

Safeguarding Interstate Adoptions: The Interstate Compact on the Placement of Children

Policy Brief

Too often, when adoptions make headlines, it is because of a dire situation created when adoption laws and policies are circumvented or even ignored. Regulating adoption in this country has historically been the purview of states, and some have stricter regulations than others. When children are placed from one state to another, additional issues arise – and there is greater risk for a lack of attention to specific requirements. And, sometimes, legal requirements and best-practice guidelines simply are not met.

The primary safeguard to regulate the adoption of boys and girls from one state to another is the Interstate Compact for the Placement of Children (ICPC). For a significant number of foster children, finding permanent families requires moving in with relatives or other families outside their own states. For these boys and girls, accomplishing permanency is a more complicated process requiring the cooperation of child welfare agencies and judicial systems in two jurisdictions. When the ICPC was created four decades ago to facilitate this process, other types of adoptions were incorporated into it as well.

While the ICPC provides a legal framework intended to facilitate interstate placements, the actual practice of interjurisdictional placement of children is a complex system involving the cooperation of several governmental agencies across two states, and often organizations at both the county and state levels. A U.S. Children's Bureau analysis of FY2000 data, for instance, showed that foster children in interstate placements waited one year longer to be adopted than did their counterparts in in-state placements (Maza, 2002). This finding has been cited frequently to underscore barriers in the execution of interstate placement of children and in moving these children to permanency.

For many years, a wide range of professionals and organizations – including the American Bar Association, the National Council of Juvenile and Family Court Judges, and the National Association of Public Child Welfare Administrators, among others – have expressed concerns about barriers to the interjurisdictional placement of children and about problems with the ICPC system. Over the past decade, stakeholders have given more attention to pointing out the problems in the current system than to finding the solutions required to address these problems. The pressure to expedite interjurisdictional placements has finally built to the point where serious efforts are now being made on several fronts, including the development of a new ICPC document by a team of professionals working with the American Public Human Services Association (APHSA).

For the sake of the thousands of children who will benefit every year, this brief is intended to outline the relevant issues and help inform the discussion during current efforts to rewrite the ICPC, and to develop other solutions for facilitating interjurisdictional placements.

The barriers to expediting the interstate adoption of children from foster care include:

- Lengthy delays in obtaining home studies for placement approval, including delays due to criminal background checks;



- Conflicts between policies and laws in sending and receiving states, which lead to further delays in placement or permanency planning steps, as well as conflicts over payment of educational and medical expenses of children;
- Lack of awareness among child welfare workers and other adoption facilitators of ICPC guidelines and their application; and
- Poor communication and bureaucratic roadblocks in navigating the system facilitating interjurisdictional placements and in case planning for children already in interstate placements.

Modification of the ICPC will address some difficulties in the current system. It is important to emphasize, however, that many problems relating to interjurisdictional placements stem from factors other than the ICPC – such as inadequate funding of child welfare systems, heavy staff turnover, and other systemic impediments influencing the quality of work performance in nearly every state. In reality, increased federal and state funding of child welfare initiatives are needed to effectively resolve the current problems with interjurisdictional placements – and, thereby, enhance every child's prospects of moving into a loving, permanent family.

Background

The ICPC was created to facilitate the placement of children across state lines. Since its establishment in 1960, it has been enacted into law by all 50 states, the District of Columbia and the Virgin Islands. The Compact is made up of 10 articles that enumerate the responsibilities of “sending” and “receiving” states in the completion of home studies for child placements and, later, in the supervision of children in interjurisdictional placements. In addition, it includes regulations, reporting requirements and specific guidelines for the interstate child-placement process. The current Compact applies to any child placed for foster care or adoption across state lines, including international adoptions and domestic infant adoptions, as well as to delinquent children sent to institutions across state lines.

The ICPC requires each state to establish a Compact Administrator office, which acts as a central clearing point for all referrals of interstate placements into and out of that state. The Compact also mandates that quarterly statistical reports of placements into and out of each state be submitted to the Secretariat of the Association of Administrators of ICPC (AAICPC), an affiliate of the American Public Human Services Association (APHSA). Many states do not comply with this latter requirement, however, because they have not set up adequate data-tracking procedures to compute aggregate numbers. A 1998 report by the Office of the Inspector General of the Department of Health and Human Services (HHS) found only 27 states submitted placement data in the previous year.

ICPC guidelines outline a process for initiating and completing interstate placements. For example, they specify six weeks, or 30 working days, as a recommended time for completion of a home study and placement approval (or denial) by a receiving state after it gets a referral request. The receiving state is to complete the home study, along with requisite clearances, and provide supervision of children from other states as a courtesy; the sending state retains legal and financial responsibility for the child.

The ICPC currently is being rewritten to attempt to address some of the problems in the operation of interjurisdictional placements. This process has identified a number of key issues on which states and key stakeholders working in the field disagree, and the debate related to these issues continues. This brief will address some of these key issues.

Scope of the ICPC

There has been considerable confusion and disagreement regarding the scope of the ICPC regulatory authority; conflicting state court rulings related to the jurisdiction of the Compact have further muddied the waters. A scholarly critique by Madelyn Freundlich for the Evan B. Donaldson Adoption Institute (1999) summarizes many of the relevant issues and court decisions concerning the definitions of “sending agency,” “child” and “placement” in the ICPC, as well as the varying ways the Compact has been applied

by state courts. For example, courts in Wyoming and Missouri have held that the ICPC does not apply to adoptive placements across state lines by birth parents, while courts in Texas, Nebraska and North Carolina have ruled the ICPC does apply to these placements.

Disagreement over application of the ICPC continues today: The Utah Court of Appeals ruled on December 30, 2004, in a case brought by three infant-adoption agencies in that state against individuals representing the AAICPC, the Utah Department of Social Services, the Utah Department of Human Services, the Utah Compact Administrator's Office and APHSA. Those organizations had sought to exempt expectant mothers from the ICPC's jurisdiction if they came from their home states to Utah to give birth, and those attempting to apply the ICPC claimed that these adoptive placements should come under the scope of the ICPC. The Appeals Court ruled that the ICPC did not apply to the unborn children of expectant mothers, so the home state of the mother does not need to be notified. In some such cases, birthmothers may seek to avoid stricter laws regarding the consent of fathers in their home states. However, the ICPC does act as a protection in many situations of domestic infant adoptions across state lines, such as the current case of Baby Tamia in Illinois, where a woman and her 3-month-old infant were flown to Utah by an adoption agency, surrenders were taken after a few hours of "counseling" in a motel room, and the mother was flown home. Illinois courts now have ordered that this child be removed from her adoptive home and returned to her biological family.

While the first rewrite of the ICPC (by the APHSA working group) included domestic infant adoptions, the second draft eliminated these adoptions from the document's scope. Those advocating for the elimination argued that state laws and courts regulate domestic infant adoptions and that the ICPC is therefore not needed to oversee these adoptions. Many who practice in the field believe that a monitoring function, at a minimum, is needed to ensure that both biological mothers and fathers have consented to the adoption and that criteria for approval of the adoptive family are addressed. The inclusion of domestic infant adoptions in the ICPC offers some protections to stem some practice abuses that occur in interstate situations, and so the exclusion of these adoptions does not appear to be in the best interest of babies placed across state lines.

Barriers to timely interjurisdictional placement of children from foster care

A March 1999 review by the HHS Inspector General of state implementation of the ICPC cited four primary weaknesses:

- 1) A lack of knowledge about the Compact among many judges, attorneys and caseworkers;
- 2) Placements taking place in violation of the Compact;
- 3) The lengthy process involved in ICPC placements, and
- 4) Differing state adoption laws that can hinder placements.

Overall, the review indicated that states were fulfilling their obligations to conduct home studies and to supervise placements of foster children moving into their states, as well as honoring their financial obligations to children they sent out of state. State compact administrators reported waiting an average of three to four months for the entire home study process to be completed, which is more than twice as long as the timeframe recommended in the ICPC guidelines (USDHHS, 1999).

APHSA completed a study in 2002, "Understanding Delays in the Interstate Home Study Process." ICPC Administrators identified several factors as causing delays, including home studies containing incomplete information on the family or not addressing the child's specific needs; in these cases, delays occur while additional information is requested and retrieved. In addition, delays for criminal background or child-abuse checks were common, as were conflicts in establishing responsibility for specific services to the child. Federal law supports states in providing Medicaid coverage for foster children from low-income families (Title IV-E eligibility), but when this eligibility cannot be established, obtaining medical assistance in the resident state requires further negotiations among relevant officials in each jurisdiction. In addition, resolving payment sources for special services or educational expenses is required; typically, the sending state pays for these expenses until the child is adopted and becomes a legal resident of the new state.

Workload issues are also often identified as contributing factors in difficulties with interjurisdictional placements. State child welfare workers typically have heavy caseloads with frequent crises, so courtesy home studies for children not on their caseloads often are not top priorities. Similarly, once children have moved to a new state, the process of moving them toward permanency may lag behind efforts for children on a worker's caseload who are physically present. Regular case reviews and court hearings often do not occur in a timely way for children who are residing in another state.

Efforts to address problems with interjurisdictional placements

There have been some significant efforts to reduce delays in the ICPC process and to facilitate interjurisdictional placements. A Joint Committee for ICPC Improvement was convened in 1996; it was a collaborative effort by the National Council of Juvenile and Family Court Judges (NCJFCJ), the AAICPC, and the National Association of Public Child Welfare Administrators (NAPCWA). This committee made 10 recommendations for improving the process, one of which resulted in the AAICPC accepting a new rule (Regulation 7) that provides for priority handling of urgent cases, primarily by facilitating placements of children with relatives. Another recommendation was the development of border state agreements that allow social workers from one state to conduct home studies in an adjoining state or to hire contractors to do the study, an arrangement enacted by only a few states to date.

Last year the U.S. Children's Bureau funded a national study on effective strategies used by states for facilitating interjurisdictional placements. This research is scheduled to be completed this spring by the Research Triangle Institute of Raleigh, N.C., and involves the participation of a national workgroup with expertise related to such placements.

In addition, two drafts of a new interstate compact have been completed by the Development and Drafting Team at APHSA and have been disseminated for comments. Information about this process and explanatory articles may be accessed at: <http://www.aphsa.org/Policy/Interstate.asp>

The first draft of the new compact contained 19 Articles and was distinctly different from the existing one in fundamental ways. A primary change was in the scope of the ICPC. The new version defined a sending state as a public child welfare agency or state court sending a child under its jurisdiction to another state. This draft provided for the development of a certification process for documentation of domestic independent and private adoptions; the second draft omits this provision, however, and focuses entirely on child welfare placements. International adoptions are omitted from the jurisdiction of both drafts of the new document because the ICPC process was deemed to be duplicative of the federal immigration process. However, in the event of a disruption or dissolution of an international child placement, the affected child would come under the same process as private and independent domestic adoptions.

Another fundamental difference in the latest draft is that the new Compact makes the sending states responsible for paying for the home studies and supervision of all children they send to other jurisdictions, rather than expecting them to perform these services as a courtesy. This change addresses some inequities in the current system – namely, that some states send many times more children than they receive. This change also allows for greater participation by contracted private agencies. Some states will encounter a new problem if this alteration is made, however; that is, they will have to pay for services to each child they send, and they do not necessarily have the funding to do so.

A criticism of the current system addressed in the new draft is the lack of accountability and enforcement potential in the ICPC. The redrafted ICPC creates an "Interstate Authority for the Placement of Children," made up of a designated official from each member state, individuals from relevant organizations, and an executive committee with paid staff. In addition to writing the by-laws that contain the specific guidelines for operation of the new Compact, the Interstate Authority would provide for dispute resolutions between states, collect standardized data, and enforce compliance. It could impose penalties for Compact violations, including fines on defaulting states and, ultimately, suspension of a state's membership. Participating states would be charged an assessment to support the cost of the operation of the Interstate Authority. While states currently pay for the administration of the ICPC, the cost of the proposed operation would be higher.

Resources needed to adequately improve the system

A lack of resources is the bottom line for many of the problems with the current system, and for many of the dynamics driving the search for solutions. Individual child welfare agencies are responsible for administering the Compact, yet the majority of adoptions addressed by state ICPC offices do not currently involve children within the public system. Since they do not have the resources to attend conscientiously to the needs of foster children leaving or coming into their states, they are reluctant to spread scarce resources even further to oversee interstate domestic infant adoptions or international adoptions. Charging adoptive families in non-child welfare adoptions a fee – an idea not included in the new ICPC drafts – could be a reasonable way to help offset the cost of this review.

The latest draft of the proposed ICPC would result in an even heavier financial burden on states as a result of the fee levied for the Interstate Authority and the costs required to pay other states to facilitate interstate placements. If states do not have the funds to pay for agencies elsewhere to facilitate these adoptions, it is probable these costs will become an additional barrier to interjurisdictional placement and to achieving permanency for children who are best served by a family residing in another state. This may prove to be a particular issue for county-administered child welfare systems with smaller budgets. For example, the county department would have to come up with thousands of dollars in additional funds to send a single child out of state. In a time of shrinking social service budgets, this is an obvious barrier to facilitating placements. Other unintended consequences of such a policy could include: pressure on sending states to close cases quickly to avoid monthly supervision charges; opportunities for contractors to delay case closures in order to receive higher pay; and additional delays caused by bureaucratic requirements for contracting for home studies.

The intent of the Adoption and Safe Families Act was to reduce barriers to permanency for foster children, including the barriers to their interjurisdictional placement. The federal government has put considerable funding into initiatives to promote adoption of foster children, such as the Adopt USKids initiative. However, all of these efforts seem unlikely to succeed in cases of interstate placements unless sufficient resources are made available to support the efficient working of the ICPC process.

In summary, the Adoption Institute offers these recommendations to help alleviate barriers to interjurisdictional placements:

- Additional federal funding channeled to the states to support interjurisdictional placements of foster children;
- Inclusion of independent and private adoptive interstate placements in the new Compact;
- Establishment of a fee charged to adoptive families in independent and private adoptive interstate placements to support the cost of the ICPC review;
- Reinstatement of possible courtesy service by child welfare systems for other states, at least to a certain threshold, so cost does not create a new barrier to interjurisdictional placements.

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