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Interstate Compact on the Placement of Children: ICPC

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Summary

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Interstate Compact on the Placement of Children: ICPC

Introduction

The Interstate Compact on the Placement of Children (“ICPC”)¹ provides a uniform legal framework for the placement of children across State lines in foster homes and/or adoptive homes. At the present time, all fifty States, the District of Columbia, and the Virgin Islands have enacted the provisions of the ICPC in their individual laws. In general, State laws govern child placements, and certain differences exist among the various State laws; however the ICPC provides uniformity and the legal structure for the interstate placement of children for adoption or for foster care. In recent years, the role of the ICPC in interstate placements has increased in importance because of demographic changes in American society, the growing need to find appropriate homes for children in jurisdictions other

than in their home jurisdiction, and the transience of current daily life.² The chief function of the ICPC is to protect the interests of children and of the States by requiring that certain procedures be followed in the making and the maintenance of interstate child placements. The ICPC provides various safeguards for children and the States, including: uniformity of placement practices which promotes economy and efficiency; oversight of the children in interstate placement so that placed children do not become “lost;” and prevention of the “dumping” of unwanted children by one State into another State. Prior to an interstate placement of a child, the ICPC requires the execution of an agreement between both participating States—the sending State and the receiving State. The receiving State must undertake a study of the proposed placement and notify the appropriate person in the sending State that the placement “does not appear to be contrary to the interests of the child.”³ Only after this study is completed and this determination of the child’s interests is made, may the child be sent or brought into the receiving State.

1

Secretariat to the Association of Administrators of the Interstate Compact on the Placement of Children, Guide to the Interstate Compact on the Placement of Children 9-12 (2001)(Cited to afterward as “ICPC.”) Copy in Appendix.

2

For example, it is not uncommon for a birth mother to reside in one jurisdiction, for her to give birth in a second jurisdiction, and for the prospective foster or adoptive parents to reside in a third jurisdiction. In addition, the legal concept of “family” has expanded beyond its traditional definition in some jurisdictions.

3

ICPC, Art. III (d). Article III (d) does not state “best interests” of the child.

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The Keeping Children and Families Safe Act of 2003,⁴ which President Bush signed into law on June 25, 2003, includes provisions on interjurisdictional adoptions. The law amends the Adoption Opportunities Program established under the Child Abuse Prevention and Treatment and Action Reform Act of 1978⁵ and authorizes certain grants for projects that seek to eliminate the barriers to adoptions across jurisdictional boundaries. It also requires the Secretary of Health and Human Services to submit to Congress a report containing recommendations for an action plan to facilitate the interjurisdictional adoption of foster children. This report examines the legal background of the ICPC, provides a section-by-section summary of the ICPC and its regulations, examines the implementation of the ICPC, considers various issues which have arisen through the operation of the ICPC, and examines studies which have been undertaken on the ICPC and its effectiveness. The limited role of the federal government with respect to the ICPC is examined, along with a new federal law intended to better facilitate interjurisdictional adoptions.

Background

An interstate compact is a binding contract between the party States and also is a statute enacted by the legislature of each party State.⁶ The Framers of the Constitution provided for the authorization of these agreements in the “compact clause.” This clause provides that “No State shall, without the Consent of Congress, ... enter into any Agreement or Compact with another State, or with a foreign power...”⁷ The requirement that Congress must consent to such a compact has been held applicable only to those compacts which encroach upon specific federal powers.⁸ Therefore, compacts which do not expand State powers, such as those compacts concerning traditional State matters, do not require the approval of Congress.⁹ The ICPC—which dealt with child welfare and child placement--

concerns

a traditional State matter, and did not require congressional approval, as it did not expand the existing and traditional authority of the States.¹⁰

4

Pub. L. 108-36 (June 25, 2003).

5

Pub.L. 95-266, 92 Stat. 208 (Apr. 24, 1978), codified at 42 U.S.C. § 5111.

6

F. Zimmerman & M. Wendell, *The Law of Interstate Compacts*, 1, 2 (1976).

7

U.S. Const. art. I, § 10, cl. 3.

8

Virginia v. Tennessee, 148 U.S. 503, 519 (1893).

9

Since the beginning of the twentieth century, the interstate compact has been used as an instrument for State cooperation in implementing affirmative programs for the solution of common problems.

10

The ICPC provides that the government of Canada or a Canadian province may join the ICPC with the consent of Congress (ICPC, art. IX). At the current time, congressional approval has not been sought for Canadian participation.

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Problems associated with interstate child placement have existed for many years. In the 1950's a group of East Coast social service administrators met to informally study the issues of children moved out of State for foster care and/or adoption. The group focused on the failure of existing child importation and

exportation statutes enacted by the individual States to provide adequate protection for children.¹¹ Their study centered on two issues: 1) a State's jurisdiction ended at its borders; and 2) a State could only compel an out-of-state agency or individual to discharge its obligations toward a child through a compact. There was also concern that a State to which a child was sent did not have to provide supportive services, even though it might agree to do so on a courtesy basis. In response to these problems, the ICPC was drafted under the auspices of the New York State Legislative Committee on Interstate Cooperation and was approved by a twelve-State conference in 1960. New York was the first State to enact the ICPC in 1960.¹² Since then, all States, the District of Columbia, and the Virgin Islands have adopted the provisions of the ICPC.¹³

11

Secretariat to the Association of Administrators of the Interstate Compact on the Placement of Children, *Guide to the Interstate Compact on the Placement of Children 1* (2001)(cited afterward as "Guide").

12

Id. See also Harold Hagen, *The Interstate Compact on the Placement of Children, Child Welfare* 12 (Dec. 1960).

13

Citations to the ICPC in all jurisdictions: Ala. Code §§ 44-2-20 to 44-2-26 (1991); Alaska Stat. §§ 47.70.010 to 47.70.080 (Michie 2000); Ariz. Rev. Stat. §§ 8-548 to 8-548.06 (West 1999); Ark. Code Ann. §§ 9-29-201 to 9-29-208 (2002); Cal. Family Code §§ 7900 to 7912 (West 2003); Colo Rev. Stat. Ann. §§ 24-26-2802 to 24-26-1803; § 26-6-104(5)(West 2002); Conn. Gen. Stat. Ann. § 17a-175 to 17a-182 (West 1998); 31 Del. Code Ann. §§ 381 to 389 (1988); D.C. Code Ann. §§ 4-1421 to 4-1424 (2001); Fla. Stat. Ann. §§ 409.401 to 409.405

(West 1998); Ga. Code Ann. §§ 39-4-1 to 39-4-10 (1995); Haw. Rev. Stat. Ann. §§ 350E-1 to 350 E-9 (Michie 1999); Idaho Code §§ 16-2101 to 16-2107 (Michie 1979); 45 Ill. Comp. Stat. Ann. §§ 15/0.01 to 15/9 (West 1993); Ind. Code Ann. §§ 12-17-8-1 to 12-17-8-8 (Michie 1997); Iowa Code Ann. §§ 232.158 to 232.168 (West 2000); Kan. Stat. Ann. §§ 381201 to 38-1206 (2000); Ky. Rev. Stat. §§ 615.030 to 615.050; § 615.990 (Michie 1996); La. Rev. Stat. Ann. Ch.C. §§ 1608 to 1622 (West 1995); 22 Me. Rev. Stat. Ann. §§ 4191 to 4247 (West 1992); Md. Code Ann., Fam. Law §§ 50601 to 50611 (1999); Mass. Gen. Laws Ann. ch. 119 App., §§ 2-1 to 2-8 (West 1993); Mich. Comp. Laws Ann. §§ 3.711 to 3.717 (West 1994); Minn. Stat. Ann. §§ 260.851 to 260.91 (West 2003); Miss. Code Ann. §§ 4318-1 to 43-18-17 (1999); Mo. Ann. Stat. §§ 210.620 to 210.640 (West 1996); Mont. Code Ann. §§ 41-4-101 to 41-4-109 (2001); Neb. Rev. Stat. §§ 43-11-1 to 43-11-2 (1998); Nev. Rev. Stat. Ann. §§ 127.320 to 127.350 (Michie 1998); N.H. Rev. Stat. Ann. §§ 170-A:1 to 170-A:6 (1994); N.J. Stat. Ann. §§ 32A-11-1 to 32A-11-7 (Michie 2001); N.M. Stat. Ann. §§ 32A-11-1 to 32A-11-7 (Michie 2001); N.Y. Social Services Law § 374-a (McKinney 2003); N.C. Gen. Stat. §§ 7B-3800 to 7B-3806 (1999); N.D. Century Code §§ 14-13-01 to 14-13-08 (1997); Ohio Rev. Code Ann. §§ 5103.20 to 5103.28 (Anderson 2000); 10 Okla. Stat. Ann. §§ 571 to 576 (West 1998); Or. Rev. Stat. §§ 417.200 to 417.260 (1999); 1996 Pa. Legis. Service, 62 P.S. §§ 761 to 765 (West); R.I. Gen. Laws §§ 40-15-1 to 40-15-10 (1997); S.C. Code §§ 20-7-.... to 20-7-.... (Law. Co-op. 1985); S.D. Codified Laws §§ 26-13-1 to 26-13-9 (Michie 1999); Tenn. Code Ann. §§ 37-4-201 to 37-4-207 (1996); Tex. Fam. Code Ann. §§ 162.101 to 162.107 (Vernon 2002); Utah Code Ann. §§ 62A-4a-701 to 62A-4a-709 (2000); 33 Vt. Stat. Ann. §§ 5901 to 5927 (2001); 34 V.I. Code Ann. §§ 121 to 127 (1994); Va. Code Ann. §§ 63.1-219.1 to 63.1-219.5 (Michie 1995); Wash. Rev. Code (continued...)

Summary of the Provisions of the ICPC

Suggested legislation for the implementation of the ICPC was proposed by the ICPC drafters, and was adopted by the party States in substantially similar form. The ICPC text is divided into ten articles, and this text has also been enacted in nearly identical form by the member States.¹⁴ The ICPC defines the types of placements and the placing individuals or entities who are subject to the law; the procedures to be followed in making an interstate placement; and the specific protections, services, and requirements brought about by the enactment of the law. The ICPC requires prospective, rather than retrospective compliance. Hence, the ICPC requires that its procedures be followed in sequential order, so as to obtain the receiving State's permission for placement, prior to the child being sent by the sending State to the receiving State.

Article I—Purpose and Policy

Article I of the ICPC sets forth the purpose and policy of the ICPC. The statement of purpose provides that the ICPC was drafted to accomplish four objectives: 1) each child receives maximum opportunity for placement in suitable care; 2) the receiving State is fully informed of the placement circumstances and requirements; 3) the sending State has all information necessary to evaluate a possible placement; and 4) the jurisdictional responsibilities of both the sending State and the receiving State are made clear. The first purpose responds to a problem when there is a shortage of appropriate placements for children in a particular State. This purpose requires the maximization of opportunity for desirable placements--by removing limitations usually imposed by State boundaries--hence, expanding the range of available placements. By expanding the range of placements, a child welfare administrator is not restricted by State boundary lines in locating a desirable placement for a child. The second and third purposes respond to the need to have adequate knowledge

in order to review a proposed interstate placement prior to the placement occurring.

Problems may arise when a child is placed in a State without the prior knowledge of that State's child welfare authorities and the courts—those bodies which are ultimately responsible for the well being of the child.

The final purpose concerns issues related to jurisdictional conflicts regarding the supervision of and financial responsibility for interstate placements. These problems

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(...continued)

Ann. §§ 26.34010 to 26.34080 (West 1997); W.Va. Code Ann. §§ 49-2A-1 to 49-2A-2

(Michie 2001); Wisc. Stat. Ann. §§ 48.988 to 48.989 (West 1997); Wyo. Stat. Ann. §§ 14-5101 to 14-5-108 (Michie 2001).

14

Id.

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involve the possible loss of jurisdiction over a child placed out-of-state, the inability to supervise an out-of-state placement, and the risk of shifting the financial responsibility to the receiving State.

Article II—Definitions

Four key definitions are provided by Article II—child, sending agency, receiving State, and placement:

“Child” is defined as a person, who by reason of his or her minority, is legally subject to parental guardianship or similar control.

The “sending agency” is defined as a party State, officer or employee; 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.

A “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 authorities or for placement with private agencies or persons.

A “placement” is defined as the arrangement for the care of a child in a family free home, or boarding home, or in a child-care agency or institution.¹⁵ It does not include any institution caring for the mentally ill, mentally defective, or epileptic, or any institution primarily educational in character, or any hospital or other medical facility.

Article III—Conditions for Placement

This article sets out four general requirements for a valid placement.

Paragraph

(a) prohibits a sending agency from sending, bringing, or causing to be sent or brought into any party State any child for placement in foster care or as a preliminary step to a possible adoption, unless the provisions of Article III and the placement laws of the receiving State are met.

Paragraph (b) requires that a sending agency must provide written notice of the proposed placement to the receiving State. This written notice is required to include identifying information about the child, the child’s parents or guardians, and the person, agency, or institution with whom the child is to be placed. This notice must contain a statement of reasons for the proposed placement and evidence of the authority pursuant to which the placement is proposed to be made.

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The term “family free” home is not defined in the ICPC. However, the term is defined in Regulation No. 3; “family free or boarding home” 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.

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Paragraph (c) provides that an appropriate officer of the sending State, agency of the sending State, or the sending agency itself may be required to provide any additional information requested by the receiving State.

Paragraph (d) provides that the child shall not be sent, brought, or caused to be sent or brought into the receiving State until the receiving State notifies the sending agency in writing that the proposed placement does not appear to be contrary to the interests of the child.

Article IV—Penalty for Illegal Placement

Two types of penalties for a placement made in violation of the ICPC are provided for in Article IV. The violation of the ICPC is treated as a violation of the child placement laws of both the sending and the receiving States and may be punished as such in either State. The ICPC violation is considered to constitute grounds for the suspension or revocation of a license to place or to care for children.

Article V—Retention of Jurisdiction

Paragraph (a) states that the jurisdiction over a child placed in another State is retained by the sending agency to direct the child's custody and care. The sending agency holds the same degree of control over, and responsibility for, the child as if the child had remained in the sending agency's State. The sending agency remains financially responsible for the support and maintenance of the child during the period of placement. Paragraph (a) sets out an exception to the retention of jurisdiction by the sending agency when a child commits a crime or a delinquent act in the receiving State. The receiving State has jurisdiction sufficient to deal with the act of the delinquency or the crime.

Paragraph (b) provides that when the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving State providing for the performance of one or more services concerning the case by serving as an agent for the sending agency.

Paragraph (c) states that nothing in the ICPC shall be construed to prevent a private charitable agency authorized to place children in the receiving State from

performing services or acting as agents in that State for a private charitable agency of the sending State. Nor shall the ICPC prevent the agency in the receiving State from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set out in paragraph (a) above.

Article VI—Institutional Care of Delinquent Children

Article VI provides for the placement of a child adjudicated delinquent in an institution in another State pursuant to the ICPC. No 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 the child being sent to the other jurisdiction for institutional care.

In addition, the court must determine that: 1) equivalent facilities for the child are not

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available in the sending agency's jurisdiction; and 2) the institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

Article VII--Compact Administrator

Article VII provides that the Governor of each State (or the executive of the jurisdiction) must designate an officer of the State to serve as a compact administrator to coordinate ICPC activities. In addition, the administrator, acting with other compact administrators, has the authority to promulgate rules and regulations to implement the ICPC.

Article VIII--Limitations

The ICPC applicability is limited by two provisions in this article. Paragraph (a) exempts placements made by a close relative (parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt) or the guardian, and leaving the child with any of these same close relatives or non-agency guardian in the receiving State.

Paragraph (b) exempts placements made pursuant to another interstate compact or similar agreement between the States.

Article IX—Enactment and Withdrawal

This article provides that the ICPC may be joined 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.” In most instances, the ICPC may be joined by the enactment of its provisions into State law.

Article IX provides for the withdrawal from the ICPC by the enactment of a State statute. Such a withdrawal cannot take effect for two years following the enactment. Notice of the withdrawal must be given to all of the other party States.

The withdrawal of a party State shall not affect the rights, duties, and obligations under the ICPC of any sending agency with respect to a placement made prior to the effective date of the withdrawal.¹⁶

Article X—Construction and Severability

Article X requires the liberal construction and the severability of the ICPC provisions. If the ICPC is held contrary to the constitution of any party State, 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.

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Since the compact was created, no party State has attempted to withdraw from the ICPC.

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The ICPC Regulations

At the present time there are ten ICPC Regulations (“Regulations”) which are summarized below.¹⁷ Article VII of the ICPC vests the executive head of each jurisdiction that is party to the ICPC with the authority to act jointly with the other party jurisdictions in order to promulgate rules and regulations. The Regulations are developed by the Association of Administrators of Interstate Compact of the Placement of Children (“AAICPC”) and the ICPC Secretariat, discussed below. It appears that the member jurisdictions give the Regulations the force of State law.

While the ICPC model has remained unchanged through the years, 18 various changes and modifications have been made to the Regulations which have been modified to reflect changing societal needs--such as the need for expedited placement processing. These modifications are summarized below.

Regulation No. 0.01--Forms. Regulation 0.01 deals with the uniformity and the availability of the various forms required for ICPC placements. The Regulation lists and describes the various forms and their uses. The amended Regulation was approved on May 2, 2001 and became effective on July 2, 2001.

Regulation No. 1--Conversion of Intrastate Placement into Interstate Placement; Relocation of Family Units. This Regulation concerns situations when an intrastate placement becomes an interstate placement. The appropriate forms and procedures are specified. The documentation needed for prompt handling is set out in the Regulations. It is made clear that the Regulation does not alter the receiving State's supervision and report on the placement.

Within thirty days of being notified by the sending State or by the custodian(s) from the sending State¹⁹ 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 the applicable laws and requirements of the receiving State.

Regulation 1 became effective in May 1973 and was repealed and replaced at the 1999 AAICPC annual meeting.

Regulation No. 2--Repealed. This regulation related to certain programs in which children could be placed in family homes in order to permit their attendance

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Regulation No. 2 was repealed in 1999. A copy of the Regulations is attached in the Appendix to this report.

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It should be noted that individual States may have made modifications to the model language in the enactment and possible subsequent amendment of the ICPC into their State

codes.

19

The regulation does not specifically define “custodian.” However, subsection (d) states that 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. It may be presumed that the “custodian” is a foster and/or adoptive parent or an agent of the sending State.

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at local public schools. The regulation was repealed by action taken at the 1999

AAICPC annual meeting.

Regulation No. 3—Placements with Parents, Relatives, Non-Agency Guardians, and Non-family Settings. This Regulation provides specific definitions for several key terms: placement; conditions for placement; guardian and non-agency guardian; family free or boarding home; and foster care. This Regulation also provides specific instances when the ICPC does not apply: to certain child placements involving close relatives or guardians or when a court transfers the child to a non-custodial parent under certain circumstances. Certain instances of placement which require ICPC compliance are set out, such as when a child is placed with any entity not included in the definition of placement as specified in Article II (d) of the ICPC.

Regulation No. 4—Residential Placement. This Regulation deals with determining whether the sending/bringing of a child to another State is exempt from the ICPC by reason of the exemption provided for various institutions. The Regulation provides various definitions for determining whether the placement is exempt: primarily educational institution; hospital or other medical facility; institution for the mentally ill or mentally defective; and treatment for a chronic condition.

The Regulation governs the applicability/nonapplicability of the ICPC to certain specific instances: short-term treatment for an acute condition; treatment of a chronic condition; placement of minor with a chronic mental or behavioral condition

into a facility with treatment programs; placement in a treatment center; out-patient treatment; funding sources for the cost of treatment; and the type of license held by the institution.

Regulation No. 5—Central State Compact Office. This Regulation requires each party State to establish a central State compact office for ICPC matters. The appointment of the coordinators of activities under the ICPC in the individual party States is provided for.

Regulation No. 6—Permission to Place Child: Time Limitations, Reapplication. This Regulation provides that the authority for making a placement is limited to six months, and if placement is not made in that time period, a reapplication must be made. If a reapplication is made by the sending agency, the receiving State must determine whether the child's needs or condition have changed since the initial authorization. The receiving State will deny the placement if it determines that the placement is contrary to the interests of the child.

Regulation No. 7—Priority Placement. Exemptions from the Regulation are set out, such as when the request for placement of the child is for licensed or approved foster family care or adoption. When a court determines that a priority placement of a child from one State to another State is necessary, the court shall sign an order of that finding. Specific time limits are established for the various actions of the court, the sending State Compact Administrator, and the receiving State Compact Administrator. Specific direction is given for the transmission of the application to the receiving State Compact Administrator and this Administrator with

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a specific time period in which to respond. If the receiving State Compact Administrator does not complete the action within the allowed time period, the receiving State is deemed to be out of compliance with the ICPC. The Regulation requires that the court order finding entitlement for priority placement must find one or more of certain circumstances present. These circumstances include when 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 certain other standards are met. Time periods in this regulation may be modified with a written agreement between the court, the sending agency, the receiving State Compact Administrator, and the sending State Compact Administrator. The Regulation requires that State and local agencies are required to process interstate cases—both routine and hardship—as quickly and as efficiently as intrastate cases. An exception is made for certain extraordinary circumstances.

Requirements
are made for the transmittal of documents. Regulation 7 was first effective on October 1, 1996, and was readopted by the AAICPC in April 1999. It was amended at the 2001 AAICPC annual meeting and was effective as of July 2, 2001.

Regulation No. 8—Change of Placement Purpose. Regulation 8 provides that form ICPC-100B is to be used when there is a change of purpose in an existing placement, e.g. from foster care to preadoption, even though the placement recipient may remain the same. The regulation was first effective April 30, 1997 and was readopted at the 1999 AAICPC annual meeting.

Regulation No. 9—Definition of a Visit. This Regulation provides a definition of a visit and distinguishes a visit from a placement. A stay of more than thirty days is considered a placement, except under certain circumstances. If a stay does not have an express termination date, or if the duration is not clear, the stay is to be considered a placement or a proposed placement and not a visit. A visit, as defined by Regulation No. 9, is not subject to the oversight of the ICPC. The Regulation was first adopted as a resolution effective on April 26, 1983. It was promulgated as a Regulation as of April 1999 and was amended at the 2002 AAICPC annual meeting, taking effect after June 27, 2002.

Regulation No. 10—Guardians. This Regulation provides specific definitions for the terms “guardian” and “nonagency guardian.” Except under certain

circumstances, prospective adoptive parents are not considered guardians.

The

Regulation also deals with the effect of guardianship on ICPC placements, the

permanency status of guardianships, and guardian appointed by the parent.

The

Regulation was promulgated in April 1999, amended at the 2002 AAICPC annual

meeting, with the amendments effective after June 27, 2002.

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The Federal Role in the ICPC

The federal government does not administer the ICPC, however, federal law

concerning State foster care policy (Title IV-B and IV-E of the Social Security Act

discussed below) makes specific reference to certain protections for children who are

placed interstate. The law is intended to ensure that State boundary lines are not to

be a barrier to the placement of children in permanent homes.

Title IV-E, Section 475(A) and (C) of the Social Security Act²⁰ mandates that

a case plan prepared for a child placed out of State provide the reasons why this out

of State placement is in the child's best interests.²¹ The continued appropriateness

of such a placement must also be part of the child's required annual permanency

review and plan. The statute also requires that a State that has made an interstate

placement send a caseworker to visit the home or institution where the child is

located at least once every twelve months and to submit a report to the child's home

State evaluating this visit.²²

The Adoption and Safe Families Act, 1997 ("ASFA")²³ addresses interstate child placements relating to adoption. ASFA prohibits States from delaying or

denying a placement for adoption when an approved family is available in another

jurisdiction.²⁴ The States are required to develop plans for the effective use of crossjurisdictional resources to facilitate the timely adoption or the permanent placements

of children.²⁵ If charges or delays in cross-jurisdictional placement are made, the

State must afford an opportunity to review the "promptness" of the

placement.²⁶

States in violation of cross-jurisdictional placement requirements are subject to the withholding of federal funds.²⁷

The ASFA also mandated that the General Accounting Office (GAO) review the operation of interstate child placements and report to Congress on how to improve procedures to facilitate timely adoptions across State boundaries. This report is discussed below.

20

42 U.S.C. § 675(5)(A) and 42 U.S.C. §675(5)(C).

21

Id. § 675(5)(A).

22

Id. § 675(5)(C).

23

Pub.L. 105-89, 111 Stat. 2116, Nov. 19, 1997.

24

42 U.S.C. § 622(b)(12).

25

Id. § 671(a)(23).

26

Id. § 671(a)(15).

27

Id. § 674(d).

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Operations of the ICPC

Administration of the ICPC

The individual state child welfare agencies are the primary administrators of

the ICPC. Individual States establish their own individual program and procedures. As provided by Article VII of the ICPC, each State has a Compact Administrator who oversees the interstate placement process. The Compact Administrators of all the member States are authorized by Article VII to jointly issue rules and regulations.

The Compact Administrator is often the commissioner or the director of the State's social service program. The Deputy Compact Administrator and his/her support staff normally handle the ICPC's day-to-day operations.

The Compact Administrators have established a national organization, the Association of Administrators of the Interstate Compact on the Placement of Children ("AAICPC"). The AAICPC is associated with the American Public Human Services Association which provides a Secretariat to the AAICPC for record keeping

purposes, and for technical and legal support. The Secretariat provides coordinating functions on a national level which include record keeping, dissemination of data, technical assistance, and other duties. The AAICPC issues a Compact Administrator's Manual ("Manual")²⁸ that includes text, regulations, forms and procedures for administering the ICPC. In addition, the Manual provides interpretative materials, opinions, and information concerning individual States and the ICPC.

A significant function of the Secretariat is to provide advisory opinions to ICPC Administrators. These opinions are included in the Manual. While the Secretariat Opinions do not have the force of law, they are sometimes cited by courts as persuasive authority in ICPC issues.²⁹

Child Placements made through the ICPC

After it is determined that there may be an interstate child placement, the relevant ICPC personnel in both the sending State and the receiving State are required to be contacted. While the general wording and application of the ICPC is nearly identical in all jurisdictions, each State has implemented its own requirements.

The requirements of each State may vary depending upon whether it is the sending State or the receiving State. Other variations in State requirements may occur in whether the placement is an agency placement or a private placement (conducted without the use of a social services agency) and whether the placement is for foster care or for adoption.

As the first actual step in the process, the ICPC requires that the prospective sending agency submit a notice of proposed placement in writing to the receiving

28

American Public Human Services Association, *The Compact on the Placement of Children: Compact Administrators' Manual* (2000).

29

H. Gitlin, *Adoptions: An Attorney's Guide to Helping Adoptive Parents* 116 (1987).

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State's administrator. In addition, all States require that this notice is sent to the Administrator in the sending State. The Administrator then forwards it to the receiving State.³⁰ This written notice is completed on form ICPC-100A, the "Interstate Compact on the Placement of Children Request." A social history of the child and a case work plan are also required to be prepared. The completed ICPC100A and the child's social history are forwarded to the prospective receiving State's

Administrator by the sending State's Administrator.

After receiving the form ICPC 100A, the receiving State Administrator will forward the documents to the appropriate entity in the receiving State for further action. Usually the appropriate entity is a local public or private child welfare agency or a residential facility that is being asked to receive the child. The response to any request for placement will vary with the type of the proposed placement.

The response could include a study undertaken by the appropriate official or agency in the receiving State of a prospective adoptive or foster family, or relative home, or a

review by the facility to ascertain whether its program is appropriate for the child's needs.³¹ Following the local agency's evaluation, it prepares a report that includes a recommendation on whether the placement should be made. This recommendation is returned to the Compact Administrator in the receiving State for evaluation. If the local agency's evaluation is positive and the Compact Administrator determined that all of the receiving State's laws and requirements have been met, the placement will be approved. If the local agency recommends against the placement and/or if the Compact Administrator finds that the placement cannot be legally completed, the placement will be denied unless the problems can be resolved. In either event, the Compact Administrator notifies the sending State's ICPC office and forwards copies of the recommendations to the sending agency.³² The recommended processing time for the placement application is six weeks—thirty working days from the date that the receiving State compact office receives the notice of placement until the date that the placement is either approved or denied. However, the referral process may take longer to complete. In recent years, delays in the completion of home studies by the receiving States' local agencies have become a significant problem.³³ It has been reported that at times the receiving State does not complete the home studies for several months. Because of these delays, Regulation No. 7 on Priority Placement, was proposed and was approved on July 2, 2001 with the aim of achieving parity of treatment in fact for interstate and intrastate placements. The chief objective of this regulation was to assure priority handling for hardship cases and for cases which have already been delayed.³⁴

31

Id.

32

Id. at 5.

33

Id.

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Id.

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After the request for placement of the child has been approved by the receiving State, the sending agency and the receiving parties jointly work to arrange details for the actual placement. The final agreements are arranged concerning the payment for the child's care, the type of monitoring of the placement, and the frequency of the supervisory reports that are to be provided to the sending agency. After the completion of all of the plans and agreements, the child is moved to the receiving State. The sending agency then notifies the receiving State of the placement by completing and sending form ICPC-100B, "Interstate Compact on the Placement of Children Report on Child's Placement Status" to the receiving State. The sending agency's responsibility for the child continues until the agency legally terminates the interstate placement. The placement may be terminated: 1) by returning the child to the home State; 2) with the child remaining in the receiving State when the child is legally adopted; 3) when the child becomes self-supporting or reaches the age of majority; or 4) for other reasons with the prior concurrence of the receiving State. The sending agency is required to notify the Administrator of the receiving State of any change in the child's status. Such a change must be reported using form ICPC-100B. Such changes in status could include a termination of the

interstate placement, or a new placement in the receiving State, or a transfer of legal custody.³⁵

Reducing Delays in Interstate Placements—Border State Agreements

Delays in interstate placement remain an issue of concern for the AAICPC.³⁶

A technique which has been developed to attempt to reduce delays and to facilitate

the timely and efficient completion of home studies is the so-called Border State

Agreement. These agreements operate outside of the actual legal structure of the

ICPC, but are consistent with the ICPC requirements.

The underlying premise of the Border State Agreements³⁷ is to permit a local

social worker in the sending State to complete a home study in the receiving State

while the ICPC referral packet is reaching the requisite authorities in the States

involved in a child's case.³⁸ Presumably, this would eliminate duplication of home

study assessments and accelerate the investigative process. The

Agreements usually

contain provisions which permit the local social workers in both States to become

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Id. at 6.

36

Frank Barthel, Interstate Compact on the Placement of Children—Appendix C at 96-97

(cited to afterward as “Barthel”).

37

A Border State Agreement is a written document/contract which permits two adjacent

jurisdictions to cooperate on interstate placements and to streamline and share information

in order to comply more efficiently with the requirements of the ICPC.

38

Barthel at 97.

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involved in the home study process. The goal of such agreements is to streamline the home study process and to reduce delays in interjurisdictional placements.³⁹

Assessment of the ICPC

In 1999, two major studies—one prepared by the General Accounting Office and one prepared by the Office of the Inspector General of the Department of Health and Human Services (“HHS”)—were released concerning the ICPC and its implementation. The findings and recommendations of these studies are summarized below.⁴⁰

GAO Report

In 1998, as mandated by the Adoption and Safe Families Act,⁴¹ the General Accounting Office (“GAO”) undertook a study of the State operation and structure of the ICPC⁴² which focused on three issues: 1) the number of foster children who are available and waiting for an adoptive home to be identified; 2) the actions taken by State and county child welfare agencies and nonprofit organizations to improve the adoption process where prospective adoptive families and foster children live in different jurisdictions, and 3) the actions taken by the federal government to improve the adoption process where prospective adoptive families and foster children live in different jurisdictions.

The GAO Report focused on the actual operation of the ICPC and outlined the various procedures and provisions. One of the major findings of the study was that there were relatively few foster children available and waiting for adoptive homes; rather, most of the foster children waiting for adoption were those who were considered most difficult to place (e.g., older children, children with physical and/or emotional challenges, children to be placed with other siblings, etc.).⁴³ It was theorized that reaching across jurisdictional lines for an adoptive family for these difficult to place children might improve the possibility that a foster child

could be
matched with an appropriate family for eventual adoption. The GAO Report
concluded that the interjurisdictional adoption process is longer and more
intricate
than the adoption process within a single jurisdiction. Hence, the Report
concluded
that the opportunities for a successful conclusion from interjurisdictional
searches for
adoptive families were dependent on the interjurisdictional placement
process itself.

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At this time, it is uncertain how many jurisdictions maintain "Border State
Agreements,"
and it is also unclear as to how successfully these Agreements operate.

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However, it should be noted that these findings were made several years
ago and may have
diminished relevance in 2003.

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See note 24.

42

Foster Care: HHS Could Better Facilitate the Interjurisdictional Adoption
Process (GAO
Rept. No. HEHS-00-12 Nov. 1999)

43

Id. at 9.

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The Report made several observations. It noted that the individual States
have
the primary responsibility to regulate the adoption process. In addition,
nonprofit
organizations are also involved in developing improvements in the adoption
process.
However, the individual States' authority does not extend beyond their own
borders
and nonprofit organizations are not able to change this process. Hence, the
States
and the nonprofit organizations cannot implement changes in all aspects of
the
interjurisdictional adoption process. The Report noted that the HHS had

made attempts to assist the States in improving the adoption process in areas such as the provision of technical assistance, and that more organizational planning could facilitate improvements in the interested parties in the interjurisdictional adoption process. It was suggested that such a master plan could present strategies to encourage the standardization of home studies and to assist States in the use of websites for placement activities.

The GAO Report recommended that the Secretary of HHS develop and make widely available an action plan to respond to areas that would encourage the interjurisdictional adoption of foster children. The plan would need to assess planned and ongoing activities by HHS and other adoption agencies and should include plans to: 1) encourage joint partnerships between governments and other adoption entities to promote standardization of homestudies and provide additional training on the ICPC; and 2) provide technical assistance to the States on the efficient use of adoption websites in order to attract adoptive families for difficult to place foster children.⁴⁴ This suggestion has been implemented by the Children's Bureau of the Administration for Children and Families of the Department of Health and Human Services with the creation of a national internet adoption photolisting service: "AdoptUSKids."⁴⁵ This service coordinates placement services through six adoption organizations and has as its motto: "Together, we will find families for our children."

HHS Office of the Inspector General Report

The Office of Inspector General of HHS focused on the ICPC and its implementation.⁴⁶ This study examined the ICPC process and related issues, examined the strengths and weaknesses of the ICPC process, and made certain recommendations as to how to improve the ICPC process. The study determined that the individual States have policies and procedures

that are generally uniform and comprehensive. The study concluded that the ICPC has been successful in establishing procedures for the interstate placement of children.⁴⁷

44

Id. at 18.

45

See <http://www.adoptuskids.org>.

46

Interstate Compact on the Placement of Children: Implementation (Department of Health and Human Services, Office of Inspector General)(March 1994) OEI-02-95-00044.

47

Id. at 6-7.

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However, the study discovered and examined a number of weaknesses in the interjurisdictional placement process. One area of concern was found in that many

States were sometimes unaware that children have been placed in their jurisdiction.⁴⁸

This situation could arise primarily under two sets of circumstances. One instance could be when children were placed through the ICPC but the receiving State was not informed that the placement had been finalized. The other case could be placements that were made without compliance with the ICPC. Other areas of concern were that

violations of the ICPC (by persons involved in the placement process) could lead to

problems in placement and could cause subsequent legal problems.⁴⁹ It was found

that many persons/entities involved in the ICPC process felt that it was too lengthy

and cumbersome.⁵⁰

After evaluating the ICPC's operation, the study made various recommendations

for improvement. These recommendations involved: 1) better awareness of the ICPC and its operation; 2) timeliness in administering the ICPC and its various requirements; 3) better coordination at the State administration level; 4) training and technical assistance provided to the States; and 4) improved handling of ICPC placements in residential care facilities.⁵¹

Recent Federal Legislation

The "Keeping Children and Families Safe Act of 2003" (cited to afterward as "Act"),⁵² contains provisions which impact interjurisdictional adoptions. Enacted on June 25, 2003, the Act amends the Adoption Opportunities Program created by the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978.⁵³ Section 201 of the Act amends 42 U.S.C. 5113 and creates new provisions to facilitate the elimination of barriers to adoption across jurisdictional boundaries. The Secretary of Health and Human Services is authorized to award grants to, or enter into contracts with States, local government entities, public or private child welfare or adoption agencies, adoption exchanges, or adoption family groups to carry out initiatives aimed at improving efforts to eliminate barriers to placing children for adoption across jurisdictional boundaries. The Act provides that funds provided are to supplement any other funds available for such purposes, including: 1) developing a uniform homestudy standard and protocol for acceptance of homestudies between States and jurisdictions; 2) developing models of financing cross-jurisdictional placements; 3) expanding the capacity of all adoption exchanges to serve increasing numbers of children; 4) developing training materials and training social workers on preparing and moving

48

Id. at 7-8.

49

Id. at 8.

50

Id.

51

Id. at 11-12.

52

Pub. L. 108-36.

53

Pub. L. 95-226, 92 Stat. 205, codified at 42 U.S.C. § 5111-5115.

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children across State lines; and 5) developing and supporting initiative models for networking among agencies, adoption exchanges, and parent support groups across jurisdictional boundaries.

Section 203 of the Act amends 42 U.S.C. § 5114 which deals with the study of unlicensed or unregulated adoptions. The Act authorizes additional studies, including a study of how interstate placements are being financed across State lines.

Section 204 of the Act amends 42 U.S.C. 5114 to require that not later than one year after enactment, (Act was signed by the President on June 25, 2003), the Secretary submit to Congress a report that contains recommendations for an action plan to facilitate the interjurisdictional adoption of foster children.

Conclusion

The ICPC provides a uniform framework for the placement of children across State lines in foster homes and/or adoptive homes. In compliance with the provisions of the ICPC, both the sending State and the receiving State have certain legal obligations which must be completed prior to the interstate placement and which

have the purpose of protecting both the interests of the children and of the State authorities.

At the present time, all fifty States, the District of Columbia, and the Virgin Islands are parties to the ICPC. The ICPC defines the types of placements and the placing individuals or entities who are subject to the law; the procedures to be followed in making an interstate placement; and the specific protections, services, and requirements brought about by the adoption of the ICPC. While the ICPC is primarily a matter of State law, certain portions of the Social Security Act and the Adoption and Safe Families Act relate to the ICPC. The recently enacted "Keeping Children and Families Safe Act of 2003" also includes provisions relating to interjurisdictional adoptions.

The actual operation of the ICPC involves a sequential process of applications, notifications, and studies prior to the actual interstate placement. Regulations have been promulgated to implement the provisions of the ICPC and provide a means to readily effectuate changes in State adoption policy without amending the adoption laws of fifty-two jurisdictions. So-called Border Agreements entered into by adjacent jurisdictions are aimed at streamlining the processes required by the ICPC. Various studies have examined the operation of the ICPC and have made recommendations for its improved performance.

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