is made that *does not fall under the specifications of Regulation 7 Priority Placements*, the following time line fits within the reasonable expectations that have been set forth by the ICPC and the AAICPC, *unless the placement involves foster home licensing or adoption*. All days are counted in business days, which exclude Saturdays, Sundays, or legal holidays:

- The court orders an interstate placement – *Day 1*
- The local human services agency completes the required paperwork and sends it to the sending state ICPC Office. Nothing in the Compact specifically speaks to this time line; however, in keeping with the expectation that all ICPC correspondence should be processed as quickly as possible, a time frame of five working days would seem reasonable – *Maximum Day 6 plus two days' postal service = eight days*.
- The sending state ICPC Office reviews and sends the required paperwork to the state ICPC Office of the receiving state within three working days – *Maximum Day 11 plus two days' postal service = 13 days*.
- The receiving state ICPC Office reviews and sends the required paperwork to the receiving state's local human services agency within three working days – *Maximum Day 16 plus two days' postal service = 18 days*.
- If the placement does not involve the licensing of the home for foster care, the receiving state local human services agency completes a home study in 30 days

and sends the results and recommendation to the receiving state ICPC Office – *Maximum Day 48 plus two days' postal service = 50 days.*

- The receiving state ICPC Office reviews the home study, approves or denies the placement, and sends materials to the sending state ICPC Office within three working days – *Maximum Day 53 plus two days' postal service = 55 days.*
- The sending state ICPC Office reviews the materials, makes its decision for or against ICPC approval of the placement within 3 working days, and sends its decision and the required materials to the court and the local child-serving agency in the sending state that initiated the placement request – *Maximum Day 58 plus two days' postal service = 60 days.*

Consequently, when an interstate placement does not involve foster home licensing or pre-adoptive placement, the court should expect an answer regarding whether the ICPC approves a non-priority interstate placement in three months.

2. Placements involving foster home licensing or adoption

The Adoption and Safe Families Act (ASFA) has two requirements that can significantly extend the amount of time required for ICPC approval of a placement when the placement involves foster home licensing or adoption. The first requirement is that anytime a Title IV-E eligible child is to be placed in Title IV-E subsidized foster or relative care, the state's foster home licensure process must be completed. In the past, states have permitted less stringent approval processes for subsidized placements with relatives. The new federal ASFA regulations remove this as an option.

Since most interstate placements are with relatives, and many of these placements involve Title IV-E eligible children, a significant number of ICPC placements will require the relative to complete the same training and other licensing requirements *as any foster parent*. This process, at best, can take as long as two to four months. The two-month time frame cannot be reached unless the state has defensible grounds to waive the training requirement. However, a state cannot violate ASFA by waiving the training requirement solely on the

basis that the proposed placement is a relative. It could only waive the training requirement if it has a set of criteria for *any foster parent* that allows training to be waived and the relative meets the criteria.

The other ASFA requirement that impacts time frame is that all prospective foster parents and prospective adoptive parents must undergo a criminal background check. In instances where an ICPC interstate placement request is for adoptive placement with an already approved adopting parent or a foster parent who has already completed the criminal background check, this will not create additional time. However, in instances where the licensing process is not complete and a criminal background check has not been done, this requirement could add additional time. Criminal background checks can take as long as three to four months.

Step four of the ICPC approval process from the previous section is when the receiving state ICPC office reviews and sends the required paperwork to the receiving state's local human services agency within three working days. The time frame for completion of the first four steps is 18 days. The next step is the home study step, and for a placement involving foster home licensing or adoption this step includes training and a criminal background check. If the receiving state local agency initiates the criminal background check and begins this licensing process immediately and concurrently, and if the licensing process takes two to four months and the criminal background check takes three to four months, then the receiving state local agency generally will complete this process in three to four months. This same step for interstate placements requiring a home study but *not* licensing or a criminal background check takes one month to complete. Consequently, the criminal background check and licensing requirement can add two to three months to the approval process for relative placements and for foster and adoption placements if the home is not yet licensed.

Using this calculation, the new ASFA requirements are likely to extend the time frame for approval of these placements from three months to five to six months. Efforts are underway by the NCJFCJ and the American Bar Association to establish priority in criminal background checks for prospective foster and adoptive parents to speed up the process. Other options to expedite these time frames are discussed in Chapter II.

It should be noted that at the May 2001 meeting of the AAICPC, a significant revision was made to Regulation 7 Priority Placement. This revision, effective July 2, 2001, removed from the definition of a priority placement any case where the request for placement of the child is for licensed or approved foster family care or adoption, or if the child is already in the receiving state in violation of the ICPC. This change was made because ASFA requirements made it impossible to meet priority placement time frames if licensing was required. These cases now fall under the time lines for non-priority placements discussed in this section. Possible strategies for meeting ASFA requirements and reducing the time frame when dealing with relative placements are discussed in Chapter II.

D. Regulation 7 Priority Placements

In response to widespread dissatisfaction with delays experienced in placing children through the ICPC, a joint committee including the NCJFCJ, the National Association of Public Child Welfare Administrators (an affiliate of APHSA), and the AAICPC was established to develop a procedure to eliminate delays in the interstate placement of children in appropriate family homes. The result was ICPC Regulation 7 on Priority Placements, adopted by the AAICPC in 1996. The full text of Regulation 7 can be found in Appendix K.

As mentioned in the preceding section, Regulation 7 was revised at the May 2001 meeting of the AAICPC to specifically exclude from priority placement applicability any placement in which the request is for:

- placement of a child for licensed or approved foster family care or adoption; or
- a child already in the receiving state in violation of the ICPC.

Regulation 7 applies only when a court finds *through court order* that these two conditions are met *and* one or more of the following circumstances exist that make the situation a *priority placement*:

- The proposed placement recipient is a parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or guardian; *and*
 - a) the child is under two years of age; or
 - b) the child is in an emergency placement; or
 - c) the court finds the child has spent substantial time in the home of the proposed placement recipient.
- The receiving state has had a completed ICPC-100A (“Request for Placement”) with supporting documentation for over 30 business days, but the sending agency has not received notice determining whether or not the child may be placed.

Regarding time frames, in the first instance, when an ICPC request is initiated, a court has two days to send the court order detailing the circumstances that make the case a priority placement to the sending agency. The sending agency has three days to forward the referral to the sending state ICPC Office, and the sending state ICPC Office has two days to transmit the priority request to the receiving state ICPC Office. The receiving state will be deemed out of compliance with ICPC procedures if it fails to either approve or disapprove the placement within 20 business days of the receipt of the request.

In the second instance, an ICPC request had already been made and the receiving state failed to respond in a timely manner and is therefore out of compliance. In determining that the receiving state has had complete documentation for over 30 business days and not responded, it is important for courts to factor in the probable seven to eight business days that passed prior to the documentation arriving at the receiving state.

A receiving state *cannot* be considered out of compliance if:

- Within two business days of receipt of the ICPC priority placement request, the receiving state Compact Administrator notifies the sending state Compact Administrator that further information is necessary. Such notice must specifically detail the information needed. For a case in which this subparagraph applies, the 20-business day period for the receiving state Compact Administrator to complete

action shall be calculated from the date of the receipt by the receiving state Compact Administrator of the information requested.

- Or, extraordinary circumstances make it impossible to comply with the time requirements, and the receiving state, within two business days, notifies the sending state of the problem, including a full identification and explanation of the extraordinary circumstances that are delaying compliance and a date on or before which the receiving state will provide its response to the placement request.

If a court has met its obligation, and if a receiving state is out of compliance, the court may then communicate directly with the court in the receiving state and request its assistance in completing the home study and making the recommendation regarding whether the placement should occur. To avoid conflicts regarding *ex parte* communication, a judge should inform all parties of the intent to contact the court in the receiving state. If possible, the conversation should be held through a telephone conference call in which all parties may participate, or subsequent to the conversation, the judge should share all information with all parties. Judges should consider having all parties and their attorneys present during any communications with agency personnel or judges in the sending or receiving state. If the recommendation is positive and the sending state ICPC Administrator concurs, the placement can proceed and ICPC requirements will have been met.

Regulation 7 requires all transmission of paperwork between entities in priority placements to be by fax or overnight mail to expedite the process. It also requires a state and its local agencies to process interstate cases no less quickly than intrastate cases and give no less attention to interstate hardship cases than to intrastate hardship cases.

The time line in a Regulation 7 request where the interstate placement is initially being requested as a priority placement is (all days are counted in business days that exclude Saturdays, Sundays, or legal holidays):

1. *Day 1* – the court determines that a priority placement is indicated;
2. *Day 3* – the court sends a written order to the local agency of the sending state;

3. *Day 6* – the local agency sends the required documents to the ICPC Office in the sending state by overnight delivery and sends confirmation to the court;
4. *Day 8* – the sending state ICPC Office sends the referral to the receiving state ICPC Office by overnight delivery service;
5. *Day 9* – the receiving state ICPC Office receives the referral;
6. *Day 10* – the receiving state ICPC Office transmits the referral by fax and overnight delivery service to the local agency, and the local agency telephones the proposed caretaker for an appointment;
7. *Day 15* – the local office worker in the receiving state makes a home visit to the proposed caretaker to initiate the home study;
8. *Day 28* – the local office of the receiving state sends three copies of the home study to the ICPC Office in the receiving state by overnight delivery service;
9. *Day 29* – the receiving state ICPC Office receives the home study and submits the placement decision to the sending state by fax;
10. *Day 30* – the sending state ICPC Office transmits the placement decision by overnight delivery service to the local agency; and
11. *Day 31* – the local agency notifies the court and either the placement is approved or a decision is made to explore alternative placement.

1. Consequences of misidentifying a Regulation 7 Priority Placement

Because of this reduced time frame, judges may be inclined to identify a case as a priority that does *not comply* with the requirements of Regulation 7. Although previously stated in this chapter, these requirements are so important that they bear repeating. *Regulation 7 Priority Placement procedures can only be used if the following apply:*

- Placement of the child *is not* for licensed or approved foster family care or adoption; *and*
- The child is not already in the receiving state in violation of ICPC; *and*
- The proposed placement recipient is a parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or guardian; *and*
 - a) the child is under two years of age, or
 - b) the child is in an emergency placement, *or*
 - c) the court finds the child has spent substantial time in the home of the proposed placement recipient.
- Or the receiving state has had a completed ICPC-100A (“Request for Placement”) with supporting documentation for over 30 business days, but the sending agency has not received notice determining whether or not the child may be placed.

If a court identifies a case to be a priority that does not fall within these definitions, *the case will be delayed* because the staff of the agency or Compact will be *required* to send the case back to the court with a request for modification.

An example of a court rule and sample court order that can help prevent this error from happening can be found in Appendix L. Use of these tools to expedite ICPC cases is discussed in Chapter II.

IV. SUMMARY OF THE ARTICLES OF THE ICPC

Compact law contains 10 Articles. They define the types of placements and entities subject to the law; the procedures to be followed in making an interstate placement; and the specific protections, services, and requirements contained in the law. Some of the Articles have already been reviewed in previous sections. One Article will be reviewed in Chapter II. In this section, each Article is listed and either summarized or reference made to the previous or future section containing information on the Article.

A. Article I. Purpose and Policy

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

- 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;
- 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;
- 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; and
- appropriate jurisdictional arrangements for the care of children will be promoted.

B. Article II. Definition

This article contains the original definitions of the terms used in the Compact. Additional definition occurs in Regulation 3 (placement), Regulation 9 (visit), and Regulation 10 (guardian) in the next section of this chapter.

- “Child” means a person who by reason of minority is legally subject to parental, guardianship or similar control.

- “Sending agency” means a party state, officer or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency or other entity which sends, brings, or causes to be sent or brought any child to another party state.
- “Receiving state” means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.
- “Placement” means the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective or epileptic or any institution primarily educational in character, and any hospital or other medical facility.

C. Article III. Conditions for Placement

No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.

Prior to sending, bringing or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

1. The name, date and place of birth of the child;
2. The identity and address or addresses of the parents or legal guardian;
3. The name and address of the person, agency or institution to or with which the sending agency proposes to send, bring, or place the child; and

4. A full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

Any public officer or agency in a receiving state which is in receipt of a notice pursuant to this article may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive from them, such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

D. Article IV. Penalty for Illegal Placement

Refer to Chapter II, Section I.D. for a summary of this article.

E. Article V. Retention of Jurisdiction

Refer to Section II.A. of this chapter for a summary of this article.

F. Article VI. Institutional Care of Delinquent Children

Refer to Section I. B. of this chapter for a summary of this article.

G. Article VII. Compact Administrator

The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in his or her jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to

promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

H. Article VIII. Limitations

The compact shall not apply to:

- The sending or bringing of a child into a receiving state by his or her parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or his or her guardian and leaving the child with any such relative or non-agency guardian in the receiving state.
- Any placement, sending or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law.

I. Article IX. Enactment and Withdrawal

This compact shall be open to joinder by any state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and, with the consent of Congress, the Government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until two years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the Governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties and obligations under this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

J. Article X. Construction and Severability

The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence

or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

V. SUMMARY OF THE REGULATIONS OF THE ICPC

There are currently 11 ICPC Regulations. Article VII gives the executive head of each jurisdiction that is party to the Compact the authority to act jointly with the other party jurisdictions to promulgate rules and regulations. Regulations are developed through the AAICPC and the ICPC Secretariat.

As with the Articles, some of the regulations have already been reviewed in previous sections. In the final section of this chapter, we will list each of the regulations and either summarize the text or reference the previous section that contains information on the regulation. Each regulation contains the statement that *words and phrases used in this regulation have the same meanings as in the Compact, unless the context clearly requires another meaning.*

A. Regulation No 0.01. Forms

- To promote efficiency in processing placements pursuant to the Interstate Compact on the Placement of Children (ICPC) and to facilitate communication among sending agencies, states and other concerned persons, the forms promulgated by the compact administrators, acting jointly, shall be used by all sending agencies, sending and receiving states, and others participating in the arranging, making, processing and supervision of placements.
- ICPC forms shall be uniform as to format and substance, and each state shall make available a reference to where its forms may be obtained by the public.

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

ICPC-100A “Interstate Compact Placement Request”;

ICPC-100B “Interstate Compact Report on Child’s Placement Status”;

ICPC-100C “Quarterly Statistical Report: Placements into an ICPC State”;

ICPC-100D “Quarterly Statistical Report: Placements Out of an ICPC State”; and

ICPC-101 “Sending State’s Priority Home Study Request³¹”.

- Form ICPC-102 “Receiving State’s Priority Home Study Request” is an optional form that is available for use.
- This regulation is adopted pursuant to Article VII of the Interstate Compact on the Placement of Children by action of the Association of Administrators of the Interstate Compact on the Placement of Children at its annual meeting of April 29 through May 2, 2001; the regulation, as amended, was approved May 2, 2001 and became effective as of July 2, 2001.

B. Regulation No. 1. Conversion of Intrastate Placement into Interstate Placement; Relocation of Family Units

Regulation No. 1 became effective May 1973. It was repealed and replaced by the following in April 1999:

1. A placement initially intrastate in character becomes an interstate placement subject to the ICPC if the child’s principal place of abode is moved to another state.
2. If the child is to be sent or brought to the receiving state more than 45 days in the future, the normal ICPC procedures for an interstate placement shall be initiated. However, the ICPC-100A and the information accompanying it shall make it specific

³¹ See Appendix M for copies of these forms.

and clear that the relocation of a family unit is involved and that the family home is not yet in the receiving state. As much information as reasonably possible shall be given to the receiving state concerning the location and character of the intended family home in the receiving state.

3. a) In any instance where the decision to relocate into another state is not made until 45 days or less before the date on which it is intended to send or bring the child to the receiving state, an ICPC-100A and its supporting documentation shall be prepared immediately upon the making of the decision, processed promptly by the sending agency's state compact administrator and transmitted to the receiving state compact administrator. The sending agency's state compact administrator shall request that the receiving state provide prompt handling of the case with due regard for the desired time for the child to be sent or brought to the receiving state.

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

- 1) A form ICPC-100A fully completed.
- 2) A copy of the court order pursuant to which the sending agency has authority to place the child or, if authority does not derive from a court order, a statement of the basis on which the sending agency has authority to place the child.
- 3) A case history for the child.
- 4) In any instance where the sending state has required licensure, certification or approval, a copy of the most recent license, certificate or approval of the qualification of the custodian(s) and/or their home showing the status of the custodian(s), as qualified custodian(s).
- 5) A copy of the most recent home study of the custodian(s) and any updates thereof.
- 6) A copy of the child's permanency plan and any supplements to that plan.
- 7) An explanation of the current status of the child's Title IV-E eligibility under the Federal Social Security Act.

c) Requests for prompt handling shall be as provided in paragraph 4 (a) hereof. Some or all documents may be communicated by express mail or any other recognized

method for expedited communication. The receiving state shall recognize and give effect to any such expedited transmission of an ICPC-100A and/or supporting documentation, provided that it is legible and appears to be a complete representation of the original. However, the receiving state may request and shall be entitled to receive originals or duly certified copies if it considers them necessary for a legally sufficient record under its laws.

d) In an instance where a custodian(s) holds a current license, certificate or approval from the sending state evidencing qualification as a foster parent or other custodian, the receiving state shall give effect to such license, certificate or approval as sufficient to support a determination of qualification pursuant to Article III (d) of ICPC, unless the receiving state compact administrator has substantial evidence to the contrary. This provision applies to a case that meets the description set forth in paragraph 4 (b) of this regulation.

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

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

4. If a custodian(s) submits the referral, a receiving state shall recognize and give effect to evidence that the custodian(s) have satisfactorily completed required training for foster parents or other parent training. Such recognition and effect shall be given if:

a) the training program is shown to be substantially equivalent to training offered for the same purpose in the receiving state; and

b) the evidence submitted is in the form of an official certificate or other document identifying the training.

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

6. A favorable determination made by a receiving state pursuant to Article III(d) of the ICPC and this regulation means that the receiving state is making such determination on the basis of the best evidence available to it in accordance with the requirements of paragraph 4 (b) of this regulation and does not relieve any custodian or other entity of the obligation to comply with the laws of the receiving state as promptly after arrival in the receiving state of the child as possible. If it is subsequently determined that the placement in the receiving state appears to be contrary to the interest of the child, the sending agency shall arrange to return the child or make an alternative placement as provided in Article 5(a) of the ICPC.

7. Within 30 days of being notified by the sending state or by the custodian(s) that the custodian(s) and the child have arrived in the receiving state, the appropriate personnel of the receiving state shall make an initial contact with the custodian(s) to ascertain conditions and progress toward compliance with applicable laws and requirements of the receiving state.

C. Regulation No. 2. Repealed

D. Regulation No. 3. Placements with Parents, Relatives, Non-agency Guardians, and Non-Family Settings

The following regulation was amended by the AAICPC in May 2001 and was effective July 2, 2001:

1. "Placement" as defined in Article II(d) includes the arrangement for the care of a child in the home of his parent, other relative, or non-agency guardian in a receiving

state when the sending agency is any entity other than a parent, relative, guardian or non-agency guardian making the arrangement for care as a plan exempt under Article VIII(a) of the Compact.

2. “Conditions for Placement” as established by Article III apply to any placement as defined in Article II(d) and Regulations adopted by action of the Association of Administrators of the Interstate Compact on the Placement of Children.
3. The terms “guardian” and “non-agency guardian” have the same meanings as set forth in Regulation No. 10 of the Regulations for the ICPC.
4. The term “family free or boarding home” as used in Article II(d) of the ICPC means the home of a relative or unrelated individual whether or not the placement recipient receives compensation for care or maintenance of the child, foster care payments, or any other payments or reimbursements on account of the child’s being in the home of the placement recipient.
5. The term “foster care” as used in Article III of the ICPC, except as modified in this paragraph, means care of a child on a 24-hour a day basis away from the home of the child’s parent(s). Such care may be by a relative of the child, by a non-related individual, by a group home, or by a residential facility or any other entity. In addition, if 24-hour a day care is provided by the child’s parent(s) by reason of a court-ordered placement (and not by virtue of the parent-child relationship), the care is foster care.
6. (a) Pursuant to Article VIII(a), this Compact does not apply to the sending or bringing of a child into a receiving state by the child’s parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or the child’s guardian and leaving the child with any such relative or non-agency guardian in the receiving state, provided that such person who brings, sends, or causes a child to be sent or brought to a receiving state is a person whose full legal right to plan for the child: (1) has been established by law at a time prior to initiation of the placement arrangement, and (2) has not been voluntarily terminated, or diminished or severed by the action or order of any court.

(b) The Compact does not apply whenever a court transfers the child to a non-custodial parent with respect to whom the court does not have evidence before it that such parent is unfit, does not seek such evidence, and does not retain jurisdiction over the child after the court transfers the child.

7. Placement of a child requires compliance with the Compact if such placement is with either of the following:
 - (a) any relative, person, or entity not identified in Article VIII of the Compact;
or
 - (b) any entity not included in the definition of placement as specified in Article II(d) of the Compact.

8. If a court or other competent authority invokes the Compact, the court or other competent authority is obligated to comply with Article V (Retention of Jurisdiction) of the Compact.

E. Regulation No. 4. Residential Placement

Refer to Section I. C. 4. in this chapter for a summary of this regulation.

F. Regulation No. 5. Central State Compact Office

The following regulation was adopted by the AAICPC in April 1982 and amended and readopted in April 1999.

- It shall be the responsibility of each state party to the Interstate Compact on the Placement of Children to establish a procedure by which all Compact referrals from and to the state shall be made through a central state compact office. The Compact Office shall also be a resource for inquiries into requirements for placements into the state for children who come under the purview of this Compact. The Compact Administrator and deputies appointed by the executive head of each state under Article VII shall be located in this central state compact office.

G. Regulation No. 6. Permission to Place Child: Time Limitations, Reapplication

Refer to Section III. B. 2. in this chapter for a summary of this regulation.

H. Regulation No. 7. Priority Placement

Refer to Section III. D. in this chapter for a summary of this regulation.

I. Regulation No. 8. Change of Placement Purpose

This regulation was adopted by the AAICPC in April 2000.

- An ICPC-100B should be prepared and sent in accordance with its accompanying instructions whenever there is a change of purpose in an existing placement, e.g., from foster care to preadoption even though the placement recipient remains the same. However, when a receiving state or a sending state requests a new ICPC-100A in such a case, it should be provided by the sending agency and transmitted in accordance with usual procedures for processing of ICPC-100As.

J. Regulation No. 9. Definition of a Visit

Refer to Section I. C. 3. in this chapter for a summary of this regulation.

K. Regulation No. 10. Guardians

This regulation was adopted by the AAICPC in April 1999.

1. Guardian Defined.

As used in the ICPC and in this Regulation:

- a) “Guardian” means a public or private agency, organization or institution which holds a valid and effective appointment from a court of competent jurisdiction to have custody and control of a child, to plan for the child, and to do all other things for or on behalf of a child which a parent would have authority and responsibility for doing by virtue of an unrestricted parent-child relationship. Guardian also means an individual who is a non-agency guardian as defined in subparagraph (b) hereof.
- b) “Non-agency guardian” means an individual holding a currently valid appointment from a court of competent jurisdiction to have all of the authority and responsibility of a guardian as defined in subparagraph (a) hereof.

2. Prospective Adoptive Parents Not Guardians.

An individual with whom a child is placed as a preliminary to a possible adoption cannot be considered a non-agency guardian of the child, for the purpose of determining applicability of the ICPC to the placement, unless the individual would qualify as a lawful recipient of a placement of the child without having to comply with the ICPC as provided in Article VIII (a) thereof.

3. Effect of Guardianship on ICPC Placements.

a) An interstate placement of a child with a non-agency guardian, whose appointment to the guardianship existed prior to consideration of the making of the placement, is not subject to the ICPC if the sending agency is the child's parent, stepparent, grandparent, adult brother or sister, or adult uncle or aunt.

b) An appropriate court of the sending agency's state must continue its jurisdiction over a non-exempt placement until applicability of the ICPC to the placement is terminated in accordance with Article V (a) of the ICPC.

4. Permanency Status of Guardianship.

a) A state agency may pursue a guardianship to achieve a permanent placement for a child in the child welfare system, as required by federal or state law. In the case of a child who is already placed in a receiving state in compliance with the ICPC, appointment of the placement recipient as guardian by the sending state court is grounds to terminate the applicability of the ICPC when the sending and receiving state compact administrators concur on the termination pursuant to Article V (a). In such an instance, the court which appointed the guardian may continue its jurisdiction if it is maintainable under another applicable law.

b) If, subsequent to the making of an interstate placement pursuant to the ICPC, a court of the receiving state appoints a non-agency guardian for the child, such appointment shall be construed as a request that the sending agency and the receiving state concur in the discontinuance of the application of the ICPC to the placement. Upon concurrence of the sending and receiving states, the sending agency and an appropriate court of the

sending state shall close the ICPC aspects of the case and the jurisdiction of the sending agency pursuant to Article V (a) of the ICPC shall be dismissed.

5. Guardian Appointed by Parent.

If the statutes of a jurisdiction so provide, a parent who is chronically ill or near death may appoint a guardian for his or her children, which guardianship shall take effect on the death or mental incapacitation of the parent. A non-agency guardian so appointed shall be deemed a non-agency guardian as that term is used in Article VIII (a) of the ICPC, provided that such non-agency guardian has all of the powers and responsibilities that a parent would have by virtue of an unrestricted parent-child relationship. A placement with a non-agency guardian as described in this paragraph shall be effective for the purposes of the ICPC without court appointment or confirmation unless the statute pursuant to which it is made otherwise provides and if there is compliance with procedures required by the statute. However, the parent must be physically present in the jurisdiction having the statute at the time that he or she makes the appointment or expressly submits to jurisdiction of the appointing court.

6. Other Definitions of Guardianship Unaffected.

The definitions of “guardian” and “non-agency guardian” contained in this regulation shall not be construed to affect the meaning or applicability of any other definitions of “guardian” or “non-agency guardian” when employed for purposes or to circumstances not having a bearing on placements proposed to be made or made pursuant to the ICPC.

VI. ADDITIONAL INFORMATION ON ICPC PROCEDURES

The APHSA has developed a web site on the ICPC that will be linked with the APSHA site. The web site can be accessed at <http://icpc.aphsa.org>. The site contains the ICPC Articles, Regulations and current AAICPC state contacts. The site will be regularly updated and information will be added continuously.³²

³² For more information, contact APHSA c/o ICPC Secretariat (202) 682-0100.



CHAPTER II: ICPC CHALLENGES, SOLUTIONS, AND BEST PRACTICES

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CHAPTER II: ICPC CHALLENGES, SOLUTIONS, AND BEST PRACTICES¹

Lack of knowledge about the Compact among judges, attorneys, and caseworkers was previously discussed as one of the four main weaknesses regarding Compact implementation.² In Chapter I, we covered the procedures of the ICPC. For those juvenile and family court judges who perceived the ICPC to consist solely of Regulation 7, there is now a much greater understanding of the extent and detail of Compact law. Knowledge is a powerful weapon and the first step in overcoming the challenges of the ICPC. However, knowledge of Compact law cannot by itself make the compact work effectively and efficiently.

Because the compact relies on a multi-layered interstate process of communication, investigation, support, and case monitoring, and because the individuals involved in making the Compact work have limited resources, efficient operation of the Compact rests on the willingness of all of the professionals in the child-serving system to work together for the best interest of every child, even the child that is the “responsibility” of another state.

A 1999 Department of Health and Human Services report on the ICPC³ found that of the state Compact Administrators, local agency workers, and judges surveyed:

- six of 10 Compact Administrators were not completely satisfied with the way the Compact was working;
- six of 10 Compact Administrators believed that the Compact needed improvement; and

¹ Substantial portions of this chapter are excerpted from the *APHS Training Manual for Administrators & Liaisons of the Interstate Compact on the Placement of Children*, AAICPC, 2000.

² *Interstate Compact on the Placement of Children: Implementation*, Department of Health and Human Services, Office of Inspector General, June Gibbs Brown, Inspector General, March 1999, OEI-02-95-00044.

³ *Ibid.*

- almost half of all respondents felt the Compact process was lengthy and procedures in their own Compact Offices contributed to delays.

The 2001 survey of juvenile and family court judges completed by the NCJFCJ in conjunction with the development of this *Manual and Instructional Guide* found opportunities for improvement with the Compact.⁴ Across all professionals involved with the ICPC in the juvenile and family court system, approximately one-third were believed by judges to have little to no knowledge of the ICPC, and approximately one-third were believed to have only some knowledge of the ICPC. Only one-third were believed to be knowledgeable regarding the ICPC.

Judges reported that ICPC problems included:

- time frames;
- lack of proper documentation and supporting documents;
- difficulties in communication and coordination between states;
- issues of court orders and court jurisdiction; and
- issues of training and knowledge.

In Chapter I, three problem areas were identified that needed to be addressed in this chapter—expediting time frames overall; expediting relative placements to deal with the challenges presented by the licensing requirements of ASFA; and using court rules and standard orders to prevent errors and delays. The purpose of Chapter II is:

- to cover these three areas and many additional areas of the Compact that present significant challenges for timely and effective implementation, and
- to give suggestions and describe best practices that have been successful in making the Compact work more efficiently for children.

⁴ Refer to the Introduction, Section VIII and to Appendix E for more information on the survey and its results.

Because problems and dissatisfaction can lead to avoidance of the Compact, this chapter begins by addressing illegal practices that attempt to evade compliance with the ICPC and the consequences of such practices.

I. ILLEGAL PRACTICES

This *Manual* recognizes that following Compact law can be a time-consuming process. Unfortunately, instead of working toward ensuring a timely process, some courts and agencies ignore Compact law and make illegal placements. In this section, three illegal practices that violate Compact law are identified, specifically:

- illegal placements;
- attempting to use a visit to evade compliance; and
- inappropriately using guardianship to evade compliance.

A. Illegal Placements

The following situations are illegal placements in violation of Articles III and V of the Compact:

- Violation of Article III(a)—Sending, bringing, or causing a child to be sent or brought into any other state without complying “with each and every requirement set forth in [Article III of the Compact] and with the applicable laws of the receiving state governing the placement of children therein.”
- Violation of Article III(b)—Failure by the sending agency to notify the receiving state in writing of the proposed placement.
- Violation of Article III(d)—Sending, bringing, or causing a child to be sent or brought into the receiving state without obtaining from “the appropriate public authorities [ICPC Office] in the receiving state” a notice “in writing, to the effect that the proposed placement does not appear to be contrary to the best interests of the child.”

- Violation of Article V(a)—Failure to “retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, and disposition of the child that it [the sending agency] would have had if the child had remained in the sending agency’s state until the child
 - is adopted;
 - reaches majority;
 - becomes self-supporting; or
 - is discharged with the concurrence of the appropriate authority (the ICPC Office) in the receiving state.”

This includes situations in which:

- the child’s social worker recommends dismissal of court jurisdiction of the child without obtaining the concurrence of the ICPC Office in the receiving state; and/or
 - the court dismisses its jurisdiction of the child unilaterally.
- Violation of Article V(a)—Failure to retain financial responsibility for support and maintenance of the child during the period of the placement.

B. Attempting to Use a Visit to Evade Compliance

In Chapter I, Section I. D.(3), the definition of a visit was contrasted to the definition of a placement. This is an area where courts attempt to evade compliance with the Compact by calling what is really a placement, a visit.

Since a visit is not a matter to which the ICPC applies, its planning or occurrence does not call for the involvement of a Compact Administrator. In many of these cases, neither the Compact Administrator in the sending state nor the receiving state knows anything about the child(ren) unless and until some sort of trouble arises or until services are requested.

When a court allows a child under its jurisdiction to be placed in another state on the pretense of a visit, when the intent is in fact a placement, not only does the court violate the

law, but also it may place the child at risk. Because the ICPC procedures have not been followed, a home study has not been completed to determine the appropriateness of the placement, and services that may support a successful placement have not been put in place. It should be noted that there is no legal concept of an “extended visit” under the ICPC. In some jurisdictions, attorneys provide suggested court orders to judges that include “extended visit” language. When attorneys do this, they are contributing to violation of the ICPC law.

C. Inappropriately Using Guardianship to Evade Compliance

As discussed in Chapter I, Section V.K., interstate placements with guardians can be exempt from the ICPC in certain circumstances. There have been sufficient instances in which prospective adoptive parents have been made guardians of the children they propose to adopt in order to evade compliance with the ICPC that a Secretariat memorandum was issued on this topic in 1988 and revised in 1998.⁵ The full text of this memorandum is contained in Appendix N. This memorandum examines the question of the legitimacy of such appointments and their meaning for the ICPC, compliance issues, and enforcement.

The position taken is that such appointments should be held invalid as a matter of law and that they do not relieve sending agencies and other parties of the obligation to comply with and enforce the ICPC. The conclusion to the memorandum states:

It is a customary statement of courts that they will inquire behind appearances to determine the actual facts and their legal significance. Consequently, a guardian who is one in appearance and name only should not be sustained. In fact, we submit that the type of guardianship arrangement used to evade the ICPC is even worse than a deception and a meaningless form; it is a status which places the prospective adoptive parents in a conflict of interest situation and is therefore improper for that reason as well. However, courts will often do nothing about appearances that are inconsistent with reality unless a party to a proceeding brings them to the court's attention. If a Compact Administrator or another public official is to enforce compliance with the ICPC, this is likely to mean that, where litigation is necessary, the enforcing agency will need to point out the existence of the sham guardianship in presenting its case.

⁵ Wendell, Tucker, and Rosenbaum: *Memorandum on Guardianship and Attempts to Evade the Interstate Compact on the Placement of Children*, ICPC Secretariat, Revised 1998.

Who can properly be a guardian of a child going through a placement and adoption situation will depend on the particular circumstances of the case; however, it is possible to state certain propositions as applicable rules:

1. If a particular individual is already the guardian of the child before there is any thought of placing the child, the chances are that such a guardian (if an individual) is within the exempt class under Article VIII. Nevertheless, special note should be taken of state laws that provide for the Child Welfare Agency of the State to be the “guardian” of each state ward. This is an agency guardianship, even though a named individual may appear as the “guardian.”
2. A “friend of the family” may be a non-agency guardian within the meaning of Article VIII. In any such case, it is matter of fact as to whether that person is really a friend or merely an individual who is found for the purpose and merely alleged to be a “friend of the family.”
3. The prospective adoptive parents should never be guardians and cannot properly serve in that capacity because their role as petitioners to adopt makes it impossible for them to perform the duties of independent surveillance and protector that are the essence of the guardianship function and responsibility.

D. Consequences of Illegal Placements

The placements described in the previous three sections all represent illegal placements. Whenever the court makes an illegal placement certain consequences can result. The most serious consequence, unfortunately, can be to the innocent party—the child who has been placed illegally. As discussed in the Introduction, when courts place children out-of-state without following the ICPC, home assessments have not been completed and follow-up supports and services have not been arranged. This sets up the possibility of children being

placed at physical and emotional risk without adequate services.⁶ When Compact law is followed and the receiving state approves a home, the receiving state is obligated to also provide supervision on request.

When children are placed interstate without the ICPC approval, often the new caretaker is unable to enroll the child in school and may not be able to obtain a medical card. As a result, a placement that with the proper services could become a permanent home may unnecessarily disrupt, causing more trauma to the child, yet another move, and another delay in permanency.

When a receiving state discovers that a child has been illegally residing in the state, it may determine that the child is in an inappropriate setting that could be injurious to the child. The receiving state may take the following actions, depending on the circumstances and severity of the situation:

1. In consultation with the sending state or sending agency, make immediate arrangements to return the child to the sending state.
2. Refuse to proceed with an adoption.⁷

⁶ *Custody of Quincy*, 29 Mass. App. Ct. 981, 562 N.E.2d 94 (Mass. App. Ct. 1990) in which child was placed with a father in violation of the ICPC. After the child began acting out, the child was without services from the sending state. The receiving state would not offer services unless the child was brought into care in the receiving state. The court noted that the sending state would have been required to provide services if authorities had complied with the ICPC. From *Court Cases of the Interstate Compact on the Placement of Children: Briefs & Legal Analysis*, page I-18, APHSA, 2000.

⁷ *In re A.M.M.*, 949 P.2d 1155, 24 Kan. App. 2d 605 (Kan. App. 1997) The court held that failure to comply with the ICPC was sufficient grounds to revoke consent for an adoption.

In re Adoption/Guardianship NO. 3598 in the Circuit Court for Hartford County, 109 Md. App. 475, 675 A.2d 170 (Md. Ct. Spec. App. 1996) The court has the discretion to dismiss an independent adoption based on violations of the ICPC.

Matter of Adoption of Jon K., 141 Misc. 2d 949, 535 N.Y.S.2d 660 (N.Y. Fam. Ct. 1988) The court rejected making a “best interest” determination when a child had been placed for adoption in violation of the ICPC. The court rejected granting an adoption until the parties had complied with the ICPC because “the general welfare of children illegally transported across state lines will be promoted by strict enforcement of ICPC.”

Adoption of Higginbotham v. Higginbotham, 1981 WL 2942 (Ohio App. 12 Dist. Clermont County 1981) Relatives appealed dismissal of their petition to adopt their niece. Dismissal was upheld based on violation of the ICPC and lack of notice to the natural mother. From *Court Cases of the ICPC: Briefs & Legal Analysis*, page I-7, I-10, I-22, I-28, APHSA, 2000.

3. Remove the child from the inappropriate setting and place the child in emergency shelter/foster care in the receiving state while more permanent plans can be developed and implemented.
4. Determine that the child is not in any danger and notify the sending state or sending agency that the child can remain in the current setting while a home study is being completed and compliance can be achieved.

In the first three actions, the harmful consequences to the child are clear and the delay in permanency for the child is significant. In the last action, the child may be safe and in an appropriate home, however, such an action is not without consequences. After-the-fact compliance cannot be construed to mean that the court and all parties who did not object to the court's order have violated the law. If the child is Title IV-E eligible, the child welfare agency faces loss of reimbursement and possible financial sanctions for failure to comply with ASFA. Courts, child welfare agencies, attorneys, and Compact Administrators, as explained below, put themselves at significant risk when they knowingly engage in the practice of "retroactive compliance."

In addition to potential harm to a child, illegal placements and failure to follow Compact law can result in consequences to the court and any attorneys involved in the case. These consequences could include:

1. Appeals filed regarding the court's illegal action with the decision being overturned by the appellate court and the court identified as ordering an action in violation of state law. This not only results in potential embarrassment to the judge but significantly delays permanency for the child.⁸

⁸ In Interest of R.R., 156 Wisc. 2d 824, 458 N.W.2d 390 (Table Text in WestLaw), Unpublished Disposition, 1990 WL 100379 (Wisc. App. 1990) A natural mother appealed an order placing her children with an out-of-state relative in violation of the ICPC. The court reversed the order and remanded the case based on violations of the ICPC and other relevant state law. The court noted that "without compliance with these statutes, the trial court had no authority to send (the children) to Indiana as it did under this dispositional order."

In re Eli F., 212 Cal. App.3d 228, 260 Cal. Rptr. 453 (Cal. App. 3 Dist., 1989) The court found that proper remedy for an ICPC violation was to rescind the placement order.

T.W.S. v. Department of Health and Rehabilitative Services, 466 So.2d 387 (Fla. App. 1 Dist. 1985) On appeal, the court reversed the termination order and ordered the child returned to Florida with Florida

2. Violations reported to the Judicial Review Committee of the state's Supreme Court for corrective action.
3. For any attorneys involved who have recommended action in violation of the Compact, or not appealed a court's order that violates the Compact, a report to the state's Bar Association for corrective action. Furthermore, if the attorney is a member of the American Academy of Adoption Attorneys (AAAA), the violation should also be reported to that organization's Review Committee.⁹
4. A sending state court that places a child in violation of Compact law remains liable for its actions in making an illegal placement.
5. A handful of states have enacted criminal offense provisions expressly for violation of the ICPC. In other states it appears that provisions in other criminal statutes could be utilized to address non-compliance with the ICPC.

Department supervision resumed. The court emphasized that the child welfare statutory mandates "must be taken seriously." The court continued "to say that we are dismayed at the woeful inattention to statutory mandates evidenced by the participant's actions in this cause is an understatement." Florida statutes required compliance with the ICPC and the completion of a performance agreement between the Department and the parents.

Dept. of Health and Rehab. Serv. v. J.M.L., 455 So 571 (Fla. App. 1 Dist. 1984) Trial court erred in placing children in an out-of-state placement in violation of the ICPC, in ordering the children placed out of state without the approval of the receiving state, and in relinquishing jurisdiction in violation of the ICPC.

In re Linn, 310 N.C. 151, 312 S.E.2d 648 (N.C. 1984) The North Carolina Supreme Court had vacated a North Carolina trial court order that had found the ICPC inapplicable to a child placed out-of-state with a parent. The court found the ICPC inapplicable because the mother was physically present in the courtroom to relieve the North Carolina Department of Social Services of physical and legal custody. On appeal, the Supreme Court vacated the lower court's order and remanded the case for further proceeding in accordance with the ICPC.

In re John M., 122 N.H. 1120, 454 A.2d 887 (N.H. 1982) Placements were illegal because authorities had not complied with the ICPC.

From *Court Cases of the ICPC: Briefs & Legal Analysis*, page I-19, I-21, I-25, I-26, I-27, I-28, APHSA, 2000.

⁹ Iowa Supreme Court Board of Professional Ethics and Conduct v. Hill, 576 N.W.2d 91; 1998 Iowa Sup. LEXIS 65 (Iowa 1998) Attorney's license was revoked because of the mishandling of an interstate adoption. The mishandling included failure to comply with the ICPC.

Matter of Adoption of R.N.L., 913 P.2d 761 (Utah App. 1996) Attorney was sanctioned for not complying with the ICPC.

State ex. Rel. Oklahoma Bar Ass'n v. Johnson, 863 P.2d 1136 (Okla. 1993) An attorney was suspended for four months from the practice of law. Included in the charges against the attorney was that the attorney took no steps to comply with the ICPC when facilitating an adoption.

From *Court Cases of the ICPC: Briefs & Legal Analysis*, page I-7, I-10, I-15, APHSA, 2000.

Because there are different ways to interpret the law, a judge may make an order that she/he believes complies with the law but is later overturned by the appellate court. To avoid such a situation, judges should become thoroughly familiar with Compact law and case law involving the Compact so as to minimize the possibility of delaying a child's case through an inadvertent violation of the law.

E. A Best Practice to Deal with Unilateral Terminations-Missouri's Second Chance Statute

In Chapter I, Section II.B., a practice that violates the ICPC involving unilateral termination was described. That practice is for a court to make an interstate placement, approve the placement or direct another entity such as a public welfare agency to make it, and then unilaterally dismiss its jurisdiction. This practice is unlawful because none of the requirements of dismissal or termination have been met, specifically:

- the child is adopted;
- reaches majority;
- becomes self-supporting; or
- is discharged with the concurrence of the appropriate authority in the receiving state.

Whenever a court issues an order, there is generally a window of 30 days from the date of issuance in which the court can be requested to review its order and make changes, although the court has no obligation to change its order. After the expiration of the 30-day window, the court's order is considered to be final.

In the case of a unilateral termination, it may be that the ICPC Office does not learn of such action until after the expiration of the 30-day time limit. In such situations, the ICPC Office is unable to ask the court to comply with Article V of the Compact. In this instance, the

court and any attorneys involved who have not appealed the court's action are at risk of disciplinary action because they have violated the law,¹⁰ and the agency has no recourse—clearly a situation that is not in the best interest of all involved.

Missouri has enacted a statute that allows the public child welfare agency to petition the court to have the child's custody returned to the agency, even though it has been more than 30 days since the court issued its order to terminate jurisdiction over the child. The statute is reprinted below, and is offered as an example of a practice that could be implemented to ameliorate unilateral termination in violation of the Compact.

Section 211.036. Custody of released child may be returned to division of family services, when-

If a child under the age of 18 is released from the custody of the division of family services and after such release it appears that it would be in such child's best interest to have his custody returned to the division of family services, the juvenile officer, the division of family services or the child may petition the court to return custody of such child to the division until the child is 18 years of age.

II. STRATEGIES TO PREVENT OR DEAL WITH DELAYS IN THE ICPC PROCESS

In Chapter I, Section III, expected time frames for routine processing of ICPC paperwork (Part A), home studies (Part B), non-priority placements (Part C), and Regulation 7 Priority Placements (Part D) were discussed. By working through the steps of the ICPC process and applying Compact and AAICPC time expectations, the best case scenario for the length of time a non-priority ICPC placement will take when the placement does not involve foster home licensing or pre-adoptive placement is likely to be three months. When the placement involves foster home licensing or pre-adoptive placement and the home is not already licensed, the best case scenario for ICPC approval is three to four months. For Regulation 7

¹⁰ See Section D of this Chapter.

Priority Placements, the best case scenario for the length of time it will take to get approval is 1½ months.

This section covers the importance of case tracking systems so that courts and agencies have a clear picture of individual and aggregate time frames for the ICPC approval process and best practices that can reduce the time frames for ICPC approval.

A. Case Tracking Systems

As discussed in the *RESOURCE GUIDELINES: Improving Court Practice in Child Abuse & Neglect Cases* and the *ADOPTION AND PERMANENCY GUIDELINES: Improving Court Practice in Child Abuse and Neglect Cases*.¹¹

“Courts must understand how they are managing their caseloads in terms of numbers, timelines and outcomes for neglected and abused children. They must use technology to create management information systems that can ensure compliance with statutory time limits, track overall compliance with goals, analyze trends and evaluate the effectiveness of programs and policies. Such systems not only provide important research and evaluative information to help the court improve outcomes for children, but also provide information to justify increased resources when needed.”

For ICPC cases, because of the potential for delays inherent in this multi-layered system, both individual case monitoring and aggregate case time line tracking are essential.

1. Individual case monitoring through court review

In individual cases involving the ICPC, close judicial monitoring is necessary to identify whether the case is moving according to the time frame expectations

¹¹ Both Guidelines published by the NCJFCJ, Reno, Nevada, *RESOURCE GUIDELINES* in 1995 and *ADOPTION AND PERMANENCY GUIDELINES* in 2000. For copies of these publications, contact (775) 327-5300.

considered reasonable as described in Chapter I, Section III. A tickler system should be used to “red flag” the ICPC case at critical points for court review.

If a court’s local agency and state ICPC Administrator have a consistent track record of timely processing of ICPC paperwork, the court should “red flag” the case for review at the point the receiving state should have handed the case to the local receiving state agency to begin the home study. This will ensure there has been no delay in reaching this critical point. Once this handoff has occurred, the case should again be “red flagged” at the point the home study should be completed and the recommendation made for approval.

If the court’s local agency and/or state ICPC Administrator do not have a consistent track record of timely processing of ICPC paperwork, in addition to the time frames “red flagged” for the receiving state, the court should “red flag” the case for a report from the local agency within 1½ weeks of the court’s order to begin the ICPC approval process. This will ensure the paperwork has been submitted to the sending state ICPC Office, and the sending state ICPC Office has forwarded the material to the receiving state.

Once the ICPC approves the placement and the placement is completed, the court should continue to review the case using the time frames described in detail in the *NCJFCJ RESOURCE GUIDELINES* and *ADOPTION AND PERMANENCY GUIDELINES* until one of the conditions for termination has been met and the court closes the case (see Section I. E. in this chapter).

2. Aggregate case tracking

Aggregate case time line data is also important to use to analyze trends. If set up properly, this information enables a court to determine the local agency’s efficiency in processing ICPC referrals, the sending state ICPC Office’s efficiency, and the efficiency of various receiving states. Judges can use this information persuasively in making a case for the need for improvement by proving that a problem is not an

isolated case but a trend over a number of cases. Courts can also use the information to identify states where frequent interstate placements are made and where border state agreements or relationship development would assist in making the ICPC process more timely (see the next two sections for more information on border state agreements and relationship development).

APHSA and the ICPC Secretariat have developed a database that can be used by all states to track interstate placements. This system will be available to all interested states in the summer of 2001.¹² This system will make it possible for states to identify placement delays and their causes so that they can facilitate remedial action. This system can be tailored to meet each state's individual requirements and will be available to all State Compact Administrators at no cost. Juvenile and family court judges should be aware that this data tracking system is available to the state ICPC Administrator.

B. Best Practices to Decrease the Length of Time for ICPC Approval in All Types of ICPC Cases

1. Ensuring that the completion of court orders does not delay the process

Ideally, courts should be able to produce signed and certified orders of the court at the end of each hearing so that parties leave the hearing with written, signed orders in hand. Where the court's order must be generated after the hearing is complete and mailed to parties, judges should require prioritization of typing court orders involving the initiation of ICPC placement approval. These orders should be prepared, signed, certified, and either delivered by same-day inter-departmental mail or faxed to the local agency within 24 hours of the hearing at which it was determined the ICPC approval request was to be initiated. If faxed, original orders should follow immediately.

¹² For more information, contact APHSA c/o ICPC Secretariat (202) 682-0100.

2. Using fax and overnight mail

Regulation 7 Priority Placements *require* that materials being sent from agency to agency use fax or overnight mail. Non-priority placements do not *require* this expedited method, but in the best interest of children, in order to reduce an already lengthy time delay for ICPC cases, sending and receiving agencies should be willing to use these methods and to accept faxed documents until approval has been granted.

There are certain instances where original documents are important for the receiving state; however, unless the receiving state approves the placement, whether they have faxed or original copies is really a moot point. If the placement is approved, original copies can be sent by overnight mail at that time.

Using these expedited methods of transmitting materials can reduce the time frame in a non-priority placement approval by two weeks. Faxing copies incurs no additional expense as courts and local and state child welfare agencies routinely possess the ability to fax. The use of overnight mail, which is expensive, can be limited to one instance per case, specifically *after* approval has been received to provide original documentation.

Since the use of fax and overnight mail can reduce waiting time for a child, judges should require in their court orders initiating the ICPC placement approval process that the interagency transmittal of written information at local and state levels must be by the most expeditious method available.

3. Using concurrent transmittals of requests to expedite the ICPC process

In 1996, a joint committee consisting of representatives from the NCJFCJ, the National Association of Public Child Welfare Administrators (NAPCWA) and the AAICPC was convened. Their charge was to eliminate delays in the placement of children in appropriate family homes across state lines and to simplify the ICPC

process while making the process user friendly. This joint committee was convened as a result of the recognition of broad dissatisfaction over delays in the ICPC process. These delays denied children the opportunity to achieve timely stability and permanency during a period when they are traumatized by the movement and experiences that brought them into the child welfare system.

One of the recommendations from the report of this joint committee¹³ was to allow simultaneous receipt of interstate requests at both the state ICPC Office and the local office. This would require that state offices have the names and telephone numbers of local office supervisors in order to facilitate such communication. This method has the potential to reduce the time frames of the process by *more than one week*.

Judges should advocate for these efficiencies in their joint ICPC training and improvement committees. If this practice is not implemented in spite of these efforts, judges should include in their court orders initiating the ICPC approval process a requirement for concurrent transmittals of requests.

It is important to note that if agencies combine the use of fax and overnight mail, and concurrent transmittals, the length of time the non-priority ICPC approval process requires can be reduced by almost one month.

4. Enhanced communication to quickly identify and resolve delays

The joint committee also recommended opening up direct lines of communication between the sending and receiving state local supervisors, as opposed to requiring that all communication travel through both state ICPC Offices. This does not mean to suggest that state offices are skirted in making the formal approval request. It does recommend that for questions, verification of information, and resource identification, direct communication between local workers both before the official

¹³ *ICPC Final Report of the Joint Committee on ICPC Improvement, ICPC Regulation No. 7 and Recommendations*, December 1996.

referral is made and during the official referral process as the most efficient process. Judges should expect such practices to occur in their jurisdictions.

Another recommendation of the joint committee was to use the UCCJA/UCCJEA as a model for judge-to-judge communication to deal with delays and problems in ICPC cases. When determination of jurisdiction is a question in the juvenile court at the time a complaint is filed (see Chapter 1, Section I. D. 10) it is accepted practice for the judge where the complaint was filed to pick up the telephone and call another judge who may have ongoing jurisdiction over the child through another matter. The two judges discuss the situation and make a determination as to which court should properly hear the matter.

In ICPC cases when there has been an undue delay in obtaining a home study or in any other problem situation, unless state statutes and/or Judicial Conduct Codes of Ethics specifically forbid such communication (see Introduction, Section VII. D on *Ex Parte* Communication) it is recommended that the same method of judge-to-judge communication occur in order to determine if the judge in the receiving state county can assist in determining what is causing the problem and assist in a solution.

Judge-to-judge communication will not only promote close working relationships among judges in different jurisdictions, but also can lead to greater understanding and appreciation of local working conditions as well as create opportunities to resolve roadblocks.¹⁴

5. Judges directly communicating with state ICPC Administrators regarding delays

The joint committee on ICPC improvement recommends that judges directly contact the Compact Administrator who actually processes the ICPC requests to obtain information on ICPC cases. The Compact Administrator should have information readily available that identifies the date the ICPC Administrator received the request from the local worker, the date the request was sent to the receiving state, and the

dates that notices were sent to the receiving state requesting the status of the home study.

When judges have difficulty obtaining information on delays, several states have reported success in subpoenaing state ICPC personnel when a properly initiated ICPC approval request is not moving through the approval process in a reasonable time frame. If the delay is at the sending state level, the state ICPC Office has the direct ability to positively impact the problem. Even if the delay is at the receiving state level, courts report that the impact of the subpoena on their state administrator has a significant impact on the cooperativeness of personnel in the receiving state.

Before considering such an action, however, courts must make sure that they have followed all requirements of Compact law, must understand what time frames are reasonable to expect as described in Chapter I, and must have attempted to resolve the problem through direct contact.

6. Using judicial leadership to influence the local and state child protection agency to implement recommended practices to expedite ICPC requests¹⁵

One of the primary reasons for the delays in processing ICPC requests is because in many local and state child welfare offices, ICPC requests are considered workload to be attended to as time permits. Local child welfare service cases are given first priority. In some instances, ICPC requests may be assigned to the newest staff due to this sense of lower urgency and importance. The AAICPC recognizes that this mindset must be changed because interstate placements involve children who, in most cases, have already been waiting weeks for home studies. These children may be in temporary emergency shelters pending the outcome of the ICPC request, and even processing their case in the order received at the local office may be unfair.

¹⁴ Ibid.

¹⁵ Excerpted in part from *ICPC Final Report of the Joint Committee on ICPC Improvement, ICPC Regulation No. 7 and Recommendations*, December 1996.

State public child welfare administrators generally have the ability to raise the priority for processing ICPC requests in the total workload. They can promote prioritization on the basis of the individual case circumstances, degree of risk, etc., as is common local practice.

A best practice that has been successful in several locations throughout the country is to assign a dedicated worker or unit to handle all incoming interstate cases in a local office or area. This method has many positive attributes, such as allowing a worker to specialize in these cases and become experienced in the rules and regulations of the ICPC. Dedicated workers or units are able to adjust schedules to accommodate emergency requests and develop standard approaches to describe family situations that can assist in rapidly preparing written home studies.¹⁶

If judges experience difficulty in the timely processing of ICPC cases within local and state agencies, they can use judicial leadership to encourage collaborative relationships. These relationships can lead to formation of improvement committees to advocate adoption of improved practices by local and state agencies. Judges should review their respective state Judicial Conduct Codes of Ethics, Judicial Advisory Opinions, and any court decisions interpreting those state Judicial Conduct Codes of Ethics as to the propriety of membership on Improvement Committees. See Introduction, Section II on Judicial Leadership.

C. Best Practices to Decrease the Length of Time for ICPC Approval in Specialized ICPC Cases

1. Reducing the waiting period prior to placement for relative placements where Title IV-E board payments are required

As previously discussed in Chapter I, Section III. C. 2., ASFA regulations now require that to receive reimbursement for board payments for a Title IV-E child, the full licensure process that the agency uses for a non-relative foster home must be

completed for the relative. This requirement can significantly extend the amount of time required to obtain ICPC approval of a placement if the relative home is not already licensed as a foster home or pre-adoptive home. In the past, state policies have allowed for less stringent approval processes for subsidized placements with relatives. Recent ASFA regulations remove this as an option. Since most interstate placements involve placement with relatives, and since most of these placements must be subsidized through foster care board payments, a significant number of ICPC placements will require the relative to complete the same training and other licensing requirements as any foster parent. This process, as described in Chapter I, Section III, can delay the placement of a child with a relative from two to three months.

If financial and/or medical assistance needs on behalf of a child fall into one of the following categories, and the receiving state's laws do not indicate otherwise, the case does not fall under the requirement of licensure because Title IV-E funds are not involved. Specifically:

- no financial assistance is required in support of the child;
- financial assistance is provided through state funding sources;
- financial assistance is provided through Temporary Assistance for Needy Families (TANF) funding;
- medical assistance is provided through a method that does not use Title IV-E funding; or
- any other non-Title IV-E funding is used for assistance.

This opens up some possible ICPC approval alternatives when the ICPC request is for placement with a relative who must become licensed as a foster parent. One option is that the relative agree to forego payment on a *temporary* basis. If this is possible, the receiving state could indicate its approval of the home and immediately begin the licensing process. The child could be placed in the home while the

¹⁶ For more information, contact APHSA c/o ICPC Secretariat (202) 682 – 0100.

licensing process proceeds without foster home board payments. This would provide motivation for the relative to complete those parts of the licensing process under the relative's control as soon as possible. At the point the licensing process is complete, Title IV-E foster care board payments could be initiated.

Another alternative, if the relative is unable to forego payment until the licensing process is completed, is for the sending state to identify a non-Title IV-E funding source for board payments, or bridge payment, until the home is licensed. The bridge payment could incorporate a built-in incentive to the relative to ensure that the relative is moving as quickly as possible to expedite the licensing process. At the point the home is licensed, the ASFA requirement would be met, the Title IV-E subsidy could again be used for financial maintenance of the placement, and the bridge payment would terminate.

2. Using border state agreements to reduce time frames for ICPC approval

For jurisdictions that routinely place children in neighboring state jurisdictions, border state agreements can be created to alleviate delays in obtaining ICPC approvals. Border state agreements are often used to allow the sending state social worker to conduct the home study in the receiving state. When used for this purpose, border state agreements generally acknowledge that it is the primary responsibility of the receiving state to conduct the home study when approval has been requested through the ICPC for an interstate placement. They also acknowledge, however, that extenuating circumstances may justify the home study being performed by personnel from the sending state.

When the local agency of the sending state lies geographically close to the proposed interstate placement location, the sending state local agency worker can save significant time by conducting the home study because the agency worker is already knowledgeable of the child's circumstances and needs. It can also be assumed that the sending state local agency has a higher level of motivation than the receiving state

local agency worker to complete the home study as soon as possible. A sample border state agreement between Kansas and Missouri is included in Appendix O.

Unfortunately, few states have taken advantage of border state agreements. It has been suggested that part of the reason may be that some ICPC Administrators do not believe they have the authority to initiate such discussions with judges or agency heads. This perceived barrier reinforces the importance of judges reviewing not only the interstate placement data from their jurisdiction (see Section A.2. in this chapter on Aggregate Case Tracking), but also the data from the *entire* state to identify if there are bordering states that are frequently used for the interstate placement of their state's children.

If there are states where such placements are occurring with some frequency, the judge should determine if a border state agreement exists. If it does, the judge should get a copy of the agreement and make sure its provisions are understood by court personnel. If an agreement does not exist, judges should take a leadership role in raising the issue with the child welfare agency director to help ensure that such an agreement is developed.

It is important to note that border state agreements need not be limited in content to home studies, to court involved cases, to Regulation 7 Placements, or even to ICPC issues. Some states (i.e., North and South Carolina, and Missouri and Kansas) use border state agreements to address shared use of emergency and other residential facilities. Border state agreements can be used for *any subject* that can benefit from increased cooperative use of resources between states.

3. Contracting with private agencies to conduct home studies to reduce delays

When the court is informed that the receiving state, due to exigent circumstances, is unable to complete a home study within the recommended time frame, judges should first identify whether a border state agreement applies to the situation, and if it does, the judge should expect the sending agency child welfare worker to

immediately begin the home study. When a border agreement is not in place, or when sending state resources are not sufficient to meet the expected time frame, the judge should attempt to determine if there is a private agency with which the sending or receiving state can contract to complete the home study in the expected time frame.

The *Final Report of the Joint Committee on ICPC Improvement*¹⁷ has recommended that local agencies expand their list of available resources for performing a home study and post-placement supervision in order to achieve timely processing of ICPC requests. A summary of points made in this report include:

- Although some states or local offices have strict policies that allow only their staff to perform home studies and post-placement supervision, if such policies contribute to a delay in getting a child placed, *other alternatives need to be considered.*
- One reason for resistance to other alternatives is the concern the agency does not want to supervise a placement that it would not have approved had it conducted the home study. Variations in perception do exist among workers doing home studies; however, the likelihood of inconsistency *between* agencies is not significantly different than the likelihood of inconsistency *within* one agency.
- Licensed child-placing agencies exist in all states, and most are routinely involved in completing home studies for foster or adoptive placement of children. There *should not be any artificial barriers or restrictions* to utilizing private sector licensed agencies to perform home studies and/or to provide supervision if the public agency resources cannot meet reasonable time frames due to resource issues.

¹⁷ *ICPC Final Report of the Joint Committee on ICPC Improvement, ICPC Regulation No. 7 and Recommendations*, December 1996. Participants included NCJFCJ, AAICPC, and NAPCWA.

- Fees for these services should be paid by either the sending or receiving agency, depending on which agency does not have the resource to respond in a timely fashion. If the agency tracks fees paid for this purpose, the agency can determine the cost-effectiveness of continuing to contract with private agencies as opposed to increasing agency staff.
- Another argument against the practice of contracting with private agencies is that the receiving agency does not want multiple caseworkers involved in the process. This argument falters because agency practice often has the home study and the follow-up supervision performed by different units within an agency. Even if this is not the case, routine staff turnover or temporary unavailability of a worker often produces involvement of one or more staff within a single agency.
- In addition to private, licensed child placement agencies, licensed or certified professional social workers, or any other individual meeting state standards should be considered as a resource to conduct home studies. These professionals should be considered fully qualified if they meet the standards of the state in which they practice. Fees for these services should be paid by either the sending or receiving agency, depending on which agency does not have the resource to respond in a timely fashion.
- In some instances, courts and agencies should allow parents or relatives to obtain and pay for their own home study by a licensed provider, if the home study meets established standards.
- In some instances, it makes sound fiscal sense for the sending agency to pay for a home study by a private agency or individual in the receiving state if the receiving state convincingly concludes that no other alternative is available to them other than delaying the placement of the child. This option may make fiscal sense when the child is going to a placement with a parent or relative at no cost or at a reduced cost from the placement the child must wait in while the interstate placement is

approved. If the sending agency can use a private provider to obtain a home study significantly sooner than waiting for the local agency of the receiving state, the placement can occur sooner, not only benefiting the child but also fiscally benefiting the sending agency.

4. How mediation and family conferencing can be used to reduce ICPC delays

The court in El Paso, Texas, reports successful reductions in the amount of time the ICPC approval process takes by using mediation and family conferencing as a tool to do initial screening of a potential out-of-state relative placement.¹⁸

All relatives are identified immediately after an abused or neglected child is removed from the parental home. The relatives are contacted to discuss their willingness to be a part of the placement plan for the child. If an out-of-state relative indicates a serious interest, preliminary checks of criminal and abuse history are completed. If the checks are acceptable, the relatives are invited to attend either a mediation or family group conference, and travel costs, if needed, are covered.¹⁹

The mediation or family group conference enables the potential out-of-state relatives to show their sincere interest by attending the meeting and allows them to meet the child and talk to the parents and foster parents. They also talk to the caseworker who completes a psychosocial evaluation. The child's attorney, CASA, and any other party also have the ability to meet the relative. The caseworker can explain firsthand the ICPC process and how the relative can help expedite the home study once the ICPC referral is made. The relative is available to appear in court to assist the court in determining the appropriateness of the child's placement with the family.

¹⁸ Information provided by Judge Patricia A. Macias.

¹⁹ In jurisdictions that routinely use mediation and family conferencing, budgets are set aside for expenses such as transportation, lodging, and other costs related to bringing the family together to participate in the mediation or family conference. These dollars are usually in the child welfare budget but may be in the court budget if the court is operating the mediation program.

Once the court has approved initiating the ICPC approval process for the relative, all of the information obtained about the out-of-state relative through the mediation or family conferencing process is included in the ICPC referral. In addition, informal contact is made between the sending state local caseworker and the receiving state local caseworker.

As the formal ICPC process proceeds, the relative remains involved in the case, e.g., attends court hearings via telephone, maintains telephone and written contact with the child through the foster parents, and receives all court documents. At the point the ICPC approves the placement, everything is in place and the child and relative have already begun their relationship. Because of the involvement of the relative and the local and out-of-state caseworkers from the beginning of the process, the ICPC approval moves forward more quickly than would usually be the case, in large part due to the active participation of the relative as a team member.

5. Using form court orders in Regulation 7 Priority Placement cases to ensure that all necessary items are included

As explained in Chapter 1, Section III. D, use of Regulation 7 to identify a priority placement requires a court order that details the circumstances that make the case a priority placement. Specifically, to be a priority placement, the request for placement cannot be for licensed or approved foster family care or adoption and the request for placement cannot be for a child that is already in the receiving state in violation of the ICPC. *In addition*, the proposed placement recipient must be a parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or guardian, *and* the child must be under two years of age, or in an emergency placement, or the court must find the child has spent substantial time in the home of the proposed placement, or the receiving state has had a completed referral for over 30 days and no decision has been made.

If the court does not carefully draft the court entry so that it properly identifies that the case falls within the definition of a priority, the ICPC Administrator will be

required to send the case back to the court for clarification. This causes significant delay.

A way to avoid errors in drafting the court entry is to use a form entry. Form entries ensure that all required language is covered. An example of a court rule and sample court order can be found in Appendix L.

III. HOW TO AVOID DISRUPTION WHEN A FOSTER PARENT MOVES TO ANOTHER STATE

Regulation No. 1: *Conversion of Intrastate Placement into Interstate Placement; Relocation of Family Units*²⁰ was implemented to ensure that foster children could move to a different state with their foster parents, when appropriate, without the placement being disrupted while the foster parents acquired licensure in the new state of residence.

The following example illustrates this situation:

The H. foster family is presently caring for three siblings: Max, age 6, Nate, age 5, and Hazel, age 3. The children have been in the H. foster home for a year. They were removed from their mother's care due to substantiated physical abuse and lack of parental care and supervision. The children's mother has a long history of alcohol abuse and illegal drug use. She is resistant to therapy or treatment. Her visits with her children are sporadic (four one-hour visits in 17 months and no contact during the last four months) and her few visits demonstrate she has little insight regarding appropriate parenting skills.

The father of Max and Nate has not seen his children for over four years. His whereabouts are unknown. Hazel's alleged father has never seen his daughter because he left the relationship with Hazel's mother during the pregnancy.

The H. family is moving from Former State to New State due to a change in employment. They want to keep the children together and want to adopt the children if and when the children are free for adoption. All three children refer to Mr. and Mrs. H. as "Dad" and "Mom." Max expresses his desire to "live with Mom and Dad forever" and stay with his brother and sister.

²⁰ See Chapter I, Section V. B. for full text.

The worker agrees that the family should move with the children to New State. The court has given its approval for the children to remain in the foster home and will allow the children to move to New State.

Clearly this would not be in the children's best interest. With Regulation 1, the children can move with the foster parents.

Sometimes these situations are not quite so clear. Prior to the court determining how to comply with the ICPC in these cases, the court must have the answers to the following key questions in order to determine whether the foster children should move with the foster parents:

- Is it in the best interest of the child(ren) to remain with the foster parents?
- Do the foster parents want to keep the child(ren) in their home even though moving to another state?
- Does the child(ren) want to remain with the foster parents (assuming the child is age appropriate to make such a declaration)?
- How will the child(ren)'s move to another state affect the child(ren)'s birth and/or extended family?
- If the child is a member of a sibling group, and the sibling group is not placed together, what plans can be implemented that will allow the child to maintain contact with siblings (assuming such contacts are considered beneficial to all parties)?

When the court has determined that the foster child(ren) should move to another state with the foster parents, the appropriate Regulation 1 protocol depends on whether there is more or less than 45 days' advance notice of the move.

When there is more than 45 days' advance notice, the normal ICPC protocol is initiated, and the information accompanying the packet must make it specific and clear that the relocation of a family unit is involved and the family does not yet reside in the receiving state. If there is

less than 45 days' notice, the sending state requests the receiving state to expedite the referral so that it is handled within the time frame remaining before the family arrives in the receiving state. This assumes that the sending state has handled its end of the referral in a prompt manner. Both instances assume that the foster family has identified either a temporary or permanent place of residence in the new state.

In both instances, when the family holds a current foster home license with the sending state, the receiving state is expected to give effect to the license as sufficient to support a determination of qualification unless there is substantial evidence to the contrary. It is also expected that the proposed relocation will be promptly approved unless the receiving Compact Administrator finds that the child's needs cannot be met under the circumstances of the proposed relocation.

Once the family has moved, the receiving state is expected to make initial contact within 30 days and, if required by receiving state laws, to initiate its own foster home licensing process.

IV. HOW TO DEAL WITH A YOUTH WHO HAS RUN AWAY FROM AN APPROVED ICPC PLACEMENT²¹

The ICPC does not address the issue of children who have been placed across state lines through ICPC procedures and subsequently run away from the home of the caregiver in the receiving state. The Interstate Compact on Juveniles (ICJ), however, is a multi-state agreement that provides the procedural means to regulate the movement across state lines of juveniles who are under court supervision. All 50 states, the District of Columbia, the Virgin Islands, and Guam are members of the ICJ.

The ICJ provides for the monitoring and/or return of any juvenile who:

- has run away from home without the consent of a parent or legal guardian;
- is placed on probation or parole and wants to reside in another state;

²¹ Excerpted in part from the OJJDP web site [<http://www.ojjdp.ncjrs.org/pubs/fact.html>], *Fact Sheet on the ICJ* by Christopher Hollaway, September 2000.

- has absconded from probation or parole or escaped from an institution and is located in another state;
- requires institutional care and specialized services in another state; or
- has a pending court proceeding as an alleged delinquent, neglected, or dependent juvenile and runs away to another state.

Consequently, if a child under the jurisdiction of the court has been placed in another state through the ICPC and runs away, the ICJ provides procedures to bring about the return of the child from the receiving state to the sending state, or the return of a child from a third state to the receiving state. In some states, the ICJ is administered by the same staff who administer the ICPC. In other states, there are two separate persons responsible for these two Compacts.

Under the ICJ, a “juvenile” means any person who is a minor under the law of the state of residence of the parent, guardian, person, or agency entitled to the legal custody of such minor. All states use age 18 as the age of majority except the following:

Alabama	– age 19
Colorado	– age 18 under children’s code; otherwise age 21
Mississippi	– age 21
Nebraska	– age 19
Ohio	– age 18 unless mentally or physically handicapped, and then age 21
Wyoming	– age 19

Most states allow the juvenile or family court to extend its jurisdiction to age 21 whenever necessary for a child’s protection. Whenever the court exercises this option, age of majority is extended to age 21. It should be noted that a minor is considered to be legally emancipated upon marriage without regard to age at time of marriage, provided the marriage is recognized as valid within the state where it occurred.

Whenever a child has been placed into a receiving state through the ICPC and the child runs away, the child may be returned to the sending state through the ICJ, subject to various circumstances. The following are three examples of how to handle the case of a child who has run from the receiving state:

Example 1: If the child voluntarily agrees to return to the sending state, the court that has jurisdiction over the child will be requested to issue an order for the return of the child at the expense of the sending agency (refer to Article IV(b) of the ICJ). The court's order should be sent via fax to the local law enforcement agency where the child is located with a request to pick up the child. The sending agency is responsible for determining how and when the child will be returned. This information is to be shared with the local law enforcement agency that will pick up the child.

If it is necessary for the child to change planes, airport surveillance may be available. This action requires a minimum of 24 to 48 hours advance notice.

Example 2: If the child does not voluntarily agree to be returned to the sending state, a petition may be filed in the court that has jurisdiction over the child with a request the court issue a requisition for the return of the child to the sending state. If the court sustains the petition, the court will issue a requisition order.

The subsequent procedures identified above in Example 1 should be followed with regard to sending the court order by fax to the local law enforcement agency where the child is located.

Example 3: If the child has committed a criminal act or is suspected of committing a criminal offence or act of juvenile delinquency in the receiving state, the child shall not be returned to the sending state until the child has been discharged from prosecution or other form of proceeding, imprisonment, detention, or supervision for such offense or juvenile delinquency.

V. DEALING WITH THE CHALLENGE OF WHICH STATE LAW APPLIES

When dealing with interstate placements, the question frequently arises as to which state law applies to the approval or denial of the placement request—the sending state’s law, the receiving state’s law, or both? The answer varies depending on case circumstances as explained in the sections below.

A. All Placements Except Adoption

Whenever a proposal is made to place a child with a birth parent, a relative (as defined in Article VIII(a)), a foster family, or a residential treatment facility, and the proposed placement is subject to compliance with the ICPC, the law(s) of the *sending state* apply in almost all instances.

1. Placement with a birth parent

Whenever the court proposes to place a child under its jurisdiction with one or both birth parents in another state, the laws of the sending state control activities, with one exception identified below. This is true because Article V(a) of the Compact requires the sending agency to retain “jurisdiction over the child...that it would have had if the child had remained in the sending agency’s state.” The court in the sending state retains its responsibility for the child until the case is legally dismissed according to one of the four reasons given in Article V.

The home study on the birth parent(s) in the receiving state must be completed in accordance with the *receiving state’s* applicable laws and regulations that govern the preparation and completion of such studies.

The only exception to use of the laws in the *sending state* occurs if the child engages in behavior that would be considered an act of delinquency or a crime in the receiving state. In this circumstance, the laws where the act of delinquency or crime occurred would govern (refer to Article V).

If the child is charged with either a delinquency act or a crime in the receiving state, the court in the sending state must be notified about this information immediately. The judges in the sending state and the receiving state should discuss the case situation to determine how the UCCJA/UCCJEA and applicable court activity over the child will ensue, unless state statutes and/or Judicial Conduct Codes of Ethics specifically forbid such communication. See Introduction, Section VII.D on *Ex Parte* Communication. The decision of the judges is shared with the ICPC Offices in both the sending and the receiving states.

If the child is adjudicated a delinquent or guilty of a criminal act in the receiving state, the ICPC case should be closed and a referral should be made to the Interstate Compact on Juveniles. The ICJ will then govern any interstate movement of the child from the receiving state to another state.

2. Placement with a foster family

The laws of the *sending* state govern the placement and supervision of the child placed into foster care in the receiving state as required by Article V (a) of the Compact.

The applicable laws and/or regulations of the *receiving* state regarding the study, approval, and licensure of foster families govern these issues. If the foster family is licensed in the receiving state, the sending state must accept such licensure even though the family may not meet the licensing standards of the sending state. Acceptance of the license by the sending state is consistent with the “full faith and credit” clause of the U.S. Constitution.

If a foster child commits a crime and/or delinquent act while in placement in the receiving state, such behavior is subject to the laws of the receiving state where the delinquent act or crime occurred.

3. Placement in a residential treatment facility

Children may be placed into a residential treatment facility in the receiving state under a variety of circumstances:

- the parent(s) of a child voluntarily places the child into a private facility he or she has selected;
- a child, who has been adjudicated delinquent, may be committed to a private facility by a court (refer to Article VI of the Compact); or
- with the approval of the court, a child is placed into a facility by the public or private child-placing agency that is the child's custodian.

Whenever a child in State A is placed into a residential treatment facility in State B, the laws of the sending state govern the commission of a delinquent act or crime by the child while in State B with one exception. If the parent of a child voluntarily placed the child into a facility the parent selected and the child commits a delinquent act or crime, the laws of State B apply.

B. Adoptions

One of the most frequently asked questions in adoption cases concerns the identification of which states' laws apply to the proposed interstate placement of a child. Article III(a) of the Compact clearly requires that the sending agency must comply with *both* the requirements of the Compact *and* the applicable laws of the receiving state governing the placement of children.

Most of the preliminary steps leading to the adoption of a child must occur in the sending state. The completion of those preliminary steps must comply with the applicable laws in the sending state. Assuming the adoption will be finalized in the home state (receiving state) of the adoptive parents, the applicable laws of the receiving state

do not come into play until the adoption petition has been filed in the appropriate court within the receiving state.

1. The sending state

Article III(b)(4) of the Compact requires a full statement of the reasons for the proposed placement and evidence of the authority pursuant to which the placement will be made.

There are a variety of circumstances among the 50 states as to who has the legal authority to place a child for adoption. Some states allow birth parents to place their child for adoption directly. Some states require the birth parent to use the services of a public or private child placing agency to place a child for adoption. Some states allow the birth parent to use the services of an intermediary, such as an attorney or a physician, to place a child for adoption.

If the “sending agency” in State A has the legal authority to place a child for adoption, then State B must accept the validity of the sending agency even if that entity cannot be shown as a “sending agency” under State B’s statute. Consequently, it is important for sending agencies to know, state by state, which has the authority by statute to place a child for adoption and to understand that an “authority” may be valid in the sending state but illegal under statute in the receiving state. If the laws differ, it is critical that the ICPC referral contains “evidence of the authority pursuant to which the placement is proposed to be made.” Unless this evidence is self-explanatory (such as a birth parent being shown as the “sending agency”) the “evidence” must be in writing. If required by statute, the evidence may need to be in the form of a court order issued and signed by an appropriate court that gives permission for the “sending agency” to place the child for adoption.

2. The receiving state

If the adoption will be finalized in the receiving state, a court within that state conducts a hearing and issues its findings as to compliance with the applicable statutes of the receiving state.

Article III specifies compliance with the *applicable laws* of the receiving state. Preliminary activities that occur in the sending state prior to the child entering the receiving state are not subject to the laws of the receiving state because they did not occur within the receiving state. Only those activities that occur within the receiving state have applicability to the adoption process within the receiving state. The court in the receiving state is expected to give “full faith and credit” (as required by the U.S. Constitution) to actions that were taken in the sending state under applicable statutes of the sending state.

For example, if a court in the sending state terminated the parental rights of the birth parents, there should be no need for the court in the receiving state to repeat that action. It is immaterial if the basis on which the sending state court terminated parental rights agrees with the statute of the receiving state as long as its action adheres to its own statute.

A second example is that if the sending state requires a birth parent to wait 24 or more hours following birth of the baby before signing consent to adoption, then the consent must be accepted as valid by the receiving state even though the receiving state statute requires 48 or more hours. Because the consent was signed by the birth parent in the sending state, using the statutes of the sending state, it is immaterial whether the signing meets the statutory requirement in the receiving state. The consent was not taken in the receiving state, so the receiving state statute does not apply. This is also true for any other preliminary steps taken in the sending state. To do otherwise, the receiving state would be negating the “full faith and credit clause” of the U. S. Constitution.

It is important to note, however, that although the Constitution sets the framework for states to accept the court orders of other states, neither the Congress nor case law has specifically addressed acceptance of termination of parental rights orders or adoption decrees.²² The Supreme Court has ruled that states are not obligated to judicial actions of other states in situations where minimum standards of due process have not been provided to those affected. There are two solutions to this potential problem:

- First, if a court has implemented the recommendations of the NCJFCJ *RESOURCE GUIDELINES*²³ and the NCJFCJ *ADOPTION AND PERMANENCY GUIDELINES* regarding due process issues, minimum standards of due process will be easily met.²⁴
- Second, some states specify in their adoption statutes that the state will accept such orders from any other state.

VI. DEALING WITH DIFFERENT HOME STUDY REQUIREMENTS

Currently no single, nationally accepted standard for home studies exists. Public child welfare agencies in one state do not have the authority to specify the contents of a home study prepared in another jurisdiction. Consequently, the home study from the receiving state may not meet the procedural requirements of the sending state.

A long-term solution to this challenge is for the AAICPC to develop national standards and a nationally accepted format for ICPC home studies. The *Final Report of the Committee on ICPC Improvement* made this recommendation, and as of this writing, APHSA is in the process of studying the feasibility of this task.

²² Excerpted from the *ADOPTION AND PERMANENCY GUIDELINES: Improving Court Practice in Child Abuse and Neglect Cases*, NCJFCJ, Reno, Nevada, 2000. For copies of this publication, contact (775) 784-1652.

²³ *RESOURCE GUIDELINES: Improving Court Practice in Child Abuse & Neglect Cases*, NCJFCJ, Reno, Nevada, 1995. For copies of this publication, contact (775) 784-1652.

²⁴ For example, who should be present at hearings, proper service of process, proper legal representation, etc.

In the short term, however, if the sending agency notifies the receiving agency of its specific home study requirements in advance, it is probable that the receiving agency will be willing to ensure that all of its procedural requirements are covered. It is important to note that for Indian children who qualify under the ICWA, the child's tribe has the authority to set the tribe's community standards for home studies that occur within the tribe's jurisdiction. Consequently, if the child is an Indian child under the ICWA, the sending agency is *required* to accept the tribe's home study standards if the child is to be placed within the reservation.

VII. ENSURING THE FINANCIAL NEEDS OF CHILDREN ARE MET IN INTERSTATE PLACEMENTS

It is the obligation of the sending agency to retain its responsibility for case planning for a child placed through the Compact. This responsibility includes providing for the child's educational, financial, and medical needs. The sending agency has choices regarding *how* it will carry out this responsibility. It cannot choose *not* to meet this responsibility.

On the other hand, a child placed into a receiving state is eligible for social services within that state on the same basis as a child who has always lived in that state. Consequently, the receiving state is required to provide to the child placed through the Compact the same services it provides to any other child of the state.

Sending agencies can meet the needs of children placed in other states through one or a combination of the following:

- requesting that the receiving state public child welfare agency provide services to the child and the child's receiving state family in accordance with the family's eligibility for any services in the receiving state;
- arranging to purchase services from an agency in the receiving state whenever a service is needed and is not otherwise available to the child without cost.

Whenever the court proposes to place a child in another state with one or both of the child's *birth parents*, the parents will be responsible for meeting the child's financial and medical needs, using whatever private and/or public resources are available to other parents in the state.

In all situations, appropriate educational, medical, and financial plans must be in place *prior* to placement of the child. Lack of attention to these matters is a major cause of interstate placement disruptions. If a child needs a particular service that is not otherwise available, the sending agency is responsible for obtaining and paying for the service; if the sending agency is unable to arrange for the service, it may be necessary to reconsider the plan to place the child with that particular caregiver. The Compact Administrator in the receiving state may correctly deny placement of the child if needed services will not be provided by the sending agency.

Financial issues related to interstate placement of children are complex. For the purposes of this *Manual and Instructional Guide*, the issues of educational costs, medical costs, and other financial payment, including the Interstate Compact on Adoption and Medical Assistance (ICAMA), are briefly summarized. Each state and each child can represent individual challenges that cannot possibly be covered here. The best source of ongoing information pertaining to resolving individual challenges will come from the people with whom each judge has established relationships through team training and ICPC improvement teams, as well as the judiciary in receiving states with whom judges have established relationships through the NCJFCJ network.

A. Educational Costs

Article V(a) of the Compact requires the sending agency to retain financial responsibility for support and maintenance of the child. If any costs will be involved for the child's education in the receiving state, the sending agency is responsible for those costs. When considering the placement of a school-age child across state lines, judges should ensure that the agency has a complete assessment of the educational needs of the child, and that this information is included in the ICPC referral to the receiving state.

The sending agency has the responsibility to determine if the school district in the receiving state will require payment from the appropriate person, agency, or school district in the sending state, or what action, if taken, would ameliorate the need for such payment. It is necessary that the sending state understand applicable education laws of both the sending state and the receiving state, particularly when the child has special educational needs. Prior to approving an interstate placement of a child, the court should ensure that the following resources have been identified and that any costs associated with these resources have been defined and will be covered by the sending state:

- regular classroom placement if appropriate;
- a combination of mainstreaming and special classroom if appropriate;
- special education classroom if appropriate;
- accommodations for a child who uses crutches, leg braces, a wheelchair, etc.;
- knowledge of compulsory school attendance laws, including the minimum and maximum ages for compulsory attendance and the penalties for non-compliance;
- costs involved if the child must pay out-of-state or out-of-district tuition;
- how Individualized Education Plans are used if a child has special educational needs;
- resources available for the child who has learning disabilities; and
- transportation.

If the sending agency will not or cannot pay necessary educational costs of the child, the Compact Administrator in the receiving state may correctly deny the proposed placement of the child.

B. Medical Costs

Any child in an interstate placement who is eligible for Medicaid in the sending state can continue to have medical needs met through Medicaid. Whenever possible, the sending agency should arrange for the child to receive Medicaid benefits from the receiving state. Since Medicaid is an open-ended entitlement program, there should be no disincentive for

the receiving state not to make such arrangements. If the receiving state cannot provide the Medicaid benefits, then the sending agency must assist the receiving state family in obtaining needed medical services for the child from providers in the receiving state who will accept the child's sending state Medicaid card. It is also possible that the child may be eligible for other medical assistance benefits from the receiving state.

If the child's interstate placement is with a birth parent, the child's eligibility for Title IV-E Medicaid may be terminated. It is important to determine in advance whether the sending or receiving state has restrictions that would impact the child's Medicaid eligibility, and if so, to ensure there is another resource to meet the child's medical needs.

In cases involving adoption assistance, medical services may need to be coordinated through the Interstate Compact on Adoption and Medical Assistance (ICAMA). The ICAMA is explained in the next section.

C. Interstate Compact on Adoption and Medical Assistance (ICAMA)²⁵

In 1980, Congress passed the Adoption Assistance and Child Welfare Act (P.L. 96-272). Among other things, P.L. 96-272 established a federally aided adoption assistance program under Title IV-E of the Social Security Act.²⁶ Through this program, the federal government contributes to states' costs of providing adoption subsidies and Medicaid for children who meet the program's eligibility criteria. As part of efforts to encourage adoption of children with special needs, P.L. 96-272 also directed states to protect the interstate interests of children covered by adoption assistance agreements.²⁷ For more information on adoption, see the *ADOPTION AND PERMANENCY GUIDELINES: Improving Court Practice in Child Abuse and Neglect Cases*, © National Council of Juvenile and Family Court Judges, 2000.

The Interstate Compact on Adoption and Medical Assistance (ICAMA) creates the framework for formalized interstate cooperation envisioned under P.L. 96-272. The

²⁵ This section was written by Liz Oppenheim, JD, AAICAMA. For more information on the ICAMA, see contact information in Appendix Q: Resources.

²⁶ 42 U.S.C. 673 et. seq.

²⁷ 42 U.S.C. 675(3); 42 C.F.R. 1356.40(4)

ICAMA, which has the force of law within and among the party states, provides for uniformity and consistency of policy and procedures to ensure the receipt of medical and other necessary benefits when a child with special needs is adopted by a family in another state, or the adoptive family moves to another state during the continuance of the adoption assistance agreement. The children concerned are those adopted pursuant to adoption assistance agreements between states and the prospective adoptive parents under the terms of Title IV-E of the Social Security Act. Through the ICAMA, states may also extend these protections to children adopted through state-funded subsidy programs. A copy of the ICAMA and the member states can be found in Appendix P.

Operation of the ICAMA is the responsibility of the designated ICAMA Administrator in each state. This person coordinates with in-state and out-of-state officials to facilitate the provision of benefits and services, process ICAMA forms, and serve as an information resource. The ICAMA also mandates use of ICAMA forms and administrative procedures.

The ICAMA does not come into effect until there is an adoption assistance agreement between the state and the adoptive parents and the child has been placed with the adoptive parents. A prerequisite for any adoptive placement is compliance with the ICPC. Therefore, during the time when a child is placed for adoption (post-placement supervisory period), and prior to finalization, both the ICPC and the ICAMA Compacts are in effect if there is an adoption assistance agreement between the state and the adoptive parents. Finalization of the adoption ends the role of the ICPC. At that point, the ICAMA Compact Administrators in both the adoption assistance state²⁸ and the residence state²⁹ assume responsibilities required by the Compact and required by good practice. If a disruption occurs prior to finalization of the adoption, the child(ren) remain under the jurisdiction of the ICPC.

In 1985, Congress passed the Consolidated Omnibus Reconciliation Act (COBRA) which made two changes in Title XIX Medicaid affecting special needs adoption. First, it mandated that the state of residence provide Medicaid to all children adopted under the Title IV-E

²⁸ The adoption assistance state is the state that is the signatory to an adoption assistance agreement on behalf of a particular child

²⁹ The residence state is the state where the child lives.

federally assisted adoption subsidy program. COBRA did not, however, provide any administrative mechanism to facilitate the provision of Medicaid across state lines. Each state's Medicaid program differs. The forms, information required, benefits, and coverage vary substantially. The ICAMA provides the bridge between these systematic differences so that they do not pose barriers to children and families receiving medical benefits in interstate situations. The ICAMA predates the COBRA. It makes the very same demand of the party states as Congress imposed on them through federal law. However, the ICAMA goes further by establishing an administrative structure for adherence to a uniform system through which critical services are made available to children.

The COBRA provided states with the option of extending Medicaid coverage to children adopted pursuant to state-funded adoption subsidy programs, if the child met the outlined criteria.³⁰ The ICAMA is also the mechanism by which the provision of Medicaid for children receiving state-funded adoption assistance is facilitated. Appendix P provides information on the states that have elected the option and provide it to children who reside in one state but receive adoption assistance from another.

Although medical assistance is the most obvious interstate interest of families who adopt special needs children, the importance of post-adoption services cannot be overlooked. Adoption specialists agree that the availability of post-legal adoption services is directly related to the success of an adoption and the long-term health and stability of adoptive families. Geographic boundaries do not alter the need for these services. While the ICAMA does not mandate the delivery of these services by the residence state, it does foster a coordinated response to ensure that the child and family receive what they need. ICAMA Administrators help families identify providers of these services if they are not provided by the public agency. In fact, the ICAMA

³⁰ The 1985 Consolidated Omnibus Reconciliation Act made two changes in Title XIX, Medicaid. First, it required the state of residence to provide Medicaid to all children adopted under the federally-assisted adoption subsidy program. Second, the COBRA gave states the option of extending Title XIX Medicaid to children adopted pursuant to state-funded adoption subsidy programs if they met the following eligibility criteria: (1) there is an adoption assistance agreement between the state and the adoptive parents; (2) the state agency has determined that the child cannot be placed for adoption without Medicaid because the child has a special need for medical or rehabilitative care; and (3) before or at the time the adoption assistance agreement was executed, the child would have been eligible for medical assistance given his or her income and resources, or the child was receiving or was eligible to receive Medicaid as either a mandatory or optional categorically needy (Section 1902(a)(10)(ii)(VII) SSA; CFR 435.227).

declares that their personnel will assist the agencies of other ICAMA states in accomplishing interstate delivery of all types of services. This is not a matter of professional courtesy, but lawful obligation.

In 1986, ICAMA states formed the Association of Administrators of the Interstate Compact on Adoption to facilitate the administration of the Compact. Through its Secretariat, the American Public Human Services Association, AAICAMA provides member states with technical assistance and support in administering the ICAMA. The Association also provides assistance to non-member states that need help in passing enabling legislation and taking other steps to join the ICAMA. Member states of the Association also work together to find ways to enhance adoption opportunities for special needs children and address increasing needs of these children and families.

D. Other Financial Issues

When a child is placed in another state, the placement may be with a parent, relative, or guardian and not be subsidized, or the placement may be with a relative, foster parent, or pre-adoptive family requiring board payment to financially support the placement. The majority of placements made through the Compact are with relatives and require board payment.

As previously discussed in Chapter I, new ASFA regulations require that to claim reimbursement for board payments of a child who is Title IV-E eligible, a relative home must be licensed as a foster home. It is important for courts to understand this change and identify early in the discussion of a proposed interstate placement whether board payments will be needed. If they are needed, courts should require an initial assessment as to whether the family will be eligible to be licensed under the requirements of the receiving state. Failure to make this assessment could subject the child to months of wasted time pursuing an interstate placement that will not be approved.

The court must inquire in detail what financial assistance will be available to the family in the receiving state, either from the sending agency or from the receiving state. In addition to

support, whole in or part, from the sending agency through federal/state funds, Food Stamps, TANF child-only grants, or other financial assistance may be available. Financial issues should not stand in the way of an interstate placement that would in all other respects provide an appropriate home for the child. Judges should work with their child protection agency leaders and state and county governments to overcome financial barriers.

VIII. ENFORCEMENT OF LOCAL AND STATE CHILD WELFARE AGENCY COMPLIANCE WITH THE ICPC

As previously acknowledged, one of the reasons judges evade the ICPC is because the local or state child welfare agencies do not comply in a timely way with the court's attempts to follow Compact law. As discussed in the Introduction, Section VII.C., the most effective ways to ensure timely permanency in ICPC cases is for judges to work with the public human services agency (subject to existing limitations exerted by state Codes of Judicial Conduct and Canons of Judicial Ethics) to:

- use team training to ensure all parties involved in the system understand both the ICPC and their role in its effective implementation; and
- improve inter- and intrastate relationships between the judiciary, public human services agencies, and Compact Administrators.

Many other ideas and best practices have been discussed in this chapter that can help shorten time frames and surmount obstacles to effective ICPC implementation. A court should make sure that it has done everything possible, including:

- educating itself regarding Compact law;
- having internal mechanisms in place to insure the court is following Compact law;
- being a leader in team training; and
- advocating for the implementation of the suggestions and best practices discussed earlier in this chapter.

If, however, in spite of such efforts, the local or state child welfare agency is not following the expectations of Compact law in an individual child's case, and the case is not proceeding in a timely fashion, the court must exercise its authority to order timely and appropriate action on the part of the child-serving system if necessary to ensure the child's best interests.

In such instances, *if the court has followed Compact law*, and determines that the local, sending or receiving state agency has violated Compact expectations as described in Chapter I of this *Manual and Instructional Guide*, or has violated other agreements regarding reasonable time frames within the state, a judge may consider one of the following responses as a *last resort*:

1. Make a finding that reasonable efforts have not been made—An unreasonable delay on the part of the local or sending state agency qualifies for a finding that reasonable efforts have not been made when the child is in the agency's or court's temporary or permanent custody. In the case of a child in temporary custody, the court must find that reasonable efforts to eliminate the need for placement of a child have been made in order for a child to be deemed Title IV-E eligible. In the case of a child in permanent custody, the court must find that reasonable efforts have been made to finalize a permanent home in order for a child to be deemed Title IV-E eligible.

A finding that reasonable efforts *have not been made* can negatively impact the agency's right to claim reimbursement for its eligible Title IV-E expenditures and therefore is a court action that most agencies take very seriously. Anytime the court finds that reasonable efforts have not been made, a copy of the court's finding should be sent to the worker's supervisor and to the agency director.

Some agencies may attempt to convince a court that a "no reasonable efforts" finding will prevent the child from being eligible for the federal adoption assistance program. This is not accurate for special needs children.³¹ All states receiving federal dollars for the

³¹ Federal regulations define a child with special needs as a child who has a specific condition or factor that makes a child difficult to place for adoption.

adoption assistance program must provide the same adoption assistance options to all special needs children. If a child is not Title IV-E eligible, the assistance must be provided from state funds.

2. Make a finding that the local, sending or receiving agency has not complied with ASFA requirements—ASFA requires in inter-jurisdictional adoptions that the state will not deny or delay placement of a child for adoption when an approved family is available outside of the jurisdiction that has the responsibility for handling the case. It also requires that the state develop plans for the effective use of cross-jurisdictional resources to facilitate timely adoptive or permanent placements for waiting children.

Consequently, if either the sending or receiving state or local agency is unreasonably delaying the interstate placement of a child for adoption or other permanent placement, a court finding that the local agency or sending or receiving state agency is not complying with ASFA requirements should be of serious concern. For the finding to make the desired impact, copies of the court entry should be forwarded to the heads of all involved agencies. If the problem persists, copies of several court entries reflecting the same problem should be forwarded to the unit responsible for auditing federal funds. ASFA sets penalties of up to 5% of the state's allocation if found in violation of these provisions and if a corrective action plan is not implemented.

3. Subpoena the local child welfare administrator or state ICPC Administrator—When a local or state agency *consistently* causes delays in the handling of ICPC processes, and in spite of notification of the problem, fails to correct it, a subpoena to appear before the court may be appropriate. The expectation would be for the local administrator or ICPC Administrator to explain why a timely response has not occurred, and what will be done to correct the situation in this case and in future cases. In such instances, the court can expect the argument to be made that so much time is being spent in court that the agency's job is being further impeded. However, many courts

have found this technique effective when all other efforts to solve the problem have failed.

4. Notify the AAICPC and ICPC Secretariat of problems that persist without appropriate response—More than any other agency professionals, the people in Compact Offices play a pivotal role because Article VII of the ICPC makes the Compact Administrator the coordinator of ICPC activities in the state. Most Compact Administrators know more than anyone else about what goes on in an individual interstate case. When they become aware of a violation they *must* address the issue of the violation and the issue of penalty.

Article IV of the ICPC provides that violation of the Compact is a violation of the laws of both the sending and the receiving states and can be punished in either of them. It further provides that in addition to any other penalties that may be imposed, a violation in and of itself is sufficient ground for suspension or revocation of any license, permit, or other authorization that enables the holder to place or care for children. For child-placing or child-caring agencies, this is a powerful sanction. A case in Nebraska provides an illustrative example:

The state of Nebraska notified an agency that had received children from other states without ICPC compliance that its license would not be renewed. The agency brought suit to forestall such action. The state pursued the case all the way to the State Supreme Court and won. See Cornhusker Christian Children's Home, et. al v. Department of Social Services of the State of Nebraska, et. al 229 Neb. 837, 429 NW2d 359 (Neb. 1988).

In another case, an agency in the District of Columbia that had repeatedly subverted the ICPC was driven to cease operations because a licensure proceeding was brought that resulted in judicial pressure.

Compact Administrators have been instrumental in these cases, either as complainants or by supplying information and strongly advocating for the revocation of licensure. Judges should expect action from their state's Compact Administrator when violations occur repeatedly without appropriate remedial action on the part of the violators.



**CHAPTER III: INSTRUCTIONAL GUIDE – TEACHING
THE ICPC TO JUVENILE AND FAMILY COURT JUDGES
AND COLLABORATIVE TEAMS**

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Note:

This publication is designed to provide accurate information about the Interstate Compact on the Placement of Children (ICPC) and related issues for judges and other members of juvenile and family court systems. Its content is not intended as legal advice or services. If legal advice or other expert assistance is required, the services of a competent professional should be sought. In matters of judicial responsibility, judges of the juvenile and family courts should consult and rely on their states' respective Codes of Judicial Conduct, Canons of Judicial Ethics, or other applicable professional rules.

CHAPTER III: INSTRUCTIONAL GUIDE—TEACHING THE ICPC TO JUVENILE AND FAMILY COURT JUDGES AND COLLABORATIVE TEAMS¹

Chapter I of this *Manual and Instructional Guide* focused on the content of the ICPC—on the articles and regulations of the ICPC and how they apply to juvenile and family court judges. The purpose of Chapter I was to ensure that judges had all of the necessary information to enable them to comply with Compact law.

Chapter II discussed significant challenges for timely and effective implementation of the ICPC, and the consequences of violating Compact law, and described best practices in implementing the ICPC. The purpose of Chapter II was to provide suggestions to juvenile and family court judges that, if implemented, would make the Compact work more efficiently for children.

The final chapter in this *Manual and Instructional Guide* provides instructional information to assist the juvenile and family court judge in teaching the information in Chapters I and II to others—to key staff within their court, to other judges, and most importantly, to teams of agency and court personnel who are collaborating to create improved methods of implementing the ICPC.

The ICPC is a complex law that many different professionals must understand and apply in the course of its implementation. For the ICPC to work efficiently in a particular jurisdiction, all persons involved in its implementation must be thoroughly trained in their portion of the process. They must also understand the *entire* process, including the roles of

¹ Substantial portions of this chapter were excerpted from *COURT, AGENCY and COMMUNITY COLLABORATION*, Permanency Planning for Children Department, NCJFCJ, Reno, Nevada, 2000.

the other professionals, and how each role impacts the overall effectiveness of the jurisdiction's implementation of the ICPC.

Chapter III covers:

- Why Collaboration and Team Training Are Important
- Needs Assessment and Learning Objectives
- Preparing Content
- Methods of Delivering Content to Ensure Audience Involvement
- Using Audio-Visual Learning Aids
- Sample ICPC Case Studies, Overheads, and Handouts

I. THE NEED FOR COLLABORATION AND TEAM TRAINING

Judges must never forget that changes in the juvenile court must come from them. No one else has responsibility for day-to-day operation of the court process including adequate representation, ensuring adequate facilities, overseeing security, ensuring that necessary papers get to all parties, collecting data on court operations, providing oversight of social service activities, ensuring that children reach permanency in a timely fashion and more. True judicial leadership is the appreciation that in addition to calendar management, other issues must be addressed and that judges must take responsibility to see that they are. No one else will.

– Leonard P. Edwards, Santa Clara County Superior Court, San Jose, California²

² NCJFCJ Technical Assistance Bulletin *Judicial Leadership and Judicial Practice in Child Abuse and Neglect Cases*, Volume II, No. 5, July 1998.

The National Council of Juvenile and Family Court Judges has taken a judicial leadership role in advocating collaboration for more than a decade. In the 1992 NCJFCJ publication *The Juvenile Court and the Role of the Juvenile Court Judge*,³ the need for judges to become knowledgeable about the services available in the community, as well as services that *should* be available, was acknowledged as a necessity for effective post-dispositional case review. To effectively monitor a case, a juvenile or family court judge must:⁴

- know which agencies and individuals are responsible for developing policies and providing services to children in their community;
- know what services are available in the community, the problems that can be addressed by these services, and encourage the development of needed but unavailable services; and
- encourage the development of cooperative agreements between law enforcement bodies, the child welfare agency, and other child serving organizations within the community.

The Juvenile Court and the Role of the Juvenile Court Judge discusses in detail the importance of judges moving beyond the confines of the courtroom and into the community to both inform and advocate within the community on behalf of children and their families. It states:

Because of confidentiality laws which restrict the flow of information about most juvenile court cases, it is critical that the juvenile court judge ensure that information about the juvenile court system is made available to the public. Only in this way will the public receive a balanced view of the work of the juvenile court and not rely solely on the spectacular headlines that appear at regular intervals.

³ Judge Leonard P. Edwards, *Juvenile and Family Court Journal*, 1992, Vol. 43, No. 2.

⁴ Excerpted in part from *Making Reasonable Efforts: Steps for Keeping Families Together*, the Edna McConnell Clark Foundation.

In addition, the juvenile judge has a role beyond providing information to the community. The judge must also take action to ensure that the necessary community resources are available so that the children and families that come before the court can be well served.

This means convening meetings of private and public sector leaders, multi-disciplinary task forces, and community-based organizations. It means providing the information and the leadership to join in concerted efforts to preserve and strengthen families.⁵

In 1997, the NCJFCJ *Juvenile and Family Court Journal*, Permanency Planning Issue included the article *Improving Juvenile Dependency Courts Twenty-Three Steps*.⁶ Two of those steps specifically address the issues of collaboration and team training as follows:

- *Step 14—Judges should ensure that all judicial officers, attorneys, and other members of the child abuse and neglect system regularly participate in cross training regarding all aspects of child welfare law.*

Training is critical to the continued development of competence and expertise among all participants in the juvenile court. Training for judges, attorneys, social workers, and court staff can be conducted within each discipline. However, cross training offers the additional opportunity for the participants to learn together while simultaneously building working relationships with one another. Judges should authorize and convene such training and ensure that all participants in the juvenile court have input into its content and form.

- *Step 15—Judges should meet regularly with agency representatives and other members of the court system to discuss administrative and court operation issues as well as matters of general concern to the participants in the juvenile court system.*

⁵ Refer to the Introduction, Section VII.D: *Comments on Ex Parte Communication*, for a discussion of how these activities can be carried out without violating restrictions on *ex parte* communication.

⁶ Judge Leonard P. Edwards, Vol. 48/No. 4.

For juvenile courts to run efficiently, communication among various participants is essential. Holding regular meetings with the director and other representatives from the social service/child welfare agency, the administrative heads of legal offices, the court clerk's office, mediation services, child advocate offices, court administration, and other key persons within the juvenile court system will ensure that the system's problems are addressed in a timely fashion.

These meetings offer an opportunity for the court to inform all participants of new rules or policies, to resolve on-going problems, to suggest improved policies and procedures, to introduce new participants in the child welfare and court systems, and to address current issues such as new legislation or appellate decisions. They permit members of the court system to focus on matters such as delays in the court process and late court reports, and to seek remedies for these problems. These meetings can also be the site of information sharing concerning issues critical to child welfare cases, including child development, service delivery, alternative dispute resolution programs, and substance abuse. Participants can also plan trainings and conferences that would be of interest to all members.

In addition to these general administrative meetings, some courts have found it useful to form committees concerning special issues such as the services necessary to support families in which children have been removed, problem cases, children in institutional care, children whose special problems make adoption more difficult, long-range planning, foster care, permanency planning for younger children, housing, services for drug-addicted women and their children, and funding for services. These courts have found that committee work is an effective means of identifying solutions to complex problems within the court system.

In 1999, the Board of Trustees of NCJFCJ approved 11 *Key Principles for Permanency Planning*⁷. The following excerpts from these key principles are particularly applicable for judges regarding collaboration and team training:

- **Judicial Leadership**—Judges must ensure that the courts they administer provide efficient and timely justice for children and their families. Judges must convene and engage the community in meaningful partnerships to promote the safety and permanency of children.
- **Collaboration**—The juvenile court must encourage and promote collaboration and mutual respect among all participants in the child welfare system. The court should regularly convene representatives from all participants in the child welfare system to improve the operations of the system. Judges should convene the community so that professionals, volunteers, agencies, and politicians can join together to work on behalf of children and families. Judges should encourage cross training among all members of the child-serving system.

As previously discussed in the Introduction, when a process must have the cooperation of individuals in many different roles to work efficiently, team training is the most effective method of training. Ideally, training on the ICPC involves *both as participants and trainers*, representatives from the juvenile court, including judges, probation officers, and other appropriate court staff; the local public human services agency; the state ICPC Office; prosecutors; public defenders; guardians ad *litem*; and court appointed special advocates.

Team training accomplishes several goals that cannot be accomplished when only one segment of professionals in the child-serving system is involved. Team training:

- provides the opportunity for participants to understand the roles, limitations, needs, and challenges from the viewpoints of all the professionals in the system;

⁷ The *Key Principles for Permanency Planning* can be found in Appendix D.

- creates an atmosphere of cooperation and encourages us to put aside blaming and turf issues and instead focus on how the best possible system for the children we serve can be created;
- brings together different perspectives, experience, and knowledge that can be used to design a better process, demonstrating that the combined knowledge and expertise of the group is greater than that of any one individual or system segment; and
- provides the opportunity to build effective working relationships with other professionals in the system in order to best serve children in need.

Once a judge understands the importance of complying with the ICPC and how the ICPC protects children when they are placed between states, the judge will want to ensure that the ICPC systems within the judge's jurisdiction are the most effective and efficient systems possible. Next the judge needs to ensure that the other individuals in the child serving system are equally knowledgeable about the Compact and that a mechanism exists to engage their collaboration in team training and problem solving.

If I don't take the leadership role, if I'm not going to do it and inspire others – who will?

– Hon. Joan Byer, Family Court Judge
Jefferson County Family Court, Louisville,
Kentucky⁸

If the use of collaborative teams is not already an existing practice in a judge's jurisdiction, the judge should refer to the recent publication *COURT, AGENCY and COMMUNITY COLLABORATION* developed by the Permanency Planning for Children Department of the NCJFCJ.⁹ This publication is the first in a series of national judicial curricula on how courts, agencies, and communities can work together to create systems change.

⁸ *COURT, AGENCY and COMMUNITY COLLABORATION*, Permanency Planning for Children Department, NCJFCJ, Reno, Nevada, 2000.

⁹ *Ibid.* For copies of this publication, contact (775) 784-1652.

The training assistance provided in this curriculum is not content oriented. Instead it is people and systems focused to help those working in the child-serving systems begin to become convinced of the value of collaboration and learn to practice collaboration. Court staff can use this material to create the groundwork of collaboration needed to implement the remaining portions of this chapter—creating team training on the ICPC.

II. PREPARING FOR TRAINING ON THE ICPC – THE NEEDS ASSESSMENT AND LEARNING OBJECTIVE

Once a court has established a foundation for collaboration and systems change, the court is ready to convene a collaborative team to plan training on the ICPC. The team should consist of representatives from:

- judges,
- probation officers and other appropriate court staff,
- the local public human services agency,
- the state ICPC Office,
- prosecutors,
- public defenders,
- guardians ad *litem*, and
- court appointed special advocates.

To receive maximum benefit from the training, both trainers and attendees should be representative of all of the systems within the child-serving system that play a role in the implementation of the ICPC.

The first two issues the training team needs to address are a needs assessment followed by determining the learning objective for the training.

A. The Needs Assessment

An assessment of learners' needs is the first step in planning a presentation on the ICPC. The needs assessment is a combination of what the learners want or expect to gain from training, and what the training team believes the learners should gain from the training.¹⁰ It is important for the training team to understand the following:

- Do members of the training team understand the ICPC process in their jurisdiction? The team should take an ICPC case and chart it through the steps of the process as it exists in their jurisdiction. They should identify each step and the person responsible for that step. Are all persons involved in the process represented on the team?
- What is the general level of knowledge of the personnel in each sector of the child-serving system regarding the articles and regulations of the ICPC? Are there areas of Compact law that most individuals understand well? If so, the training can move quickly over these areas. Are there areas of Compact law that most individuals do *not* understand well? If so, the training needs to focus on these areas in depth.
- What is the general level of knowledge of the personnel in each sector of the child-serving system regarding the roles and responsibilities of each of the *other* sectors in making the Compact work effectively and efficiently for children?
- How many children from the jurisdiction are being placed interstate?
- Is Compact law usually or rarely being followed in these placements?
- Are there particular states in which the jurisdiction frequently places children, and if so, is there a border agreement in place?

¹⁰ Ibid.

- What prior efforts have occurred in training staff on the ICPC and with what results? What can be learned from these prior efforts that can be avoided or repeated to enhance the effectiveness of the training?
- What is the jurisdiction doing well with regard to interstate placements?
- What are the problems that occur with frequency regarding interstate placements?

The training team can collect information for the needs assessment in formal or informal ways. A formal method is to distribute a questionnaire and to compile the results. The questionnaire used in conjunction with this *Manual and Instructional Guide* to assess the needs of juvenile and family court judges with regard to the ICPC is included in Appendix E. Informal methods of collecting needs assessment information include:

- using the knowledge and experience of the members of the training team,
- using the members of the training team to ask key questions of their constituents either through informal conversation or structured interviews,
- reviewing a random selection of case files involving interstate placement of children, and
- reviewing participant evaluations from past training to determine what formats have and have not been well received.

B. Developing Learning Objectives¹¹

Without exception, judicial and multi-disciplinary trainings on the ICPC should have learning objectives. These objectives should evolve from the needs assessment, be the central focus during the team's and individual instructor's preparation, and be explained clearly and explicitly to the learners. When developing training on the ICPC, it is probable that a series of presentations will occur on different topics. Not only should there be a

¹¹ Ibid.

learning objective covering the entire series of presentations, but there should also be individual learning objectives for each presentation that tie back to the overall learning objective.

A learning objective is *not*:

- a goal statement—for example, “To improve knowledge of the ICPC” is not a learning objective;
- a course title—for example, “The Interstate Compact on the Placement of Children” is not a learning objective;
- what the trainer plans to do—for example, “To explain why the ICPC should be followed” is not a learning objective.

The learning objective is the *response expected from the learner*. There are three types of learning objectives or learner responses:

1. Cognitive—What the learner will perceive, comprehend, and remember.
2. Attitudinal—What the learner will feel, value, and become committed to or enthusiastic about.
3. Behavioral—What the learner will be able to do, demonstrate, use, or explain.

Examples of learning objectives for training on the ICPC are:

- As a result of this training, the learner will be able to identify when an interstate placement falls under the ICPC and when the court can legally terminate jurisdiction in an ICPC case.
- As a result of this workshop, the learner will be able to discuss ICPC time frames for home studies and best practices that can be implemented to reduce unnecessary delays.

- As a result of this presentation, the learner will be able to explain why compliance with the ICPC is important to children and how children can be put at risk by illegal interstate placements.

There are three steps to writing specific learning objectives:

1. Begin the objective with, “As a result of this session (keynote address, workshop, course, etc.), the learner will be able to . . .”

2. Then, select an action verb. For example:

prepare	identify	write	organize	demonstrate
rule on	defend	argue for	answer	utilize
create	form	practice	promote	instruct
speak	present	apply	list	solve
discuss	manage	decide	provide	find
gather	analyze	suggest	conduct	mediate
revise	try out	verify	research	define

3. Finally, complete the objective with the relevant content of the particular presentation on the ICPC.

When constructing learning objectives, avoid phrases that cannot be observed or verified, such as “understand,” “know,” and “be aware of.”

III. TRAINING CONTENT

Your needs assessment has identified the areas that are most important to your training on the ICPC, and these needs drive your learning objectives and the content of the sessions. Depending on the range of topics to cover, you will plan a one-time training of several hours, a half-day training, full-day training, or a series of trainings over time. Within the overall training plan there should be a variety of presentations on different components of the ICPC.

It is important to ensure that a representative from each discipline within your training team is included as a trainer. During the needs assessment step, the team worked an ICPC case through the system, identifying all persons involved. At this point, it would be helpful to add a description of each person's role, time lines, and details regarding how to make contact with each person. This makes a great handout for the training.

In preparing content, it is important to consider the following:¹²

1. *Do not try to prepare a "survey" course.* Survey courses (i.e., A Review of All Articles and Regulations of the ICPC) are rarely effective in adult learning settings, which should focus on the specific needs of the judges and professionals attending.
2. *Do not attempt uniformity or "evenness" of coverage.* For example, if there are five sub-points on a topic, perhaps two require significant time in learning and activities, two others might need only quick review, and one might be covered only in written materials.
3. *Build in flexibility.* Be prepared to spend more time on some areas if spontaneous participant needs develop, thus reducing planned discussion in other areas.
4. *Have reserve materials on hand.* Be ready for unexpected questions and problems.
5. *Prepare general time guidelines for each segment.* But remember the need for flexibility.
6. *Prepare brief, usable written materials.* Short checklists, brief synopses of cases, and one- or two-page summaries of lengthy articles are best.
7. *Use visual support throughout.* This includes handouts, overheads and videos. See the next section for tips on using audio-visual learning aids.
8. *Build in early participation.* Participants should have to do something in the first 30 to 45 minutes. It is difficult to get them involved if they have been listening passively to an hour or two of presentation.

¹² Ibid.

9. *Use the team approach to planning course structure.* Some of the best courses involve two to five faculty planning a unified, coherent course content.

IV. METHODS OF DELIVERING CONTENT TO ENSURE AUDIENCE INVOLVEMENT

One of the least effective methods of training is the straight lecture—the presenter prepares a structured and inflexible package of information to convey to the audience. The presenter uses the entire time period to cover material, saving a few minutes at the end for questions. By the time the end arrives, either the audience has forgotten their questions or they are asleep. It is *strongly* recommended that audience involvement is planned very early in a training session and is interspersed liberally throughout the entire training. Although the optimal size for participatory learning is 12 to 20 people, several techniques can be used to assure good participation in much larger groups. Trainers need not use a lecture style just because there are 100 or more people in a room.

Adult learning is closely aligned with experience. A learning theory that was developed by David Kolb in 1984 is called the “learning circle.” The model says that adult learning is a process that involves four progressive learning modes, specifically:

- direct experience,
- reflection on that experience,
- abstractions or principles, and
- application.

The most effective adult learning occurs when all four components are used in the learning circle. An example of using all four components would be:

- watching a videotape or reading a case study on the ICPC (direct experience);
- discussing how the information on the videotape or in the case study is similar or different from the experience of participants (reflection on that experience);

- the delivery of factual information about the ICPC that directly relates to the videotape or case study (abstractions or principles); and
- breaking into small groups to discuss how, if the factual information had been followed, the outcome of the case study would be different (application).

A. Ten Interactive and Energetic Ways to Deliver Content¹³

Ten methods to deliver content in ways that energize and involve participants, regardless of whether the group is large or small include:

1. *Self-tests* – these can be completed before the workshop begins with the presenter reviewing the answers during the training; or the participants can answer the questions as a part of the presentation. Some examples of self-tests include:
 - true/false or multiple choice questions;
 - “how would you rule?” scenarios where a set of facts is given and each participant must decide the proper decision;
 - rank or prioritize problem areas listed on a handout; or
 - match situations with appropriate decisions.
2. *Active brainstorming*
 - Have participants write down ideas.
 - Invite participants to contribute their ideas to a larger list recorded on a flipchart or transparency.
 - Instructor or participant organizes the ideas to handout, or instructor refers to the list later in the program.
3. *Case study*
 - Summarize a case on a transparency or handout.
 - Have participants make a written or oral response individually or as part of a

¹³ Ibid.

small group.

4. *Demonstration*

- Use a video. (See the next section on using audio-visual learning aids.)
- Conduct a live, spontaneous demonstration using pre-arranged participants, asking for volunteers from the audience, or selecting audience participants. Only select participants from the audience if you know your audience well enough to ensure you select outgoing and verbal people who are not likely to be embarrassed by being put on the spot.
- If you are team teaching, you can use fellow trainers. This method is ideal for multi-disciplinary training where the trainers represent all of the disciplines.

5. *Brief questionnaires* - these are passed out before or at the beginning of the session. While the session proceeds, they are collected and quickly tallied by a team member. The issues identified by many participants are identified and provided to the presenter.

- Later in the presentation, the information is used for a section on “Key Problems You Face.”
- Or, the material can be used during the last part of the session to deal with frequently noted problems.

6. *Active overheads/slides/computer power point*

- For a large group, overheads, slides, and Power Point presentations are better than using a flipchart.
- Slides and computer Power Point presentations must be pre-planned.
- Overheads can be pre-planned or spontaneous.
- The print must be large enough to be easily seen and only one concept with limited information should be used on each sheet/screen. Refer to the final section in this chapter for sample overheads.
- Copies of pre-planned overheads with room for notes should be made available to trainees.

7. *Small group sessions*

- During a larger workshop divide participants into smaller groups.
- State clearly the task you want each group to work on.
- Allot about 5 to 15 minutes to complete the task.
- Ask the groups to report back to the larger group.
- Do not let the feedback portion bog down; keep it moving.

8. *Testimony from others:*

- May include opinions, experiences, and special information from children, parents, and community leaders;
- May be live, on video or audiotape, even in writing;
- Provides a stimulus to discussion and dialogue.

9. *Mini-debates*—this technique can be particularly useful when there are two positions on a particular issue.

- “Debaters” may be two members of host-site faculty team with planned arguments and stopping places for discussion.
- “Debaters” may be pre-selected participants or representatives who have worked on developing key arguments.

10. *Panel discussions*—this can be effectively used in multi-disciplinary training with panelists representing the various disciplines. Preparation is imperative and the panel should be viewed as a “teaching team” with at least one prior meeting for coordination.

- A moderator or team leader should take the responsibility for managing a coordinated, efficient process.
- Panelists can assume various roles such as presenter, critic, questioner, discussion leader, etc.
- The panel should let written material provide comprehensive coverage, using oral communication to focus on critical information and issues.

- For ICPC training, the step-by-step process developed by the training team can be used to discuss the question, “How can our jurisdiction make the ICPC work more efficiently?”

B. Tips For Using Audio-Visual Learning Aids¹⁴

Videotaped presentations, demonstrations, and case scenarios *assist* trainers and participants in the learning process and should never stand on their own as “course content.” It is what happens as a result of observing videotapes that determines whether learning occurs. The following tips will help trainers use videos in a way that enhances participant learning:

- Participants must know, in advance of seeing the tape, what they will do with the information.
- Avoid “theater-type” seating, especially with groups of 30 or fewer. Arrange seating to facilitate participant interaction.
- Make sure that everyone can see and hear the tape easily.
- With lengthy tapes, use the “STOP” or “PAUSE” button frequently. Deal with specific events or ideas when they occur. *Do not* have trainees watching a video for more than 5 to 10 minutes without interruption.
- In most situations, have written supplementary materials such as:
 - questions to direct discussion,
 - list of specific events in the tape,
 - citations, bibliographic references,
 - summary of information presented,
 - additional case scenarios, or “what ifs,” or
 - task or problem assignments to complete.
- Provide closure on each major point suggested by the tape.

- Elicit total participation in discussing or using the tape. For example:
 - self-tests,
 - written questions requiring written responses,
 - show of hands, or
 - small breakout group discussions.

- Do not lecture. Be a mobile, active facilitator of discussion as learners supply their own analysis, experience, and resources.

- When concluding, let the group develop a summary of key points or an action plan such as: “What have we learned?” or “What are we going to do?”

¹⁴ Ibid.

**V. SAMPLE ICPC
CASE STUDIES,
OVERHEADS,
AND
HANDOUTS**

**COMING TOGETHER
IS A BEGINNING,
TALKING TOGETHER
IS A PROCESS,
AND WORKING TOGETHER
IS A SUCCESS.**

—Henry Ford

ICPC QUIZ¹⁵

Read the following statements and respond by placing T (True) or F (False) in the blank in front of each statement.

1. ____ An ICPC referral request for a home study is assigned to the appropriate local agency by the receiving state ICPC Office.
2. ____ The ICPC Office in the receiving state bases its recommendation of a proposed placement on the following criteria:
 - information about the child and the family that has been forwarded to the receiving state, including a court order;
 - compliance with ICPC law;
 - compliance with any other child placement laws in the receiving state;
 - the home study on the family completed by a worker or agency in the receiving state;
 - the financial and medical plan for the child.
3. ____ Compliance with the ICPC is not required if children in agency custody move out-of-state while they are living with parents or close relatives.
4. ____ Workers are obligated to notify their ICPC Office of the child's move out-of-state as soon as they learn of the move.
5. ____ If a worker is concerned about a child living out-of-state and no longer in the custody of the agency, the worker may request supervision through the ICPC.
6. ____ The worker prepares a memorandum for the ICPC Office that requests supervision when a child in agency custody moves out-of-state while in placement.
7. ____ A court does not have the authority to place a child out-of-state when the receiving state has denied placement.

¹⁵ This quiz was adapted from material developed by the Alaska ICPC Office.

ANSWER KEY TO ICPC QUIZ

1. True
2. True
3. False – children are in the agency’s custody; therefore ICPC approval is required.
4. True
5. False – agency does not have custody of the child.
6. True
7. True

QUIZ ON THE ICPC

Indicate whether these cases need to comply with the ICPC.

1. Your agency investigates a child abuse hotline report of alleged child abuse/neglect. During the course of the investigation, the social worker learns that the child and the mother have moved to a battered women's shelter. The mother subsequently wants to place her child with the child's grandmother in Louisiana.

Are ICPC procedures required? ____ Yes ____ No

2. A family in one of your counties has been receiving voluntary treatment services from a private community agency for six months due to a substantiated finding on a referral of physical child abuse. The father is able to get a job in Texas and wants to move his family there.

Are ICPC procedures required? ____ Yes ____ No

3. Assume for this exercise your agency does not accept voluntary foster care placements of children from a parent.

A 4-year-old child is removed from his home and placed in your agency's foster care program. His grandmother, in Virginia, wants him to live with her.

Are ICPC procedures required? ____ Yes ____ No

4. A 12-year-old girl is placed in your agency's foster care program. She would like to live with an aunt in Michigan, where she and her mother used to live. The aunt and the child's mother are agreeable to this plan.

Are ICPC procedures required? ____ Yes ____ No

5. Assume for this exercise that independent adoptions are illegal in your state and that a licensed child-placing agency must handle all adoptive placements.

A child is freed for adoption, but no resources have been located within your state. A relative in Montana is interested in adopting the child.

Are ICPC procedures required? ____ Yes ____ No

6. A child is your agency's legal custody resides in a licensed foster home. The child has a very rare disease, and the doctor recommends treatment at the Mayo Clinic in Rochester, Minnesota. The child has been accepted for treatment there and needs to be placed there within the next 48 hours. The treatment is scheduled to take three months.

Are ICPC procedures required? ____ Yes ____ No

ANSWER KEY TO QUIZ

1. **NO**, ICPC procedures are not required.

The child has not been made a ward of the court; there is no documentation (in this example) that the child and/or mother are in any way prohibited from moving from one state to another.

2. **NO**, ICPC procedures are not required.

As in question 1, there is no court involvement with the family; there is no documentation (in this example) that the family is prohibited from freely moving from one state to another.

3. **YES**, ICPC procedures are required.

The child is in foster care, which means there is court jurisdiction over the child. Your agency is the “sending agency,” and Virginia would be the “receiving state.”

4. **YES**, ICPC procedures are required.

Same conditions as in question 3 above.

5. **YES**, ICPC procedures are required.

The licensed agency would be the “sending agency,” and Montana would be the “receiving state.”

6. **NO**, ICPC procedures are not required.

Article II(d) of the Compact specifically excludes “placement” in any hospital or other medical facility for care/treatment from compliance with ICPC.

*If I don't take the
leadership role...
if I'm not going
to do it and
inspire others...
who will?*

*– Hon. Joan Byer,
Family Court Judge
Jefferson County Family Court,
Louisville, Kentucky*

HYPOTHETICAL ICPC CASE STUDY

When the police stopped Mary Jones' car on the streets of San Jose, California, because it was weaving in heavy traffic, they discovered that Mary was under the influence of some unknown substance. She was barely coherent and could not pass any of the field sobriety tests they administered to her. In the back seat of the car were two children, Sally, age 3, and Johnny, age 1. Neither was in a car seat.

Mary was arrested, and the children were taken to the Children's Shelter. The next day, Mary was charged with driving under the influence, child endangerment, and violation of probation. She had been convicted of driving under the influence six months earlier. Mary was denied bail pending the probation violation hearing.

Also the next day the Children's Services worker attempted to locate other family members in order to find a placement for the children. Based on information gathered from Mary, the worker talked with the children's father, Harry Smith, who lived in Arizona. He had never had custody of the children but visited them now and then, was living alone in an apartment, and worked as a long-distance truck driver. Although he freely admitted he was the children's father, he and Mary had not been married, and his paternity had not been established over the two children. He said he was not in a position to care for the children but suggested his mother who lived in Texas. The social worker also talked with Mary's mother who lived in Massachusetts. She said she would love to have the children live with her.

At the detention/shelter care hearing, Mary was still in custody. She reported that she would be entering a six-month residential drug treatment program. Thereafter, she said she would consider moving back to her home in Massachusetts. Harry also appeared and asked that the children be placed with his mother in Texas. Other than the two grandmothers, no other relatives could be located who were willing to care for the children.

QUESTIONS:

1. Is it necessary to establish paternity for the juvenile court to consider the paternal grandmother as a placement?
2. Is it necessary for the court to utilize the ICPC to consider placement with either grandmother?
3. How should the court proceed?
4. Should the court utilize the priority placement procedures?
5. If the court places the children with a non-custodial parent, should it dismiss the case? Should it create a custody order first?
6. What about a child who is in emergency care or who is in a voluntary placement and who is not yet a dependent child? Can the child be placed pursuant to the ICPC? Is it necessary to have juvenile court jurisdiction? Is it necessary to have a dispositional order with dependency?
7. Assume that the grandmother wishes to adopt the children. Are there ICPC procedures that must be followed? Is another home study necessary? What part does each state play in the adoptive process?
8. Assume that there is only one child, a 14 year old boy who has been institutionalized for years because of fire setting and sexual abuse. The child will need secure placement wherever he is placed.
 - a) If he is to be sent by the juvenile court to the father, must the ICPC process

be used?

- b) If he is to be placed by the juvenile court with an out-of-state grandmother, must the ICPC process be used? Can the priority placement process be utilized?
 - c) Which state is financially responsible for placement costs in the receiving state?
 - d) The child has been sent to the father who immediately placed him with a local residential treatment center. One year later the sending court is asked to dismiss the case. Can this be done? What procedures must be followed? What if the child is now living with the father and the father does not request any services? Can the sending state dismiss the case?
9. What role does a CASA volunteer have in the ICPC process? Can CASAs conduct home studies? Can CASAs assist the child in other ways?

ICPC CASE SUMMARY

Mr. and Mrs. C. have maintained a licensed foster home in Old Town, Old State, for several years. During that time period, they have had a total of ten foster children in their care.

At the present time, Mr. and Mrs. C. are caring for two foster children: Adam, age 13, and Benjamin, age 9. Adam and Benjamin are not related to each other. Both boys have been in the C. foster home for almost 11 months.

The current foster home license in Old State will expire five months from today.

Mrs. C. works as an engineer for an oil company. Mr. C. has elected to be a stay-at-home father even though he has a lifetime teaching certificate and has been a schoolteacher.

Mrs. C's company is involved in downsizing, and for Mrs. C. to keep her current position with the company, she will begin working in New Town, New State, within the next 30 to 60 days. The company has given Mrs. C. some discretion on the effective date of her transfer. It is approximately 400 miles from Old Town to New Town.

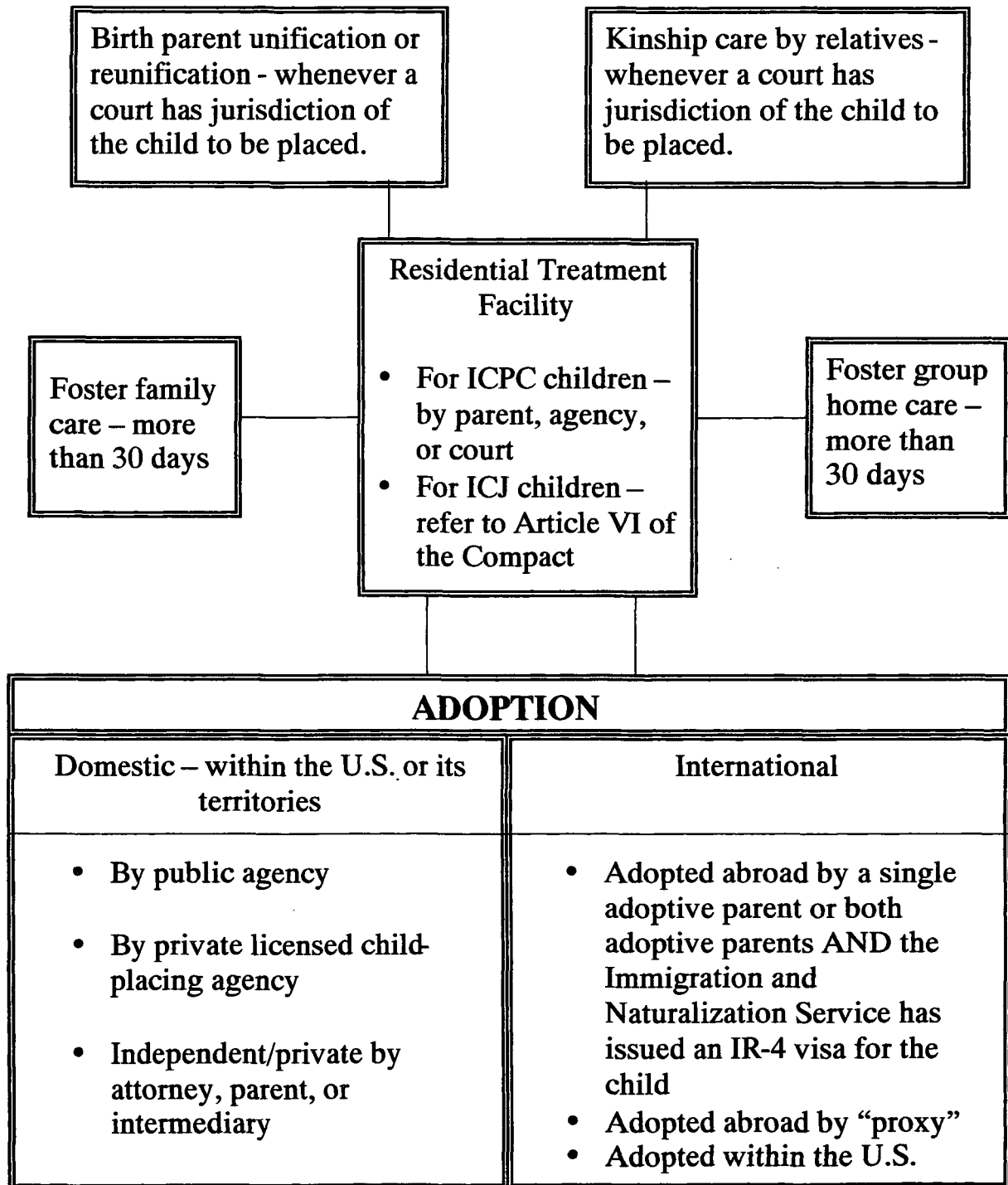
After much discussion between Mr. and Mrs. C. and the boys, everyone agrees that the C. family wants to keep the boys with them. Adam and Benjamin want to remain with Mr. and Mrs. C., even though both boys have siblings who are in foster care in other foster homes in Old State. Adam's sister, Carla, age 15, is in a foster home about 20 miles from Old Town, and his brother, Dan, age 7, is in a foster home about 80 miles from Old Town. Carla and Adam have a close relationship, but Adam has less relationship with his brother, Dan, because of the age difference.

Benjamin has a sister, Earline, age 8, who is in a foster home about five miles on the other side of Old Town. Benjamin has always been fiercely protective of his sister and continues to insist that he wants her to come and live with him so he can protect her and take care of her. At the same time, he feels secure with the C. family for the first time in his life. Benjamin's social worker and Earline's social worker are in agreement that the two children should not be in the same foster home because of Benjamin's efforts to "parent" Earline.

QUESTIONS:

1. What should the agency recommend to the court regarding whether Adam and Benjamin should move out of state with Mr. and Mrs. C?
2. If the court determines that Adam and/or Benjamin should move out-of-state with Mr. and Mrs. C., what must be done with regard to the ICPC?
3. What additional information is important to know with regard to Adam and Benjamin and with regard to the social service, medical, and educational systems in New Town?
4. If the court approves the move, can the C's continue to receive foster care board payments?
5. When can the court close its case?

WHAT CASES ARE SUBJECT TO THE ICPC?

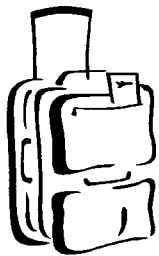


WHAT CASES ARE *NOT* SUBJECT TO THE ICPC?

- Birth parent to birth parent, if there is no court that has assumed jurisdiction of the child to be placed.
- Birth parent to relative – as defined in Article VIII – if there is no court that has assumed jurisdiction of the child to be placed.
- Relative to birth parent – as defined in Article VIII – if there is no court that has assumed jurisdiction of the child to be placed.
- Relative to relative – as defined in Article VIII – if there is no court that has assumed jurisdiction of the child to be placed.
- Child is admitted to any institution that cares for the mentally ill, mentally defective, or epileptic.
- Child is admitted to any hospital or other medical facility.
- Divorce/custody investigations and/or home study.
- International adoption, whenever Immigration and Naturalization Service has issued an IR-3 visa for the child being adopted in the child's country of origin.
- Requests received through International Social Services or any of its branch offices for home studies and/or social services.
- Visits.
- Placements of a child into or out of Canada, Puerto Rico*, Guam and/or American Samoa.

* Until Puerto Rico becomes a member of the ICPC, which is in progress

IS IT A PLACEMENT ... OR A VISIT?



IT IS A VISIT IF:

- It does not extend beyond 30 days
- It is a social experience of short duration



IT IS A PLACEMENT IF:

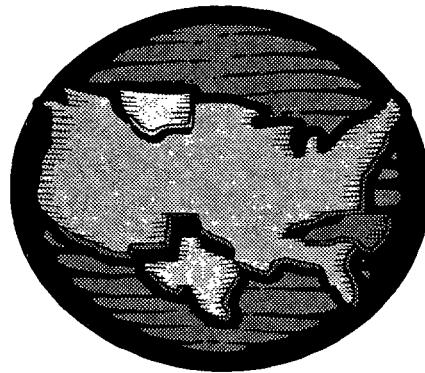
- The proposed stay is longer than 30 days
- It is a short visit with the hope or intention to place
- The circumstances make the duration of the stay unclear
- From the onset, the stay does not have an express terminal date

**THE KEY ISSUES:
PURPOSE ... DURATION ... INTENTION**

RESPONSIBILITIES OF THE LOCAL SENDING AGENCY

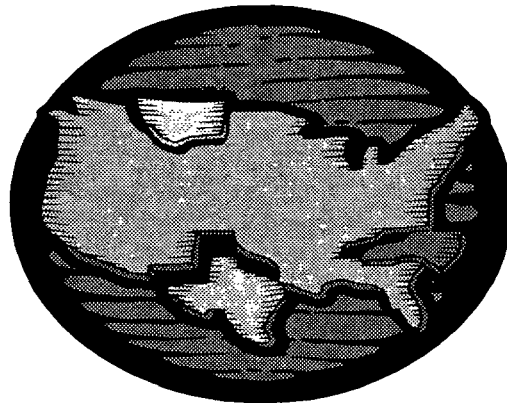
THE WORKER FOR THE LOCAL SENDING AGENCY IS RESPONSIBLE FOR:

- PREPARING THE REFERRAL PACKET
- RETAINING CUSTODY
- PROVIDING ONGOING PLANNING FOR THE CHILD
- MAINTAINING FINANCIAL RESPONSIBILITY
 - ✓ IV-E ELIGIBILITY
 - ✓ FOSTER PAYMENT
 - ✓ MEDICAL PAYMENT
 - ✓ DAY CARE
 - ✓ COUNSELING, ETC.
- MAKING THE TRAVEL ARRANGEMENTS TO PLACE THE CHILD AND RETURN THE CHILD IF/WHEN NECESSARY



RESPONSIBILITIES OF THE SENDING STATE'S ICPC OFFICE

- REVIEWS AND FORWARDS REFERRALS
- ASSURES COMPLIANCE WITH STATE LAWS
- MONITORS FLOW OF REPORTS
- MONITORS PLACEMENT STATUS
- RESOLVES PROBLEMS
- ENSURES ONGOING COMPLIANCE



RESPONSIBILITIES OF THE RECEIVING STATE'S ICPC OFFICE

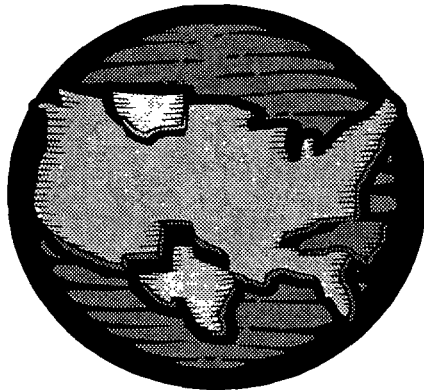
- REVIEWS AND FORWARDS REFERRALS
- ENSURES COMPLIANCE WITH STATE LAW
- APPROVES OR DENIES PLACEMENT
- MONITORS FLOW OF REPORTS
- MONITORS PLACEMENT STATUS
- RESOLVES PROBLEMS
- ENSURES ONGOING COMPLIANCE
- APPROVES DISMISSAL OF SENDING AGENCY'S CUSTODY OR RETURN OF THE CHILD TO SENDING STATE



RESPONSIBILITIES OF THE LOCAL RECEIVING AGENCY

THE WORKER FOR THE RECEIVING AGENCY IS RESPONSIBLE FOR THE FOLLOWING:

- COMPLETING THE HOME STUDY – MAKING THE RECOMMENDATION
- SUPERVISING THE PLACEMENT
- COMPLETING QUARTERLY REPORTS
- ENSURING REQUESTED SERVICES ARE RECEIVED
- NOTIFYING THE ICPC WHEN PROBLEMS OCCUR
- RECOMMENDING DISMISSAL AND CASE CLOSURE OR RETURN OF THE CHILD TO THE SENDING STATE



**LIST NINE REASONS WHY THE
JUVENILE/FAMILY COURT SHOULD
RETAIN JURISDICTION WHENEVER A
CHILD GOES TO ANOTHER STATE**

1. _____

2. _____

3. _____

4. _____

5. _____

6. _____

7. _____

8. _____

9. _____

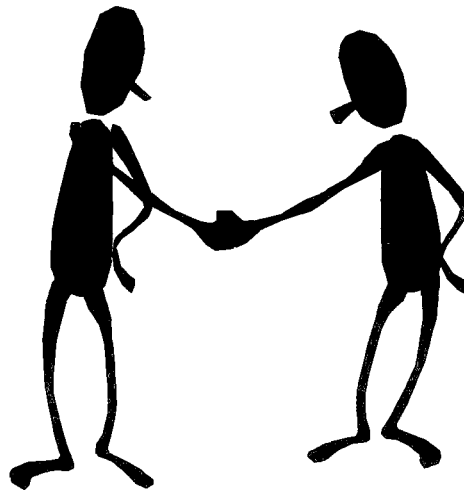
ANSWER SHEET

- 1. IT'S THE LAW.**
- 2. The court is kept aware of the status of the child and the caregiver.**
- 3. The sending state will receive progress reports from the receiving state.**
- 4. It facilitates payment whenever the sending state is making a payment to the child's caregiver.**
- 5. It is easier for the child to receive Medicaid in the receiving state if the sending state is issuing payment on behalf of the child.**
- 6. The child's worker can assure the well-being of the child.**
- 7. It facilitates the return of the child to the sending state if such action becomes necessary or appropriate.**
- 8. Financial responsibility is fixed.**
- 9. By requiring the receiving state to provide supervision of the placement, it promotes the protection of the child from further risk and enhances the possibilities of success.**

WHEN CAN THE JURISDICTION OF THE COURT IN THE SENDING STATE LEGALLY BE TERMINATED?

WHEN THE CHILD:

- IS ADOPTED,
- REACHES MAJORITY,
- BECOMES SELF-SUPPORTING, OR
- IS DISCHARGED WITH THE CONCURRENCE OF THE APPROPRIATE AUTHORITY IN THE RECEIVING STATE.



SAMPLE SLIDES FOR ICPC PRESENTATION

Slide 1

New Developments for Judges on the Interstate Compact on the Placement of Children

Presentation to the Tennessee Council
of Juvenile & Family Court Judges
August 7, 2001 Memphis, Tennessee

Presenter: Thomas E. Hornsby, Circuit Court Judge (ret.)
Professor of Law, Florida Coastal School of Law, Jacksonville,
Florida

E-mail: Tomhornsby@aol.com

Tel: 904-272-4903

1

Slide 2

Learning Objectives of Workshop

- Identify Interstate Compact On the Placement of Children (ICPC) resources in Tennessee
- Manage ICPC cases more effectively

2

Slide 3

What is the ICPC?

- The Compact is a uniform law that has been enacted in all 50 states, the District of Columbia, and the U.S. Virgin Islands
- It establishes orderly procedures for the interstate placement of children & fixes responsibility for those involved placing the child
- It covers neglected, dependent & abused as well as unruly or delinquent
- Generally, anytime a juvenile or family court sends or causes a child to be sent into another state, the law requires that the Court follow the regulations of the ICPC

3

Slide 4

Purpose of Compact—Article I

- States cooperate with each other in the interstate placement of children so that...
 - a) each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment & with a person or institution having appropriate qualifications & facilities to provide a necessary & desirable degree & type of care.

4

Slide 5

What Types of Placement Does the Compact Cover?

- Children may be sent to other states for placements that are:
 - Preliminary to an adoption
 - For foster care, including foster homes, group homes, residential treatment facilities, & institutions
 - With parents & relatives when a parent or relative is not making the placement; or
 - Of adjudicated delinquents in institutions in other states

5

Slide 6

Who Must Use the Compact?

- “Sending agencies” when they “send, bring, or cause a child to be brought or sent” to a party state. These “sending agencies” are:
 - A state party to the Compact, or any other officer or employee of the subdivision;
 - A subdivision, such as a county or city, or any officer or employee of the subdivision;
 - A court of a party state; or
 - Any person (including parents or relatives in some instances), corporation, association, or charitable agency of a party state

6

Slide 7

Interstate Compact & Regulation Do Not Apply To: (Article VIII)

- Sending or bringing of a child into a receiving state by his parent, step-parent, grandparent, adult uncle or aunt, or his guardian & leaving the child with any such relative or non-agency guardian in the receiving state.
- Any placement, sending or bringing of a child into the receiving state pursuant to any other interstate compact or legal agreement to which both the sending and the receiving states are parties
- Placements made in medical & mental health facilities or in boarding schools

7

Slide 8

Identify Whether These Cases Need to Be Processed Through ICPC

<ul style="list-style-type: none">• Social worker investigating hotline report of abuse/neglect learns that mother & child has moved to battered women's shelter. Mother wants to place child with grandmother in Louisiana.	<ul style="list-style-type: none">• Family has been receiving voluntary services for 6 months in Tennessee due to a "reason to suspect" finding on a referral of child abuse. The father has a job waiting in Texas & wants to move his family there.
<ul style="list-style-type: none">• Are ICPC procedures required? Yes ___ NO ___	<ul style="list-style-type: none">• Are ICPC procedures required? Yes ___ No ___

8

Slide 9

Cont Whether ICPC Involved

<ul style="list-style-type: none">• Tennessee Juvenile Court places neglect case under supervision of ct without finding of neglect adjudication. Family wants to move. Kentucky judge concerned with supervision & services. The Tennessee judge entered an order requiring the parents to enter into a voluntary case plan with the Ky agency & would not close the case until it was done.	<ul style="list-style-type: none">• Your state does not accept voluntary foster care placements. A 12-year-old is placed in your Tennessee agency's foster care program. She would like to live with an aunt in Michigan, where she & her mother used to live. The aunt & child's mother are agreeable to the plan.
<ul style="list-style-type: none">• Are ICPC procedures involved? Yes ___ No ___	<ul style="list-style-type: none">• Are ICPC procedures involved? Yes ___ no ___

9

Slide 10

Cont Whether ICPC Involved

- A child in your agency's legal custody resides in a licensed foster home. The child has a rare disease, doctor recommends treatment in Mayo clinic in Minnesota. Child has been accepted for treatment & needs to be placed within next 48 hours. Treatment will take 3 months.
- Are ICPC procedures required? Yes? __ No? __
- Natural father wants child in custody of DCF & adjudicated dependent by Florida Court placed with him in Vermont. Vermont refused placement. Fl judge ordered DCF to send child to live with father.
- Are I.C.P.C procedures required? Yes __ No __

See Department of Children & Families v. Benway, 745 So.2d 437 (1999)

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Slide 11

**Important Amendment to Article 3
May, 2001**

- (b) **The compact does not apply** whenever a court transfers the child to a **non-custodial** parent with respect to whom the court :
 - Does not have evidence before it that such parent is unfit;
 - Does not seek such evidence, and
 - Does not retain jurisdiction over the child after the court transfers the child

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Slide 12

What Safeguards Does the Compact Offer?

- Gives the sending agency chance to conduct home studies & evaluate proposed placement;
- Allows prospective receiving state to ensure that the placement is not "contrary to the interests of the child & that its applicable laws have been followed before it approves the placement;

12

Slide 13

Continue Safeguards Compact Offers:

- Guarantees the child legal & financial protection by fixing these responsibilities with the sending agency or individual;
- Ensures that sending agency does not lose jurisdiction over the child once the child moves into the receiving state; And
- Provides the sending agency opportunity to get supervision & regular reports on child's adjustment & progress in placement

13

Slide 14

Retention of Jurisdiction-Article V

- Retention of Jurisdiction by the sending agency is **MANDATORY** until jurisdiction can be properly dismissed under ICPC;
- Sending agency continues to have financial responsibility for support & maintenance of the child during the period of placement
- Jurisdiction can only be terminated if child is:
 - Adopted
 - Reaches majority
 - Becomes self supporting, or
 - Is discharged with concurrence of the appropriate authority in the receiving state

14

Slide 15

Court Terminations

- New York ct found children to be dependent, placed in foster care with paternal grandmother in N.Y, moved children under ICPC to maternal grandmother in Colorado, declined to extend petitions to extend foster care, & discharged children to maternal GM
- Violation of ICPC? _____
- New York adjudicated 5 children dependent, placed with GM in N.Y., GM moved to California under I.C.P.C, CA caseworker recommended termination of dependency as result of mother's improved condition, N Y ct terminated jurisdiction
Violation of I.C.P.C.?

• See *In the Matter of H. M.*, 634 N.Y.S.2d 675 (N.Y.App.Div.1995)

See *In the Matter of Shaida W.*, 626 N.Y.S.2d 35 (1995)¹⁵

Slide 16

Conflicts between ICPC, UCCJA, PKPA & UCCJA

- When a conflict occurs, courts must reconcile the statutes to determine the proper jurisdiction of a case before decision on the merits
- Conflicts in Foster Placements:
 - Courts are more likely to defer to jurisdiction of sending state
 - States base this deference on mandates of Article V of I.C.P.C, the “best interest” standard of the child and UCCJA

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Slide 17

Conflicts in Foster Placements-UCCJA

- 3 children adjudicated dependent in Washington as a result of mother’s mental condition & father in service & placed in foster care in WA & WA continued to supervise placement & provide foster care payments and medical expenses
- Children were placed under I.C.P.C in Illinois with relative caretaker &
- 4 years later, mother in Illinois files for dissolution of marriage & custody
- Illinois ct refused to hear custody pet holding Washington had retained jurisdiction
- Which Court had jurisdiction? Illinois _____ WA _____
See *In re the Marriage of Slate*, 536 N.E.2d 894 (Ill. Ct. App. 1989)

17

Slide 18

Conflicts in Independent Adoptions

- Because the sending state often has fewer connections with the child in an independent adoption than if foster placement, courts often allow receiving state to assume jurisdiction under the UCCJA

Stancil v Brock, 108 N.C. App. 745 (N.C. App. 1999):

- Ky residents placed child with residents of No Car for adoption through I.C.P.C.
- Adoptive parents sought custody in No. Car when learned natural parents wanted to revoke adoption consent
- Natural parents filed a petition to revoke consent & dismiss adoptive parents custody petition
- Your Decision re jurisdiction:
 - Kentucky _____
 - North Carolina _____

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Slide 19

Placement or Visit?

- Distinguished by:
 - Purpose
 - Duration
 - Intention
- Placement:
 - Proposed stay more than 30 days
 - Purpose: hope or intention to place
 - Duration of stay is not clear from the circumstances
 - From outset, no terminal date

19

Slide 20

Responsibilities of Local Sending Agency

- Prepare referral packets & forwarding to ICPC office;
- Retaining custody/jurisdiction;
- Provide ongoing planning for the child;
- Maintaining financial obligation:
 - IV-E eligibility
 - Foster payment
 - Medical payment
 - Day care
 - Counseling, if necessary
- Making travel arrangements to place the child (and return child if necessary)

20

Slide 21

Responsibilities of the Sending State's ICPC Office

- Reviews & forwards referrals
- Assures compliance with state laws
- Monitors placement status
- Resolves problems
- Assures ongoing compliance

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Slide 22

Responsibilities of Receiving State's ICPC Office

- Reviews & forwards referrals
- Assures compliance with state laws
- Approves or denies placement
- Monitors placement status
- Resolves problems
- Assures ongoing compliance
- Approves dismissal of sending agency's custody or return of child to sending state

22

Slide 23

Responsibilities of Local Receiving Agency

- Completing the home study/making recommendations
- Supervising the placement
- Completing quarterly reports
- Ensuring requested services are received
- Notifying ICPC office when problems occur
- Recommending dismissal & case closure or return of child to sending state

23

Slide 24

Regulation 7, Priority Placement

- INTENTION:
 - Aimed at achieving parity of treatment for interstate cases
 - Assure priority handling for hardship cases & cases which have already suffered delays
 - Establishes procedures for out-of-state priority placement of children
 - Sets time frames for priority placement to occur within 28 business days

24

Slide 25

Circumstances Under Which Priority Procedures May Be Used:

- Court, upon request, or on its own motion, or when court approval is required, determines if a proposed priority placement is necessary.
- Court order requesting a priority placement is not valid unless it contains an express finding that 1 or more of the following circumstances applies to a particular case & sets forth the facts on which the court bases its findings

25

Slide 26

Important May 2001 Revision to Regulation 7

- Revision excludes from priority placement applicability any placement in which the request is for:
 - Placement of a child for licensed or approved family care or adoption; or
 - A child already in the receiving state in violation of the ICPC

26

Slide 27

Reason for Regulation 7 Revision-ASFA Licensing Requirement of all Non-Parental Homes

- Can no longer expect to complete a “relative home study” in 20 working days because:
 - Federal Regulations to implement ASFA require state license of all non-parental homes
 - No difference between relative home study & foster home study
 - All must meet foster care home study standard
 - Delays in licensing by training requirements, safety inspections, fingerprinting

27

Slide 28

Strategies to Deal with Delays Re Reg 7

- If financial and/or medical assistance needs behalf of a child fall into one of following categories, & the receiving state's laws do not indicate otherwise, **the case does not fall under the requirements of licensure because Title IV-E funds are not required: IF:**
 - No financial assistance is required in support of the child;
 - Financial assistance is provided through state funding sources;
 - Financial assistance is provided through Temporary Assistance for Needy Families (TANF) funding;
 - Medical assistance is provided through a method that does not use Title IV-E funding; or
 - Any other non-Title IV-E funding is used for assistance 28

Slide 29

ICPC Approval Alternatives When Request Is For Placement With a Relative Who Must Become Licensed As a Foster Parent

- **Relative agrees to forego payment on a temporary basis until licensed**
 - Receiving state could indicate its approval of the home & immediately begin the licensing process
 - Child could be placed in the home while the licensing process proceeds without foster home board payments
- If relative is unable to forego payment until licensing process is completed, **sending state identifies a non-Title IV-E funding source for board payments, or bridge payment, until the home is licensed** 29

Slide 30

Court's Finding of Facts in Order

- Placement of child is not for licensed or approved foster care or adoption; or
- Child is not already in the receiving state in violation of the ICPC, **and**
- Proposed placement recipient is parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or guardian; **and**
 - 1. The child is **under two** years of age, or
 - 2. The child is an **emergency placement**, or
 - 3. The court finds that the **child has spent substantial time in the home of the proposed placement** 30

Slide 31

Cont Court's Findings & Facts

- The receiving State Compact Administrator has a properly completed ICPC-100A & supporting documentation for over 30 business days,
but
 - **The sending agency has not received a notice** pursuant to Article III(d) of the ICPC determining whether the child may or may not be placed

31

Slide 32

Regulation 7 Timeframe:

- Court sends its order to sending Agency within 2 business days. Order includes:
 - Name, address, telephone number, and, if available, the fax number of the judge & court
- Court has sending Agency transmit within 3 business days, the signed court order, a completed form 100A (“Request for Placement”) & supporting documentation to the sending state compact administrator

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Slide 33

Cont. Regulation 7 Timeframe

- Within time not to exceed 2 business days after receipt of the ICPL priority placement request, sending state compact administrator transmits priority request & accompany documentation to receiving state administrator together with a notice that the request for placement is entitled to priority processing
- Court order, ICPL-100A, & supporting documentation transferred to receiving state compact administrator as soon as practicable but not later than 20 business days from the date the overnight mailing was received & sends completed 100-A by fax to sending state compact administrator

33

Slide 34

Non Compliance with Regulation 7

- If receiving state compact administrator fails to complete action within time period allowed, receiving state not in compliance

- If not in compliance, court which made priority order may inform an appropriate court in receiving state, provide documentation & request assistance
 - Court should be careful of ex parte communication prohibition in respective state Codes of Judicial Conduct.

 - Recommendation that conversation take place over speaker phone in judge's chambers in presence of parties and their attorneys and record be made of conversation

34

Slide 35

Cont Compliance with Reg 7

- Requested court may render assistance, including the making appropriate orders, for the purpose of obtaining compliance with Regulation 7

35

Slide 36

Adoption & Safe Families Act Licensing Requirement of All Non-parental Homes & Effect on Regulation 7

- No longer expect to complete a “relative home study” in 20 working days because:
 - Federal Regs to implement ASFA require state license all non-parental homes
 - No difference between relative home study & foster home study
 - All must meet foster care home study standard
 - Delays in licensing by training requirements, safety inspections, fingerprinting.

36

Slide 37

ICPC Hypo

When the police stopped Mary Jones' car in San Jose CA, on 11/3/96, because it was weaving in heavy traffic, they discovered that Mary was under the influence of some unknown substance. She was barely coherent and could not pass any of the field sobriety tests they administered to her. In the back seat were 2 children, Sally(3) and Johnny (1). Neither was in a car seat.

Mary was arrested & the children were taken to the Children's shelter. The next day Mary was charged with DUI, child endangerment & for violation of probation. She had a conviction of DUI in March of 1996. Mary was denied bail pending the probation hearing

37

Slide 38

Cont ICPC Hypo

Also the next day the Children's Services worker attempted to locate other family members to find a placement for the children. She talked with the children's father, Harry Smith, who lived in Arizona. He never had custody of the children, but visits them now & then, was living alone in an apartment & worked as a long distance truck driver. He freely admitted that he was the children's father, he & Mary had not been married & his paternity of the 2 children had not been established. He said he was not in a position to care for the children, but suggested his mother who lived in Texas. The social worker talked with Mary's mother who lived in Massachusetts, who told Mary she would love to have the children live with her.

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Slide 39

Cont ICPC Hypo

At the detention (shelter care) hearing, Mary was still in custody. She reported that she would be entering a 6 month drug treatment program. Thereafter, she said that she would consider moving back to Massachusetts. Harry appeared & asked that the children be placed with his mother in Texas. Other than the 2 grandmothers, no other relatives could be located who were willing to care for the children

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Slide 40

Cont ICPC Hypo

- Can paternity be established in the juvenile dependency court?
 - Is this necessary in order to enable the juvenile ct to consider the paternal grandmother as a placement?
- Must the court utilize the ICPC order to consider with either grandmother?
- How should the court proceed?
- Is this a priority placement?
 - Would it be a priority placement if there had been a relative willing to care for the children on a temporary basis in San Jose, California?

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Slide 41

Cont ICPC Hypo

- What should the juvenile ct judge do in order to initiate the priority placement process?
- What should the juvenile ct judge do if the priority placement timelines are not followed & the case is languishing on someone else's desk?

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Slide 42

Assume that Harry moves to Texas to stay with his mother, & the social worker's assessment is that Harry is an adequate parent & prevents a reasonable child care arrangement with his mother

- What process is necessary to place children with their father? Is juvenile court jurisdiction needed?
- Is it necessary to follow ICPC procedures?
- Is it necessary to conduct a home study?
- Can the ct place with the father & dismiss the case?
Does mother have the right to insist upon family reunification services?

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Slide 43

Assume you know nothing about the father, Harry, who is living in Nebraska

- How can you determine whether he is an adequate parent for placement? An out-of-state enquiry/home study? A quick check-a serious study?
- What if Harry is only asking for a month's summer time with his children? An out-of-state inquiry?
- What if the 1 mo summer vacation turns out to be successful? Can it become a permanent placement

43

Slide 44

Assume facts as above except that Harry has 2 convictions for DUI, is on probation & is described by probation officer as an alcoholic

- What process is necessary in order to place the children with him?
- Is it necessary to follow ICPC procedures?
- Is it necessary to conduct a home study?
- Is a custody order needed?

44

Slide 45

Cont ICPC Hypo

- Assume that the grandmother wishes to adopt the children
 - Are there ICPC procedures that must be followed?
 - Is another home study needed?
 - What part does each state play in the adoptive process?

45

Slide 46

Cont ICPC Hypo

- Assume that there is only 1 child, a 14 year old who has been institutionalized for years because of fire setting & sexual abuse. The child will need secure placement wherever he is placed.
 - If he is to be sent by the juv ct to the father, must ICPC be utilized?
 - If placed by the juv ct with out-of-state grandmother, must ICPC be utilized?
 - Which state is financially responsible for costs in receiving state?

46

Slide 47

Cont ICPC Hypo

- Assume that the child has been sent to the father who places him in a local residential treatment. 1 year later the sending ct is asked to dismiss the case.
 - Can this be done?
 - What procedures are followed?
 - What if the child is now living with the father & no services are being requested by the father?
 - Can the sending ct dismiss the case?
- What role does a CASA volunteer have in the ICPC process?
 - Can CASA's conduct home studies?
 - Assist the child in other ways?
 - Liability issues when without ct authority

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Slide 48

Violations of ICPC-Art. IV

- **Penalty for Illegal Placement.**
 - The sending, bringing, or causing to be sent or brought into a receiving state of a child in violation of the Compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from whom it sends or brings the child and of the receiving state.

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Slide 49

Consequences of Violation

- Violation may be punished or subjected to penalty in either jurisdiction in accordance with law
- In addition liability for penalties, violation shall constitute full & sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place, or care, for children

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Slide 50

Types of Penalties & Remedies:

- In discussing violations, consider
 - Whether compact was violated
 - Who or what entity violated the Compact
 - What remedy was imposed as a result of the violation
- Types of penalties: Courts reluctant to impose
 - Sanctions against individual violators
 - Dismissal of adoption petitions-Cts defer to best interests standards
 - Dismissal of previous placement orders

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Slide 51

Violations in Independent Adoptions

- **Revocation of Adoption Consent: In re A.M.M., 24 Kan.App.2d 605 (1997)**
 - Natural mother in Missouri called her former foster parents in Kansas to care for children.
 - 1/21/98, mother returned to Kansas, signed adoption consent forms & listed Missouri as her residence & returned to Missouri
 - 2/2/97, mother applied for & received Kansas public assistance
 - 2/97, adoptive parents filed adoption petition
 - 3/25/97, mother filed to revoke consent and to dismiss adoption
 - Dismiss _____
 - Deny Dismissal _____

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Cont Violation in Independent Adoption

- **Dismissal of Adoption: In re Adoption/Guardianship No 3598 in the Circuit Court for Hartford County 109 Md.App.475, (1996)**
 - Child born to New York mother & placed in Maryland without permission or knowledge of natural father
 - Placement not made pursuant to I.C.P.C
 - Adoptive parents petitioned to adopt child in Maryland court
 - Natural father appealed citing violations of I.C.P.C
 - Your Decision?
 - Grant Petition to Adopt _____ Dismiss Petition _____
 - Continue to next slide—

Slide 53

Cont 109 Md.App. 475

- **Court listed factors in determining whether to dismiss:**
 - Whether I.C.P.C violation knowingly committed
 - Whether violation impaired rights of natural parents
 - Whether violation was more than a technicality
 - Whether violation impeded state's jurisdiction to determine best interests of child
 - Whether violation circumvented sending state's laws in order to effectuate the adoption
 - Whether violation was made to enhance bond between adoptive parents & child & dictate adoption in the receiving state's courts
 - What were the best interests of the child

Slide 54

ICPC Violation, Attorney Sanction

- **Iowa Supreme Court Board of Professional Ethics and Conduct v. Hill, 576 N.W.2d 91, (1998 Iowa Sup. LEXIS 65 (Iowa 1998)**
 - Attorney facilitated an interstate adoption without researching or complying with ICPC provisions
 - Your decision re sanction?

See People v. Rosenstein, 402 N.Y.S.2d 151 (1998) Attorney & sister could both be prosecuted for violation of ICPC & for grand larceny when they obtained money by false pretenses in the unlawful placing of a newborn across state lines. Placed potential adoptive parents at risk for possible criminal prosecution for violation of ICPC

Slide 55

**Sanction Where Judge Does Not Comply with
ICPC**

- A Rhode Island Family Court Judge ordered a dependent child in the Department's care, custody, and control to be put into foster home in Florida without first obtaining consent of appropriate public authorities in Florida on 4/21/94. On 4/22/94 the R.I. Supreme Court at Department's request stayed the Family Court's order & directed a reevaluation of the FL home by Florida Health & Rehabilitative services. Family Court vacated his 4/21/94 order. Sup Ct held that ordering placement of child in another state without prior consent violated the ICPC.
- Should Judge be sanctioned? What about Agency?
- Yes _____
- No _____

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Slide 56

**“ Always Do Right.
This Will Gratify Some People,
And Astonish the Rest”**

Mark Twain

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APPENDIX
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APPENDIX A: ICPC COMPACT AND DEPUTY COMPACT ADMINISTRATORS

COMPACT ADMINISTRATOR

DEPUTY COMPACT ADMINISTRATOR

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Charisse Simmons
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Private Placements

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California is a decentralized State. ICPC functions, except those involving group home or residential treatment placements, are delegated to the county social services departments licensed public and private adoption agencies, or one of the California Department of Social Services' Adoption District Offices. A listing of authorized county and state ICPC liaisons and public and private agencies is maintained by the Out-of-State Placement Policy Unit on an annual basis.

All ICPC 100A requests for Group Home/Residential Treatment placements into and out of California must be directed to the Out-of-State Placement Policy Unit effective January 15, 1999. Case specific correspondence and telephone inquiries for all other ICPC cases should continue to be directed to the appropriate local agency. Correspondence and telephone inquiries on policy and statewide issues should continue to be directed to the Deputy Compact Administrator.

COMPACT ADMINISTRATOR

DEPUTY COMPACT ADMINISTRATOR

COLORADO

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Chantal Corr
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Child Welfare Division
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ICPC County Liaisons

Functions are performed by Counties

NON-PUBLIC ADOPTIONS are processed by: Adoption Alliance, 2121 S. Oneida St., Suite 420, Denver, CO 80224. Contact Person: Kathy Tirone, (303) 337-1731. FAX: (303) 337-5481.

RESIDENTIAL CHILD CARE FACILITIES—All incoming RCCF placement requests are processed by: Chantal Corr (address, same as above). Do not send these requests to local county department of social services.

All incoming Foster Care requests originated by a public entity and where a private child placement agency is performing services in Colorado are processed by: Chantal Corr (address, same as above). Do not send these requests to local county department of social services.

All other inquiries regarding specific cases should be directed to the appropriate local county department of social services for expedient service.

ICPC Office Hours: Monday - Friday, 8:00 a.m. to 5:00 p.m. Mountain Time Zone.

COMPACT ADMINISTRATOR

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COMPACT ADMINISTRATOR

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Taffy Compain
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Josette Marquess (as needed)(850) 922-6234
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Address for UPS Mail Only:

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COMPACT ADMINISTRATOR

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COMPACT ADMINISTRATOR

DEPUTY COMPACT ADMINISTRATOR

LOUISIANA

Carmen D. Weisner, Assistant Secretary
Office of Community Services
Department of Social Services
P.O. Box 3318
333 Laurel Street, 70801
Baton Rouge, LA 70821
Telephone: (225) 342-4073

Leola McClinton
Field Services Division
Office of Community Service
Department of Social Services
P.O. Box 3318
Baton Rouge, LA 70821
Telephone: (225) 342-4034

Interstate Correspondents

Linda Stephens, (225) 342-4032 (Foster care cases with child last name beginning A-J.)
Rose Richard, (225) 342-8867 (Foster care cases with child last name beginning K-Z.)
Leola McClinton, (225) 342-4034 (Adoption referrals).

ICPC Unit Number: (225) 342-9923, 2929.

Address Correspondence To: Leola McClinton, Deputy Compact Administrator.

ICPC Office Hours: Monday - Friday, 8:00 a.m. to 4:30 p.m., Central Time Zone.

Federal Express and overnight delivery services address: Office of Community Services, 333 Laurel Street, Suite 840, Baton Rouge, LA 70801

FAX: (225) 342-0965.

COMPACT ADMINISTRATOR

DEPUTY COMPACT ADMINISTRATOR

MAINE

Margaret Semple
Bureau of Child & Family Services.
Department of Human Services
State House, Station 11
Augusta, ME 04333
Telephone: (207) 287-5060

Charles Gagnon
Bureau of Child & Family Services
Department of Human Services
State House, Station 11
221 State Street
Augusta, ME 04333
Telephone: (207) 287-5060

ICPC Office Hours: M-F, 8-5 EST.

FAX: (207) 287-5282

COMPACT ADMINISTRATOR

DEPUTY COMPACT ADMINISTRATOR

MARYLAND

Stephanie Pettaway, Administrator
MD Dept. of Human Resources
Social Services Administration
311 W. Saratoga Street
Baltimore, MD 21201

Jane Noonan P-Z
MD Dept. of Human Resources
Social Services Administration
311 W. Saratoga Street
Baltimore, MD 21201
Telephone: (410) 767-7249

Placement Analysts

Beverly Banks (410) 767-7795 A-G
Fran Burns (410) 767-7159 H-M

Administrative Specialist

Linda Christian (410) 767-7608

Secretary

Judy Oliver (410) 767-7345

Address Correspondence To: Compact Administrator.

Address All Calls To: Deputy Compact Administrator or Placement Analysts.

ICPC Office Hours: Monday - Friday, 8:00 a.m. to 5:00 p.m. Eastern Time Zone.

FAX: (410) 333-0922 or 333-6742

COMPACT ADMINISTRATOR

DEPUTY COMPACT ADMINISTRATOR

MASSACHUSETTS

John York
Interim Deputy Commissioner
Department of Social Services
150 Causeway Street
Boston, MA 02114

(Vacant)
Department of Social Services
24 Farnsworth Street
Boston, MA 02210
Telephone: (611) 748-2374

ICPC Coordinator

Paula Sweeney
(617) 748-2375

Assistant ICPC Coordinator

Kaitlin B. Lyons
(617) 748-2433

ICPC Clerk

Pamela C. Blake
(617) 748-2237

Address Correspondence and Telephone Calls To: Deputy Compact Administrator.

ICPC Office Hours: Monday - Friday, 9:00 a.m. to 5:00 p.m., Eastern Time Zone.

FAX: (617) 261-7437 or (617) 261-7435 (please call before faxing).

COMPACT ADMINISTRATOR

DEPUTY COMPACT ADMINISTRATOR

MICHIGAN

James E. Beougher, Director
Office of Children's Services
Family Independence Agency
P. O. Box 30037
235 S. Cesar Chavez Ave., 5th Floor
Lansing, MI 48909
Telephone: (517) 335-6158

Bryan Stewart
Office of Children's Services
Family Independence Agency
P. O. Box 30037
235 S. Cesar Chavez Ave., 5th Floor
Lansing, MI 48909
Telephone (517) 335-4652

Adoptions

Mr. Dale L. Murray, Consultant
(517) 373- 6918

Foster Care

Carol Bower, Consultant
(517) 373-7650

Office Hours: M-F, 8-4:30 EST.

FAX: (5 page limit): (517) 241-7047.

COMPACT ADMINISTRATOR

DEPUTY COMPACT ADMINISTRATOR

MINNESOTA

Michael O'Keefe, Commissioner
Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3815

Robert B. DeNardo, Supervisor
Department of Human Services
Family and Children's Services Division
444 Lafayette Road
St. Paul, MN 55155-3831
Telephone: (651) 296-3740

ICPC ADMINISTRATOR—PARENT/ FOSTER CARE,
RTC, GROUP HOME PLACEMENTS

Jodi Jurek
Department of Human Services
Family and Children's Services Division
444 Lafayette Road
St. Paul, Minnesota 55155-3832
Telephone: (651) 296-2725

ICPC ASSISTANT

Julie Gruber
Same address as above.
Telephone: (651) 297-3319

ADOPTIONS

Tammy Roth
Same address as above.
Telephone: (651) 297-3973

ICPC Office Hours: Monday-Friday, 8:00 a.m. to 4:30 p.m., Central Time Zone.

FAX: (651) 296-5430

COMPACT ADMINISTRATOR

DEPUTY COMPACT ADMINISTRATOR

MISSISSIPPI

Dr. Bettye Ward Fletcher
Executive Director
Department of Human Services
P.O. Box 352
Jackson, MS 39205
Telephone: (601) 359-4480

Patricia Hickman
Department of Human Services
Division of Family & Children's Services
Post Office Box 352
Jackson, MS 39205
Telephone: (601) 359-4986
E-Mail: PHickman@MDHS.State.MS.US

Address Correspondence To: Deputy Compact Administrator.

Direct telephone calls to appropriate persons: Parental/Relative/Foster Care/Residential/Group Home: Terry Varnado (601) 359-4498. Adoption: Delores Harris (601) 359-4998.

Federal Express Address: 750 North State Street, Jackson, Mississippi 39202

ICPC Office Hours: Monday - Friday, 8:00 a.m. to 5:00 p.m., Central Time Zone.

FAX: (601) 359-4978

COMPACT ADMINISTRATOR

DEPUTY COMPACT ADMINISTRATOR

MISSOURI

Denise Cross, Director
Missouri Division of Family Services
P.O. Box 88
Jefferson City, MO 65103-0088
Telephone: (573) 751-4247

(Vacant)

Caseload Distribution – based on surname of oldest child in case.

Mary Kay Kliethermes – Relative, Foster Care, and Private/Independent Adoptions A-H.
Residential St. Louis City and County area.
E-mail: mary_kliethermes@dssdfs.state.mo.us

Mary Kay Kliethermes - Relative, Foster Care and Private/Independent Adoptions I-M.
All Public and Intercountry Adoptions.
E-mail: mary_kliethermes@dssdfs.state.mo.us

Jim Cade - Relative, Foster Care and Private/Independent Adoptions N-Z.
Residential Kansas City area.

Address Correspondence and Calls To: ICPC Unit, Children's Services Section
Division of Family Services
P.O. Box 88
Jefferson City, MO 65103-0088
Telephone: (573) 751-2981

The following street address should be used ONLY for Federal Express, Airborne Express, UPS, etc. Please note that the U.S. Postal Service will not deliver mail to this address:

ICPC Unit, Children's Services Section
Otko Building
3418 Knipp Drive
Jefferson City, MO 65109

ICPC Office Hours: Monday - Friday, 8:00 a.m. to 5:00 p.m., Central Time Zone.

FAX: (573) 522-2199

COMPACT ADMINISTRATOR

DEPUTY COMPACT ADMINISTRATOR

MONTANA

Kandice Morse
Montana DPHHS
Child and Family Services Division
P. O. Box 8005
Cogswell Building
1400 Broadway, Rm. C-123
Helena, MT 59601
Telephone: (406) 444-5917
E-Mail: kmorse@state.mt.us

Address All Correspondence To: Compact Administrator.

ICPC Office Hours: Monday - Friday, 8:00 a.m. to Noon, and 1:00 p.m. to 5:00 p.m.,
Mountain Time Zone.

FAX: (406) 444-5956

COMPACT ADMINISTRATOR

DEPUTY COMPACT ADMINISTRATOR

NEBRASKA

Chris Hanus
Administrator
Protection and Safety Division
NE Dept. of Health and Human Services
Telephone: (402) 471-9308

Suzanne Schied
ICPC Program
NE Dept. of Health and Human Services
Protection and Safety Division
P.O. Box 95044
Lincoln, NE 68509-5044
Telephone: (402) 471-9245

Christy Miller, Staff Assistant
Telephone: (402) 471-9753

Mary Dyer, Adoptions
Telephone: (402) 471-9331

Address Correspondence in Triplicate To: Suzanne Schied – ICPC Program or
Mary Dyer – ICPC Program Adoptions
Jerry Dominquez – Inter-Country Adoptions

Express Mail Address: Suzanne Schied/Mary Dyer, Interstate Compact on the Placement of Children, 301
Centennial Mall South, 3rd Floor, Lincoln, NE 68508

ICPC Office Hours: Monday-Friday, 8:00 a.m. to 5:00 p.m., Central Time Zone.

FAX: (402) 471-9034

COMPACT ADMINISTRATOR

DEPUTY COMPACT ADMINISTRATOR

NEVADA

Bruce Alder, Acting Administrator
Division of Child and Family Services
Department of Human Resources
711 E. Fifth Street
Carson City, NV 89701-5092
Telephone: (775) 684-4400

Connie Martin
Division of Child and Family Services
Department of Human Resources
711 E. Fifth Street
Carson City, NV 89701-5092
Telephone: (775) 684-4418

Acting Alternate Deputy Compact
Administrator/ICPC Program Specialist
Alice Pittsley
Telephone: (775) 684-4438

ICPC Program Assistants
Emily Nunez (8:00 a.m.-12:00 p.m.)
Debbie Gottschalk (12:30 p.m.-4:30 p.m.)
Telephone: (775) 684-4416

Address Correspondence To: Deputy Compact Administrator.

ICPC Office Hours: Monday - Friday, 8:00 a.m. to 5:00 p.m., Pacific Time Zone.

FAX: (775) 684-4456

COMPACT ADMINISTRATOR

DEPUTY COMPACT ADMINISTRATOR

NEW HAMPSHIRE

Nancy Rollins, Director
Department of Health and Human Services
Office of Family Services
Children, Youth and Families Division
129 Pleasant Street
Concord, NH 03301-3857

Linda Bombaci, DCA
Department of Health and Human Services
Office of Family Services
Children, Youth and Families Division
129 Pleasant Street
Concord, NH 03301-3857
Telephone: (603) 271-4708

ICPC Office Hours. M-F, 8-4 EST.

FAX: (603) 271-4729.

**COMPACT ADMINISTRATOR
NEW JERSEY**

DEPUTY COMPACT ADMINISTRATOR

		<u>Telephone Numbers</u>
Benita Rommel	SUPERVISOR	609-292-3188
Susan Peskin	A-C (Fostercare) A-C (Adoption)	609-984-7482
Miguel Fernandez	D-G, V (Fostercare) D-H (Adoption)	609-292-0866
Lucia Perez-Delgado	H-L (Fostercare) I-L (Adoption)	609-292-4293
Sylvia Maloney	M-R (Fostercare) M-R, V (Adoption)	609-984-1049
Christine Foulkes	S-U, W-Z (Fostercare) S-U, W-Z (Adoption)	609-633-2760
Acquanetta Napier	Administrative Assistant	609-292-9170
Christine Carter	Administrative Assistant	609-292-9171

Federal Express Address
NJ D.Y.F.S.
Interstate Services Unit
Department of Human Services
Capital Center – 7th Fl. SE
50 E. State St.
Trenton, NJ 08625

For Regular Mail
NJ D.Y.F.S.
Interstate Services Unit
Department of Human Services
PO Box 717
Trenton, NJ 08625-0717

ICPC Office Hours: Monday-Friday, 9:00 a.m. to 5:00 p.m., Eastern Time Zone.

FAX: (609) 633-6931

**COMPACT ADMINISTRATOR
NEW MEXICO**

DEPUTY COMPACT ADMINISTRATOR

Deborah Hartz, Secretary
Children, Youth and Families Department
P. O. Drawer 5160 (PERA Bldg.)
Santa Fe, NM 87502-5160
Telephone: (505) 827-7602

Peg A. Tassett
Protective Services Division-ICPC
Children, Youth and Families Department
P. O. Drawer 5160 (PERA Bldg., Rm. 254)
Santa Fe, NM 87502-5160
Telephone: (505) 827-8457

Federal Express
PERA Bldg., Rm. 254
1120 Paseo de Peralta
Santa Fe, New Mexico 87504

Address Correspondence and Telephone Calls to Deputy Compact Administrator.

ICPC Office Hours: Monday - Friday, 8:00 a.m. to 5:00 p.m., Mountain Standard Time Zone.

FAX: (505) 827-8433

COMPACT ADMINISTRATOR

DEPUTY COMPACT ADMINISTRATOR

NEW YORK

Anne C. Furman
Director, Family & Placement Services
Division of Family & Children's Services
NY State Department of Social Services
40 North Pearl St., Mezzanine
Albany, NY 12243
Telephone: (518) 474-9406

James M. Keeler, Jr.
Deputy Compact Administrator
NY State Department of Social Services
40 North Pearl St., Riverview Center, 6th Fl.
Albany, NY 12243
Telephone: (518) 473-1591

Address All Correspondence To: Interstate Compact Unit
New York State Office of Children & Family Services
Riverview Center, 6th Floor
40 North Pearl Street
Albany, New York 12243

PLEASE DO NOT ADDRESS CASE SPECIFIC CORRESPONDENCE TO ANY SPECIFIC INDIVIDUAL AS THIS WILL DELAY DELIVERY AND PROCESSING.

TELEPHONE CALLS/CASELOAD ASSIGNMENTS: Caseload is divided alphabetically by the last name of the child(ren) concerned. For cases with multiple last names, use the last name occurring first alphabetically.

A thru L (and all private agency and independent adoptions)
Jim Keeler (518) 473-1591

M thru Z (and all returns to New York of children from failed placements)
Beth Dugan (518) 474-9582

ICPC Office Hours: Monday-Friday, 8:30 a.m. to 4:30 p.m., Eastern Standard Time.

FAX: (518) 486-6326

COMPACT ADMINISTRATOR

DEPUTY COMPACT ADMINISTRATOR

NORTH CAROLINA

Kevin M. FitzGerald, Director
Division of Social Services
Dept. of Social Services
325 North Salisbury Street
Raleigh, North Carolina 27511

Osborne Shamberger
Child Welfare Standards/Interstate Unit
Division of Social Services
325 North Salisbury Street
Raleigh, North Carolina 27611
Telephone: (919) 733-9464

Adoption
Estelle High, Supervisor
Linda Wrightson, Agency Cases
Tel: (919) 733-9464

Parent, Relative
Brenda Robertson
Charlene Timmons
Tel: (919) 733-9464

Family Foster Home (Residential)
Gayle Moore
Tel: (919) 733-9464

ICPC Office Hours: M-F, 8-5 EST.

COMPACT ADMINISTRATOR

DEPUTY COMPACT ADMINISTRATOR

NORTH DAKOTA

Paul Ronningen, Director
Children & Family Services Division
ND Department of Human Services
State Capitol-Judiciary Wing
600 E. Boulevard Avenue, Dept. 325
Bismarck, ND 58505
Telephone: (701) 328-1725

ICPC Office Hours: M-F, 8-5 CST.

FAX: 701-328-2359.

Deb Petry, Foster Care
North Dakota ICPC
Department of Human Services
State Capitol-Judicial Wing
600 E. Boulevard Avenue, Dept. 325
Bismarck, ND 58505
Telephone: (701) 328-3581

Delores Friedt, Adoptions
Same address as above.
Telephone: (701) 328-4152

OHIO

Greg Moody, Director
Ohio Department of Job and Family Services
30 E. Broad Street, 32nd Floor
Columbus, OH 43266-0423

Heidi Stone
ODJFS – Bureau of Family Services
ICPC Unit
255 East Main Street, 3rd Floor
Columbus, OH 43215
Telephone: (614) 466-9274

Address Correspondence and Telephone Calls To: ICPC Unit, ODJFS – Bureau of Family Services, 255 East Main Street, 3rd Floor, Columbus, Ohio 43215.

ICPC Office Hours: Monday - Friday, 8:00 a.m. to 5:00 p.m., Eastern Time Zone.

FAX: (614) 728-6803

COMPACT ADMINISTRATOR

DEPUTY COMPACT ADMINISTRATOR

OKLAHOMA

Raymond Haddock
Acting Director
Department of Human Services
P.O. Box 25352
Oklahoma City, OK 73125
Telephone: (405) 521-3646

Jeannie Scifres (Adoptions)
Department of Human Services
Division of Children and Family Services
P.O. Box 25352
Oklahoma City, OK 73125
Telephone: (405) 521-2475

Alida Campbell (Foster care, relative and residential)
Department of Human Services
Division of Children and Family Services
P.O. Box 25352
Oklahoma City, OK 73125
Telephone: (405) 521-4077

PUBLIC AND PRIVATE ADOPTIONS are processed by Heritage Family Services, Inc., 5200 South Yale, Suite 300, Tulsa, OK 74135. Contact Person: Mike Nomura at (918) 491-6767.

Public and private adoptions initiated prior to June 15, 1998, will be managed by DHS Adoptions Deputy Compact Administrator, Jeannie Scifres, until case closure.

Address Correspondence and Telephone Calls Related To: Foster Care, Relative or Residential ICPC cases to Ann Davis, DCA, Department of Human Services, PO Box 25352, Oklahoma City, OK 73125.

Address Correspondence and Telephone Calls Related To: Public and Private ICPC referrals initiated after June 15, 1998 to Heritage Family Services, Inc., 5200 South Yale, Suite 300, Tulsa, OK 74135, telephone (918) 491-6767.

Address Correspondence and Telephone Calls Related To: Public and Private Adoption ICPC referrals initiated before June 15, 1998, to Jeannie Scifres, DCA, , Department of Human Services, PO Box 25352, Oklahoma City, OK 73125, telephone (405) 521-2475.

ICPC Office Hours: Monday - Friday, 8:00 a.m. to 5:00 p.m., Central Standard Time.

FAX (405) 522-4488

COMPACT ADMINISTRATOR

DEPUTY COMPACT ADMINISTRATOR

OREGON

Ramona Foley, Director
State Office for Services to
Children and Families
Department of Human Resources
500 Summer Street, N.E.
Salem, OR 97310-1017

Vic Congelton
SCF Administration
Interstate Compacts
500 Summer Street, N.E. E70
Salem, OR 97310-1068
Telephone: (503) 945-6685

ICPC Consultants

Gayle Thorbeck (A-K)
(503) 945-5671
Diana Hammond (L-Z)
(503) 945-5673
Teresa Anderson (Adoption A-Z)
(503) 945-7019

ICPC Support/Runaways

Carol Gillespie
(503) 945-5994

Address Correspondence and Telephone Calls To: Deputy Compact Administrator.

Joann (503) 945-5671 Diana (503) 945-5673
Terrie (503) 945-7019 Carol (503) 945-5994

ICPC Office Hours: Monday - Friday, 6:00 a.m. to 5:00 p.m., Pacific Time Zone.

FAX: (503) 947-5072

COMPACT ADMINISTRATOR

DEPUTY COMPACT ADMINISTRATOR

PENNSYLVANIA

Feather Houstoun, Secretary
Department of Public Welfare
P.O. Box 2675
Harrisburg, PA 17105

Warren Lewis
Division of State Services
Department of Public Welfare
P.O. Box 2675, Hillcrest, 2nd Floor
Harrisburg, PA 17105
Telephone: (717) 772-7016

Address Correspondence and Telephone Calls To:

Relative, Foster, Residential
Placements and Agency Adoptions
Sue Darhower, (717) 772-5502
Susan McNear, (717) 772-5501
Sheila Kelley (717) 705-8144

Intercountry, Independent, Glenn Mills,
and VisionQuest Placement
Vilma Dornell, (717) 772-5503

Note: Pennsylvania has a joint office combining the Interstate Compact on the Placement of Children and the Interstate Compact on Juveniles. The Compact Administrator and the Deputy Compact Administrator are the same for both Compacts. The Director of the Compact Unit is Larry Yarberough. Telephone: (717) 772-5506.

To mail Federal Express items, use the following address:

Division of State Services
Harrisburg State Hospital
Cameron Street
Hillcrest, 2nd Floor
Harrisburg, PA 17103

ICPC Office Hours: Monday-Friday, 8:00 a.m.- 5:00 p.m., Eastern Time Zone.

FAX: (717) 772-6857

COMPACT ADMINISTRATOR

DEPUTY COMPACT ADMINISTRATOR

RHODE ISLAND

Everett Thornton
Department of Children,
Youth and Families
530 Wood Street
Bristol, RI 02809
Telephone: (401) 254-7077

ICPC Office Hours:
M-F, 8:30-4:00 EST.

FAX: (401) 254-7099

COMPACT ADMINISTRATOR

DEPUTY COMPACT ADMINISTRATOR

SOUTH CAROLINA

Elizabeth G. Patterson
State Director
SC Department of Social Services
P.O. Box 1520
Columbia, SC 29202

Mary Williams, Division Director
Department of Social Services
Division of Human Services
ICPC Unit
P.O. Box 1520
Columbia, South Carolina 29202
Telephone: (803) 898-7318

Address Correspondence and Telephone Calls to the Appropriate Person Listed Below.

DCA and Supervisor

Mary Williams
Telephone: (803) 898-7318

Interstate Adoption/International Adoptions

Martha Kennerly, ICPC Coordinator
Telephone: (803) 898-7640

ICPC Supervisor

Jackie Kasufkin
Telephone: (803) 898-7254

Foster/Relative Care for Counties A-Greenville

Wanda Cobb
Telephone: (803) 898-7523

Foster/Relative Care for Counties Greenville-Y

Patricia Cokley, ICPC Coordinator
Telephone: (803) 898-7330

Overnight Mail Address: South Carolina Department of Social Services, Division of Human Services, ICPC Unit, 1530 Confederate Avenue, Columbia, SC 29201

ICPC Office Hours: Monday-Friday, 8:30 a.m. to 5:00 p.m., Eastern Time Zone.

FAX: (803) 898-7641 or (803) 898-7217 Call before FAXing any documents.

COMPACT ADMINISTRATOR

DEPUTY COMPACT ADMINISTRATOR

SOUTH DAKOTA

Vergena Wieseler, Program Administrator
Child Protective Services
Department of Social Services
Richard F. Kneip Building
700 Governors Drive
Pierre, SD 57501-2291
Telephone: (605) 773-3227

Duane E. Jenner, Program Specialist
Child Protective Services
Department of Social Services
Richard F. Kneip Building
700 Governors Drive
Pierre, SD 57501-2291
Telephone: (605) 773-3227

ICPC Office Hours: M-F, 8-5 CST.

FAX: (605) 773-6834.

Adoption Cases:

DiAnn Kleinsasser, Program Specialist
Same address & telephone as above.

COMPACT ADMINISTRATOR

DEPUTY COMPACT ADMINISTRATOR

TENNESSEE

George W. Hattaway, Commissioner
Tennessee Department of Children's Svcs.
9th Floor, Andrew Johnson Tower
710 James Robertson Parkway
Nashville, TN 37219
Telephone: (615) 741-9699

Cheri Stewart, Program Specialist
Tennessee Department of Children's Services
ICPC Unit
8th Floor, Cordell Hull Building
436 6th Avenue, North
Nashville, TN 37243-1290
Telephone: (615) 532-5618, 5595, 5613

A - K: Cheri Stewart
L - Z: Alice Ann Reid (615) 532-5617.

ICPC Office Hours: M-F, 8-4:30 CST.
FAX: (615) 532-1130.

COMPACT ADMINISTRATOR

DEPUTY COMPACT ADMINISTRATOR

TEXAS

Audrey Deckinga
Division Administrator
Texas Department of Protective
and Regulatory Services
P.O. Box 149030
Austin, TX 78714-9030
Telephone: (512) 438-3238

Carolyn Thompson
Texas Interstate Placement Section
Texas Department of Protective
and Regulatory Services
P.O. Box 149030, Y-942
Austin, TX 78714-9030
Telephone: (512) 834-4474

Interstate Specialist
Mussett Richey
Texas Interstate Placement Section
Texas Department of Protective
and Regulatory Services
P.O. Box 149030, Y-942
Austin, TX 78714-9030
Telephone: (512) 834-4481

Administrative Assistant
Charlotte Howell
Telephone: (512) 834-4479

Federal Express Address
8100 Cameron Road, Bldg. A, Suite 150
Austin, TX 78754

Address Correspondence To: Deputy Compact Administrator.

ICPC Office Hours: Monday - Friday, 8:00 a.m. to 5:00 p.m., Central Time Zone.

FAX: (512) 834-4476

COMPACT ADMINISTRATOR

DEPUTY COMPACT ADMINISTRATOR

UTAH

Abel Ortiz, Director
Child Welfare Projects
120 North 200 West, Suite 225
Salt Lake City, UT 84103
Telephone: (801) 538-8258

Mike Chapman
Division of Children, Youth, and Families
120 North 200 West, Suite 225
Salt Lake City, UT 84103
Telephone: (801) 538-4364
E-mail: mrchapma@hs.state.ut.us

Adoption, Foster Care, Relative, Parent, and Residential Placements

Mike Chapman
Telephone: (801) 538-4364

Address Correspondence To: Deputy Compact Administrator.

ICPC Office Hours: Monday-Friday, 8:00 a.m. to 5:00 p.m. Mountain Time.

FAX: (801) 538-3993 or (801) 538-9815

COMPACT ADMINISTRATOR

DEPUTY COMPACT ADMINISTRATOR

VERMONT

Frederick Ober, MSW
Division Director
Division of Social Services
Osgood Bldg., 3rd Floor
103 South Main Street
Waterbury, VT 05671-2401
Telephone: (802) 241-2131

Margo Bryce
Division of Social Services
Osgood Bldg., 3rd Floor
103 South Main Street
Waterbury, VT 05671-2401
Telephone: (802) 241-2141

ICPC Office Hours: M-F, 7:45-4:30 EST.

FAX: (802) 241-2980.

COMPACT ADMINISTRATOR

DEPUTY COMPACT ADMINISTRATOR

U.S. VIRGIN ISLANDS

Cheryl S. Hyndman
Interstate Compact Administrator
Department of Human Services
Knud Hansen Complex
1303 Hospital Ground
Charlotte Amalie, VI
Telephone: (340) 774-0930

ICPC Office Hours: M-F, 8-5 AST.

FAX: (340) 774-0082

COMPACT ADMINISTRATOR

DEPUTY COMPACT ADMINISTRATOR

VIRGINIA

Sonia Rivero, Commissioner
Commonwealth of Virginia
Department of Social Services
730 E. Broad Street
Richmond, VA 23219-1849

RoseMarie Keith
Commonwealth of Virginia
Department of Social Services
730 E. Broad Street
Richmond, VA 23219-1849
Telephone: (804) 692-1270

Interstate Specialists:

Betty (Sunshine) Arnold (804) 692-1283
Linda Searcy (804) 692-1282
Grace Richardson (804) 692-1279
(Vacant) (804) 692-1281

Interstate Program Support Staff

Joan Green (804) 692-1279
Sylvia Purvis (804) 692-1274

ICPC Office Hours: M-F, 8-5 EST.

FAX: (804) 786-0455.

COMPACT ADMINISTRATOR

DEPUTY COMPACT ADMINISTRATOR

WASHINGTON

Rosie Oreskovich, Assistant Secretary
Dept. of Social & Health Services
14th & Jefferson, OB-2
Olympia, WA 98504-5711

(Vacant)
Dept. of Social & Health Services
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APPENDIX B: ORDER FORM
*Court Cases of the Interstate Compact on the Placement
of Children: Briefs and Legal Analysis*

An ICPC federal grant publication developed under Children's Bureau Grant #90C00898.

**Court Cases of the Interstate Compact
on the Placement of Children: Briefs and Legal Analysis**

Court Cases of the Interstate Compact on the Placement of Children: Briefs and Legal Analysis is an important resource for those who make interstate placements. The one-volume manual organizes federal and state court cases that interpret ICPC. The manual includes federal and state cases up to March 2000. The cases are organized into three main categories:

- Jurisdiction and the ICPC (*a discussion of retention of jurisdiction under ICPC Article V and conflicts between ICPC, UCCJ(E)A, and/or PKPA*);
- Application and the ICPC (*a discussion of application of ICPC to parental placements and intrastate placements*); and
- Violations of the ICPC (*a discussion of enforcement mechanisms under the ICPC*).

The manual is available at a cost of \$50, plus \$8 for shipping and handling. In addition, there is a \$15 fee for each yearly update that will include all new cases for that year. Holders of this document will receive an invoice on an annual basis.

Order Form

Please send _____ copies of *Court Cases of the Interstate Compact on the Placement of Children: Briefs and Legal Analysis* (includes cases up to and including March 2000) to:

Please send _____ copies of *2000 Update* (includes cases from April 2000 – March 2001):

(please print legibly)

Name _____

Agency/Company _____

Address _____

City/State/Zip _____

Telephone Number _____ Email _____

(for internal APHSA use only)

Checks should be made payable to the **American Public Human Services Association (APHSA)**. **Orders must be prepaid.**

Mail your check and order form to:
ICPC Court Case Manual
Attn: Demetrius Williams
American Public Human Services Association
810 First Street, NE, Suite 500
Washington, DC 20002-4267

APPENDIX C: SECRETARIAT OPINIONS

Secretariat
Opinion No.

Title

1. Intrastate Placements, Relations to
2. Fraud and Intrastate Placements, Relations to
3. Education Costs
(Repealed by Secretariat Opinion No. 68)
4. Custody; Definition of Placement
5. Adjudicated Delinquent, Placement of
6. Use of Compact, Mandatory or Discretionary; Discharge;
Courtesy Supervision
7. Mentally Ill Children, Placement of
8. Courtesy Supervision
9. Movement by Foster Family, Interstate; Validity of Placement
10. Foreign-Born Children, Interstate Placement of
(Repealed by Secretariat Opinion No. 67)
11. Education; Suitable Placement Environment
(Repealed by Secretariat Opinion No. 69)
12. Custody; Temporary Visits; Definition of Placement
13. Drug Treatment Center; Suitable Placement Environment
(Repealed by Secretariat Opinion No. 69)
14. Agency Supervision, Receiving State
15. Nature of Institution, Determination of
(Repealed by Secretariat Opinion No. 69)
16. Placements Made Without Proper Procedure
17. License Requirement, Foster Home
18. AFDC Foster Care Payments
(Repealed by Secretariat Opinion No. 71)
19. Placement, Before Enactment of Compact; Cooperative Agreements

20. Financial Obligations
21. Coverage, Relatives; AFDC Foster Care Payments
(Repealed by Secretariat Opinion No. 71)
22. Custody, Use of Compact; Coverage
23. Suitability of Placement, Disagreements
24. Intercountry Placements, Applicability of Compact to
(Repealed by Secretariat Opinion No. 67)
25. Age of Majority Difference
26. AFDC Payments
(Repealed by Secretariat Opinion No. 71)
27. Transients
28. Disregard of Article III Provisions; Effect on Applicability of
Other Compact Articles
29. Placement with Relatives; Coverage under Compact
30. Return Costs; Court's Financial Liability
31. Return to Resident State of Parents; Coverage under Compact
32. Placement with Parent(s); Coverage under Compact
33. Maternity Homes; Coverage under Compact
34. Return of Custody to Parent; Authority of Court
35. Placements, Before Enactment of Compact; Retroactive Compliance
36. Intercountry Placements, Applicability of Compact to
(Repealed by Secretariat Opinion No. 67)
37. Independent Placements; Violations of Compact
38. Independent Placements; Coverage; Liability; Relationship of a
Pending Adoption Petition to a Placement; Violation of Receiving
State Law
39. Guardians; Responsibility for Furnishing Information in
Independent Placements
40. Non-Agency Guardians, Applicability of Compact to
41. Divorce, Custody, Applicability of Compact to

42. Voluntary Placements, Applicability of Compact to
43. Return of Custody to Parent; Authority of Court
44. Intrastate Institutional Placement of Child with Subsequent Interstate Move of Parents
45. Exempt Relatives: Subsequent Placements and Custody Transfers
46. Withdrawal of Article II (d) Notice of Approval; Dismissal of Jurisdiction
47. Effect of Sending Agency's Death on Compact State
48. Surrender and Release of Child to Agency Licensed to Another State (Revised June 22, 2001)
49. Expectant Mothers, Travel to Another State for Birth
50. Parental Kidnapping, Voluntary Agreement of Care of Children
51. Request for Home Studies, Compact to Be Used
52. Parents with Joint Custody—Return to Noncustodial Parent—ICPC or UCCJA?
53. Placements into Residential Institutions (Repealed by Secretariat Opinion No. 69)
54. Interstate Placements and User Fees
55. Placements Involving a Three State Scenario (Repealed by Secretariat Opinion No. 70)
56. Retention of Home Study Requests
57. Intercountry Proxy Adoption
58. Placement Activities Involving Three States (Repealed by Secretariat Opinion No. 70)
59. Refusal of Originating Jurisdiction to Process ICPC Papers
60. Retroactive Compliance and Private Preadoptive Placements
61. Article VIII (a) Exemptions
62. Educational Placements (Repealed by Secretariat Opinion No. 68)
63. Implications of Placement Recipient's Citizenship on Application

of ICPC

64. Article II (d) and Placements “Primarily Educational in Character”
(Repealed by Secretariat Opinion No. 69)
65. Allegations of Abuse, Requests for Homes Studies and ICPC
66. “Institution Primarily Educational in Character” Defined
(Repealed by Secretariat Opinion No. 69)
67. Intercountry Adoption
68. Education Costs
69. Placements in Residential Institutions; Education, Emotional Disturbance, Substance Abuse, Multiple Purpose Institutions
70. Placements Involving Three State Situations
71. Responsibility for Relative Placements

APPENDIX D: NCJFCJ KEY PRINCIPLES FOR PERMANENCY PLANNING FOR CHILDREN

For over 25 years, the National Council of Juvenile and Family Court Judges (NCJFCJ) has been a national leader in the implementation of federal and state laws written on behalf of abused and neglected children and their families. As the nation's oldest judicial membership organization, the National Council has provided training and written materials for thousands of judges in every state in the country.

In January 1998, the Board of Trustees of the National Council asked its Permanency Planning for Children Advisory Committee to draft a statement of Key Principles for Permanency Planning. The Committee met several times to develop this statement of Key Principles, approved by the NCJFCJ Board of Trustees in July 1999.

1. Child Health and Safety

All children have the right to a healthy and safe childhood in a nurturing, permanent family, or in the closest substitute to a family setting.

Protecting children from abuse and neglect by their parents/caretakers is the primary goal of the child welfare system.

2. Permanency for Children

All children are entitled to a safe, permanent and nurturing home in order to reach their full potential as human beings.

It is preferable that permanency be accomplished within a child's own family, but if that is not possible, it should be accomplished in a family setting.

From the time a child enters the child welfare system, all participants in that system and all levels of the judicial system must strive to achieve permanency for the child.

Judges must do all they can to ensure that children 16 years of age or older receive services to prepare them for independent living, even while planning for adoption or other permanent plan.

3. Family Preservation

Consistent with child safety, families should be preserved, reunified and strengthened so that they can successfully rear their children.

Judges must use their legal authority to ensure that social and protective services are immediately available to families whose children have been placed at risk of abuse or neglect. The services should be easily accessible, adequate, appropriate and delivered in a culturally competent framework.

4. Judicial Leadership

Judges must ensure that the courts they administer provide efficient and timely justice for children and their families.

Judges must ensure that their juvenile and family court system has the capacity to collect, analyze, and report aggregate data relating to judicial performance, including the timely processing of cases to ensure the achievement of permanency for children who are under court jurisdiction.

Judges must convene and engage the community in meaningful partnerships to promote the safety and permanency of children.

5. Adequate Resources

There must be sufficient resources for the court hearing abuse and neglect cases. These resources include adequate judicial officers, court staff, attorneys and guardians *ad litem*, technological support, and space. In addition, there must be sufficient supportive services for families, including mental health services, counseling, educational/parenting programs, and domestic violence and substance abuse services.

6. Judicial Oversight of Children and Families

Judges must provide oversight of children and families under court jurisdiction to ensure that these children are safe and have a permanent home in a timely fashion, and that the parents/caretakers receive due process of law.

Court systems should be organized such that where possible the same judge presides over the entire child welfare case from the shelter hearing through permanency, including any adoption.

Judges must use the full extent of their authority to protect children, to keep them and other family members safe, and to hold accountable those who endanger children and other family members.

Judges must exercise their authority to order state/local agencies to provide reasonable and necessary services to children and families under court jurisdiction to ensure safe, permanent outcomes for children and a fair opportunity for parents to become competent and safe caretakers.

7. Alternative Dispute Resolution Techniques

All juvenile and family court systems should have alternative dispute resolution processes available to the parties. These include family group conferencing, mediation and settlement conferences.

Judges should encourage and support the development and maintenance of alternative dispute resolution processes in their court systems and ensure that they are staffed by qualified, well-trained professionals.

8. Courtroom Civility

Judges should ensure that the courtroom is a place where all who appear are treated with patience, dignity and courtesy.

9. Cultural Sensitivity/Competence

All members of the court system must strive to learn and respect the ethnic and cultural traditions, mores and strengths of those who appear before the court.

To this end, courts must ensure that legal materials for families are available in their native languages, that certified interpreters can assist families throughout the court process and that services are designed with appropriate cultural understanding.

10. Competent & Adequately Compensated Representation

All parties in child welfare proceedings should be adequately represented by well-trained, culturally competent and adequately compensated attorneys and/or guardians *ad litem*.

State and local governments must provide the financial means to accomplish this principle.

11. Collaboration

The juvenile court must encourage and promote collaboration and mutual respect among all participants in the child welfare system.

The court should regularly convene representatives from all participants in the child welfare system so as to improve the operations of the system.

Judges should convene the community so that professionals, volunteers, agencies and politicians can join together to work on behalf of children and families.

Judges should regularly appear in the community in order to inform the community about children and families in the child welfare system and to develop better working relationships with schools, service organizations, health care providers and volunteers.

Judges should encourage cross-training among all members of the child welfare system.

Judges should encourage the development of volunteer programs, particularly Court Appointed Special Advocate Programs and foster care review boards, to assist children and families within the courts and the child welfare system.

Conclusion: These Key Principles for Permanency Planning must guide the actions of the National Council of Juvenile and Family Court Judges, the Permanency Planning for Children Advisory Committee, and the judges who serve in our nation's courts. The Key Principles should be disseminated to judges and members of juvenile and family court systems throughout the country and should be implemented consistent with the Canons of Judicial Ethics.

APPENDIX E: QUESTIONNAIRE FOR JUVENILE AND FAMILY COURT JUDGES ON THE INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN (ICPC)

DEMOGRAPHIC INFORMATION:

1. What state do you preside in? _____
2. What is the population of your jurisdiction? _____
3. Are you a judge/judicially appointed hearing officer of a: (Please check)
 Juvenile Court
 Family Court
 Court of General Jurisdiction
 Other: (Please Describe)

4. Please describe the categories of cases involving *children* that you hear on your docket (e.g., delinquency, abuse/neglect, etc.):

5. Approximately how many cases (counted either as children or families) are on your *abuse & neglect/child protection* docket? _____ children **OR** _____ families

THE ICPC:

6. Please estimate the number of cases involving ICPC that you currently have *pending* on your docket: _____
7. Of these ICPC cases pending on your docket, how many do you estimate involve *interstate* adoption? _____
8. Circle the number that best describes your knowledge of the requirements of the ICPC, with "0" indicating no knowledge and "10" indicating a great deal of knowledge:
No knowledge 0 1 2 3 4 5 6 7 8 9 10 A great deal of knowledge
9. Based on their performance with ICPC cases on your docket, please describe the following groups' knowledge of the ICPC, with "0" indicating no knowledge and "10" indicating a great deal of knowledge:
 - a. **Child Welfare Workers**
No knowledge 0 1 2 3 4 5 6 7 8 9 10 A great deal of knowledge
 - b. **Agency Attorneys**
No knowledge 0 1 2 3 4 5 6 7 8 9 10 A great deal of knowledge

c. **Prosecuting Attorneys**

No knowledge 0 1 2 3 4 5 6 7 8 9 10 A great deal of knowledge

d. **Children's Attorneys**

No knowledge 0 1 2 3 4 5 6 7 8 9 10 A great deal of knowledge

e. **Probation Officers**

No knowledge 0 1 2 3 4 5 6 7 8 9 10 A great deal of knowledge

f. **Guardians Ad Litem**

No knowledge 0 1 2 3 4 5 6 7 8 9 10 A great deal of knowledge

g. **Court Appointed Special Advocates**

No knowledge 0 1 2 3 4 5 6 7 8 9 10 A great deal of knowledge

10. Overall, how timely is the *local* child welfare agency's handling of ICPC cases?

- very timely
- somewhat timely
- not at all timely
- unsure
- not applicable

11. Overall, how timely is the *state* child welfare agency's handling of ICPC cases?

- very timely
- somewhat timely
- not at all timely
- unsure
- not applicable

12. Overall, how timely is the *receiving* state child welfare agency's handling of ICPC cases?

- very timely
- somewhat timely
- not at all timely
- unsure

13. Have you used the ICPC Regulation 7? YES
 NO (Skip to Question 15)

a. If YES, How often were the time frames met?

- most of the time
- some of the time
- rarely
- not sure

- b. Does your child welfare agency, as the sending state, pay other agencies to do the home study if the receiving state indicates it does not have the resources to meet the required time frames? (Please circle)
- YES NO NOT SURE
- c. Do you use standard form orders for Regulation 7? YES NO
 If NO, would it be helpful to have standard form orders? YES NO
14. Have you experienced any problems with Regulation 7? YES NO
- a. If YES, please describe the problems you have experienced with Regulation 7:

15. Have you encountered any barriers that have prevented you from using the ICPC? YES NO
- a. Please describe the barriers that prevented you from using the ICPC:

16. Does your jurisdiction use a **border state agreement** for ICPC cases? YES NO
- a. If YES, circle the number that best describes how well this agreement works, with "0" indicating never works well and "10" indicating always works well:
- Never works well 0 1 2 3 4 5 6 7 8 9 10 Always works well
- Please list the parties to the agreement: _____

17. Have interstate adoptive placements in your jurisdiction increased in the last year?
- YES NO NOT SURE
18. Have you experienced any barriers to the timely implementation of the ICPC due to:
- a. **Adoption and Safe Families Act (ASFA)** YES NO
 If YES, please explain

- b. **Multiethnic Placement Act (MEPA)** YES NO
 If YES, please explain _____

c. **Interethnic Placement Act (IEPA)** YES NO

If yes, please explain _____

19. Have you attended any training in the last 5 years on the ICPC? YES NO

a. If YES, when was the training held (please note year): _____

b. Who provided the training?

c. Was it helpful? YES NO

20. Would you attend training on the ICPC now if it were offered? YES NO

21. Please add any additional comments regarding your **training** needs and preferences:

22. If you would like to provide additional comments regarding **any aspect of the ICPC**, please do so in the space provided below, or attach additional pages if needed.

Please return your completed survey via mail or fax to:

Attn: Melissa Litchfield, Research Specialist
Permanency Planning for Children Department
National Council of Juvenile & Family Court Judges
University of Nevada, P.O. Box 8970
Reno, NV 89507 (FAX: 775-327-2393)

THANK YOU FOR TAKING THE TIME OUT OF YOUR BUSY SCHEDULE TO COMPLETE THIS SURVEY. YOUR RESPONSES WILL BE INVALUABLE TO US!

APPENDIX F: BIRTHMOTHERS AND SECRETARIAT OPINION #49

Prepared by the Secretariat of the Association of Administrators of the Interstate Compact on the Placement Of Children. Affiliate of American Public Human Services Association, April 1997.

Secretariat Opinion #49 deals with the applicability of the Interstate Compact on the Placement of Children (ICPC or Compact) to pregnant women who go from their homes to hospitals in other states, give birth there, surrender the infant(s) for adoption by persons in the state where the birth occurred; and then leave the state usually to return home. Although the Opinion was issued in 1986 and has generally been followed by Compact Administrators, questions continue to arise. Secretariat Opinion #49 concludes that ICPC does apply to such situations. It appears that the reason why the question continues to recur is that persons and agencies wishing to avoid compliance with the Compact look for ways to make interstate placements without the need for compliance. The present memorandum will not repeat the analysis contained in Secretariat Opinion #49, although there is inevitably some overlap between what is said here and that Opinion. The fact that the problem is repetitious makes further comment desirable. For persons who are not already familiar with it, Opinion #49 should be read in conjunction with this memorandum.

Viewed in terms of legal and practical analysis, the crux of the matter appears to be that those who contend that the ICPC should not be applied would have us believe an interstate placement is nothing more than a transfer of physical possession of the infant. Even they will usually recognize that when a birthmother takes her newborn from one state to another and delivers it to the prospective adoptive parents (or to an agency which will then deliver it to prospective adoptive parents), ICPC applies. But transfer of physical possession will virtually always take place within a single state. People do not stand at a state line and reach the baby across to the waiting person on the other side.

The drafters of the ICPC and the states (all 50 of which have now enacted the Compact) have known full well that the purpose is not to regulate transportation and physical delivery for their own sake. The purpose is to assure that children are not placed from one state into another without receiving the protections of the Compact. That is why Article II (d) defines "placement" as an "arrangement for the care of a child." Thus the Compact regulates two elements of a placement transaction: 1) "sending, bringing, or causing to be sent or brought" across state lines of a child and 2) the making or arrangements for the care of the child. The second element is fully as inherent in an interstate placement as defined by the ICPC, as is the first element. When both the Article III (a) requirement with respect to "sending, bringing," etc., and the definition of Article II (d) are considered, it is apparent that the birthmother or agency that makes arrangements is engaged in making the placement. Indeed, if this were not so, it would be impossible to implement the protections for children, which is the clearly stated purpose of the ICPC.

Article I declares that the ICPC will assure children maximum opportunity to be placed in safe and suitable situations. Article I also provides that the Compact will be a means of

providing both the sending and receiving states with knowledge of the circumstances of the placement.

To these ends, the compact procedures involve home studies, case plans, financial plans, and other information on the basis of which the receiving state Compact Administrator makes a determination as to whether the proposed placement does or does not appear to be contrary to the interests of the child. Article III (d) could not be administered if the documentation to be used in making the determination were not part of the placement process. This documentation shows what the "arrangements for the care of the child" are. Transmitting the request for placement and its supporting documentation through the Compact Administrator of the sending state further implements Article I of the Compact by giving the sending state information concerning the circumstances of the placement.

Some persons have thought that there should be a distinction between birth mothers who merely go to a bordering state and those who travel great distances to give birth and surrender their infants for adoption. They argue that whereas expectant mothers would not usually travel to distant states if not to evade the ICPC, they may well use hospitals and prenatal services immediately across state lines. For example, residents of Kansas City, Missouri-Kansas City, Kansas; St. Louis, Missouri-East St. Louis, Illinois; or the New York-New Jersey-Connecticut Metroplex often use services and facilities in various parts of the region, without regard to which side of a state line they are situated in. Further, they argue that such activities are essentially local in character.

The answer to such a position is that the ICPC has no provision making a distinction between short-distance and long-distance interstate transactions.

Equally to the point, state and local governmental organization, including organization and authority for child protective and other child welfare services, and court jurisdiction, stops at the state line. These instruments for regulation and protection of interstate placements do not cross state lines except by use of the ICPC.

The compact administrator, at whose request this memorandum has been prepared, informs us that the courts of his neighboring state do not appear to have any trouble in finalizing adoptions of infants born of birth mothers who have crossed from his state to the other in order to deliver the child and surrender it for adoption. They appear to be content that under the laws of that state, a child born therein may be considered a resident of the state, even though the mother came from another jurisdiction.

But under the ICPC (which governs interstate placements in all states), the residence of the child or of the parents is irrelevant. The ICPC does not say that a nonresident child shall not be sent or brought from one state to another without complying with the Compact. Nor does it define "placement" as the arrangement for the care of a nonresident child. The Compact is addressed to the interstate placement of a "child." No modifier is used.

Finally, Article X of the Compact begins with the provision that: "This compact shall be liberally construed to effectuate its purposes." This certainly does not mean that the ICPC is to be construed so as to exclude as many children as possible from its application. The purposes of the ICPC are to see that children are not placed interstate until the placement

recipients have been evaluated to determine the suitability and safety of the placement; that there is provision for proper supervision during the continuance of placement; and that receiving states are not subjected to undue risks of later having to assume financial or other burdens because of interstate placements that are poor prospects for success. To make the applicability of the ICPC depend solely on the logistics of transportation and physical transfer of the child, and to ignore the express definition of "placement" as an "arrangement for the care of a child" is not consistent with the purposes or the language of the Compact.

Secretariat Opinion 49—June 30, 1986

Expectant Mothers, Travel to Another State for Birth

Can a birthmother who comes to State A from another state in order to give birth and then places her child with a State A couple thereby avoid application of Interstate Compact on the Placement of Children? It is suggested that this is consciously done on some occasions with the deliberate intention of avoiding the Compact. However, if the Compact is not circumvented by this maneuver, should the birthmother fill out an ICPC-100A beforehand? Can State A process the placement before the child is delivered?

There are a variety of reasons why people sometimes seek to convert interstate placements into intrastate placements. There is sometimes a desire to save the work of considering the laws of the other state. If the prospective adoptive parents are using a local attorney, they or he may wish to accomplish the entire matter without the need for involving a lawyer in the other state. Usually these reasons have little or nothing to do with protecting the interests of the child. In fact, circumventing laws and procedures specifically designed to protect children in interstate situations may expose both the child and the others involved in risks. Nevertheless, the desire to avoid regulation or to shorten procedures is often a powerful motive. Further, there is sometimes anxiety lest observance of protective laws may bring to light some reason why the placement and adoption should not occur.

If the child is a day old when the birthmother brings it across the state line to State A and delivers it to the attorney or to the prospective adoptive parents, there is no doubt that an interstate placement occurs and that the procedures of the Compact must be followed. The compact applies to "bringing" a child to another state for placement "preliminary to a possible adoption."

If the birthmother comes to State A one day before delivery and, very shortly after giving birth, turns the child over to an attorney or the prospective adoptive parents, it is asked whether the law should not consider the transaction to be intrastate in character and not subject to the protective procedures of the Compact.

Where a child is transferred from the custody of a birthmother to another party at or very soon after the birth, it is a virtual certainty that the arrangements for the placement have occurred before the birth and in specific anticipation of it. Where the State A couple is the recipient of the child and the birthmother is the relinquishing party, it would be sham to describe the transaction as anything other than the placement by a State X "sending agency" with a couple in another state (State A).

Some pregnant women go to maternity homes when they believe that they will place their babies for adoption or when they are undecided as to what they will do. Frequently, these women enter the maternity home a considerable time before birth of the child is expected. The home may be in their own state of residence or in another state. In the latter instances, the circumstances of the particular case may need to be looked at specifically to determine whether they are such as to make the placement of the child an interstate matter or not. In those instances too, an important motivation of the birthmother can be to be away from her own community during a difficult period. However, that has no bearing on whether the placement should or should not be considered an interstate one in character.

In other instances, women go to hospitals in another state merely to use the medical facilities for the birth of their children. This is especially frequent in metropolitan areas situated at state boundaries. The population of the entire area uses the medical and hospital resources of the region to their best advantage and convenience, without regard to the state line. Similar circumstances also can be expected wherever a hospital is near a state boundary. In such instances, it is not appropriate to regard the surrender of a newly born infant by the birthmother to prospective adoptive parent who live in her own state of residence as interstate placement requiring application of the Compact. This is true even when the physical transfer of the child occurs at the hospital in the other state. All of the pre- and post-transfer aspects of the placement relate to the single state in which both the birthmother and the prospective adoptive parents live.

Where the expectant mother crosses a state line as part of the placement plan and arrangement, the transaction should be viewed as an interstate placement. In enacting the Compact, the intent of the state legislatures was not to make the protections of placements depend on mechanical manipulation of the delivery point. Such logistic calculations are nothing more than subterfuges and studied efforts to avoid the intended and normal consequences of the law. Article X of the ICPC directs that the Compact be "liberally construed to effectuate its purposes." As set forth in Article I and evidenced in the entire pattern of the procedures and requirements specified throughout the Compact, the emphasis is on the interstate character of the arrangements. If the arrangement process is interstate, placement is interstate. The definition of "placement" in Article II also supports this interpretation.

There is some difference of view among the states on whether any work can be done on the processing of interstate placements before the child is born. Some take the position that until the birth actually occurs, there is no assurance that there will be an infant and that the full circumstances on the basis of which the placement should be evaluated are not knowable.

We prefer another approach. The time at which the birth is expected is known. The woman's intention to surrender her child is also present, even if there can be a change of mind up to the very moment when a relinquishment is executed, and even during the grace period that many states allow for reconsideration. If the prospective adoptive parents are known and the arrangements are in progress, their personal qualifications and the home environment into which the infant will go can also be studied and evaluated. If all of this is done before the birth occurs, all that will normally remain is to determine the condition of

the child and to make a judgment as to whether the already evaluated prospective adoptive parents and their environment are not contrary to the best interests of the child. Consequently, we advise that where a state is willing to do so, it should accept an ICPC-100A and should do most of the processing before the birth occurs. This can shorten and simplify the post-birth work and can make the period before approved recipients of a preadoptive placement can receive custody of the child. This can do much to reduce the pressures for neglect and violation of law in the interest of speed.

APPENDIX G: INTER-COUNTRY PLACEMENTS: LEGAL CUSTODY AND DIFFERENCES OF OPINION AS TO ICPC COVERAGE AND SECRETARIAT OPINION #67

Prepared by the Secretariat to the Association of Administrators of the Interstate Compact on the Placement of Children. Affiliates of American Public Human Services Association, April 1997.

Once again the Secretariat has been asked about the question of legal custody in connection with the applicability of the Interstate Compact on the Placement of Children (ICPC or Compact) to inter-country placements. While Secretariat Opinion #67 (September 4, 1996) deals specifically with this matter, the fact that some uncertainty appears to persist makes it appropriate for the Secretariat to comment further. The requester of this memorandum also asks what happens if his state believes that the ICPC does apply even though the sending agency does not have legal custody, while another state takes a different view.

Secretariat Opinion #67 is a consolidation of several previous Opinions. The Executive Committee of the AAICPC also expressly approved this Secretariat Opinion before it was issued. Consequently, we submit that it is entitled to great weight on the matter of legal custody. Further, the issue of differing interpretations among the states is of great concern. It is discussed in this memorandum specifically as it applies to inter-country placements and legal custody.

Legal Custody

The ICPC does not make the possession of legal custody by the placer as a condition precedent to the making of placement. The Compact simply provides that an entity that sends, brings, or causes a child to be sent or brought into another party state for placement must have taken the steps and received the permission required by Article III of the ICPC. Further, "placement" is defined in Article II (d) as "an arrangement for the care of a child." It follows that an entity that arranges for the care of a child and/or sends or brings the child into another state must do what is required under Article III.

If the laws of a receiving state require that the placer of a child must have legal custody in order to accomplish the placement lawfully, then possession of such custody is also a requirement for a lawful placement pursuant to the ICPC. This is true because Article III (a) of the Compact makes compliance with the applicable placement laws of the receiving state, as well as with the ICPC, a requirement for a lawful placement. Failure to observe this condition, as failure to observe any condition expressly provided in the Compact, does not mean that a placement into a receiving state to which the Compact applies has not been made. Rather, it raises the question as to what should or can be done to enforce the Compact against the violator.

Legal custody of minors who come into the United States for pre-adoptive placement is a confusing subject because "legal custody" does not necessarily mean the same thing under the laws and practices of a foreign country as it does under laws of U.S. jurisdictions. For

example, the laws of some countries require that a child be adopted before it can leave that country for adoption in another country. But the laws administered by the Immigration and Naturalization Service (INS) and the U.S. Department of State, Consular Service require that in order for a child to have an adoptive status recognized in the United States for the purpose of lawful entry into this country, both adoptive parents must be physically present at the adoption proceeding in the foreign country. Consequently, a child who is in the legal custody of adoptive parents due to an adoption decree granted by a foreign court, may not be in the legal custody of those persons under U.S. law. Many such foreign countries do not require the physical presence of both adopting parents. In fact, some of them allow both adoptive parents to be represented at the adoption proceeding by proxy, so that no person or agency may have received legal custody within the meaning of U.S. law.

Another example is to be found in the concept and use of guardianship. Some foreign countries insist on appointing the prospective adoptive parents as the child's legal guardians before the child can come to another country. Under the laws of these foreign countries, the guardianships are essential to "facilitate" the adoptions. But neither the foreign court nor any other agency of the foreign country exercises or expects to exercise any of the types of control or responsibility attaching to supervision of a duly appointed guardian in a state of the United States. When they are apprised of what the foreign law actually is, U.S. authorities usually decline to give effect to these foreign guardianship appointments. While guardianship is presumed in U.S. jurisdictions to carry legal custody with it, the result of the differences between the foreign law and the U.S. law may be that no one has custody of the child sufficient to use the guardianship status as the basis for authority to make or receive a placement.

Nevertheless, placements are made – some of them by individuals, many of them by inter-country adoption agencies. The INS allows these children to enter the United States as minors destined for pre-adoptive placements within a state. But federal law also provides that the laws of the state into which the placement is made governs the placement. Since the ICPC is part of the law of all states, it is to be followed unless the case is one to which the Compact by its character or terms cannot apply.

Placements from Nonparty Jurisdictions

As explained in Secretariat Opinion #67, ICPC applies only to placements that can be said to be from one party jurisdiction into another party jurisdiction. Since the Compact is a multilateral statute and contract, it can apply to activities in one or more party jurisdictions. No foreign jurisdictions are parties to the ICPC. However, if the journey of the child is significantly interrupted between the foreign point of origin and the ultimate destination within a party state, the placement is from the state where the interruption is made and to the receiving state and the ICPC applies. Also, when a person or placement agency located in one state places a foreign child into another state, the ICPC applies. Article III (a) of the Compact describes placements to which the Compact applies as those "into another party state." The fact that some or all of the pre-placement arrangements are often made between the person or inter-country adoption agency in one state and the placement recipient in another party state is significant in determining the applicability of ICPC because of the Article II (d) definition of the term "placement."

Differing Interpretations

This memorandum was requested because a compact administrator in one state (apparently on the advice of departmental counsel) declines to process inter-country cases in which it is said that the placer does not have "legal custody" of the child. The question is: What happens if a "sending agency" in a state that adheres to the interpretation offered in this memorandum and in Secretariat Opinion #67 directs a "Notice of Intention to Place a Child" as required by Article III to a receiving state that holds that ICPC does not apply unless the sending agency has legal custody of the child? Does it matter where the adoption is to be finalized?

There are two ways to approach these questions. One is to describe what is actually likely to happen. The other way is to provide a textbook legal answer on the basis of what ought to happen. The common element in both approaches is that if the ICPC is not applied, the children involved and their adoptive parents run risks and sometimes suffer damage that the law is intended to prevent. First, let us consider what is likely to occur.

Questions were first presented with respect to applicability of ICPC to inter-country adoptions in the mid 1970s. The answers developed at that time were substantially those presented in Secretariat Opinion #67 and Secretariat Opinion #s. 10, 24, and 36, which it consolidates. The Holt Adoption Program and International Children's Services raised the basic questions. That agency and the other major inter-country adoption agencies undertook to operate with respect to the ICPC in the manner presently described in Secretariat Opinion #67. With the great volume of cases over the years and the variations in conditions and foreign laws involved in inter-country pre-adoptive placements into the United States, it is probably inevitable that there should have been deviations in some instances. However, on the whole, the system has worked.

In instances in which inter-country placement agencies are making the arrangements for the placements (and in many instances involving only private individuals), it is common for the placer not to have legal custody of the child as that term is known in U.S. law. Most systems of law and administration in countries from which large numbers of foreign children come to the United States differ so markedly from our practices that custody conferred abroad is likely not to be recognized as such in the United States. Nevertheless, the placements are made, adoption petitions are filed in the states, and decrees of adoption are issued. The children are recognized by both U.S. courts and administrative agencies as having been adopted.

If circumstances are such as to cause a "sending agency" in State A to invoke the ICPC, an ICPC-100A will be sent by the placer and transmitted through the State A compact administrator.

If the State B compact administrator ("receiving state") does not process ICPC placements unless the sending agency has legal custody, that administrator will either ignore the ICPC-100A and remain silent or inform the State A compact administrator that it will not act. A delay in the disposition of the child is likely to occur, but the most likely upshot will be that sooner or later the child will be placed with the prospective adoptive parents in State B anyway. During the course of the adoption proceeding, it may not even be noticed that the ICPC was not followed. Neither the State A compact administrator nor the State B compact

administrator is likely to appear in the adoption proceeding; the prospective adoptive parents will not raise the issue of ICPC compliance. The court hearing the adoption petition can raise the question on its own motion, but unless a party brings it to the court's attention, there is likely to be no notice taken of the possible issue.

Conceivably a court in State A is more likely to raise the issue of Compact compliance than a court in State B. If the State A compact administrator takes the position that the ICPC applies to a particular instance that originated as an inter-country placement, the courts of the state may have seen similar instances before and could have it in mind that the ICPC should be followed at the placement stage. But even if the adoption petition is filed in State A, the court is not likely to deny an adoption that appears to it to be otherwise good merely because the placement was not properly accomplished.

If the adoption petition is filed in State B, the same practical result is almost certain to occur. The only difference is likely to be that there is even less chance of a State B court raising the issue of ICPC compliance.

From the textbook law point of view, the possibility that the adoption itself will be denied is greater. It can be argued that if the underlying pre-adoptive placement is unlawful, it cannot provide that basis for a lawful adoption.

Once the pre-adoptive stages are past, the real danger lies in possible contests over family issues such as inheritance. Potential heirs through the bloodline may claim that a child adopted without ICPC compliance, where there should have been compliance, was not lawfully adopted. If this assertion succeeds, the adopted child may not receive an inheritance and the will of those who thought themselves to be parents may be frustrated.

But the real present harm is not applying the ICPC in those instances where the arranger of an inter-country placement does not have legal custody is that the child is deprived of the protections that are only provided by the Compact. Pre-placement evaluation by the public authorities of a receiving state promotes the likelihood that the placement will be a safe one that is consistent with the interests of the child. If also lessens the likelihood that a placement will be allowed that will later disrupt and throw financial and other burdens on the receiving state.

Invoking the ICPC is also important in lessening the chances that an adoption petition will never be filed or will be too long delayed. After a petition is filed (if filed in the receiving state), it can be argued that the supervision by the court is a protection. But if a child is open to harm from being in an inadequate environment, the risks begin as soon as the child is delivered into the placement. For an inter-jurisdictional placement, the only way of securing pre-petition supervision is through the ICPC.

As a practical matter, the issue of legal custody is often not at all closely related to the safety and welfare of the child, especially for children who originate in foreign countries and are brought to the United States for adoption. Adequacy and safety of the environment into which they are placed is fully as important as for children who were never outside the United States. But the question of legal custody in the placer is meaningful only if a custody dispute arises. In most of the cases that give rise to inter-country adoptive situations, documentary proof of legal custody that would satisfy the requirements of American law is an unrealistic

demand. While many compact administrators expect to see evidence of the placer's authority to place the child, satisfaction of any such requirement must come from something other than legal custody in the U.S. sense.

Secretariat Opinion 67 — September 4, 1996

NOTE: THIS SECRETARIAT OPINION IS THE REPLACEMENT FOR THE CONSOLIDATION OF OPINIONS 10, 24, AND 36. THIS OPINION SUPERSEDES THE ABOVE LISTED OPINIONS.

Inter-country Adoptions

The Secretariat has been requested to consolidate several of its Secretariat Opinions dealing with inter-country adoptions. The Opinions consolidated here are 10, 24, and 36. Secretariat Opinion 57 deals with inter-country adoptions and "proxy adoptions." The subject of "proxy adoptions" raises particularly intricate questions. For that reason, we have not included it in this consolidation.

By consolidating the other three Opinions, there is no implication that anything said in any one of them is intended to be changed. Thus, anyone who wants to consult one of these earlier Opinions should do so. However, the request which has occasioned the current Opinion urges that consolidation will make it easier for compact administrators and others to analyze particular inter-country placement problems with which they are faced.

Applicability of the Compact (ICPC)

The ICPC is statutory law in each of the party states (now all 50 of them), the District of Columbia, and the U.S. Virgin Islands. It is a binding contract between and among the party jurisdictions. It follows that the Compact has no force in foreign countries or when inter-country pre-adoptive placement actions make no contact with more than one state.

Article IX of the ICPC provides that, with the consent of Congress, Canadian jurisdictions could become parties to the Compact. To date, no request has been made of Congress to consent to Canadian participation, nor has any Canadian jurisdiction become a member of the ICPC.

Adoptions Completed Abroad

When parent(s) enter the United States with a child whom they have already adopted abroad (pursuant to the laws and procedures of the foreign country), the ICPC does not apply. The parent(s) and child enter the U.S. as a fully integrated family. There is no pre-adoptive placement.

However, federal law must be observed. To qualify for lawful entry into the U.S. with the adoption completed, the prospective parent(s) must have been physically present to see the child (not merely a picture of the child) either prior to the adoption or during the adoption proceeding. In this connection, the practice in some foreign countries of "proxy adoptions" causes problems. In a proxy adoption, a representative of the prospective

adoptive parent(s) is present at the proceeding and acts for the adoptive parent(s). This does not meet the above-mentioned federal requirement. For a discussion of proxy adoptions and the ICPC, see Secretariat Opinion 57.

If the requirement of a completed foreign adoption is not met, the child may enter the U.S. with the prospective adoptive parent(s), but only if they undertake to adopt the child in a proper proceeding within the United States. In any such case, there is a pre-adoptive placement.

Connection with Only One State

If a child comes directly from the foreign country to the state in which the home of the prospective adoptive parent(s) is located and there is no connection with another state, the ICPC does not apply.

Since no foreign jurisdiction is a party to the ICPC, the Compact cannot apply even though the state on the receiving end is a party of the ICPC. However, there are a number of scenarios that describe the sending or bringing of children from abroad for adoption (see the subsequent headings in this Opinion). At this point, it is only necessary to remark that a mere change of planes or the taking of some other transportation from the “port of entry” to the placement recipient’s home does not establish a sufficient connection with the state in which initial entry into the United States occurs to make the ICPC apply.

Agencies arranging for the adoption of foreign children do so in a number of ways. When the child is placed in the same state from which the adoption agency operates, the ICPC does not apply.

But often the agency arranges for the child to be placed from the foreign country to some state other than the one in which the agency is located. The ICPC does apply because the agency is placing the child into a different state than its own (see ICPC, Article III [a]). The placement agency is the “sending agency” under ICPC. If the adoptive parents journey to a foreign country and return home with an adoptive child, the ICPC applies unless the adoption was finalized in the country where the child lives.

Sometimes an agency will bring children into the U.S. and thereafter find specific pre-adoptive placements for them. The ICPC applies because the agency is placing the particular child from one state (usually the state where the agency is located) into another state. If the placement is into the home of prospective parent(s) in the same state, where the agency is located and the child has not been kept in any other state, the ICPC does not apply.

Placement By Attorneys or Other Individuals

Private placements from foreign countries into states can and do occur. While they are less frequent than placements by agencies, these placements have the same relationship to the ICPC as the agency placements.

Guardianship

In some countries (such as India), the courts sometimes make the pre-adoptive placement recipients in the U.S. guardians of the child, even though the “guardian” is not

before the court or even in India, and no supervision or other accountability to the appointing court is intended to be involved. Whatever the purpose of such guardianships may be under the laws of the foreign country, they do not have the same meaning as "guardianship" in U.S. law. Consequently they should not be taken to have the same meaning as the term guardian." The persons so appointed as guardians are simply persons who intend to adopt the children, nothing more.

Legal Custody

Inquiry is often made as to whether the placer has custody of the child sufficient to give the entity authority to make a placement. Such a matter may need to be examined, depending on the laws of the receiving state. However, possession of legal custody is not relevant to the definition of either "sending agency" or "placement," as those terms are used in the Compact. Article II (b) of the ICPC defines a "sending agency" as a person or entity which sends, brings, or causes a child to be brought into another state for purposes of placement. Article II (d) defines a "placement" as an arrangement for the care of a child. A sending agency cannot, however, circumvent the ICPC by placing a child and then arguing that the ICPC does not apply because the sending agency lacked legal custody. The facts of a particular case determine what a placer must do in order to avoid violation of the ICPC. If those facts show that the ICPC applies and that the placer has not proceeded in accordance with the Compact, the placement activity is unlawful.

A placer entity may do a number of things (regardless of whether or not it has legal custody) which constitute violations of the ICPC. For example, it may place a child without giving the "notice of intention to place." Or it may place a child without having received permission, as required by Article III (d) of the Compact. Either of these acts is a violation and is unlawful, regardless of the custody status.

There are "referral services" which are not licensed child placing agencies and which claim that they do not place children. They assert that they merely provide information that helps others to make placements. They sometimes say they do not have legal custody of the child(ren) and thus cannot make placements. The absence of legal custody does not show that such an entity has not made a placement. It may only mean that the placement has been made unlawfully. Whether or not the facts of a particular instance reveal that a "referral service" has made a placement within the meaning of the ICPC depends on what it has done, not on whether it had the legal authority to do so.

The question of legal custody is discussed here because it appears to be raised frequently in connection with inter-country placements. However, the issue of whether or not the placer has sufficient authority to make a placement may apply in interstate cases as well as inter-country situations.

APPENDIX H: THE INDIAN CHILD WELFARE ACT³

EXCERPTED FROM: *INDIAN CHILD WELFARE ACT MANUAL*

Inter Tribal Council of Arizona, Inc.

PURPOSE

Indian tribes, state governments and federal agencies share a common challenge in carrying out their responsibilities under the Indian Child Welfare Act of 1978.⁴ The Act requires that the three systems of government coordinate their services to meet their responsibilities to protect and care for Indian children.

Effective working relationships between tribal, federal and state governments are difficult to achieve even for limited or specific purposes. Federal law for more than 100 years has recognized that Indian tribes are independent, sovereign nations that retain the powers of self-government, including sovereign authority over the welfare of their children. Federal law has, for the most part, preserved the government-to-government relationship between Indian tribes and the United States as established in constitutional law and treaties. As a result, state governments have been constrained by federal law from exercising jurisdiction over Indian reservations in most states. Many non-Indians have resented what they have perceived as “special treatment” of Indian tribes under federal law.

Most federal and state officials and employees have also been largely unschooled in the status of Indian tribes as well as the manner in which they function. The majority of federal assistance programs that provide federal aid to local governments have in the past been designed to relate exclusively to state governments and their various offices.

In this context, the Indian Child Welfare Act presents a challenge in the area of intergovernmental relations and social work practice. The Act clarifies tribal government status and the presumptive role that tribal governments play in relation to States in matters of Indian child welfare. When Congress considered the purpose of the law, that of reversing the socially destructive pattern of wholesale displacement of Indian children from an Indian environment, it was clear that this could only be effectively accomplished by:

- 1) confirming the exclusive jurisdiction of tribes over Indian children located on reservations (§101[a]);
- 2) directing that states transfer custody proceedings involving Indian children to tribal courts, when appropriate (§101[b]);
- 3) recognizing a right of intervention in state child welfare proceedings by tribes and Indian custodians (§101[c]);

³ The appendix was developed by Mike Chapman, Deputy Compact Administrator, State of Utah, and former Arizona Deputy Compact Administrator, with additional contributions by Donna Goldsmith, Special Assistant Attorney General, Alaska Office of the Attorney General.

⁴ 25 U.S.C. §1901-1063.

- 4) according full faith and credit recognition for tribal public acts and judicial proceedings applicable to Indian child custody (§[d]);
- 5) authorizing tribal retrocession from state jurisdiction over child custody proceedings (§108);
- 6) requiring state compliance with federal and tribal preferences in the placement alternatives for Indian children (§102, 103, 104, 105, 106, 110, 111); and
- 7) authorizing states and tribes to enter intergovernmental agreements in child welfare matters (§109).

For the most part, state officials who agree that Indian tribes should be primarily responsible for the care and custody of Indian children have supported the Indian Child Welfare Act. On the other hand, their lack of knowledge of and the unavailability of information regarding the laws, operations, and functions of tribal governments and courts on a practical or day-to-day level have been obstacles. Like many governmental systems, tribal courts lack sufficient resources to operate judicial systems and child welfare agencies without supplemental funding. Tribal courts also do not enjoy the same access as states to federal funding available under Title IV-E. This makes it difficult for many tribes to exert control over all child welfare proceedings involving member children. This lack of resources makes it imperative that state agencies, tribal agencies, and judicial systems work collaboratively to maximize tribal involvement in decisions affecting families and child welfare, and to ensure and protect the best interests of Indian children.

From the tribal perspective, resources to fully implement the Act at effective levels have been subject to inadequate congressional appropriations. Many small tribes in Indian country have had to explore ways of pooling complex and unstable sources of funding to develop capabilities in the area of child welfare.

Federal agencies have difficulties in securing budgetary increases to maintain existing levels of service. The lead agency for the development of services under the law is the Bureau of Indian Affairs. The Bureau awards grants to Indian tribes and Indian organizations for the establishment and operation of Indian Child and Family programs as well as for the preparation and implementation of Indian child welfare codes. Although there are 44 tribes in the Phoenix Area of the Bureau of Indian Affairs, only 20 of the tribes receive Indian Child Welfare Act funding due to lack of adequate federal appropriations.

This appendix provides, in summary form, information about the tasks and responsibilities of tribal, federal and state governments in Indian child welfare. Clearly, an important key to success in these efforts lies in developing an understanding by government officials at all levels not only of their own responsibilities, but also of the tasks confronting every other level of government and how they must interrelate in a coordinating manner. To gain such an understanding will require a serious and consistent approach based on an attitude of cooperation which is motivated by concern for the welfare of Indian children. Publicly-acknowledged policies of cooperation and coordination at all levels based on an accurate understanding of mutual responsibilities is the only strategy that holds the potential for

meeting the needs of Indian children. It is hoped that this information will prove to be of assistance in the development of such long-term strategies.

HISTORY OF THE INDIAN CHILD WELFARE ACT

The Indian Child Welfare Act (ICWA) was enacted by Congress in 1978. The Act was based on a 10-year study assessing the consequences of the removal of Indian children from their communities. Well-meaning people who either misunderstood Indian cultures or who believed that Indian children would be better off raised in white, upper-class homes, removed thousands of Indian children from their homes, extended families, and tribal communities.

After 10 years of hearings, Congress passed the Act, noting in the preamble that it recognizes that a tribe's most valuable assets are its children and that removing children without safeguards is detrimental to a tribe's existence.

MAJOR PROVISIONS OF THE INDIAN CHILD WELFARE ACT

The Indian Child Welfare Act is specifically designed to apply to Indian child dependency matters in state courts. Dependency matters include adoptions, guardianships, conservatorships, foster placements, or other types of court-ordered placement of a child with persons other than the natural parents or custodians. The Act does not govern tribal court proceedings unless the tribe has incorporated its provisions into tribal law. The Act does, however, impose substantive procedures on state courts. The Indian Child Welfare Act governs state court proceedings in dependency court, probate court, and juvenile court, if those proceedings are "child custody proceedings" involving an "Indian child" as those two terms are defined by the Act.

As a federal law, the Indian Child Welfare Act supersedes state laws. If there is conflict between state law and federal law, the law that provides the most protection for the rights of Indian parents to their children prevails.

In order for the Indian Child Welfare Act to apply, the child at issue must be an Indian child as the Act defines that term, and the proceeding at issue must be a "child custody proceeding" as defined by the Act. The Indian Child Welfare Act defines an Indian child as "any unmarried person who is under age 18 and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe." (25 U.S.C. §1903 [4]).

The Act defines a child custody proceeding as including foster care placements where the parent or Indian custodian cannot have the child returned upon demand, guardianships, conservatorships, pre-adoptive placements, adoptive placements, and termination of parental rights. (25 U.S.C. §1903 [1]). While it does not include divorce custody proceedings, it may include other custody proceedings between parents that are not in the context of a divorce. It also includes custody proceedings in which someone other than a parent is ultimately seeking custody.

If the proceeding is not a child custody proceeding as defined by the Indian Child Welfare Act, or the child is not an Indian child, the Act does not apply.

Jurisdiction

The tribal court has exclusive jurisdiction over custody proceedings involving children domiciled or resident on the reservation or already wards of that tribe's court. When an Indian child is not domiciled on the reservation but is a member or eligible for membership in that tribe, and the child's custody proceeding is in state court, either the tribe, the parents, or the child's Indian custodian may request that the case be transferred to the child's tribal court. If the state court transfers the proceedings to tribal court, the tribal court has exclusive jurisdiction over the child once the tribal court makes the child a ward of that court.

Notification Procedures

The Act requires that if a state court has reason to believe that a child may be an Indian child, the party seeking the foster care placement or termination of parental rights to the child must actively investigate the child's tribal affiliation. A state social worker who has an Indian child in his or her caseload will have to contact the child's tribe to determine membership or eligibility for membership. Each tribe is the ultimate decision-maker regarding who is eligible for membership in that tribe.

For example, a child is taken into temporary custody in Flagstaff, Arizona. If there is some reason to believe that the child is an Indian child, the state case worker must contact the tribes in which it is believed that the child may be a member or eligible for membership. If the worker has problems contacting a tribe, the worker should contact the agency's attorney—usually County Counsel, District Attorney, or Attorney General—and ask for assistance. The agency attorney should contact the tribe and ask the tribe whether either the child or the child's parents are members of that tribe.

If the child's tribal affiliation is not known, the state has an affirmative obligation to find out which tribe is the child's tribe, so that the state may serve the tribe with notice of the proceedings. If the agency has trouble ascertaining which tribe to contact, the state must send notice and inquiry to the Secretary of the Interior for the federal government. To ascertain the child's tribal affiliation as quickly as possible, the state should inquire of friends of the child's extended family, friends, local urban groups, or other Indian organizations to see if anyone has information about the child's tribal ties. Often, members of the Indian community have information that may be helpful in this regard.

Sometimes the tribe does not respond to this notice, particularly if it is sent to the wrong party. Therefore, telephone contact with the tribe is very helpful. Without a tribal response, identification of the parents, extended family, or an Indian foster home can be difficult.

Once tribal affiliation is determined, the state must provide written notice of the proceedings to the child's parents, Indian custodian, and tribe. Section 1912(d) of the Indian Child Welfare Act sets out the information that must be contained in that notice. The notice must be sent by registered mail, return receipt requested. Every tribe has its own contact person.

To facilitate good working relationships between tribal and state workers, it is best to phone the tribal contact person and then send the required registered letter. Once the tribe receives the notice, certain guidelines and time frames are in effect. Technically, once the letter is received by the tribe and parents, they have 10 days to respond to the state court. Upon request by a parent, Indian custodian, or the child's tribe, the state court must provide an additional 20 days for parties to prepare for the proceeding.

Tribal Response to Notification

The tribe's response should take one of three forms:

- 1) The tribe can decline to intervene;
- 2) The tribe can petition to intervene in the proceeding; or
- 3) The tribe can petition to have the case transferred to the tribal court.

Without a tribal response, the state worker proceeds as if the child were a ward of the state court. The foster care placement preference is as follows:

- 1) members of the child's extended family;
- 2) Indian foster home, licensed by the tribe;
- 3) an Indian foster home licensed by a non-Indian licensing authority; and
- 4) an institution approved by the tribe.

Declination

Even if a tribe acknowledges that the child in question is a member or eligible for membership and the biological child of a member of an Indian tribe, the tribe has the option of declining to intervene in the proceedings. Even if the child's tribe declines to intervene in the state proceedings, and the child is within the jurisdiction of the state court, all of the requirements of the Indian Child Welfare Act still apply. Thus, for example, the state is still required to follow tribal placement preferences, must adhere to the standards of proof, and must notify the child's tribe, parent, or Indian custodian of any subsequent state court proceedings.

Intervention

Under the Indian Child Welfare Act, to intervene means to become a party to a legal proceeding pending between other parties. Under the Act, an Indian Child's Indian custodian and Indian tribe have the right to become a party to a child's custody proceeding at any time during the proceeding.

If the tribe does not indicate that it wants to have the case transferred to the tribal court but wants to intervene in the case nevertheless, the tribe has the right to receive notification of

all proceedings. The tribe also has the right to be heard at any proceedings regarding the placement of the child. The proceedings will take place in state court if a tribe does not intervene. Basically, the tribe is indicating that it is interested but does not want to take over the case. Intervention is a matter of right. If a tribe moves to intervene, a State judge must grant the tribe's intervention.

Transfer of Indian Child Welfare Act Case to Tribal Court

Either a parent, the child's Indian custodian, or the child's tribe may petition the state court to request that the state court transfer the proceedings to the child's tribal court. While there is a presumption that the state court should transfer the case upon such a request, transfer of child custody proceedings is not automatic.

First, if a parent vetoes the request for transfer to tribal court, the state court may not transfer the case. The language contained within 25 U.S.C. §1911(b) is clear and unequivocal: parental veto absolutely precludes transfer of a case to tribal court. Similarly, the tribal court may decline to exercise jurisdiction over the case, in which case the state court may not transfer the case to the tribal court. A tribal court includes any court operated under the code or custom of a federally-recognized Indian tribe, any Court of Indian Offenses, and any other administrative body of a tribe which is vested with authority over child custody proceedings. Thus, for example, a tribal council that has authority over child custody proceedings may sit in the capacity as a tribal court.

Second, the state court need not transfer the case if there is good cause not to do so. The Indian Child Welfare Act does not define what constitutes good cause, and courts throughout the country define it differently. The Guidelines for State Courts in Indian Child Custody Proceedings, issued by the Bureau of Indian Affairs to assist in the implementation of the Act, provide guidance on what factors should constitute good cause not to transfer. The Guidelines are useful, and may be found at 44 Fed. Reg. 67584 (1979).

Once transfer is completed, the state is no longer involved and the Indian Child Welfare Act may not apply to the tribal child custody proceedings. Tribal law, which may include a written code or statutes, regulations, case law, and unwritten custom and tradition, now governs the case. Some tribes have incorporated the Act into their tribal codes, while others have not. Some tribes will welcome participation by state Court Appointed Special Advocates (CASAs), or other state personnel, while others will not. The rules governing tribal court proceedings will vary greatly from tribe to tribe.

The Indian Child Welfare Act requires that each state and each tribe give full faith and credit to the public acts, records and judicial proceedings of any other Indian tribe to the same extent that such courts give full faith and credit to the public acts, records and judicial proceedings of any other entity. The Act does not, however, require tribal courts to give full faith and credit to state court proceedings. Tribal law governing a tribal court will dictate whether that court must give full faith and credit to state child custody proceedings. Such laws will vary greatly from tribe to tribe.

Standards of Evidence

The Indian Child Welfare Act deals with custody issues that occur off-reservation. It does not affect how a tribal court handles its own matters but it does affect how the state court handles an Indian child dependency case as compared to a custody case involving a non-Indian child.

The standard of evidence changes, in that the proof in an Indian Child Welfare Act case has to be much higher than in cases not governed by the Act. "Burden of proof" is the duty of proving a fact or facts in dispute on an issue raised between two parties. The burden of proof lies with the state department.

For example, if the state takes custody of a child, the parents are entitled under state law to a hearing. At this hearing the issue will be whether continued custody by the state is necessary. If the child is non-Indian, the standard of proof is if there are reasonable grounds to believe that it is clearly necessary to remove the child to prevent imminent harm or abuse. If the child is an Indian child and the state seeks to place the child in foster care, then the Indian Child Welfare Act standard of proof applies, requiring "clear and convincing evidence, including testimony from qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

If the state seeks to terminate parental rights to the child, the Indian Child Welfare Act requires the state to prove, beyond a reasonable doubt, that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

The Act does not define who will qualify as an expert for purposes of Indian Child Welfare Act proceedings. However, the legislative history to the statute indicates that Congress intended that state courts require someone other than a social worker to provide expert testimony about the cultural context of the family and child. The expert should be quite familiar with the child's tribe's cultural norms regarding parenting practices. It is not sufficient that the expert be Indian or Native American, because someone from another tribe and cultural group will not necessarily meet these qualifications.

For either foster care or termination of parental rights proceedings, the state must also prove that "active efforts" have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, and that these efforts have been unsuccessful. Active efforts include any efforts made by tribal programs, urban Indian programs, and any other agencies offering services to the parents—they are not solely limited to efforts made by the state child welfare agency. There must be a nexus between active efforts made and the parenting problems that are requiring the state to seek or maintain custody of the child. State case workers must document the efforts that they have made to offer the family rehabilitative and remedial services to resolve whatever the problem was that caused the child to be out of the home.

Placement of Indian Children under the Indian Child Welfare Act

The Indian Child Welfare Act establishes foster care placement preferences for Indian children. The Act provides that children should be placed in the least restrictive environment and within reasonable proximity to his or her home. The order of preference is as follows:

- 1) A member of the extended family; right now, that means third-degree blood ties (first or second cousins, aunts, uncles, grandparents and stepparents);
- 2) Indian foster parents approved by the tribe;
- 3) Indian foster home licensed by the state department or other non-Indian licensing authority; and
- 4) Residential care approved by the tribe.

In adoptive placements, the preferences are:

- 1) Extended family;
- 2) Non-relative members of the child's tribe; and
- 3) Other Indian families.

In both foster care and adoptive placements, the social worker needs to carefully document any reasons for failure to follow the order of preference and make diligent efforts to comply with the Act.

A tribe, by resolution, may alter the order of preference for its children. Then the state worker must follow the tribe's order of preference. Also, consideration may be given to a parent's or Indian child's wishes with regard to placement preference.

When the jurisdiction over an Indian Child Welfare Act case remains with the state and a foster care placement disrupts, the state must send notice to the child's tribe, parent and Indian custodian by registered mail, certified return receipt, because any new placement triggers the notification requirements of the Act. Again, the tribe can decide to decline to intervene in the state court proceedings, or to request that the state court transfer jurisdiction over the proceedings to tribal court.

Voluntary Placements

In voluntary placements of Indian children, a judge must explain all actions to the parents in a language that is understood by the parents or custodians. Consent to foster care or termination of parental rights must be executed in writing before a judge. The judge must issue a written certification that the judge explained in detail to the parent or Indian custodian the terms and consequences of the parent's or Indian custodian's consent. The judge must also certify either that the parent or Indian custodian fully understood the explanation in English, or that the explanation was offered through an interpreter in a

language that the parent or Indian custodian understood. Any consent obtained in violation of these requirements is invalid. Any consent, if given prior to or within 10 days of the birth of a child, is automatically invalid.

The placement preferences in Section 1915 of the Act govern voluntary placements as well as involuntary placements. Any consent to termination of parental rights or adoptive placement may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, and the child must be returned to the custody of the parent. If a final decree of adoption has been entered, the parent may withdraw his or her consent within two years of the effectiveness of that adoption if they can demonstrate that the consent was obtained by fraud or duress, unless state law provides a longer period of time in which to withdraw such consent.

APPENDIX I: COMPARISON OF ICPC AND ICJ FOR OUT-OF-STATE CONFINEMENT

Prepared by the Secretariat to the Association of Administrators of the Interstate Compact on the Placement of Children. Affiliate of American Public Human Services Association, September 1997.

Pennsylvania has requested comparison of the Interstate Compact on the Placement of Children (ICPC) and the Interstate Compact on Juveniles (ICJ) in regard to the confinement of adjudicated delinquents in a state; than the one whose courts made the adjudication. The request informs us that a Minnesota institution has refused to receive a juvenile delinquent under the ICPC and would accept only if the placement is made pursuant to the ICJ. We also have memos from Arizona and Colorado. The former is an intradepartmental memo directing preparations to be made for phasing out reception of such cases under the ICPC starting January 1, 1995. The Colorado memo says that placements for the out-of-state confinement of adjudicated delinquents in Rebound are no longer accepted under the ICPC and that the situation is being reviewed with respect to other institutions.

To compare the ICPC and the ICJ in this regard, it is necessary to know the intent of both compacts and to analyze the relevant provisions of each. The conclusions we reach are as follows:

1. Under Article VI of the ICPC, adjudicated delinquents can be placed in private institutions. Conceivably, they could also be placed in public institutions, but this is not the present practice, nor to the best of our knowledge is it being considered.

2. Article X of the ICJ could be used to place adjudicated delinquents in public institutions, if appropriate steps were taken. The use of the ICJ for placements in private institutions might be possible, but it would be more difficult.

Intent

The ICJ was developed and received its first enactments in the mid 1950s, approximately five years in advance of the development and first enactments of the ICPC. During those years, a number of states were actively considering the development of compacts for the confinement of adult prisoners on an out-of-state basis. All of the Western States had one or more such projects in mind. The Dakotas and Minnesota also had such plans. The New England states actually did conclude such a compact and used it for some cases, at least for a few years. In all these cases, the institutions to be used were only state owned and operated facilities. Article X of the ICJ was thought of as a counterpart in the juvenile field to these efforts at out-of-state incarceration of adult prisoners.

Article VI of the ICPC was meant to authorize and make practicable the out-of-state confinement of adjudicated delinquents in private institutions. Perhaps such provisions could have been included in the ICJ, but no thought was given to doing so. By the time the issue arose, ICJ has already received enactments in a number of states. Consequently, it was decided to include the provisions applicable to private institutions in the ICPC.

The intent behind ICJ Article X was primarily to relieve shortages of space in correctional institutions, especially in some states. This is true even though Article X refers to “care and treatment” as well as custody. The effort underlying ICPC Article VI was to make it possible to open specialized treatment programs in private institutions in other states to adjudicated delinquents when such programs were considered appropriate to aid in reformation in particular cases.

Nevertheless, if the plain meaning of the language in the provisions of the two compacts, or either of them, does not necessitate the distinction and limitation just indicated, either or both of the compacts could be used lawfully for out-of-state confinement in either public or private institutions.

Analysis of ICJ Article X

Article X of the ICJ does not by itself provide for the out-of-state confinement of delinquent juveniles. It authorizes “supplementary agreements” by administrative officials of two or more states for the purpose. Article X authorizes such confinement only if an administrative agreement between the sending and receiving states is in effect. Further, the Article prescribes several conditions that must be provided for in any such supplementary agreement. These are appropriate for agreements between states for their public institutions but are either difficult or impossible for private institutions within the states.

Condition #1 requires that the agreement provide for the rates and charges to be made for the care, treatment and custody of the juveniles. In making such agreements, states can negotiate and specify rates and charges for the use of their own facilities and programs, but they can hardly fix rates and charges that will be made by private institutions.

Condition #3 reads: “provide that the state receiving such a delinquent juvenile in one of its institutions shall act solely as agent for the state sending such delinquent juvenile.” The use of the words “its institutions” is consistent with the concept of state-owned and operated institutions but not with a private institution located within the state.

Condition #5 reads: “Provide for reasonable inspection of such institutions by the sending state.” If it so chooses, a state can provide for inspection of its facilities by another state, but it is extremely doubtful whether it can require private institutions to submit to inspection by officials of other states.

ICPC Article VI

Article VI of the ICPC directly authorizes delinquent juveniles to be placed in institutions – other party states than the one where the adjudication of delinquency occurred. It does not limit such placements to either public or private institutions. Consequently, the Article can be used for placements, whether public or private. However, there was no intention to use the ICPC for the confinement of delinquents in public institutions and we are not aware that it has ever been so used.

More important for the purpose of this comparison of the two compacts, the ICPC does not require the making of any supplementary agreements before it can be used for out-of-state confinement. Consequently, the only requirements are that the procedures for the making of

ICPC placements be followed and that the specific requirements of Article VI be observed in each particular case. At the required court hearing, the court must make a finding that equivalent facilities for the child are not available within the state, that the placement into another state is in the best interests of the child, and that it will not cause undue hardship. Article VIII (b) of the ICPC provided that the compact does not apply when a placement is made pursuant to any other interstate compact or agreement having the force of law to which both the sending and receiving states are parties. Thus, when a placement is lawfully made pursuant to the ICJ, the ICPC does not apply.

Important Differences Between the Compacts

In deciding whether to use the ICPC or the ICJ, some important differences should be considered. It must be remembered that unless the procedures and requirements of the compact chosen are followed, the placement will not be lawful. It is vital that for placements of delinquents who are still subject to the adjudication, the authorities of the adjudicating state (including its courts) be continued in force. If the juvenile is sent out-of-state improperly, this jurisdiction will be lost. As a result, the juvenile will no longer be subject to the compulsory jurisdiction of the state that made the adjudication and ordered the confinement and care. The receiving state will not have any such compulsory jurisdiction. The juvenile's presence in the institution will be on nothing more than a voluntary basis.

In the early days of the ICPC, several states did make supplementary agreements under Article X and used them in a few cases. Most states have never negotiated any supplementary agreements. We do not know whether the few that were made are still in force. Accordingly, without further implementation by states wishing to use ICJ for confinement and care of delinquents, that compact is not available for such use.

In any event, no private institution can be forced to receive a delinquent whom it does not want to accept. This is understood under the ICPC and the primary question is whether in response to an ICPC Request for Placement (ICPC-100A) the receiving state will find the placement to be not contrary to the interest of the child. Under Article VI, the parent or guardian of the juvenile must be accorded an opportunity to appear and be heard at the required hearing. However, if the court makes the findings provided for in Article VI, it can make the placement with or without the consent of the parent or guardian. Under Article X of the ICJ, consent of the parent or guardian to the out-of-state placement is required in order to make the placement.

Making of Article X Supplementary Agreements

Since an Article X agreement applicable to the proposed placement must be in effect prior to the making of the placement, the first question is how and by whom the necessary agreements can be negotiated and made. The Suggested Enabling Act, which was offered with the ICJ when the compact was initially developed, contained a section expressly authorizing identified administrative officials of the state to make such agreements on behalf of the state. That Suggested Enabling Act also contained other provisions dealing with matters such as costs and budgets and state-local relations in cases where county or other local courts make the adjudications and confinement orders. Such enabling provisions need not be uniform in the state but, in order to use Article X effectively, state law must have provisions covering the essential implementation of Article X. Each state wishing properly to use the ICJ in this way should first ascertain its own statutory situation.

The next question is, with which states should a particular state make agreements. Probably not with all 50 states, the District of Columbia and the several other party jurisdictions. However, significant use of out-of-state placement pursuant to the ICJ will involve the making of a number of such agreements by any state. It should also be considered that it might be difficult or impossible to ascertain in advance all of the institutions and all of the other states that any given jurisdiction may find it advantageous to utilize.

Since the focus of attention is on use of the ICJ for out-of-state delinquent placements, the making of Article X agreements presents yet another problem. The Article requires that the states be the parties to the agreement. It says nothing about private institutions being parties. However, as already noted, it is difficult to see how private institutions can be bound by or accept agreements with the contents required by Article X unless they participate in negotiating any agreements under which they are to participate and sign them.

A judge's order for the confinement, care, treatment and custody of a delinquent juvenile in Institution Y located in some other state is not an Article X agreement nor even an offer of the state to make one. A judge is not an authorized "administrative official" as provided in Article X.

Reception of a child by a private institution is not the making of an Article X agreement between states.

The foregoing shows that use of Article X of the ICJ for out-of-state confinement, care, treatment and custody of delinquent juveniles in private institutions may be possible. But its legitimacy and effectiveness depend on the taking of several steps by states and private Institutions that have not yet been taken.

Policy and Administrative Considerations

Some of the concerns over whether to use ICPC or ICJ for out-of-state confinement appear to involve the kinds of services and administration available through each compact. It has been pointed out by some people that personnel who administer the ICPC are welfare and social service workers. They are not corrections-oriented nor are they empowered under the same laws that give authority to parole or probation officers or employees of juvenile corrections institutions. Concomitantly, those who administer the ICJ are not child welfare workers having the skills and resources available from child welfare agencies. It is beyond the scope of this analysis to offer an opinion as to whether in attempting to reform and rehabilitate delinquents it is better to get along without the one type of service or the other. Probably the answer should vary, depending on the individual juvenile and his or her needs.

Perhaps the best answer would lie in cooperative use of the two compacts and of the resources available in the correctional and social service fields. Each compact provides for the appointment of compact administrators. Each compact administrator is supposed to be coordinator of activities within his or her state under ICPC or ICJ, as the case may be. Very likely, this route could develop better answers.

APPENDIX J: COMPARISON OF ICPC, UCCJA, UCCJEA AND PKPA

Prepared by Mitchell Wendell, LL.B. Ph.D.. American Public Human Services Association, March 26, 2001

The purpose of this paper is to explain the relationships among the Interstate Compact on the Placement of Children (ICPC), the Uniform Child Custody Jurisdiction Act (UCCJA and its revision UCCJEA) and the Parental Kidnapping Prevention Act (PKPA). The explanation has two parts. First the relative legal force of the three laws will be considered. That is important in order to know which law to follow if there is a conflict between any two of them. The second inquiry concerns the coverage of each law. This is also relevant in order to determine the likelihood of conflict or inconsistency among the three laws.

1. Legal Character of Each Law

(A) UCCJA or UCCJEA.

The Uniform Child Custody Jurisdiction Act (UCCJA) was first enacted by some states in the late 1970s. It spread rapidly and before long was statutory law in all states. In 1997, this Uniform Act was revised and promulgated by the National Conference of Commissioners on Uniform State Laws as the "Uniform Child Custody Jurisdiction and Enforcement Act" (UCCJEA). So far as any relationship between the Interstate Compact on the Placement of Children and these two versions of the Uniform Act is concerned, there is no difference whether one compares the ICPC and UCCJA or the ICPC and UCCJEA. A growing number of states are enacting the UCCJEA. It may be that, sooner or later, all states will have replaced the UCCJA with the UCCJEA. For the sake of simplicity, this paper will refer only to the UCCJEA, unless it is specifically indicated otherwise. However, what is said here will be equally applicable to either version of the Uniform Act.

To understand the character of the UCCJEA, it is necessary to know how the National Conference of Commissioners on Uniform State Laws works and the procedures by which draft laws promulgated by that organization become law.

The National Conference of Commissioners on Uniform State Laws (NCCUSL) was established in 1891. Its purpose was and is to establish uniformity in laws of the states in particular subject matter fields where NCCUSL believes that uniformity is desirable. Throughout its history, the NCCUSL has had more success with some of its proposals than with others. Perhaps its most signal achievement was the enactment by all states of the "Uniform Commercial Code" in the period of the mid-1930s. Some other Uniform Acts have been enacted by all states; others by some states but not by all; and some have been enacted by no states.

The NCCUSL is composed of "Uniform Law Commissioners" appointed in each instance by the Governor of a state. The Commissioners are not paid but receive expenses

for attendance at committee meetings and at the annual National Conference. A committee of the Conference does the work of developing a Uniform Act. A “reporter” who is not a Commissioner does the actual drafting. Depending on the complexity and scope of a particular proposal, the committee work can stretch over several years. When a final draft is done, it is reported to the annual meeting of the National Conference, which usually gives it successive “readings” over a two-to-three year period. Finally, if it is favored by a majority of the Commissioners, it is promulgated and recommended to all the states for enactment.

Theoretically, a uniform act is intended to be a technical document rather than a new policy pronouncement. Its purpose is to reconcile differing rules of law in the several states and to bring uniformity. However, it is often impossible to separate technicality from policy. Consequently, some uniform laws have foundered because of lack of widespread interest, while others have failed because the policies underlying them have not attained enough acceptance. In the case of the UCCJA, however, nationwide adoption was obtained. Since the UCCJEA is only several years old, some states still have the original UCCJA and others have replaced it with the UCCJEA. So far as their relationship to the ICPC is concerned, both versions are sufficiently similar so that they can be treated alike.

Even though a Uniform Act is intended to establish nationwide uniformity in the area of state law which it covers, the method for making NCCUSL’s proposals state statutes is substantially the same as for ordinary state legislation. A Uniform Act is introduced into a state legislature. If it passes, it becomes a law of the state, like any other statute enacted by the state legislature. If the legislature wishes to do so, it may amend or repeal the Uniform Act in the same manner as for any other statute of the state. This is true even if the result is to impair or destroy the “uniformity” originally intended or desired by other states.

(B) Interstate Compact on the Placement of Children

An interstate compact is almost always enacted as statutory law in each of the states that adopt it. This has been the case with the ICPC which is statutory law in each of the 50 states, the District of Columbia and the U. S. Virgin Islands. However, unlike a uniform law, an interstate compact is also a contract among the states that have adopted it. (State ex. Rel. Dyer v. Sims, 341 U.S. 522 (1951); Virginia v. West Virginia, 246 U.S. 565 (1918). Accordingly, a compact has the legal characteristics of both statutory law and contract.

The contractual character of ICPC is important. The U. S. Constitution provides that “No state shall impair the obligations of a contract”. By entering into ICPC, each state has bound itself not to violate its provisions. Clearly, when a state legislature enacts an ordinary statute, it is “state action”. It follows that the state (including its administrative and judicial officers) is constitutionally prohibited from applying another statute inconsistently with the Compact. If there are situations in which a court or administrator must choose between abiding by ICPC or invoking another state statute, the only correct legal course is to apply the ICPC.

(C) **Parental Kidnapping Prevention Act**

The Parental Kidnapping Prevention Act (PKPA) is a federal statute. The U. S. Constitution makes acts of Congress the “supreme law of the land.” Consequently, the PKPA is superior to a state law with which it is in conflict. This includes the ICPC in any case where there is a conflict.

2. Coverages: Are There Conflicts?

Most of the placements to which the ICPC applies do not involve lawsuits. A sending agency (whether public or private agency or an individual) proposes to place a child with a relative, prospective adoptive parent, residential treatment center, etc., and sends a notice of intention to place the child to the receiving state compact administrator. That administrator makes the determination called for under Article III (d) of the Compact; a placement occurs and post-placement supervision is provided. There is no controversy over custody. If there are problems or disagreements concerning the care of the child, they are worked out administratively by the sending agency, the receiving state, the placement recipient, and perhaps the sending state compact administrator.

The UCCJEA, its earlier version, and PKPA all involve cases in which there are custody disputes and in which the courts of more than one state are involved or may have jurisdictional claims. These statutes are designed to provide the means of determining which court will hear and decide a particular case on the merits. The PKPA has an important but limited coverage. It will be discussed after the UCCJA-EA and its relationship to the ICPC have been examined.

The UCCJEA does not come into play unless someone files a suit in a state court claiming custody of a child. Further, the UCCJEA has no bearing unless a party to the suit asserts (or the court itself determines) that the courts of another state or states may have a basis for taking jurisdiction of the case. If the circumstances just mentioned exist, the court in which the proceeding has been brought should decide whether it or a court of some other state is the proper place for the suit to be heard and decided.

To make this jurisdictional determination, the court is directed to apply specific rules set forth in the UCCJEA. Each rule is designed to produce an assessment of the connection that a state has with the case. Do one or more of the litigants reside in the state? Does the child live in the state, or is he/she physically present there? Have acts occurred in the state which have a significant bearing on the question of custody? Are witnesses or other evidence necessary to the case available there?

If a consideration of such questions leads the court to decide that it is the most appropriate court to hear the case on the merits, it will decide that it will exercise jurisdiction. It will then be unlawful for any of the litigants to bring or continue a suit on the same issue in the courts of any other state. The court may also find that the courts of another state have declined to accept jurisdiction of the case and that it is therefore the appropriate court to proceed.

The provisions of the ICPC, which have a bearing on the jurisdictional issue, are found in Article V of the Compact. However, they are directed to the question of whether a “sending agency” has responsibility for the care of the child or when and how a placement is terminated. The courts of any jurisdiction in which the ICPC is law may apply the Compact to answer these questions, provided a case involving such an issue is brought before it. However, the ICPC contains no rules prescribing whether the courts of a receiving state, a sending state, or some other state are the appropriate ones to hear and decide custody disputes.

Once a court has decided that it has jurisdiction to decide a custody dispute on the merits, it will move on to determine who should have custody. Depending on the facts of a particular case, a custody dispute can arise either before an interstate placement is made or while the placement continues.

If the court has taken jurisdiction of the case before an interstate placement is made, it will be considering the question of who should receive the child. If the court’s decision is to award custody to someone within its own state, the ICPC will not be involved. If the decision is to confirm a custody status that already exists, the situation will be either that ICPC is not involved or that an interstate placement previously made can continue. If, in the latter type of situation the present custodian obtained custody pursuant to the ICPC, the court’s decision will merely be a reaffirmation of action taken under the ICPC.

If the court decides to award custody to someone in another state, the proper course will be to invoke the ICPC. In such instances, the court’s decision is actually a direction that the ICPC process be initiated. Whether the placement can lawfully be made will then depend on whether the receiving state makes an affirmative determination under Article III (d) of the Compact.

The UCCJA and UCCJEA are accurately titled. But many lawyers and some courts have obtained misimpressions because they do not pay strict attention to the words. Neither Uniform Act is a “child custody” act. Each is a child custody “jurisdiction” statute. There is nothing in either version of the Uniform Act that provides rules or requirements for determining which of several possible claimants should be awarded custody of a child; nor is there anything to tell a judge which body of law to follow in doing so.

If one does not give careful attention to the scope and purpose of the Uniform Act, there are two provisions that could lead to confusion in this regard. In the UCCJEA, these are Sections 106 and 204.

Section 106 provides that all persons who are parties to a proceeding under the Act are bound by the court’s determinations and orders. But under the UCCJEA, the court does not award or confirm custody. It merely decides whether it or a court of some other state is the appropriate tribunal to hear and decide the custody issues in a particular case. If the court decides that it is the proper forum for the litigation of the custody issues, it will then proceed to examine them in accordance with whatever law is applicable. If the court decides that it is not the proper forum, it will go no further and will dismiss its jurisdiction. Thus, the court orders to which Section 106 applies are those having to do with jurisdiction to entertain the litigation. For example, these may include the production of records, the giving

of testimony, the prohibition of resort to another court while the UCCJEA issue is pending, or the subpoena process for witnesses. The substantive issue of custody is not yet before the court.

Section 204 deals with temporary custody during a period of emergency. If a child is abandoned or lost, if the parents suddenly become incapacitated while away from home in the court's state, or if shelter care is required until an emergency is resolved, Section 204 provides that the court may place the child in temporary custody. But this Section of the UCCJEA does not authorize a court to make a long-term placement of a child.

If a court acquires jurisdiction of a custody dispute pursuant to the UCCJEA, it must ascertain the appropriate body of law for the making of a placement or the return of the child to the previous custodian. If an interstate placement is contemplated, proceeding under the ICPC or some other law can have differing consequences.

Under the ICPC, the court will need to file a "request for Placement" (ICPC-100A) with the receiving state's compact administrator and await the latter's determination. If the court decides to proceed under its own state's Juvenile Code, it will be able to make an award of custody order in accordance with its own time schedule.

If ICPC has been codified in a title of the state's compiled statutes other than the Juvenile Code, provisions empowering judges to award custody probably give no indication that the process for interstate placements is different from those for intrastate placements. Consequently, it may be understandable that a court could move on from a determination of jurisdiction pursuant to the UCCJEA to the merits of a custody dispute under its most familiar procedures, ending in a custody award: *i.e.*, a placement.

However, it would be incorrect for a court to select the provisions of its own Juvenile Code as the authority for making a placement into another state. Article III (a) of the Compact provides that "No sending agency" shall, send, bring, or cause a child to be sent into another state for placement unless it complies with the Compact and with the placement laws of the receiving state. When a court proceeds to make or direct the making of an interstate placement, it is a "sending agency". Accordingly, it must comply with ICPC.

The Parental Kidnapping Prevention Act (PKPA) is a federal statute. Like the UCCJEA, the PKPA sets forth rules by which it is to be determined how to decide which state has jurisdiction to hear and decide the types of custody disputes to which the PKPA applies. In fact, one of the reasons for revising UCCJA and replacing it with the UCCJEA has been to bring the Uniform Act into conformity with the PKPA. It follows that what has been said about lack of conflict between the ICPC and the UCCJEA is also true of the relationship between the PKPA and the ICPC.

3. Divorce, Separation, UCCJEA and PKPA

A type of custody situation important for the UCCJEA and the PKPA, but not significant for the ICPC, arises from separations and divorces. When parents separate or divorce, it must be determined who will have custody of the children. Court action will consist of awarding custody to one parent or the other, or of providing for joint custody.

Any such award is not a "placement" unless abuse, neglect or incompetence of one or both parents has been found; possession of custody by either parent flows from the parent-child relationship, and so is not a "placement."

Further, there are situations which are of concern under the PKPA and the UCCJEA, but in which the ICPC plays no part. When parents (married or unmarried) have disagreements, one of them may take the children without the consent of the other and leave. Custody disputes do arise out of these situations. The PKPA and the UCCJEA may play a part in dealing with such disputes. The ICPC will not be involved unless the course of events results in the child being removed from the care of both the father and the mother.

Conclusion

The ICPC, UCCJA, UCCJEA and PKPA deal with different parts of the custody situation. The Uniform Acts and PKPA are designed to settle the issue of court jurisdiction when the courts of two or more states could have jurisdiction of a particular case. Many of the custody disputes involved are outside the purview of the ICPC because they involve custody of children in divorce and separation instances. Provided that neither parent has lost custody because of abuse, neglect or incompetence, the transfer of custody between parents or from someone else to a parent does not constitute a placement. It is an assumption or continuance of custody by virtue of the parent-child relationship. However, in cases that do involve "placements", neither the Uniform Acts nor the PKPA deal with the merits of who should have custody. If an interstate placement is involved, ICPC provides the applicable procedures. The Compact takes precedence over ordinary state statutes because, in addition to being law in the states, it is a contract among the states. This means that the Compact has a superior position under the Federal Constitution which provides that "no state shall impair the obligations of a contract."

APPENDIX K: ICPC REGULATION 7

The following regulation was adopted to provide an expedited process for interstate placements:

REGULATION NO. 7

1. Words and phrases used in this regulation shall have the same meanings as those ascribed to them in the Interstate Compact on the Placement of Children (ICPC). A word or phrase not appearing in the ICPC shall have the meaning ascribed to it by special definition in this regulation or, where not so defined, the meaning properly ascribed to it in common usage.
2. This regulation shall not apply to any case in the sending state wherein:
 - (a) the request for placement of the child is for licensed or approved foster family care or adoption; or
 - (b) the child is already in the receiving state in violation of the ICPC.
3. Whenever a court, upon request, or on its own motion, or where court approval is required, determines that a proposed priority placement of a child from one state into another state is necessary, the court shall make and sign an order embodying that finding. The court shall send its order to the Sending Agency within two (2) business days. The order shall include the name, address, telephone number, and if available, the FAX number, of the judge and the court. The court shall have the sending agency transmit, within three (3) business days, the signed court order, a completed Form 100A ("Request for Placement") and supporting documentation pursuant to ICPC Article III, to the sending state Compact Administrator. Within a time not to exceed two (2) business days after receipt of the ICPC priority placement request, the sending state Compact Administrator shall transmit the priority placement request and its accompanying documentation to the receiving state Compact Administrator together with a notice that the request for placement is entitled to priority processing.
4. The court order, ICPC-100A, and supporting documentation referred to in Paragraph Three (3) hereof shall be transmitted to the receiving state Compact Administrator by overnight mail together with a cover notice calling attention to the priority status of the request for placement. The receiving state Compact Administrator shall make his or her determination pursuant to Article III (d) of ICPC as soon as practicable but no later than twenty (20) business days from the date the overnight mailing was received and forthwith shall send the completed 100-A by FAX to the sending state Compact Administrator.
5. (a) If the receiving state Compact Administrator fails to complete action as the receiving state prescribed in Paragraph Four (4) hereof within the time period allowed, the

receiving state shall be deemed to be out of compliance with the ICPC. If there appears to be a lack of compliance, the court, which made the priority order, may so inform an appropriate court in the receiving state, provide that court with copies of relevant documentation in the case, and request assistance. Within its jurisdiction and authority, the requested court may render such assistance, including the making of appropriate orders, for the purpose of obtaining compliance with this Regulation and the ICPC.

(b) The foregoing shall not apply if:

- (1) within two (2) business days of receipt of the ICPC priority placement request, the sending state Compact Administrator determines that the ICPC request documentation is substantially insufficient, specifies that additional information is needed, and requests the additional documentation from the sending agency. The request shall be made by FAX, or by telephone if FAX is not available; or
- (2) within two (2) business days of receipt of the ICPC priority placement request, the receiving state Compact Administrator notifies the sending state Compact Administrator that further information is necessary. Such notice shall specifically detail the information needed. For a case in which this subparagraph applies, the twenty (20) business day period for the receiving state Compact Administrator to complete action shall be calculated from the date of the receipt by the receiving state Compact Administrator of the information requested.

(c) Where the sending state court is not itself the sending agency, it is the responsibility of the sending agency to keep the court, which issued the priority order, informed of the status of the priority request.

6. A court order finding entitlement to a priority placement shall not be valid unless it contains an express finding that one or more of the following circumstances applies to the particular case and sets forth the facts on which the court bases its finding:

(a) the proposed placement recipient is a relative belonging to a class of persons who, under Article VIII (a) of the ICPC could receive a child from another person belonging to such a class, without complying with the ICPC and; (1) the child is under two (2) years of age; or (2) the child is in an emergency shelter; or (3) the court finds that the child has spent a substantial amount of time in the home of the proposed placement recipient.

(b) the receiving state Compact Administrator has a properly completed ICPC-100A and supporting documentation for over thirty (30) business days, but the sending agency has not received a notice pursuant to Article III (d) of ICPC determining whether the child may or may not be placed.

7. Time periods in this regulation may be modified with a written agreement between the court which made the priority order, the sending agency, the receiving state

Compact Administrator, and the sending state Compact Administrator. Any such modification shall apply only to the single case to which it is addressed.

8. To fulfill its obligations under the ICPC, a state and its local agencies must process interstate cases no less quickly than intrastate and give no less attention to interstate hardship cases than to intrastate hardship cases. If in doing so, a receiving state Compact Administrator finds that extraordinary circumstances make it impossible for it and its local agencies to comply with the time requirements set forth in this regulation, it may be excused from strict compliance therewith. However, the receiving state Compact Administrator shall, within two (2) business days of ascertaining inability to comply, notify the sending state Compact Administrator via FAX of the inability to comply and shall set forth the date on or before which it will complete action. The notice shall contain a full identification and explanation of the extraordinary circumstances that are delaying compliance.
9. Unless otherwise required or allowed by this regulation, all transmittals of documents or other written materials shall be by overnight express mail carrier service.
10. This regulation as first effective October 1, 1996, and readopted pursuant to Article VII of the Interstate Compact on the Placement of Children by action of the Association of Administrators of the Interstate Compact on the Placement of Children at its annual meeting of April 1999, is amended pursuant to Article VII of the Interstate Compact on the Placement of Children by action of the Association of Administrators of the Interstate Compact on the Placement of Children at its annual meeting of April 29 through May 2, 2001; the regulation, as amended, was approved on May 2, 2001 and is effective as of July 2, 2001.

APPENDIX L: REGULATION 7: PRIORITY PLACEMENT SAMPLE COURT RULE AND COURT ENTRY

IT IS IMPORTANT TO NOTE THAT THIS RULE WAS EFFECTED PRIOR TO THE CHANGE IN REGULATION 7 THAT EXCLUDES CASES WHERE:

- **The request for placement of the child is for licensed or approved foster family care or adoption; or**
- **The child is already in the receiving state in violation of the ICPC.**

In order to use this Court Rule as a model after 7/2/01, these requirements must be added.

California Rule of Court #1428: Interstate compact on the placement of children

(a) [Applicability of Rule (Fam. Code. § 7900 et seq.)] This rule implements the purposes and provisions of the Interstate Compact on the Placement of Children (Compact). California juvenile courts shall apply this rule when placing children who are dependents or wards of the juvenile court and for whom placement is indicated in any other state, the District of Columbia, or the U.S. Virgin Islands. The rule applies to the placement in California of children who are dependents or wards of the juvenile court in any of the above-named jurisdictions. This rule also applies to priority placements as described below in subdivision (b) (2). This rule does not apply to placements made pursuant to the Interstate Compact on Juveniles (Welf. & Inst. Code, § 1300 et seq.).

(b) [Definitions]

(1) "Placement" is defined in Article II(d) of the Compact. It includes placements with a stepparent, a grandparent, an adult brother or sister, an adult aunt or uncle, a nonagency guardian of the child, a placement recipient who is not related to the child, a residential institution, a group home, or a treatment facility. A court directing or making an award of custody to a parent of the child is not a placement within the meaning of this rule, unless the sending court retains dependency jurisdiction over the child or the order or award requests or provides for supervision or other services or places some other condition or restriction on the conduct of the parent. Except in cases in which a child is placed with a parent and jurisdiction has been terminated or in cases in which dependency is maintained only to provide services to, or conditions imposed on, the noncustodial parent remaining in the sending jurisdiction, an order causing a child to be sent or brought to another party compact jurisdiction without a specific date of return to the sending jurisdiction, or with a return date more than 30 days from the start of the visit or beyond the ending date of a school vacation period, constitutes a placement, and the Compact shall be applied.

(2) "Priority placement" means a placement or placement request made by a court with specific findings of one or more of the following circumstances:

(A) The proposed placement recipient is a relative belonging to a class of persons who, under Article VIII(a) of the Compact, could receive the child from another

person belonging to such a class, without complying with the Compact; if the child was not under the jurisdiction of the court; and if:

- (i) The child is under two years of age; or
- (ii) The child is in an emergency shelter; or
- (iii) The court finds that the child has spent a substantial period of time in the home of the proposed placement recipient.

(B) The receiving Compact Administrator has been in possession of a properly completed interstate compact placement request form and supporting documentation for over 30 business days, but the sending agency has not received a notice under Article III (d) of the Compact determining whether or not the child may be placed.

(c) [Compact Requirements (Fam. Code, § 7901)] Whenever the juvenile court makes a placement in another jurisdiction included in the Compact or reviews a placement plan, the court shall adhere to the provisions and regulations of the compact.

(d) [Notice of Intention; Authorization (Fam. Code, § 7901)] A sending jurisdiction shall provide to the designated receiving jurisdiction written notice of intention to place the child, using an interstate compact placement request form.

(1) The representative of the receiving jurisdiction may request and receive additional information as the representative deems necessary.

(2) The child shall not be placed until the receiving jurisdiction has determined that the placement is not contrary to the interest of the child and has so notified the sending jurisdiction in writing.

(e) [Placement of Delinquent Children in Institutional Care] A child declared a ward of the court under Welfare & Institutions Code section 602 may be placed in an institution in another jurisdiction under the Compact only when:

(1) Prior to the placement, the court has held a hearing at which the child and the parent or guardian have had an opportunity to be heard;

(2) The court has found that equivalent facilities for the child are not available in the sending jurisdiction; and

(3) Institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship for the child.

(f) [Priority Placement] A court in a sending jurisdiction may designate placement as a priority placement and utilize expedited procedures as described in Regulation 7 of the Compact.

(1) The court may designate a priority placement upon express findings that:

(A) The Compact Administrator of the receiving jurisdiction has had possession of a properly completed interstate compact placement request form and supporting documents for over 30 business days, and the sending jurisdiction agency has not received a notice indicating whether or not placement in the receiving jurisdiction is contrary to the interest of the child; or

(B) The proposed placement recipient is a parent, stepparent, grandparent, adult sibling, adult uncle or aunt, or guardian of the child; and

- (i) The child is under two years of age; or
- (ii) The child is in an emergency shelter; or
- (iii) The court finds that the child has spent a substantial period of time in the home of the proposed placement recipient.

(2) Upon the findings of the court under subdivision (f)(1) that a proposed priority placement is necessary, the court shall proceed as follows:

(A) The findings shall be noted in a written order using Judicial Council *form ICPC Priority – Findings and Orders* (JV-567), which shall include the name, address, telephone number, and fax number of the court and the judicial officer.

(B) The order shall be transmitted to the sending agency of the court's jurisdiction within two business days.

(C) The sending agency shall be ordered to transmit to the Compact Administrator of the sending jurisdiction within three business days the following:

- (i) A copy of the completed Judicial Council *form ICPC Priority – Findings and Orders* (JV-567); and
- (ii) A completed interstate compact placement request form and supporting documentation as noted on that form.

(D) Within two business days the Compact Administrator of the sending jurisdiction shall transmit by overnight mail the documents described in (C) (i) and (C) (ii) above to the Compact Administrator of the receiving jurisdiction with a notice that the request is entitled to priority placement.

(3) The Compact Administrator of the receiving jurisdiction shall determine immediately, and no later than 20 business days after receipt, whether or not the placement is acceptable and shall transmit the completed interstate compact placement request form by fax to the Compact Administrator of the sending jurisdiction.

(4) If the Compact Administrator of the receiving jurisdiction fails to comply with subdivision (f)(3) within the required time limit, the sending court may inform an appropriate court in the receiving jurisdiction that the Compact Administrator in that jurisdiction has not complied with the Compact, provide the receiving jurisdiction court with

relevant documents, including Judicial Council form Findings and Request for Assistance Under ICPC (JV-565), and request assistance.

(5) The receiving jurisdiction court that receives notification may render appropriate assistance and may issue orders to secure compliance with the Compact and regulations.

(6) The time limits for a single case may be modified by written agreement between the sending court, the sending agency, and the Compact Administrators for the sending and receiving jurisdictions.

(7) To fulfill its obligations under the Compact, a jurisdiction, its local agencies, and the court are required to process interstate cases as quickly as intrastate cases and to devote equal efforts to interstate and intrastate hardship cases. If in doing so a receiving jurisdiction's Compact Administrator finds that extraordinary circumstances make compliance within the time requirements impossible, strict compliance may be excused. However, the receiving jurisdiction Compact Administrator shall immediately notify the sending jurisdiction Compact Administrator via fax of the inability to comply and shall designate a date on or before which there will be compliance. The notice shall contain a full identification and explanation of the extraordinary circumstances that are delaying compliance.

(g) [Ongoing Jurisdiction] If a child is placed in another jurisdiction under the terms of the Compact, the sending court shall not terminate its jurisdiction until the child is adopted, reaches majority, or is emancipated, or the dependency is terminated with the concurrence of the receiving state authority.

(Adopted, eff. Jan. 1, 1999.)

7. The Compact Administrator of the sending jurisdiction and all other persons to whom Article VII of the ICPC applies shall comply with Regulation 7 and shall fully implement the procedures for the request for priority placement.

8. (*Sending agency*): shall:
b. Take whatever additional steps are necessary, including follow-up contacts, to insure that the process is completed in a timely manner so as to protect the interests of the child; and
b. Inform this court promptly and on a regular basis of the progress and results of this order.

9. Hearing for progress report further disposition other (*specify*):

NOTE: Under Article V (a) of the ICPC, the sending agency shall retain jurisdiction over the child and the sending agency shall continue to assume financial responsibility for the support and maintenance of the child during the period of placement.

Date:

(PRINTED NAME OF JUDICIAL OFFICER)

JUDICIAL OFFICER

APPENDIX M: ICPC FORMS

Included:

- ICPC 100A - Interstate Compact on the Placement of Children Request (Revised 8/2001)
- ICPC 100B - Interstate Compact on the Placement of Children, Report on Child's Placement Status (Revised 8/2001)
- ICPC 100C - Quarterly Statistical Report: Placements into an ICPC State
- ICPC 100D - Quarterly Statistical Report: Placements Out of an ICPC State
- ICPC 101 - Sending State's Priority Home Study Request



INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN REQUEST

TO:

FROM:

SECTION I - IDENTIFYING DATA

Notice is given of intent to place - Name of Child:			Ethnicity: Hispanic Origin: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unable to determine/unknow	
Social Security Number:		ICWA Eligible <input type="checkbox"/> Yes <input type="checkbox"/> No	Race: <input type="checkbox"/> American Indian or Alaskan Native <input type="checkbox"/> Asian <input type="checkbox"/> Native Hawaiian/ Other Pacific Islander <input type="checkbox"/> Black or African American <input type="checkbox"/> White	
Sex:	Date of Birth	Title IV-E determination <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Pending		
Name of Mother:			Name of Father:	
Name of Agency or Person Responsible for Planning for Child:				Phone:
Address:				
Name of Agency or Person Financially Responsible for Child:				Phone:
Address:				

SECTION II - PLACEMENT INFORMATION

Name of Person(s) or Facility Child is to be placed with:		Soc Sec # (optional): Soc Sec # (optional):	
Address:		Phone:	
Type of Care Requested: <input type="checkbox"/> Foster Family Home <input type="checkbox"/> Residential Treatment Center <input type="checkbox"/> Group Home Care <input type="checkbox"/> Institutional Care-Article VI, Adjudicated Delinquent <input type="checkbox"/> Child Caring Institution <input type="checkbox"/> Other: _____ <input type="checkbox"/> Parent <input type="checkbox"/> Relative (Not Parent) Relationship: _____ <input type="checkbox"/> ADOPTION <input type="checkbox"/> IV-E Subsidy <input type="checkbox"/> Non IV-E Subsidy To Be Finalized In: <input type="checkbox"/> Sending State <input type="checkbox"/> Receiving State			
Current Legal Status of Child: <input type="checkbox"/> Sending Agency Custody/Guardianship <input type="checkbox"/> Parent Relative Custody/Guardianship <input type="checkbox"/> Court Jurisdiction Only <input type="checkbox"/> Protective Supervision <input type="checkbox"/> Parental Rights Terminated-Right to Place for Adoption <input type="checkbox"/> Unaccompanied Refugee Minor <input type="checkbox"/> Other: _____			

SECTION III - SERVICES REQUESTED

Initial Report Requested (if applicable): <input type="checkbox"/> Parent Home Study <input type="checkbox"/> Relative Home Study <input type="checkbox"/> Adoptive Home Study <input type="checkbox"/> Foster Home Study	Supervisory Services Requested: <input type="checkbox"/> Request Receiving State to Arrange Supervision <input type="checkbox"/> Another Agency Agreed to Supervise <input type="checkbox"/> Sending Agency to Supervise	Supervisory Reports Requested <input type="checkbox"/> Quarterly <input type="checkbox"/> Semi-Annually <input type="checkbox"/> Upon Request <input type="checkbox"/> Other: _____
Name and Address of Supervising Agency in Receiving State:		
Enclosed: <input type="checkbox"/> Child's Social History <input type="checkbox"/> Court Order <input type="checkbox"/> Financial/Medical Plan <input type="checkbox"/> Other Enclosure <input type="checkbox"/> Home Study of Placement Resource <input type="checkbox"/> ICWA Enclosure <input type="checkbox"/> IV-E Eligibility Documentation		

Signature of Sending Agency or Person:	Date:
Signature of Sending State Compact Administrator, Deputy or Alternate:	Date:

SECTION IV - ACTION BY RECEIVING STATE PURSUANT TO ARTICLE III(d) of ICPC

<input type="checkbox"/> Placement may be made	<input type="checkbox"/> Placement shall not be made
REMARKS:	
Signature of Receiving State Compact Administrator, Deputy or Alternate:	Date:

DISTRIBUTION (Complete six (6) copies):
 • Sending Agency retains a (1) copy and forwards completed original plus four (4) copies to:
 • Sending Compact Administrator, DCA, or alternate retains a (1) copy and forwards completed original and three (3) copies to:
 • Receiving Agency Compact Administrator, DCA, or alternate who indicates action (Section IV) and forwards a (1) copy to receiving agency and the completed original and one (1) copy to sending Compact Administrator, DCA, or alternate within 30 days.
 • Sending Compact Administrator, DCA, or alternate retains a completed copy and forwards the completed original to the sending agency.

INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN
REPORT ON CHILD'S PLACEMENT STATUS

TO:

FROM:

SECTION I - IDENTIFYING INFORMATION

Child's Name: _____ Birthdate: _____
Mother's Name: _____ Father's Name: _____

SECTION II - PLACEMENT STATUS

Initial Placement of Child in Receiving State Date Child Placed in Receiving State: _____
Name of Resource: _____
Address: _____
Type of Care: _____
 Placement Change Effective Date of Change: _____
Name of Resource: _____
Address: _____
Type of Care: _____

SECTION III - COMPACT PLACEMENT TERMINATION

Adoption Finalized In Sending State In Receiving State Court Order Attached
 Child Reached Majority/Legally Emancipated
 Legal Custody Returned to Parent(s) Court Order Attached
 Legal Custody Given to Relative Court Order Attached
Name: _____ Relationship: _____
 Treatment Completed
 Sending State's Jurisdiction Terminated with the Concurrence of the Receiving State
 Unilateral Termination
 Child Returned to Sending State
 Child Has Moved to Another State
 Proposed Placement Request Withdrawn
Name of Placement Resource: _____
 Approved Resource Will Not Be Used for Placement
Name of Approved Placement: _____
 Other (Specify): _____
Date of Termination: _____

SECTION IV - SIGNATURES

Person/Agency Supplying Information: _____ Date: _____
Compact Administrator, Deputy or Alternate: _____ Date: _____

DISTRIBUTION (Complete four (4) copies of this form):
• Sending Agency retains a (1) copy and forwards completed original plus three (3) copies to:
• Sending Compact Administrator, DCA, or alternate retains one (1) copy and forwards two (2) copies to:
• Receiving Agency Compact Administrator, DCA, or alternate retains one (1) copy and forwards one (1) copy to the receiving agency

QUARTERLY STATISTICAL REPORT: PLACEMENTS INTO AN ICPC STATE

ICPC-100C Revised June 20, 2000		REPORTING STATE _____ QUARTER/YEAR _____					
NUMBER OF COMPACT PLACEMENTS MADE BY COMPACT STATES							
1. Type of Placement:	Public Agency	Private Agency	Court		Individual		
Parent(s)							
Relative							
Foster Home							
Adoptive							
Group Home							
Residential							
Institution (Art. VI)							
Child Care Institution							
Other							
TOTAL							
2. Sex of children	Male	Female	Unknown				
3. Ages of Children	Under 1	1-5	6-10	11-15	16-18	19-21	
4. Ethnic Group	W	H	B	A	AI	OT	UK
5. Number of days between sending ICPC-100A and sending back:	0-30	31-60	61-90	Over 90			
6. Unaccompanied Refugee Minor:	_____						
7. Adoption Assistance/Subsidy:	_____						
8. Number of placements INTO your state brought into retroactive compliance on the 100A during the reporting quarter:	<input style="width: 50px; height: 20px;" type="text"/>						
9. Total number of agreements INTO your state terminated:							
Adoption finalized	<input style="width: 80px; height: 20px;" type="text"/>						
Child reached age of majority/legal emancipation	<input style="width: 80px; height: 20px;" type="text"/>						
Custody returned to parents (w/concurrence)	<input style="width: 80px; height: 20px;" type="text"/>						
Custody given to relatives (w/concurrence)	<input style="width: 80px; height: 20px;" type="text"/>						
Treatment complete	<input style="width: 80px; height: 20px;" type="text"/>						
Jurisdiction terminated (no custody disposition)	<input style="width: 80px; height: 20px;" type="text"/>						
Unilateral termination	<input style="width: 80px; height: 20px;" type="text"/>						
Child returned to sending state	<input style="width: 80px; height: 20px;" type="text"/>						
Child moved to third state	<input style="width: 80px; height: 20px;" type="text"/>						
Approved placement canceled/withdrawn	<input style="width: 80px; height: 20px;" type="text"/>						
Other reason	<input style="width: 80px; height: 20px;" type="text"/>						
Unknown reason	<input style="width: 80px; height: 20px;" type="text"/>						
TOTAL	<input style="width: 80px; height: 20px;" type="text"/>						
10. Number of children returned to your state:	<input style="width: 80px; height: 20px;" type="text"/>						
11. STATUS OF REFERRALS RECEIVED (See back of this sheet)							
12. Non-Compact Jurisdiction	Acceptable	Unacceptable	Requests Sent				
Puerto Rico	<input style="width: 50px; height: 20px;" type="text"/>	<input style="width: 50px; height: 20px;" type="text"/>	<input style="width: 100px; height: 20px;" type="text"/>				
Guam	<input style="width: 50px; height: 20px;" type="text"/>	<input style="width: 50px; height: 20px;" type="text"/>	<input style="width: 100px; height: 20px;" type="text"/>				
13. Foreign Countries	Acceptable	Unacceptable	Requests Sent				
_____	<input style="width: 50px; height: 20px;" type="text"/>	<input style="width: 50px; height: 20px;" type="text"/>	<input style="width: 100px; height: 20px;" type="text"/>				
_____	<input style="width: 50px; height: 20px;" type="text"/>	<input style="width: 50px; height: 20px;" type="text"/>	<input style="width: 100px; height: 20px;" type="text"/>				
_____	<input style="width: 50px; height: 20px;" type="text"/>	<input style="width: 50px; height: 20px;" type="text"/>	<input style="width: 100px; height: 20px;" type="text"/>				

11. STATUS OF REFERRALS RECEIVED

Sending State	Acceptable		Unacceptable		Requests Sent
	Totals		Totals		Totals
Alabama					
Alaska					
Arizona					
Arkansas					
California					
Colorado					
Connecticut					
District of Columbia					
Delaware					
Florida					
Georgia					
Hawaii					
Idaho					
Illinois					
Indiana					
Iowa					
Kansas					
Kentucky					
Louisiana					
Maine					
Maryland					
Massachusetts					
Michigan					
Minnesota					
Mississippi					
Missouri					
Montana					
Nebraska					
Nevada					
New Hampshire					
New Jersey					
New Mexico					
New York					
North Carolina					
North Dakota					
Ohio					
Oklahoma					
Oregon					
Pennsylvania					
Rhode Island					
South Carolina					
South Dakota					
Tennessee					
Texas					
Utah					
Vermont					
Virginia					
Virgin Islands					
Washington					
West Virginia					
Wisconsin					
Wyoming					

QUARTERLY STATISTICAL REPORT: PLACEMENTS OUT OF AN ICPC STATE

ICPC-100D Revised 2/7/97		REPORTING STATE _____ QUARTER/YEAR _____					
NUMBER OF COMPACT PLACEMENTS MADE BY COMPACT STATES							
1. Type of Placement:	Public Agency	Private Agency	Court	Individual			
Parent(s)							
Relative							
Foster Home							
Adoptive							
Group Home							
Residential							
Institution (Art. VI)							
Child Care Institution							
Other							
TOTAL							
2. Sex of children	Male	Female	Unknown				
3. Ages of Children	Under 1	1-5	6-10	11-15	16-18	19-21	
4. Ethnic Group	W	H	B	A	AI	OT	UK
5. Number of days between sending ICPC-100A and receipt back:							
	0-30	31-60	61-90	Over 90			
6. Unaccompanied Refugee Minor: _____							
7. Adoption Assistance/Subsidy: _____							
8. Number of placements OUT OF your state brought into retroactive compliance on the 109A during the reporting quarter: <input style="width: 50px; height: 20px;" type="text"/>							
9. Total number of agreements OUT OF your state terminated:							
Adoption finalized							
Child reached age of majority/legal emancipation							
Custody returned to parents (w/concurrence)							
Custody given to relatives (w/concurrence)							
Treatment complete							
Jurisdiction terminated (no custody disposition)							
Unilateral termination							
Child returned to sending state							
Child moved to third state							
Approved placement canceled/withdrawn							
Other reason							
Unknown reason							
TOTAL							
10. Number of children returned to your state: _____							
11. STATUS OF REFERRALS SENT (See back of this sheet)							
12. Non-Compact Jurisdiction			Acceptable	Unacceptable	Requests Sent		
Puerto Rico							
Guam							
13. Foreign Countries			Acceptable	Unacceptable	Requests Sent		

11. STATUS OF REFERRALS SENT

Receiving State	Acceptable		Unacceptable		Requests Sent
	Totals		Totals		
Alabama					
Alaska					
Arizona					
Arkansas					
California					
Colorado					
Connecticut					
District of Columbia					
Delaware					
Florida					
Georgia					
Hawaii					
Idaho					
Illinois					
Indiana					
Iowa					
Kansas					
Kentucky					
Louisiana					
Maine					
Maryland					
Massachusetts					
Michigan					
Minnesota					
Mississippi					
Missouri					
Montana					
Nebraska					
Nevada					
New Hampshire					
New Jersey					
New Mexico					
New York					
North Carolina					
North Dakota					
Ohio					
Oklahoma					
Oregon					
Pennsylvania					
Rhode Island					
South Carolina					
South Dakota					
Tennessee					
Texas					
Utah					
Vermont					
Virginia					
Virgin Islands					
Washington					
West Virginia					
Wisconsin					
Wyoming					

ASSOCIATION OF ADMINISTRATORS OF THE INTERSTATE
COMPACT ON THE PLACEMENT OF CHILDREN

ICPC-101
August 1996

SENDING STATE
PRIORITY HOME STUDY REQUEST

To be submitted by Social Worker with other required ICPC materials

Name of Child¹ to be placed _____ Age _____ Mother's Name _____

Ethnic Group _____ DOB _____ Father's Name _____

PROPOSED CARETAKER

NAME: _____ Marital Status: S, M, Sep., D, W Living with _____
(circle one) (name of person)

ADDRESS: _____

Telephone Home #: _____ Work #: _____ Social Security # _____

Relationship to child identified above: _____

Best time of day to contact caretaker: _____ Employer _____
(if applicable)

Alternate Contact Name & Address: _____

ASSESSMENT OF CHILD

Case Plan Attached: yes no Financial/ Medical Plan attached: yes no
(circle one) (circle one)

Special Needs: _____

Handicaps: Mental/Physical _____

Service Needs/Treatment Requirements: _____

School Information: _____

Other required pertinent information regarding child and family will follow: yes no
(circle one)

Worker's Name _____ (please print) _____ (Tel. #) _____

Worker's Signature _____ (date) _____

Supervisor's Signature _____ (if required) _____ (date) _____ (Tel. #) _____

¹ If there is more than one child to be placed with the proposed caretaker, list the name of the child(ren) and all requested information on a separate page and attach to this form.

ASSOCIATION OF ADMINISTRATORS OF THE INTERSTATE
COMPACT ON THE PLACEMENT OF CHILDREN

ICPC-101
August 1996

SENDING STATE
PRIORITY HOME STUDY REQUEST

To be submitted by Social Worker with other required ICPC materials

Name of Child¹ to be placed _____ Age _____ Mother's Name _____

Ethnic Group _____ DOB _____ Father's Name _____

PROPOSED CARETAKER

NAME: _____ Marital Status: S, M, Sep., D, W Living with _____
(circle one) (name of person)

ADDRESS: _____

Telephone Home #: _____ Work #: _____ Social Security # _____

Relationship to child identified above: _____

Best time of day to contact caretaker: _____ Employer _____
(if applicable)

Alternate Contact Name & Address: _____

ASSESSMENT OF CHILD

Case Plan Attached: yes no Financial/ Medical Plan attached: yes no
(circle one) (circle one)

Special Needs: _____

Handicaps: Mental/Physical _____

Service Needs/Treatment Requirements: _____

School Information: _____

Other required pertinent information regarding child and family will follow: yes no
(circle one)

Worker's Name _____ (please print) _____
(Tel. #) _____

Worker's Signature _____
(date) _____

Supervisor's Signature _____

¹ If there is more than one child to be placed with the proposed caretaker, list the name of the child(ren) and all requested information on a separate page and attach to this form.

APPENDIX N: MEMORANDUM ON GUARDIANSHIP AND ATTEMPTS TO EVADE THE INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

Prepared by the Secretariat to the Association of Administrators of the Interstate Compact on the Placement of Children

Mitchell Wendell, LL.B. Ph.D.
Cathleen Tucker, B. S.
Betsey Rosenbaum, M.S.P.

Revised August 1998

Purpose of Memorandum

The Secretariat has been made aware of a number of instances in which prospective adoptive parents have been made guardians of the children they propose to adopt. This memorandum examines the question of the legitimacy of such appointments and their meaning for the Interstate Compact on the Placement of Children (ICPC), compliance issues, and enforcement. The position taken is that such appointments should be held invalid as a matter of law and that they do not relieve sending agencies and other parties of the obligation to comply with and enforce the ICPC.

Introduction

Our society presumes that parents are the rightful and most appropriate custodians and protectors of their children and that, on the whole, parental responsibility for child nurture and care should not be interfered with by the state. Only if there are no parents or when a court following procedures prescribed by law finds that by abuse or neglect parents have been harming or endangering their children, or when the parents voluntarily surrender their parental rights, can the state intervene. It does so by administering protective and regulatory laws. When alternate care arrangements for children are undertaken on a wholly intrastate basis, the unilaterally enacted laws of the single state involved govern.

The Interstate Compact on the Placement of Children (ICPC) is a law that applies when the parent substitute arrangements for the child are from one state into another state. The ICPC encounters some of the same kinds of resistance that virtually all regulatory laws evoke. Many among the regulated persons and organizations would prefer to be unregulated and so to exercise more of their own discretion in the conduct of their activities. Their objections to legally required procedures are that they are inconvenient and sometimes that they increase costs. They may also be apprehensive (sometimes with good reason and sometimes not) that complying with the requirements or following the procedures which compose the regulatory system may lead to the imposition of limitations or even prevent the accomplishment of their intended purpose. To reduce or avoid these unwanted consequences, some of those who should comply with the law seek to arrange matters so that it will not apply in their case, or at least so that it will appear not to apply. In such instances enforcement of the law

requires that the agencies administering it and other public authorities where relevant, be able to detect the subterfuges or the mistaken actions. They must then be able to take their own corrective measures or to prevail upon others (usually the courts) to enforce obedience to the requirements of the law.

Guardianship as an Evasive Device

The ICPC applies to all interstate placements of children, except for those expressly excluded from coverage in Article VIII⁶ of the Compact. By far the most numerous placements excluded from application of the ICPC are those arranged between the categories of individuals listed in Article VIII. With the exception of one category, all of them are the various classes of close relatives of the child. Listed along with these as persons who may make and receive interstate placements without reference to the Compact are “guardian” in the list of sending agencies and “nonagency guardian” in the list of recipients of the placement.

While judges and other public officials may sometimes be among those who inadvertently or by design seek to avoid applying the ICPC to a particular case, by far the greatest problem is with persons engaged in private placements across state lines. For present purposes, it is appropriate to include in this group both a relatively few private agencies and a larger number of persons engaged in the making of independent placements.

Placements genuinely made between close relatives of the child are clearly outside the purview of the ICPC. If they involve attorneys, doctors, clergymen, etc. only as strictly subsidiary facilitators, exemption from the ICPC is not adversely affected. They are the placements which fall squarely within the presumption made by the Compact and the public policy which it implements that child rearing is a family matter and that society will count on close family members to protect and advance the best interests of the child. The listing of “guardian” in Article VIII along with the several classes of close relatives is explained on the basis of their similarity to extended family members who undertake to raise children who have no living or competent parents. To understand this point, it is only necessary to read Articles I⁷ and VIII of the Compact in juxtaposition. It is proper to do so because all parts of a statute are to be read together in order to make sense of the law as a whole. Sutherland, Stat. Const. Sec. 46.05 (4th Ed. 1972) In examining the role of guardians in interstate

1. Article VIII. Limitations—This compact shall not apply to: (a) the sending or bringing of a child into a receiving state by his parent step-parent, 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. (b) any placement, sending or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law.
2. 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.

placement processes, they will be compared with close relatives so far as presumptions concerning the purposes and policies set forth in Article I are concerned. However, it is first necessary to scrutinize the method employed to evade the Compact through creation of guardianships.

If a professional arranger of placements produces a situation in which a birthmother places her baby for adoption with one of the baby's close relatives, the Compact is avoided. However, such cases, if they exist, are not causes for concern. It is highly unlikely that in such cases a lawyer or other intermediary will act in anything more than a technical facilitating capacity. Where a close relative takes the child, it is almost certain that the family members will have worked out the preadoptive placement after having themselves identified the parties. A lawyer will draw the adoption papers and participate in any hearings the court may require, but neither he nor any other stranger is likely to have brought the child and its adoptive parents together. Thus, to have such placements outside the Compact is wholly in accord with the legal and public policy presumptions in favor of family responsibility for children, with a minimum of participation from the state.

Another scenario is more realistic and frequent. In playing it out, some pretense at regard for the ICPC is often explicit, but the purpose is to give lip service to the law while violating it. The circumstances are along the following lines:

A pregnant woman or teenaged girl becomes known as intending to place her child for adoption immediately upon its birth. The birthmother is matched with a couple in another state who desires a child. The arrangements are made (with the help of a lawyer, doctor, etc.), the birthmother signs a properly prepared relinquishment, and the couple take the child home with them, directly from the hospital or from a nearby motel.

Contemporaneously with these events, and usually with proper forethought, a court in the birthmother's state is petitioned to appoint a guardian for the child. The prospective adoptive parents are appointed as guardians—a status which they have by the time they take the child. Thus the placement, so it is contended, is from the birthmother to the child's nonagency guardians. Article VIII of the ICPC specifically provides that an interstate placement by a parent with the child's nonagency guardian is a placement to which the Compact does not apply.

Types of Guardians

Not all guardians are the same. The laws of individual states provide for the creation of guardianship and for the functions and responsibilities of various kinds of guardians. One can expect the exact details to differ from state to state, but the basic types of guardians can be identified. One kind of guardian (sometimes called "conservator or trustee") is exclusively or primarily an administrator of property. Another kind of guardian is a "guardian of the person," i.e., one who has duties with regard to the care of a ward. A third type is a "guardian *ad item*." This type has no responsibility for his or her charge, except to protect the interest of the person for whom he or she acts in a litigation. For example, in an adoption proceeding where the Court believes that none of the other participants will necessarily have primary concern for the interests of the child, the judge may appoint a disinterested individual (frequently but not necessarily an attorney) to protect the interests of the child

during the course of the adoption proceeding. A guardian *ad litem* has no authority with respect to the child other than that which is necessary for the conduct of the proceeding. Yet another type of guardian combines all of the attributes of the previously mentioned guardians. Such an individual or agency is in complete charge of the child and is a parent substitute in the fullest sense of the word, to the extent that is possible for one who is not the birth or adoptive parent.

Guardians and the ICPC

As already noted, the reference to guardians appears in Article VIII where they are included as the only nonrelative entities to be eligible to participate in interstate placements as senders or receivers of the child, without the need to comply with the ICPC. This provision requires that in order to make interstate placements without following ICPC procedures, members of the exempt close relative classes or the denominated guardian must be the senders and the recipients of the placement. Thus, to have a relative or a guardian as the sending agency and a nonexempt entity as recipient, or vice-versa, is not enough to exclude the transaction from the ICPC.

Those who seek to use guardians to evade the ICPC would have us believed that any guardian would do. In fact, the more formalistic and less substantive the guardianship functions are the better it is likely to be. This is true because the guardianship is less likely to be an independent force that might cause complications in the adoption proceeding. But it is important to consider that the guardians mentioned in the ICPC appear only in that part of Article VIII where it is said that placements from close relatives of the child to other close relatives of the child (those within the family circle) are exempt from the ICPC. These are the placements which public policy says can be treated as family matters with which the child protective and regulatory laws need have no concern.

While Article VIII can be interpreted to mean that a placement by an agency which has guardianship of a child with a close relative is exempt, a placement with an agency is *never* exempt, no matter who arranges the placement. This is true even if the agency has been appointed as the child's guardian. The reason is that the word "nonagency" appears as modifier of "guardian" only on the list of exempt recipients. In fact, it is even possible that the agency guardian is not properly to be included as either an exempt sender or recipient. Note the words "such nonagency guardian" in the list of recipients. The "such" is surplus language without meaning unless it refers to the "guardian" enumerated earlier in the sentence: i.e. the type of guardian who can be an exempt sending agency. It is a settled rule of statutory construction that a statute is to be interpreted to give all of its words effect. Sutherland, Stat. Const. Sec. 46.06 (4th Ed. 1972)

Which types of guardian can reasonably be regarded as similar to close family members whose interstate placement activities fall within the same policy category as those made within the family? Surely not guardians whose duties include only looking after the child's property, or those who are responsible only for litigation. Guardians who have no greater authority or role than foster parents (i.e. those who provide temporary care until the ward's more permanent status is determined) do not qualify for inclusion in the exempt class either. *Only those nonagency guardians who are given powers as full parent substitutes are similar to the close family members responsibility for the care of a child.*

The distinction made in the preceding paragraph is a realistic and practical one. A family friend who out of personal concern for the child or its incapacitated or deceased parents accepts appointment as a guardian of the child's person and trustee of its property (if any) fits with the relatives enumerated in Article VIII.

Appointment of the prospective adoptive parents as guardians in connection with the making of an interstate preadoptive placement and using the guardianship status as an argument against application of the ICPC is squarely at odds with the clearly expressed meaning and intent of the legislature in enacting the Compact. Recipients of a preadoptive placement embark on a trial period that is not concluded until a court grants an adoption decree. During the period between the making of the placement (usually coincident with or shortly followed by the filing of an adoption petition) and the issuance of an adoption decree, the suitability of the petitioning adoptive parents is tested.

When the recipients of the placement are strangers to the child and its family, the preadoptive period is especially important. For placements made wholly within a single state, the other laws of that state provide whatever protections are intended to be applied. For interstate placements, the states have bound themselves to the use of the ICPC as the method of obtaining protection of the child.

Article I of the ICPC enacts it as the purpose and policy of each state, in regard to interstate placements, to give each child *maximum opportunity* for placement that will provide the facilities and care appropriate to its needs. Two of the requisites expressly enumerated by the Article are that the authorities in the receiving state be aware of the situation of the case and that the authorities in the state from which the child is sent or brought have an opportunity to know the situation before the child is placed. Pursuant to the Compact, the receiving state also provides supervision of the placement. Through the Compact, as Article I also expressly intends, the appropriate jurisdictional arrangements will prevail for the parties to provide and implement actual protections for the child. Among the protections meant are those set forth in Article V (a) of the ICPC: i.e., fixing of responsibility for financial support of the child, and giving the sending agency authority and responsibility for returning or replacing the child, if the initial placement is not working out well.

The context of Article VIII makes it clear that interstate placements involving guardians can be made outside the Compact, if the guardianship is such as to justify the same assumptions of responsibility and interest in the welfare of the child that the law presumes in the case of parents and other close relatives. As already pointed out, there are some guardians who meet these qualifications. That is why the word "guardian" appears in Article VIII. The question is whether prospective adoptive parents in our scenario meet them.

Guardians as Protectors

A guardian is an "officer of the Court". 39 Am Jur. 2d Guardian and Ward Sec. 62 (1968). The appointing Court can maintain surveillance of the guardian in order to determine whether the guardianship duties are being performed properly in the interests of the child. This can be done by requiring the guardian to report to the court, by receiving information

from others concerning the guardian's performance, and by replacing a guardian who performs improperly or inadequately. Uniform Probate Code (L.L.A.) Sec. 5-206-212 (1983)³ Where a placement is intrastate in character, the appointing court has the possibility to exert these kinds of control over its "officer". In practice courts seldom exercise their powers of guardian supervision actively. 39 Am Jur. 2d, supra. See also Peters, Iowa Guardianships, 45 Iowa L. Rev. 336 (1960) and Fraser, Guardianship of Person, 45 Iowa L. Rev. 239 (1960). Unless administration of property is involved, courts do not routinely require reports. They will sometimes entertain complaints from others about a guardian's performance, if the complainant takes the initiative. This sometimes happens, especially if the proposed adoption is contrary to the wishes of a relative, a friend, or some other motivated person. The avenue through which the Court may obtain such information about its officer (guardian) is most likely to be at some stage of the adoption proceeding. Where the preadoptive placement and the adoption proceeding are local affairs, discontented persons might appear. But in an interstate case, the adoption proceeding is very likely to be in the receiving state and so entirely outside the purview of the court which has appointed the guardian. Even so, reliance on complainants is an unsatisfactory means of bringing inadequacies or malfeasances in preadoptive guardianship to light. In such situations, the task of a guardian of the person of a child is not only to afford a means of keeping abusive or neglectful adults from consummating an adoption or to defend the child's interests in contested situations. It is to help in assessing the total circumstances of a proposed adoption and to identify and protect against anything that may make the adoption unsuitable from the child's point of view. The question is whether in an interstate placement situation, appointment of the prospective adoptive parents as guardians of the child makes it likely that they will perform the protective functions that warrant placing them in the same class as the exempt relatives under Article VIII of the ICPC.

In its discretion, a court may appoint a guardian *ad litem* in an adoption proceeding. However, this should be done by the court in which the adoption petition is filed. Unless, a court sees a particular reason to do so, there is no necessity that a guardian be appointed for a child who does not already have one merely because a preadoptive placement is to be made. If the placement is to be interstate in character, the laws of all states, provide for the ICPC to be the placement mechanism and the means of protecting the interests of the child.

Appointing the prospective adoptive parents as the guardians of the child is an improper exercise of the court's discretion and invalid for at least two reasons:

1. If appointed by a court in the state from which the child is being sent or brought, such guardians will function wholly outside the jurisdiction of the court since they will be in another state. The only way to cure this

3. Article V, Part II, Guardians of Minors, Sec. 5-201-212 has been adopted by Alaska, Arizona, California, Colorado, Florida, Hawaii, Idaho, Maine, Michigan, Minnesota, Montana, Nebraska, New Mexico, North Dakota and Utah. The Uniform Code provisions dealing with guardians for minors are similar to statutory provisions in other states. See Massachusetts: M.G.L.A. c. 201 Sec. 1, 2 (1958). New York is more explicit than most although its standard for judicial discretion leaves matters substantially to the appointing court. McKinney CPLL Sec. 1201-1211 (1976). In New York, the petition must state the reasons why a person nominated would be a suitable guardian and if either parent be living why and or when they gave up their custodial role.

defect would be to employ the ICPC in making the placement. But if this is done, guardianship loses any ostensible purpose it may have to avoid application of the Compact.

2. If either a court in the sending agency's state or the receiving state appoints the prospective adoptive parents as guardians, there is an additional and decisive impediment. The function of a guardian of the person of a minor who is in a preadoptive placement is to assist in monitoring the placement and protecting against any actions of the prospective adoptive parents which are or may be detrimental to the best interests of the child. To perform this function, the guardian must be independent of the persons and circumstances he or she is to monitor. One could not expect the prospective adoptive parent guardians to report to the court any of their actions that make them unsuitable as petitioners to adopt the child. Certainly they could not be expected, as guardians should, to take steps to prevent or remedy the effects of any of their own detrimental acts or omissions.

To put it another way, there is a conflict of interest between the functions of a guardian of the child and the position of the prospective adoptive parents. It is unlawful for the court to appoint as its officer (guardian) any person whose position as guardian establishes a conflict of interest.

In any case involving a claim of guardianship as a reason for not having to comply with the ICPC, it also should be asked whether a parent or other exempt relative is really the sending agency. It should be remembered that an interstate placement is truly outside the Compact only if members of exempt categories are the senders *and* recipients of the child.

Within the definition of "sending agency" in Article II of the ICPC, birth parents or other relatives are credible as the true placers of the child only if they actually make their own arrangements. The professionals are true intermediaries only if they do no more than perform the technical work to implement the placement arranged by someone else. In the great majority of private placements (other than those among family members), the attorneys, agencies or other professionals find either the child, the prospective adoptive parents, or both and match them up. If, in addition, they develop a guardianship arrangement for a child who probably does not need one, except to evade the ICPC, it is pure sham to regard the birth parent as the "sending agency."

Conclusion

It is a customary statement of courts that they will inquire behind appearances to determine the actual facts and their legal significance. Consequently, a guardian who is one in appearance and name only should not be sustained. In fact, we submit that the type of guardianship arrangement used to evade the ICPC is even worse than a deception and a meaningless form; it is a status which places the prospective adoptive parents in a conflict of interest situation and is therefore improper for that reason as well. However, courts will often do nothing about appearances that are inconsistent with reality unless a party to a proceeding brings them to the court's attention. If a Compact Administrator or another

public official is to enforce compliance with the ICPC this is likely to mean that, where litigation is necessary, the enforcing agency will need to point out the existence of the sham guardianship in presenting its case.

Who can properly be a guardian of a child going through a placement and adoption situation will depend on the particular circumstances of the case; however, it is possible to state certain propositions as applicable rules:

1. If a particular individual is already the guardian of the child before there is any thought of placing the child, the chances are that such a guardian (if an individual) is within the exempt class under Article VIII. Nevertheless, special note should be taken of the unique law of Illinois which provides for the Child Welfare Agency of the State to be the "guardian" of each state ward. This is an agency guardianship, even though a named individual may appear as the "guardian."
2. A "friend of the family" may be a nonagency guardian within the meaning of Article VIII. In any such case, it is matter of fact as to whether that person is really a friend or merely an individual who is found for the purpose and merely alleged to be a "friend of the family."
3. The prospective adoptive parents should never be guardians and cannot properly serve in that capacity because their role as petitioners to adopt makes it impossible for them to perform the duties of independent surveillance and protector which are the essence of the guardianship function and responsibility.

APPENDIX O: SAMPLE BORDER STATE AGREEMENT⁹

AGREEMENT FOR PERFORMANCE OF CERTAIN HOME STUDIES PURSUANT TO THE INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

The State of Kansas and the State of Missouri, acting by Joyce Allegrucci, Commissioner of Kansas Commission of Children and Family Services and Carmen K. Schulze, Director of Missouri Division of Family Services hereby agree as follows:

1. Definitions

As used in this Agreement:

- (a) Terms shall have the same meanings as in the Interstate Compact on the Placement of Children (herein referred to as the "ICPC" or the "Compact"), except as otherwise defined in this Agreement. If not expressly defined in the Compact or in this agreement, a term shall have its ordinary meaning in English usage.
- (b) "Home study" means an investigation, evaluation, and written report on a prospective adoptive, foster or relative placement recipient (or placement recipients), including
 - one or more interviews with the prospective placement recipient(s), and where appropriate, other members of the recipient's household and other persons; and
 - on-site inspection of the prospective placement recipient's home and immediate neighborhood; and
 - appropriate child abuse/neglect and criminal background checks.

The child abuse/neglect and criminal background checks shall be completed by the local public agency in the receiving state as quickly as possible whenever the home study is to be completed by a worker from the sending state.

- (c) "Home" means a place of abode, including a family residence or other facility in which it is proposed that a child would live if placed with the placement recipient(s).
- (d) "Child" means a minor individual who has been made a dependent ward of the juvenile/family court and whose legal custody has been granted to the local public child welfare agency.

4. Excerpted from the *ADOPTION AND PERMANENCY GUIDELINES: Improving Court Practice in Child Abuse and Neglect Cases*, NCJFCJ, 2000.

- (e) "Adoption" for the purpose of this Agreement, pertains only to public agency adoptions and does not apply to licensed private child placing agencies or independent/private adoptions.

2. Geographic Area

The geographic area to which this Agreement applies is the common boundary between the states of Kansas and Missouri and includes Johnson, Leavenworth, Miami and Wyandotte Counties in Kansas and Cass, Clay, Jackson and Platte Counties in Missouri.

3. Home Studies Completed by Personnel From Other State

- (a) It is recognized that the preparation and completion of a home study is the primary responsibility of the receiving state (refer to Articles I (c) and III of the Compact), but that there are extenuating circumstances that may justify its performance by personnel from the state in which a placement is proposed to originate.
- (b) Personnel who may prepare and complete home studies in the other party state must be professional level employees or contractors of the state government or of a local public agency (excluding student interns and trainees) who prepare home studies within their own jurisdictions as part of their regular employment.
- (c) Personnel from Kansas or Missouri as the case may be, may prepare a home study in the other state only when: (1) there has been court intervention; and (2) an ICPC referral has been sent to the receiving state through regular channels; and (3) one of the following conditions apply to the particular case involved:
 - (i) A court has issued an order embodying a finding that the proposed placement pursuant to ICPC Regulation 7 merits priority placement processing¹⁰; or
 - (ii) The receiving state compact administrator (or designee) informs the sending agency and the sending state compact administrator (or designee) that due to the existence of extenuating circumstances (set forth in the notification), the personnel of the receiving state who would normally prepare the home study are unable to do so within 30 working days.
- (d) In addition to item (c) above, a sending agency may complete the home study for a proposed adoptive placement if an ICPC referral has been submitted through regular channels and if the sending and receiving state ICPC units have given their approval.
- (e) Personnel from the sending state who are qualified to prepare home studies may do so pursuant to this Agreement in the furtherance of interstate cooperation but are not required to do so, except as directed by their own supervisors in their own departments or agencies.

5. ¹⁰ Refer to Appendix C, page 9 for ICPC Regulation 7.

4. Uses of Home Studies

The agency whose employee or contractor has performed a home study pursuant to this Agreement shall submit copies thereof to the receiving state compact administrator (or designee) and to the local public agency that would have completed the home study if not completed pursuant to this Agreement.

If within five working days of its receipt by the local public agency in the receiving state, the receiving state compact administrator (or designee) is not notified by the local public agency that it considers the home study to be inadequate or incorrect, the receiving state compact administrator (or designee) shall consider the home study to have the same standing as a home study completed by the local public agency.

However, before using the home study, the receiving state compact administrator (or designee) shall make a telephone inquiry of the local public agency to ascertain whether the latter has an objection.

The receiving state compact administrator (or designee) may use the home study in making the finding as required by Article III (d) of the Compact and the sending agency may use the home study in deciding whether to make a proposed placement.

5. Supervision

In any case where a placement is allowed by the receiving state compact administrator (or designee) and where the home study used is one completed pursuant to this Agreement, the receiving state shall have full responsibility for supervising the placement as required by the Compact.

6. Limitations

It is expressly understood that if a child has been placed with a caretaker in the receiving state in violation of Article III (d) of the Compact, this Agreement may not be utilized in order to obtain a home study on the placement recipient.

This Agreement applies only to the preparation and completion of home studies.

The completion of a home study pursuant to this Agreement shall be for a specific child (or children). Unless the worker has identified specific child(ren) and proposed placement recipients(s), this Agreement cannot be utilized in order for a home study to be completed by a worker in the sending state.

During the time a worker is preparing and completing a home study pursuant to this Agreement, the worker must be under the direct supervision of a supervisor who is familiar with the preparation of home studies.

The worker who prepares the home study must sign his/her name at the bottom of the home study and enter the date the home study was completed. The home study will be incomplete unless it is signed and dated by the worker who prepared it.

If required by local policy, the worker's immediate supervisor shall also sign and date the home study as a means of documentation that the home study was reviewed and approved by the supervisor.

After the home study has been reviewed by the agency in the receiving state, the name, title and address of the supervisor who reviewed the home study must be added to the document and the supervisor who reviewed the home study must sign his/her name to the home study and enter the date of the home study review.

7. Scope of Employment

A person engaged in the preparation of a home study pursuant to this Agreement shall be deemed to be so engaged in the course and within the scope of his/her regular employment duties.

8. Costs

It is understood that the parties to this Agreement will not charge each other fees, either directly or indirectly, for home studies completed under the auspices of this Agreement.

9. Termination

This Agreement may be terminated by 60 days notice given in writing by either party to the other. However, any home studies in progress on the date of termination may be completed and any placement procedure pending on such termination date may continue with the same effect as though the termination has not occurred.

10. Effective Date of This Agreement

This Agreement shall become effective January 1, 1999, and shall remain in effect until termination as specified in item 9 above.

Joyce Allegrucci
Commissioner
Commission of Children and Family Services
State of Kansas

Carmen K. Schulze
Director
Division of Family Services
State of Missouri

**APPENDIX P: THE INTERSTATE COMPACT ON
ADOPTION AND MEDICAL ASSISTANCE (ICAMA)**

**ASSOCIATION OF ADMINISTRATORS OF THE INTERSTATE
COMPACT ON ADOPTION AND MEDICAL ASSISTANCE**

MEMBER STATES

ALASKA	MISSISSIPPI
ALABAMA	MISSOURI
ARIZONA	MONTANA
ARKANSAS	NEBRASKA
CALIFORNIA	NEVADA
COLORADO	NEW HAMPSHIRE
CONNECTICUT	NEW MEXICO
DELAWARE	NORTH DAKOTA
GEORGIA	NORTH CAROLINA
HAWAII	OHIO
IDAHO	OKLAHOMA
ILLINOIS	OREGON
INDIANA	RHODE ISLAND
IOWA	SOUTH CAROLINA
KANSAS	SOUTH DAKOTA
KENTUCKY	TEXAS
LOUISIANA	UTAH
MAINE	VIRGINIA
MARYLAND	WASHINGTON
MASSACHUSETTS	WEST VIRGINIA
MINNESOTA	WISCONSIN

As of June 2001, the District of Columbia, New Jersey, and Tennessee passed legislation allowing for joinder in ICAMA. Florida, Michigan, Pennsylvania, and Vermont have submitted legislation enabling joinder. New York and Wyoming are not currently pursuing joinder.

COBRA OPTION/RECIPROCITY AS OF MARCH 2001

STATE	COBRA OPTION	RECIPROCITY	COMMENTS
Alabama	Yes	Yes	Reciprocity with ICAMA member states only
Alaska	Yes	Yes	Reciprocity with all states
Arizona	Yes	No	
Arkansas	Yes	Yes	Reciprocity with all states
California	Yes	Yes	Reciprocity with all states
Colorado	Yes	Yes	Reciprocity with all states
Connecticut	No	*	*Effective October 1, 2000 DCG will use the DO2 state funded medical coverage group to provide health insurance for any child with special needs as determined under section 473c for whom there is in effect an adoption assistance agreement between a state and an adoptive parent(s).
Delaware	Yes	Yes	Reciprocity with all states
District of Columbia	Yes	No	Will have reciprocity upon executing joinder in ICAMA this year
Florida	Yes	No	
Georgia	Yes	Yes	Reciprocity with all states
Hawaii	Yes	No	
Idaho	Yes	Yes	Reciprocity with all states
Illinois	No	No	
Indiana	Yes	Yes	Reciprocity with all states
Iowa	Yes	No	Actively working towards obtaining a policy of reciprocity
Kansas	Yes	Yes	Reciprocity with all states
Kentucky	Yes	Yes	Reciprocity with ICAMA member states only
Louisiana	Yes	Yes	Reciprocity with all states
Maine	Yes	Yes	Reciprocity with ICAMA member states only
Maryland	Yes	Yes	Reciprocity with all states
Massachusetts	Yes	Yes	Reciprocity with all states
Michigan	No	No	
Minnesota	Yes	Yes	Reciprocity with all states
Mississippi	Yes	Yes	Reciprocity with all states

Missouri	Yes	Yes	Reciprocity with all states
Montana	Yes	Yes	Reciprocity with ICAMA member states only
Nebraska	Yes	No	Actively working towards obtaining a policy of reciprocity
Nevada	Yes	No	Actively working towards obtaining a policy of reciprocity
New Hampshire	Yes	No	
New Jersey	Yes	No	Will have reciprocity upon executing joinder in ICAMA this year
New Mexico	No	No	
New York	Yes	No	
North Carolina	Yes	Yes	Reciprocity with ICAMA member states only
North Dakota	Yes	Yes	Reciprocity with ICAMA member states only
Ohio	Yes	Yes	Reciprocity with all states
Oklahoma	Yes	Yes	Reciprocity with all states
Oregon	Yes	Yes	Reciprocity will all states
Pennsylvania	Yes	No	
Puerto Rico	Yes	No	Actively working towards obtaining a policy of reciprocity
Rhode Island	Yes	Yes	Reciprocity with ICAMA member states only
South Carolina	Yes	Yes	Reciprocity with all states
South Dakota	Yes	Yes	Reciprocity with all states
Tennessee	Yes	No	
Texas	Yes	Yes	Reciprocity with all states
Utah	Yes	Yes	Reciprocity with ICAMA member states only
Vermont	Yes	Yes	Reciprocity with all states
Virginia	Yes	Yes	Reciprocity with ICAMA member states only
Washington	Yes	Yes	Reciprocity with all states
West Virginia	Yes	Yes	Reciprocity with all states
Wisconsin	Yes	Yes	Reciprocity with all states
Wyoming	Yes	Yes	Reciprocity with all states

INTERSTATE COMPACT ON ADOPTION AND MEDICAL ASSISTANCE

ARTICLE I. FINDINGS

The states which are parties to this Compact find that:

(a) In order to obtain adoptive families for children with special needs, states must assure prospective adoptive parents of substantial assistance (usually on a continuing basis) in meeting the high costs of supporting and providing for the special needs and the services required by such children.

(b) The states have a fundamental interest in promoting adoption for children with special needs because the care, emotional stability, and general support and encouragement required by such children can be best, and often only, obtained in family homes with a normal parent-child relationship.

(c) The states obtain fiscal advantages from providing adoption assistance because the alternative is for the states to bear the higher cost of meeting all the needs of children while in foster care.

(d) The necessary assurances of adoption assistance for children with special needs, in those instances where children and adoptive parents live in states other than the one undertaking to provide the assistance, include the establishment and maintenance of suitable substantive guarantees and workable procedures for interstate cooperation and payments to assist with the necessary costs of child maintenance, the procurement of services, and the provision of medical assistance.

ARTICLE II. PURPOSES

The purposes of this Compact are to:

(a) Strengthen protections for the interests of children with special needs on behalf of whom adoption assistance is committed to be paid, when such children are in or move to states other than the one committed to provide adoption assistance.

(b) Provide substantive assurances and operating procedures which will promote the delivery of medical and other services to children on an interstate basis through programs of adoption assistance established by the laws of the states which are parties to this Compact.

ARTICLE III. DEFINITIONS

As used in this Compact, unless the context clearly requires a different construction:

(a) "Child with special needs" means a minor who has not yet attained the age at which the state normally discontinues children's services, or a child who has not yet reached the age of 21 where the state determines that the child's mental or physical handicaps warrant the continuation of assistance beyond the age of majority, for whom the state has determined the following:

(1) That the child cannot or should not be returned to the home of his or her parents;

(2) That there exists with respect to the child a specific factor or condition (such as his ethnic background, age, or membership in a minority or sibling group, or the presence of factors such as medical condition or physical, mental, or emotional handicaps) because of which it is reasonable to conclude that such child cannot be placed with adoptive parents without providing adoption assistance;

(3) That, except where it would be against the best interests of the child because of such factors as the existence of significant emotional ties with prospective adoptive parents while in their care as a foster child, a reasonable but unsuccessful effort has been made to place the child with appropriate adoptive parents without providing adoption assistance.

(b) "Adoption assistance" means the payment or payments for the maintenance of a child which are made or committed to be made pursuant to the adoption assistance program established by the laws of a party state.

(c) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or a Territory or Possession of the United States.

(d) "Adoption assistance state" means the state that is signatory to an adoption assistance agreement in a particular case.

(e) "Residence state" means the state in which the child is a resident by virtue of the residence of the adoptive parents.

(f) "Parents" means either the singular or plural of the word "parent".

ARTICLE IV. ADOPTION ASSISTANCE

(a) Each state shall determine the amounts of adoption assistance and other aid which it will give to children with special needs and their adoptive parents in accordance with its own laws and programs. The adoption assistance and other aid may be made subject to periodic reevaluation of eligibility by the adoption assistance state in accordance with its laws.

(b) The adoption assistance, medical assistance, and other services and benefits to which this Compact applies are those provided to children with special needs and their adoptive parents from the effective date of the adoption assistance agreement.

(c) Every case of adoption assistance shall include a written adoption assistance agreement between the adoptive parents and the appropriate agency of the state undertaking to provide the adoption assistance. Every such agreement shall contain provisions for the fixing of actual or potential interstate aspects of the assistance so provided as follows:

(1) An express commitment that the assistance so provided shall be payable without regard for the state of residence of the adoptive parents, both at the outset of the agreement period and at all times during its continuance;

(2) A provision setting forth with particularity the types of care and services toward which the adoption assistance state will make payments;

(3) A commitment to make medical assistance available to the child in accordance with Article V of this Compact;

(4) An express declaration that the agreement is for the benefit of the child, the adoptive parents and the state and that it is enforceable by any or all of them; and

(5) The date or dates upon which each payment or other benefit provided thereunder is to commence, but in no event prior to the effective date of the adoption assistance agreement.

(d) Any services or benefits provided for a child by the residence state and the adoption assistance state may be facilitated by the party states on each other's behalf. To this end, the personnel of the child welfare agencies of the party states will assist each other, as well as the beneficiaries of adoption assistance agreements, in assuring prompt and full access to all benefits expressly included in such agreements. It is further recognized and agreed that, in general, all children to whom adoption assistance agreements apply will be eligible for benefits under the child welfare, education, rehabilitation, mental health, and other programs of their state of residence on the same basis as other resident children.

(e) Adoption assistance payments on behalf of a child in another state shall be made on the same basis and in the same amounts as they would be made if the child were living in the state making the payments, except that the laws of the adoption assistance state may provide for the payment of higher amounts.

ARTICLE V. MEDICAL ASSISTANCE

(a) Children for whom a party state is committed, in accordance with the terms of an adoption assistance agreement to provide federally aided medical assistance under Title XIX of the Social Security Act, are eligible for such medical assistance during the entire period for which the agreement is in effect. Upon application therefor, the adoptive parents of a child who is the subject of such an adoption assistance agreement shall receive a medical assistance identification document made out in the child's name. The identification shall be issued by the medical assistance program of the residence state and shall entitle the child to the same benefits

pursuant to the same procedures, as any other child who is covered by the medical assistance program in the state, whether or not the adoptive parents are themselves eligible for medical assistance.

(b) The identification document shall bear no indication that an adoption assistance agreement with another state is the basis for its issuance. However, if the identification is issued pursuant to such an adoption assistance agreement, the records of the issuing state and the adoption assistance state shall show the fact, and shall contain a copy of the adoption assistance agreement and any amendment or replacement thereof, as well as all other pertinent information. The adoption assistance and medical assistance programs of the adoption assistance state shall be notified of the issuance of such identification.

(c) A state which has issued a medical assistance identification document pursuant to this Compact, which identification is valid and currently in force, shall accept, process and pay medical assistance claims thereon as it would with any other medical assistance claims by eligible residents.

(d) The federally aided medical assistance provided by a party state pursuant to this Compact shall be in accordance with paragraphs (a) through (c) of this Article. In addition, when a child who is covered by an adoption assistance agreement is living in another party state, payment or reimbursement for any medical services and benefits specified under the terms of the adoption assistance agreement, which are not available to the child under the Title XIX medical assistance program of the residence state, shall be made by the adoption assistance state as required by its law. Any payments so provided shall be of the same kind and at the same rates as provided for children who are living in the adoption assistance state. However, where the payment rate authorized for a covered service under the medical assistance program of the adoption assistance state exceeds the rate authorized by the residence state for that service, the adoption assistance state shall not be required to pay the additional amounts for the services or benefits covered by the residence state.

(e) A child referred to in paragraph (a) of this Article, whose residence is changed from one party state to another party state shall be eligible for federally aided medical assistance under the medical assistance program of the new state of residence.

ARTICLE VI. COMPACT ADMINISTRATION

(a) In accordance with its own laws and procedures, each state which is a party to this Compact shall designate a Compact Administrator and such Deputy Compact Administrators as it deems necessary. The Compact Administrator shall coordinate all activities under this Compact within his or her state. The Compact Administrator shall also be the principal contact for officials and agencies within and without the state for the facilitation of interstate relations involving this Compact and the protection of benefits and services provided pursuant thereto. In this capacity, the Compact Administrator will be responsible for assisting child welfare agency personnel from other party states and adoptive families receiving adoption and medical assistance on an interstate basis.

(b) Acting jointly, the Compact Administrators shall develop uniform forms and administrative procedures for the interstate monitoring and delivery of adoption and medical assistance benefits and services pursuant to this Compact. The forms and procedures so developed may deal with such matters as:

- (1) Documentation of continuing adoption assistance eligibility;
- (2) Interstate payments and reimbursements; and
- (3) Any and all other matters arising pursuant to this Compact.

(c) (1) Some or all of the parties to this Compact may enter into supplementary agreements for the provision of or payment for additional medical benefits and services, as provided in Article V(d); for interstate service delivery, pursuant to Article IV(d); or for matters related thereto. Such agreements shall not be inconsistent with this Compact, nor shall they relieve the party states of any obligation to provide adoption and medical assistance in accordance with applicable state and federal law and the terms of this Compact.

(2) Administrative procedures or forms implementing the supplementary agreements referred to in paragraph (c) (1) of this Article may be developed by joint action of the Compact Administrators of those states which are party to such supplementary agreements.

(d) It shall be the responsibility of the Compact administrator to ascertain whether and to what extent additional legislation may be necessary in his or her own state to carry out the provisions of this Article IV or any supplementary agreements pursuant to this Compact.

ARTICLE VII. JOINDER AND WITHDRAWAL

(a) This Compact shall be open to joinder by any state. It shall enter into force as to a state when its duly constituted and empowered authority has executed it.

(b) In order that the provisions of this Compact may be accessible to and known by the general public, and so that they may be implemented as law in each of the party states, the authority which has executed the Compact in each party state shall cause the full text of the Compact and notice of its execution to be published in his or her state. The executing authority in any party state shall also provide copies of the Compact upon request.

(c) Withdrawal from this Compact shall be by written notice, sent by the authority which executed it, to the appropriate officials of all other party states, but no such notice shall take effect until one year after it is given in accordance with the requirements of this paragraph.

(d) All adoption assistance agreements outstanding and to which a party state is a signatory at the time when its withdrawal from this Compact takes effect shall continue to have the effects given to them pursuant to this Compact until they expire or are terminated in accordance with their provisions. Until such expiration or termination, all beneficiaries of the

agreements involved shall continue to have all rights and obligations conferred or imposed by this Compact, and the withdrawing state shall continue to administer the Compact to the extent necessary to accord and implement fully the rights and protections preserved hereby.

ARTICLE VIII. CONSTRUCTION AND SEVERABILITY

The provisions of this Compact shall be liberally construed to effectuate the purposes thereof. The provisions of this Compact shall be severable, and if any phrase, clause, sentence, or provision of this Compact is declared to be contrary to the Constitution of the United States or of any party state, or where the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this Compact shall be held contrary to the Constitution of any state party thereto, the Compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

APPENDIX Q: RESOURCES

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