

INTRODUCTION

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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.

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

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

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

⁷ *Judicature*, 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

¹¹Founded 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

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.

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.

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.

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.

(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

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 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.

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

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

- 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

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CHAPTER I: ICPC PROCEDURES²⁵

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.*

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:

Who must use the Compact?

What types of cases are subject to the ICPC?

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.

²⁵ 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 and the *Guide to the Interstate Compact on the Placement of Children*, American Public Human Services Association, 2000 Revision.

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;²⁶
- any person (including parents and relatives in some instances),²⁷ 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).

B. Types of Cases that Are Subject to the ICPC

The following case circumstances are subject to the ICPC:

²⁶ *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.

²⁷ 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.

- Birth parent unification or reunification in another state whenever a court has jurisdiction over a child who is being placed.²⁸
- Kinship care by a relative(s) in another state whenever a court has jurisdiction over a child who is being placed.²⁹
- 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.³⁰ 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 care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

²⁸ 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.

²⁹ *Ibid.*

³⁰ 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.

- 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 relative³¹ placements, when no court has assumed jurisdiction of the child to be placed.
- Relative³² to birth parent, when no court has assumed jurisdiction of the child to be placed.

³¹ 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.

³² Ibid.

- Relative³³ to relative,³⁴ 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).
- Visits³⁵
- Placement of a child into or out of Canada, Puerto Rico,³⁶ 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.

³³ Ibid.

³⁴ Ibid.

³⁵ See Section I.D.3. for the definition of a visit.

³⁶ 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” homes³⁷

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

³⁷ Excerpted in part from Definition of “Family Free or Boarding Home”, AAICPC Secretariat Position Paper, November 1996.

homes” in the definition of “placement.” Regulation 3, as amended in May 2001 defines “family free or boarding home” as:

...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.³⁸

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.³⁹

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 relatives⁴⁰

³⁸ See Section V. D. in this chapter.

³⁹ 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.

⁴⁰ This question is discussed in ICPC Secretariat Opinion 45, which was issued May 25, 1982.

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 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.⁴¹

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

⁴¹ *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 of the Interstate Compact on the Placement of Children: Briefs & Legal Analysis*, page I-15, APHSA, 2000.

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 custody should be granted to those relatives.⁴² 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.⁴³

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.

⁴² 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.

⁴³ See Section V. D. in this chapter.

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 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 9⁴⁴ defines a visit, which does not require ICPC approval, as follows:⁴⁵

- 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.

⁴⁴ 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.

⁴⁵ *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.

- 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 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 4⁴⁶ 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:

⁴⁶ 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.

- accept responsibility for children during the entire year;
 - 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 ⁴⁷

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.⁴⁸

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

⁴⁷ This section was written by Donna J. Goldsmith, Special Assistant Attorney General, Office of the Attorney General, Juneau, Alaska.

⁴⁸ See Legislative History to ICWA, H.R. Rep. No. 1386, 95th Cong., 2d Sess. (1978), *reprinted in* 1978 U.S. CODE, CONG. & AD. NEWS 7530, 7531.

child and his or her tribal community is of critical importance to the essential, long-term well-being of the child.

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

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.⁴⁹ 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 personnel⁵⁰

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

⁴⁹ Public Law 106-279, Inter-country Adoption Act of 2000, passed October 6, 2000.

⁵⁰ Information provided by the American Public Human Services Association, Washington, DC.

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 PKPA⁵¹

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

⁵¹ This section is excerpted to a significant degree from: Ann M. Haralambie, "*Handling Child Custody, Abuse and Adoption Cases, Family Law Series*," Clark Boardman Callaghan, publishers.

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.⁵²

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

⁵² 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.

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.

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.⁵³

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.

Unilateral Dismissal of Jurisdiction

A memorandum prepared by the Secretariat to the AAICPC in November 1996⁵⁴ 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.

⁵³ 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.

⁵⁴ *Dismissal of Jurisdiction*, AAICPC Secretariat Position Paper, November 1996.

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 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.

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. Expeditious 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

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.

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.

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.

Article IV. Penalty for Illegal Placement

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

Article V. Retention of Jurisdiction

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

Article VI. Institutional Care of Delinquent Children

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

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 Request”⁵⁵.

- 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:

⁵⁵ See Appendix M for copies of these forms.

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 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.

IX. J. Regulation No. 9. Definition of a Visit

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

X. 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 APHSA 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.⁵⁶

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I. ILLEGAL PRACTICES

⁵⁶ For more information, contact APHSA c/o ICPC Secretariat (202) 682-0100.

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CHAPTER II: ICPC CHALLENGES, SOLUTIONS, AND BEST PRACTICES⁵⁷

Lack of knowledge about the Compact among judges, attorneys, and caseworkers was previously discussed as one of the four main weaknesses regarding Compact implementation.⁵⁸ 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 ICPC⁵⁹ 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

⁵⁷ Substantial portions of this chapter are excerpted from the *APHSA Training Manual for Administrators & Liaisons of the Interstate Compact on the Placement of Children*, AAICPC, 2000.

⁵⁸ *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.

⁵⁹ *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.⁶⁰ 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.

⁶⁰ 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 1998.⁶¹ 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.

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:

⁶¹ Wendell, Tucker, and Rosenbaum: *Memorandum on Guardianship and Attempts to Evade the Interstate Compact on the Placement of Children*, ICPC Secretariat, Revised 1998.

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.⁶² When Compact law is

⁶² *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

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.⁶³
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.

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.

⁶³ 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.

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.⁶⁴

⁶⁴ 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 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.

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.⁶⁵
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.

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.

⁶⁵ 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,⁶⁶ 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 Priority Placements, the best case scenario for the length of time it will take to get approval is 1½ months.

⁶⁶ See Section D of this Chapter.

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*.⁶⁷

“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 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.

⁶⁷ 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.

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 2001.⁶⁸ 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.

⁶⁸ 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 committee⁶⁹ 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

⁶⁹ *ICPC Final Report of the Joint Committee on ICPC Improvement, ICPC Regulation No. 7 and Recommendations*, December 1996.

recommend that for questions, verification of information, and resource identification, direct communication between local workers both before the official 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.⁷⁰

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

⁷⁰ Ibid.

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 requests⁷¹

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

⁷¹ Excerpted in part from *ICPC Final Report of the Joint Committee on ICPC Improvement, ICPC Regulation No. 7 and Recommendations*, December 1996.

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.

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.⁷²

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

⁷² For more information, contact APHSA c/o ICPC Secretariat (202) 682 – 0100.

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 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*⁷³ 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

⁷³ *ICPC Final Report of the Joint Committee on ICPC Improvement, ICPC Regulation No. 7 and Recommendations*, December 1996. Participants included NCJFCJ, AAICPC, and NAPCWA.

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.

- 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.⁷⁴

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.⁷⁵

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

⁷⁴ Information provided by Judge Patricia A. Macias.

⁷⁵ 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.

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.

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*⁷⁶ 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.

Without Regulation 1 it would be necessary for the foster family to establish residency in the new state and become licensed in the new state before the children could legally join them.

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 PLACEMENT⁷⁷

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.

⁷⁷ 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.

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;
- 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 I 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

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.⁷⁸ 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*⁷⁹ and the NCJFCJ *ADOPTION AND PERMANENCY GUIDELINES* regarding due process issues, minimum standards of due process will be easily met.⁸⁰
- 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.

⁷⁸ 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.

⁷⁹ *RESOURCE GUIDELINES: Improving Court Practice in Child Abuse & Neglect Cases*, NCJFCJ, Reno, Nevada, 1995. For copies of this publication, contact (775) 784-1652.

⁸⁰ For example, who should be present at hearings, proper service of process, proper legal representation, etc.

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.

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)⁸¹

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.⁸² 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.⁸³ 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 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.

⁸¹ This section was written by Liz Oppenheim, JD, AAICAMA. For more information on the ICAMA, see contact information in Appendix Q: Resources.

⁸² 42 U.S.C. 673 et. seq.

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

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 state⁸⁴ and the residence state⁸⁵ 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 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.

⁸⁴ The adoption assistance state is the state that is the signatory to an adoption assistance agreement on behalf of a particular child

⁸⁵ The residence state is the state where the child lives.

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.⁸⁶ 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 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

⁸⁶ 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).

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.⁸⁷ All states receiving federal dollars for the 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.

⁸⁷ 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.

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.

<p>CHAPTER III: INSTRUCTIONAL GUIDE – TEACHING THE ICPC TO JUVENILE AND FAMILY COURT JUDGES AND COLLABORATIVE TEAMS</p> <p>Table of Contents</p>
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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 TEAMS⁸⁸

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.

⁸⁸ Substantial portions of this chapter were excerpted from *COURT, AGENCY and COMMUNITY COLLABORATION*, Permanency Planning for Children Department, NCJFCJ, Reno, Nevada, 2000.

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 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, California⁸⁹

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*,⁹⁰ 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:⁹¹

- 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

⁸⁹ NCJFCJ Technical Assistance Bulletin *Judicial Leadership and Judicial Practice in Child Abuse and Neglect Cases*, Volume II, No. 5, July 1998.

⁹⁰ Judge Leonard P. Edwards, *Juvenile and Family Court Journal*, 1992, Vol. 43, No. 2.

⁹¹ Excerpted in part from *Making Reasonable Efforts: Steps for Keeping Families Together*, the Edna McConnell Clark Foundation.

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.

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.⁹²

In 1997, the NCJFCJ *Juvenile and Family Court Journal*, Permanency Planning Issue included the article *Improving Juvenile Dependency Courts Twenty-Three Steps*.⁹³ 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.*

⁹² 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.

⁹³ 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*⁹⁴. 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;

⁹⁴ 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,
Kentucky⁹⁵

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.⁹⁶ 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.

⁹⁵ *COURT, AGENCY and COMMUNITY COLLABORATION*, Permanency Planning for Children Department, NCJFCJ, Reno, Nevada, 2000.

⁹⁶ *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.⁹⁷ 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?

⁹⁷ 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 Objectives⁹⁸

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

⁹⁸ 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:⁹⁹

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.

⁹⁹ 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 Content¹⁰⁰

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*

¹⁰⁰ Ibid.

- Summarize a case on a transparency or handout.
- Have participants make a written or oral response individually or as part of a 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 Aids¹⁰¹

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

¹⁰¹ Ibid.

- 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?”

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 QUIZ¹⁰²

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.

¹⁰² 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

XI. 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.

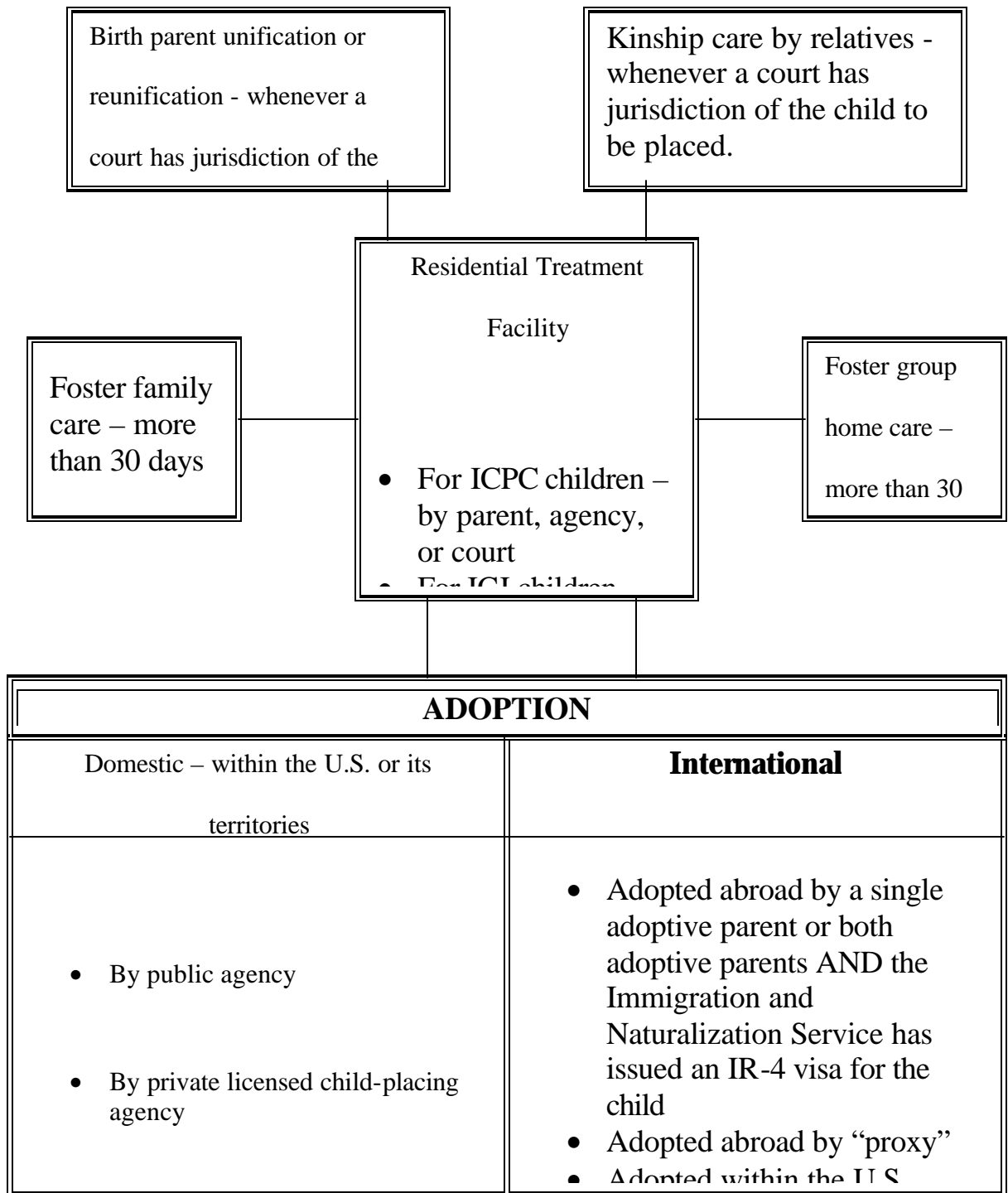
After much discussion between Mr. and Mrs. C. and the boys, everyone agrees that the C. family wants to keep the boys with them. Adam and Benjamin want to remain with Mr. and Mrs. C., even though both boys have siblings who are in foster care in other foster homes in Old State. Adam's sister, Carla, 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?

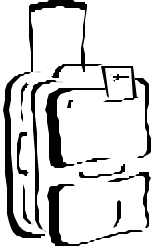


WHAT CASES ARE *NOT* SUBJECT TO THE ICPC?

- 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.

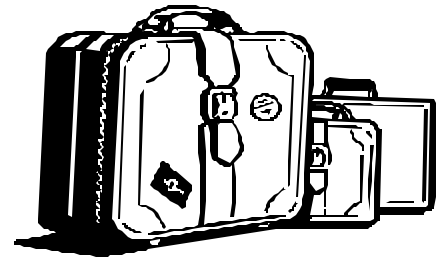
* Until Puerto Rico becomes a member of the ICPC, which is in progress

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. _____

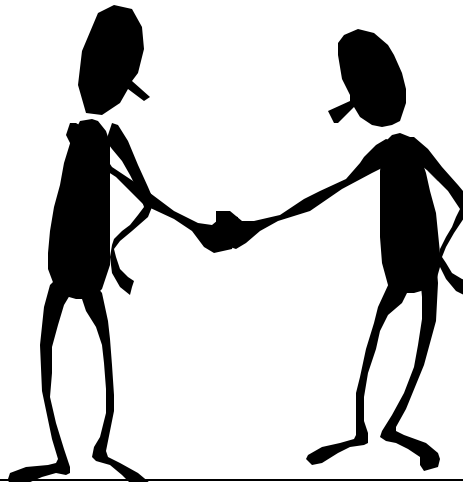
ANSWER SHEET

- 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.)
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Slide 2

Learning Objectives of Workshop

- Identify Interstate Compact On the Placement of Children (ICPC) resources in Tennessee
- Manage ICPC cases more effectively

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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

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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.

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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

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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

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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

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Slide 8

**Identify Whether These Cases Need to Be
Processed Through ICPC**

- 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.
- 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.
- Are ICPC procedures required? Yes ___ No ___
- Are ICPC procedures required? Yes ___ No ___

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Slide 9

Cont Whether ICPC Involved

- 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.
- 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.
- Are ICPC procedures involved? Yes ___ No ___
- Are ICPC procedures involved? Yes ___ no ___

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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;

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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

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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

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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 (Il. Ct. App. 1989)

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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

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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)

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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

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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

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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

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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

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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**

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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

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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

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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**

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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**

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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

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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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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

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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

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Cont Compliance with Reg 7

- Requested court may render assistance, including the making appropriate orders, for the purpose of obtaining compliance with Regulation 7

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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.

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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

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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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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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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

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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?

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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?

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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?

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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----

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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

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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

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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 FI 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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