

The ICPC:

Applying the Interstate Compact
on the Placement of Children to
Dependency, Guardianship, &
Severance Actions in Juvenile
Court

January 2021

What is
the ICPC,
anyway?

- *An interstate compact, enacted by all 50 states, to address typical interstate placement problems, specifically:*
 - *The receiving state's inability to protect children placed there*
 - *The sending state's inability to monitor services and children placed in other states*
 - *The absence of authority to require a receiving state to provide supervision or services*

- *Facilitates cooperation between states to ensure that:*

What
does it
do?

- *Children receive the maximum opportunity to be placed in a suitable environment*
- *States have full opportunity to examine the proposed placement & obtain the most complete info before placement is made*
- *Courts can make appropriate jurisdictional arrangements*

How does it work?

- *More than just an agreement—it is the law of the states that have adopted it.*
 - *ADES v. Leonardo*, 200 Ariz. 74, 77 (App. 2001).
- *Administered by a designated individual in each state (the Compact Administrator).*
 - *The DCS Director or his designee per A.R.S. § 8-548.02 (currently David Minko).*

How
does it
work?

- *The Compact Administrators have a joint body (AAICPC) to review ICPC compliance issues & promulgate regulations to increase its effectiveness.*
 - *A.R.S. § 8-548, art. VII*
 - *By adopting the ICPC, enacting § 8-548.02, & delegating a representative to the AAICPC, AZ has agreed to accept & abide by the AAICPC's duly promulgated regulations. - Leonardo at 79.*

The ICPC: Substance

Article I: Purpose & Policy

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- *States will cooperate to ensure that*
 - *(a) each child receives the maximum opportunity to be placed in a suitable environment with persons or institutions having appropriate qualifications to provide necessary care*
 - *(b) appropriate authorities in a receiving state have a full opportunity to ascertain the circumstances of the proposed placement to promote protection of the child*

...

Article I: Purpose & Policy

- *States will cooperate to ensure that*
 - *(c) the proper authorities of the sending state may obtain the most complete information needed to evaluate a proposed placement before it is made*
 - *(d) appropriate jurisdictional arrangements can be made for the care of children.*

Article I:
Purpose
& Policy

In short:

States will cooperate to ensure that everybody understands what a child needs and whether a proposed interstate placement will meet those needs.

The ICPC: Substance

Article II: Definitions

Article II:

Definitions

- *Child: a minor legally subject to parental (or similar) control*
- *Receiving state: the state to which a child is sent/brought by a sending agency*
- *Placement: arrangement for a child's care in a "family free or boarding home" (but doesn't include hospitals, boarding schools, or institutions that care for the mentally ill/ deficient)*
- *More on the "family free" issue later...*

Article II:
Definitions

- *Sending agency:*
 - *a party state, or its officer or employee;*
 - *a subdivision of a state or its officer or employee [e.g., DCS];*
 - *a court of a party state;*
 - *a person/corporation/entity which sends, brings, or causes to be sent/brought a child into another state [e.g., a private adoption agency]*

The ICPC: Substance

Article III: Conditions for Placement

Article III: Conditions for Placement

- *Sending agency may not send/bring a child into another state for placement “in foster care or as a preliminary to a possible adoption” unless it complies with each and every requirement in the ICPC and with the applicable laws of the receiving state.*
- *Requirements include:*
 - *Written notice of intent to place*
 - *Names & addresses of child, parent(s), proposed placement*
 - *Full statement of reasons for placement*
 - *Evidence of authority to place [e.g., court order]*
- *Receiving state may request add’l info.*

Article III:
Conditions
for
Placement

- *Subsection (d) is the kicker:*

“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.”

(emphasis added)

Article III:
Conditions
for
Placement

In Summary:

The court cannot allow a child to go to an out-of-state placement unless and until that state approves the placement.

(That includes “visits” or “transitions” and placement with parents.)

The ICPC: Substance

*Article IV: Penalty for Illegal
Placement*

Article IV:
Penalty for
Illegal
Placement

- *Placing a child in violation of the ICPC is an illegal placement!*
- *Sending, bringing, or causing a child to be sent/brought in violation of the ICPC is a violation of the laws of both the sending and receiving states.*
- *Violations can be punished in either jurisdiction pursuant to its laws*
 - *Note: some states have specific penalty provisions by statute!*

Article IV:
Penalty for
Illegal
Placement

- *The nuclear option:
“any such violation shall constitute full and 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.”*

Meaning, a state can revoke AZ’s ability to place any children in that state if one child is placed illegally!

The ICPC: Substance

Article V: Retention of Jurisdiction

Article V: Retention of Jurisdiction

- *The sending agency retains jurisdiction sufficient to determine “all matters in relation to the custody, supervision, care, treatment and disposition of the child” just as if the child had remained in the sending state, including the ability to cause the child’s return to the sending state.*

Article V: Retention of Jurisdiction

- *The sending agency retains jurisdiction until the child reaches the age of majority, is adopted, becomes self-supporting, or is discharged with the concurrence of the appropriate authority in the receiving state.*
- *The receiving state does have jurisdiction to deal with any delinquent or criminal act in that state, though.*

Article V:
Retention
of
Jurisdiction

- *The sending agency retains financial responsibility for the child during the placement.*
- *If the sending agency is a public agency (i.e., DCS or the Court), it may enter into an agreement with an authorized public or private agency in the receiving state to provide services as an agent for the sending agency.*

Article V:
Retention
of
Jurisdiction

In Summary:

Once you send a kid to another state, you have to keep the case open until the other state agrees that it can be closed.

The ICPC: Substance

*Article VI: Institutional Care of
Delinquent Children*

Article VI:
Institutional
Care of
Delinquent
Children

- *A delinquent child may be placed in an institution in another state pursuant to the ICPC, but only if*
 - *There is a court hearing with notice & opportunity to be heard,*
 - *The court finds that equivalent facilities are not available in the sending state, and*
 - *Institutional care in the receiving state is in the child's best interests & will not produce undue hardship*

The ICPC: Substance

*Article VII: Compact
Administrator*

Article VII:
Compact
Administrator

- *The executive head of each party state must designate an officer to serve as its general coordinator of activities under the ICPC.*

– *See A.R.S. § 8-548.02*

- *The ICPC Compact Administrators shall act jointly to “promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.”*

The ICPC: Substance

Article VIII: Limitations

Article VIII: Limitations

- *The compact does not apply to:*
 - *The sending/bringing of a child into a receiving state by his parent, step-parent, grandparent, adult sibling, adult uncle/aunt, or guardian and leaving the child with any such relative or non-agency guardian in the receiving state.*

Article VIII:
Limitations

- *The compact does not apply to:*
 - *Any placement or sending/bringing into a receiving state pursuant to any other interstate compact to which both the sending and receiving states are parties, or to any other agreement between those states with the force of law.*

Article VIII:
Limitations

In Summary:

If a child is a ward of the court (even via temporary orders) then any out-of-state placement is covered by the ICPC, even if the child is placed with a parent or relative and that parent/relative wants to move (or return) to another state.

The ICPC Regulations

Authority & Contents

Note: many Regs were rewritten in 2011

Authority

- *Art. VII establishes the Association of Administrators of the ICPC (the AAICPC) to promulgate rules & regulations to improve the ICPC's efficiency*
- *A.R.S. § 8-548.02 vests the Compact Administrator with the authority to represent Arizona in the AAICPC*
- *Arizona's courts have recognized that the AAICPC's regulations are binding (see ADES v. Leonardo)*

What do the
Regs cover?

- *Reg. 0.01: forms*
- *Reg. 1: Relocation (conversion of intrastate placements to interstate placements)*
- *Reg. 2: Public court jurisdiction cases (placements for public adoption or foster care or with parents/relatives)*
- *Reg. 3: Definitions & placement categories*
- *Reg. 4: RTC*
- *Reg. 5: Central State Compact Office*

What do the
Regs cover?

- *Reg. 6: Permission to place, time limits*
- *Reg. 7: Expedited placement decision*
- *Reg. 8: Change of placement purpose*
- *Reg. 9: Definition of “visit”*
- *Reg. 10: Guardians*
- *Reg. 11: Responsibility of States to supervise children*
- *Reg. 12: Private/independent adoptions*

Reg. 1
Conversion
of Intrastate
Placement
into
Interstate
Placement;
Relocation
of Family
Units

- *Intent: to ensure that a safe & stable placement can continue when a sending state has already approved a placement within that state but the placement desires to relocate to another state.*
- *Applies when there is ongoing supervision*
- *Not necessary if placement is < 90 days & child remains with same placement but sending state must monitor*

Reg. 1
cont'd

- *Reg. 1 includes a detailed list of documentation required to process a relocation request as well as timelines for receiving state responses.*
- *It also addresses “full faith and credit” for foster care licenses (and when additional licensing is required).*
- *Receiving state may deny permission to relocate there.*

Reg. 2
Public Court
Jurisdiction
Cases:
Placement
for Public
Adoption or
Foster Care
in Family
Settings
and/or with
Parents,
Relatives

- *Intent: to provide a home study and placement decision for the proposed placement with a caregiver who is:*
 - *A placement for a public adoption or foster care*
 - *A parent or relative*
- *Reg. 2 does apply to children under juvenile court jurisdiction for abuse/neglect/dependency pursuant to DCS action*

Reg. 2
Cont'd

- *Reg. 2 may be used to change a placement's status (e.g., a relative chooses to become licensed, or a foster placement becomes an adoptive placement).*
- *Reg. 2 includes documentation required for placement & timelines for responses.*
- *There is also a process for reconsideration of a denial.*

Reg. 2
Cont'd

- *If a child has already been placed without ICPC approval, the placement is a violation and the sending state bears full liability and responsibility for the child's safety.*
- *The receiving state can request the child's immediate removal.*
- *The receiving state does not have to process an ICPC request while the child remains in the illegal placement.*

Reg. 2
Cont'd

- *Reg. 2 does not apply to a placement with a parent if:*
 - *The child was not removed from that parent,*
 - *The court has no evidence that the parent is unfit,*
 - *The court seeks no evidence about the parent's fitness, and*
 - *The court relinquishes jurisdiction over the child upon placement with the parent.*

Reg. 3
Definitions
and
Placement
Categories:
Applicability
and
Exemptions

- *If a sending state extends foster care to age 21, the receiving state may provide ICPC approval and supervision for a “child” over age 18.*
- *4 placement categories require ICPC compliance:*
 1. *Adoptions (placement preliminary to independent, public, or private adoptions)*
 2. *Licensed / approved foster homes (whether related or unrelated caregivers)*
 3. *Placements with parents or relatives when the parent/relative isn't making the placement*
 4. *Group homes / residential placement (incl. delinquents)*

Reg. 3
Cont'd

- *“court jurisdiction only”*: if the sending court has an open dependency that gives the court jurisdiction to supervise, remove, or place the child, then the court is the *“sending agency.”*
- *Can also apply to delinquency, if the court is seeking to place the child out-of-state for treatment.*

Reg. 3
Cont'd

- ICPC does not apply in divorce, paternity, or probate actions when the child is being placed with parents, relatives, or non-relatives.
- ICPC does not apply when the child is being placed by a relative, with a relative but only if the placing relative (including a parent) has full legal right to plan for the child (not diminished by any court order).

Reg. 3
Definitions
cont'd

- *Definitions:*
 - *Independent adoption: adoption arranged by birth parent, attorney, intermediary, or adoption facilitator*
 - *Private agency adoption: arranged by a licensed agency that has been given custody & the right to place the child for adoption*
 - *Public adoption: adoptions from public court jurisdiction cases (e.g., dependencies)*

Reg. 3
Definitions
cont'd

- *Definitions:*
 - *Boarding home: the home of a relative or unrelated individual whether or not the placement receives compensation for caring for the child (has the same meaning as “family free”)*
 - *Family free: the home of a relative or unrelated individual whether or not the placement receives compensation*
 - *Thus, kinship care and foster care are both covered*

Reg. 3
Definitions
cont'd

- *Definitions:*
 - *Courtesy check: process that does not involve ICPC, used by a sending court to check the home of a parent from whom the child was not removed*
 - *Court jurisdiction only: cases where a sending court has an open dependency case that establishes jurisdiction to place a child (includes delinquency, where the court may not have taken custody/guardianship of the child)*

Reg. 3
Definitions
cont'd

- **Definitions:**
 - *Emergency placement: a temporary placement, 30 days or less*
 - *Foster care: can include care by a parent if the parent's care of the child is pursuant to court order, not just the parent-child relationship. Also includes foster homes, relative foster homes, group homes, shelters, & residential facilities regardless of whether the placement is licensed or receives payment for care*

Reg. 3
Definitions
cont'd

- *Definitions:*
 - *Home study: evaluation of a home environment according to the standards of the state where the home is located to determine whether it would meet the child's individual needs*
 - *Types: adoption, foster home, interstate, parent, relative, non-relative*

Reg. 4
Residential
Placement

- *Intent: provide for the protection & safety of children placed in a residential facility in another state*
- *“residential facility”:* includes residential treatment center or group home; provides a level of 24-hour supervised care beyond what is needed for assessment or treatment of an acute condition. Does not include primarily educational institutions, hospitals, or medical facilities (defined)

Reg. 4
cont'd

- *Sending agency remains responsible for the child and must maintain jurisdiction until the child becomes independent or the case is closed with the concurrence of the receiving state (to ensure that children are not physically or financially abandoned in the receiving state)*
- *Can apply to children over 18 if state law permits*

Reg. 4
cont'd

- *Placement of a delinquent child requires a hearing & specific findings (in art. V of the ICPC)*
- *A new ICPC referral is needed if a child is placed in the receiving state in a non-RTC home, but needs to be moved to an RTC*
- *Monitoring or supervision are provided by the RTC, not receiving state child welfare workers & probation staff*
- *There is a long list of info that must be provided along with the ICPC request, along with deadlines for responses*

Reg. 6
Permission
to Place
Child: Time
Limitations,
Reapplication

- *Approval is good for 6 months—if child isn't placed within 6 months, sending agency must reapply (receiving state may request add'l info, but shall not require a new home study unless the previous one is too old to be valid)*

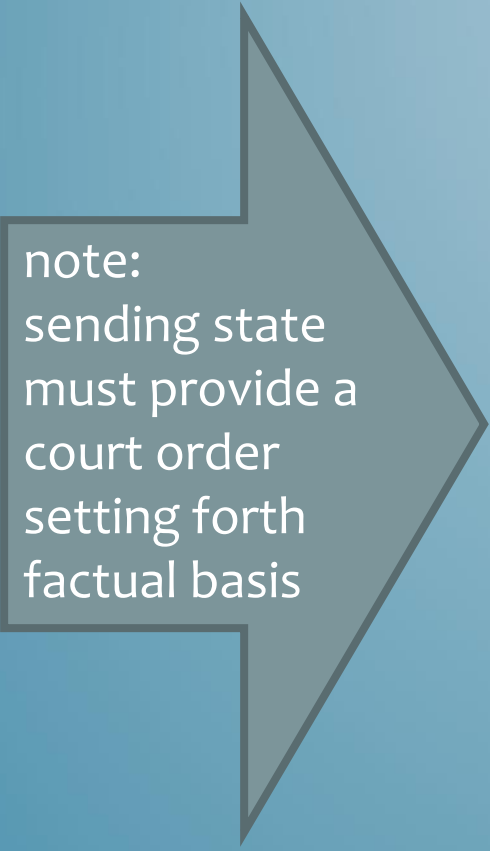
Reg. 7
Expedited
Placement
Decision

- *Intent: to expedite ICPC approval/denial for placement with a parent, stepparent, grandparent, adult uncle/aunt, adult sibling, or child's guardian & to protect safety of children while minimizing need for interim placements*
- *Must be completed within 7 days of receipt of completed packet*
- *Receiving state may give provisional approval*

Reg. 7
cont'd

- *Does not apply if*
 - *child has already been placed in receiving state illegally*
 - *Intention of sending state is for licensed or approved foster care or adoption with a specified relative*
 - *The court places with a parent from whom child was not removed & no evidence of unfitness*

Reg. 7
cont'd



note:
sending state
must provide a
court order
setting forth
factual basis

- *If the placement is pursuant to a dependency, Reg. 7 is available only if one of the following:*
 - *The dependency is unexpected (sudden incarceration, incapacitation of parent)*
 - *Child is < 4 (but may include older siblings who will be in the same placement)*
 - *Any child in the sibling group has a substantial relationship with the proposed placement*
 - *Child is currently in an emergency placement*

Reg. 8
Change of
Placement
Purpose

- *Must submit a form any time the purpose of a placement changes (e.g., from foster care to preadoption)*

Reg. 9
Definition
of a Visit

- *Visit ≠ Placement. Visits & placements are distinguished by purpose, duration, & intention as to the child's place of abode*
- *Visit = to provide child with a social or cultural experience of short duration. If the stay is < 30 days, it will be presumed to be a visit*
- *Not a visit if:*
 - *> 30 days (except school breaks)*
 - *No specific end date*
 - *ICPC request has already been made for placement (rebuttable presumption that visit is really a placement)*

Reg. 10
Guardians

- Defines “guardian”
- Placement with guardian isn’t subject to ICPC if the guardianship was established prior to considering the out-of-state placement & the placement is made by the child’s parent, stepparent, grandparent, adult sibling, or adult aunt/uncle
- Sending state may establish GX but may dismiss only with concurrence

Reg. 11
Responsibility
of States to
Supervise
Children

- *“supervision”*: monitoring the child & the child’s living situation by the receiving state under an approved ICPC placement
- *Receiving state must supervise if requested by sending state and sending agency is a public child placing agency, agency that completed the home study is a public child placing agency, and placement is not RTC or group home*

Reg. 11
cont'd

- *Must continue until child ages out, is adopted, legal custody is granted and sending state jurisdiction ends, child leaves the placement, or the sending state requests that supervision end & sending state concurs*
- *Must include monthly face-to-face visits, a majority of them in the home, with a written report every 90 days (with specific contents)*

The ICPC in Arizona

Common issues & pitfalls

ICPC & Other Laws

- *UCCJEA / PKPA*:
 - Compliance with the ICPC isn't necessary before a court can exercise jurisdiction under the UCCJEA, but noncompliance may require the sending state to retain jurisdiction.
 - Although art. V requires the sending state to retain jurisdiction, that can be modified if the receiving state accepts jurisdiction under the UCCJEA.
 - *See J.D.S. v. Franks, 182 Ariz. 81 (1995); Frank R. v. Mother Goose Adoptions, 239 Ariz. 184 (App. 2016).*

ICPC &
Other
Laws
cont'd

- *The Interstate Compact for Juveniles (ICJ) covers juveniles on probation or parole who have absconded, escaped, or run away (see A.R.S. §§ 8-361 to 8-365).*
- *ASFA: ICPC comports with ASFA requirement to place children in the least restrictive setting in close proximity to a parent's home (see 42 U.S.C. § 675(5)(A); Raelene F. v. Ariz. Dep't of Econ. Sec., No. 2 CA-JV 2009-0042, 2009 WL 3807106 at *6 (App. Nov. 13, 2009)).*
- *Note: memo decision cited only for illustrative purposes; not citeable as persuasive or controlling authority per Ariz. R. Supreme Ct. 111.*

ICPC &
Other
Laws
cont'd

- *International law: Mexico isn't a party to the ICPC, so home studies ordered through DIF aren't ICPC home studies (see Carlos O. v. Dep't of Child Safety, No. 1 CA-JV 15-0338, 2016 WL 1743003 at *1, n.5 (App. May 3, 2016); see also Hague Convention on the Civil Aspects of International Child Abduction, 22 U.S.C. §§ 9001 et seq.).*

Limitation
on
Juvenile
Court
Authority

- Court's inherent power to protect children is limited by relevant statutes, constitutional provisions, & court rules. *See Ariz. Dep't of Econ. Sec. v. Stanford*, 234 Ariz. 477 (App. 2014); Ariz. Const. art. VI, § 15 (Juvenile court's powers limited to those granted by statute).
- Court cannot circumvent ICPC requirements when frustrated with DCS's efforts (*see Pima Cty. Juv. Action No. 18635 v. Fisher*, 125 Ariz. 430 (1980)) or even after finding that a parent would be fit but for an ICPC denial (*see Duane H. v. Ariz. Dep't of Econ. Sec.*, No. 2 CA-JV 2011-0005, 2011 WL 2695737 at *2 (App. Jun. 16, 2011)).

Court as Sending Agency

- *If a placement can remove child to another state only by virtue of a court order granting authority to do so (by establishing a guardianship, for example), the court is a “sending agency” and ICPC applies even if the placement is a relative (see Stanford, 234 Ariz. at 481-82).*

Placement with a Parent

- *If a parent's rights have been diminished by court order, interstate placement must comply with ICPC*
- *What does “diminished by court order” mean?*
 - *An order granting legal decision-making or physical custody to someone other than the out-of-state parent*
 - *An order by the juvenile court granting custody (even temporary custody) to DCS on a verified petition containing allegations of unfitness*

Placement with a Parent cont'd

- *Diminished custody doesn't presume that the parent is unfit, it just requires compliance with the ICPC so that someone in the parent's state can assess the parent's fitness for custody (see Ariz. Dep't of Econ. Sec. v. Leonardo, 200 Ariz. 74 (App. 2001)).*
- *A parent can't circumvent ICPC by giving power of attorney to a relative if the child is already in DCS's temporary custody (see Maria J. v. Dep't of Child Safety, No. 1 CA-JV 14-0300, 2015 WL 1728986 at *5 (App. April 14, 2015)).*

Myths, Stories, & Urban Legends

- *There has to be a DX finding prior to submitting an ICPC request. **False!***
- *The ICPC covers reunification services in the receiving state. **False!***
- *A proposed guardian can come to AZ, the court can appoint them guardian, and the new family can happily go back to whatever state the guardian actually lives in. **False!***
- *CMDP will continue rather than enrolling the child in the receiving state's Medicaid program. **False!***

Questions?
Comments?

Thanks
for your
time and
attention!

*Dawn Williams, Assistant Attorney General
Child & Family Protection Division
Office of the Arizona Attorney General
Certified Specialist, Child Welfare Law, NACC*

Phone: 520-746-4443

Dawn.Williams@azag.gov