

Interstate Compact on the Placement of Children

Introduction

The Interstate Compact on the Placement of Children (ICPC) is premised on the belief that children requiring out-of-state placement will receive the same protections and services that would be provided if they remained in their home states. The ICPC outlines the many steps necessary to place a child out-of-state.

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 joined informally to study the problems of children moved out-of-state for foster care or adoption. Among the problems they identified was the failure of importation and exportation statutes enacted by individual states to provide protection for 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 did not have to provide 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, and New York was the first state to enact it in 1960.

The Interstate Compact on the Placement of Children (ICPC) is an agreement among all 50 states, the District of Columbia and the Virgin Islands, that coordinates the transfer of children across state lines for the purposes of adoption, foster care, and medical treatment. The ICPC establishes uniform legal and administrative procedures governing the interstate placement of children.

Difficulties

Working with an ICPC case can be a frustrating experience. There are a number of problems with the way the Compact is operating in most states. There can be delays of over six months for completing the process. Such delays are usually a result of inadequate resources allocated to these cases and a lack of priority assigned to them. Some state social service systems do not even accept requests for out-of-state placements because of a lack of staff to oversee the placements. Other problems can occur because of confusion on the part of judges and social workers as to which cases fall under the requirements of the Compact. Unfortunately, courts in various states have ruled differently so there is no clear consensus.

Judges have created a variety of ways to bypass the Interstate Compact process due to the lasting damage that long delays can cause to children in placement. One method has been for judges to ask CASA programs to do "informal home studies." It is important to note that Arizona CASA volunteers are not trained on how to do home studies. Programs that step around the Compact assume a tremendous liability if anything bad should happen. A CASA program as well as the individual volunteer can be found negligent if important information is not discovered and the child is injured in the placement. The National CASA Association and the Arizona CASA Program do not recommend that volunteers take on this type of role.

Guidelines

The following three sections will cover the situations where a case must abide by the ICPC.

Who has to use the ICPC?

The ICPC requires sending agencies to follow the compact guidelines when sending, bringing, or causing a child to be sent or brought to another state. Sending agencies include all of the following:

- A state which is a party to the compact and any officer or employee of that state.
- A court within that state.
- A county or city government or employee of a county or city within that state.
- Any person, company, association, or charitable agency in that state.

It is important to note that the sending agency is not required to have physical custody of the child for their placement to be considered an ICPC situation. An example could be a delinquent child who is being sent out-of-state by a court for incarceration or therapy. The parental rights were not severed so the court does not have custody of the child, but the child is being sent out-of-state under the court's authority. This situation would require that the ICPC be followed.

What types of cases are required to be addressed under the ICPC?

Below is a list containing the types of cases that fall under the Compact's requirements. All cases refer to placing the child in another state.

- Foster care that will last longer than 30 days.
- Kinship care when the placing court has jurisdiction over the child.
- Birth parent unification / reunification when the court has jurisdiction over the child.
- Placement in a residential treatment facility by a parent, agency, or court.*
- Preliminary placement prior to adoption by a public or private agency, attorney, parent, or intermediary.*
- International adoption when:
 1. The right to a court-appointed lawyer.
 2. The right to seek transfer of jurisdiction to the Tribal Court.
 3. If the parent voluntarily terminated custody, they can rescind their decision and have the child returned to them immediately.

*Note: The ICPC is to be followed even in cases where private placements are being pursued.

What types of cases are not required to follow the ICPC?

Interstate placement of children does not always require the sending agencies to follow ICPC. Circumstances that are not subject to compliance with the ICPC include:

- Placements between relatives when there is no court jurisdiction over the child.
- A child admitted to any hospital, medical facility, or school.
- Home studies during divorce or custody investigations.
- Tribal placements on reservations unless an ICPC is requested.
- Placement of a child into or out of Canada, Guam, or American Samoa.
- For visits, defined as:
 1. The purpose is to provide the child with a social or cultural experience.
 2. The duration of the stay will not exceed 30 days, unless it corresponds with a child's school vacation schedule.
 3. A specific return date is arranged prior to the visit beginning.
- International adoption when the INS has issued an IR-3 visa for the child.
- Requests received through International Social Services for social services or a home study.

Steps for Placement

The following steps that must be followed to comply with the requirements of the Interstate Compact.

Step 1: Decision to place child out-of-state

Either the local court or social services program determines that the child would be best-served by being placed out-of-state.

Step 2: Request for Interstate Placement

The local social services program completes the ICPC form 100A. This form identifies the child, as well as who is responsible for the child, the proposed placement information, current legal status of the child, and what type of services are being requested of the receiving state.

Step 3: Transmit form to the sending state's ICPC administrator

Upon completion of the ICPC 100A form, the social services program delivers the form to its state's compact administration office.

Step 4: Form review and transmission to receiving state

The ICPC office administrator for the sending state reviews the 100A form. If satisfied with the information provided, the administrator sends the form to the receiving state's ICPC program administration office.

Step 5: Review form and transfer to local social services program

The ICPC program administrator in the receiving state reviews the form and, if satisfied with its content, passes the information on to the local social services program to address the form's requested information.

Step 6: Evaluation and reporting decision

The receiving state's social services program completes a home study on the requested placement, evaluates what they have found, and decides if the placement will be allowed.

Step 7: Report decision

The social services program reports its findings to the ICPC program administration office.

Step 8: Communication of decision to sending state

The receiving state's ICPC administrator reviews the social services report and recommendations. The administrator determines whether the placement would be in the best interests of the child and transmits that information to the sending state's ICPC administration office.

Step 9: Communication of decision

The sending state's ICPC office administrator informs the local social services program about the results of the receiving state's home study.

Step 10: Notification of local court

The social services program reviews the receiving state's information and determines whether to request child placement in the receiving state. The social services program then informs the sending court of the results of the out-of-state placement home study and the court determines whether the placement is in the best interests of the child.

Once a child is placed in another state, similar lines of communication must be followed for case monitoring and support. This communication continues until the child returns to the sending state or the child is placed permanently in the receiving state.

Compliance Time Line

Time frames for completing the steps required for ICPC compliance can be difficult for courts and agencies to implement. The Association of Administrators for the Interstate Compact on the Placement of Children has established a recommended time line for completing the ICPC process. Keep in mind that this is recommended and is non-binding

Procedure	Licensing not required	Licensing required	Priority Placement**
Court orders interstate placement	1 day	1 day	2 days
Local agency completes paperwork and forwards it to sending ICPC office	Max. 5 working days + 2 for mailing	Max. 5 working days + 2 for mailing	3 days
Sending ICPC office reviews paperwork and forwards to receiving ICPC office	3 working days + 2 for mailing	3 working days + 2 for mailing	2 days
Receiving ICPC office reviews paperwork and forwards to local receiving agency	3 working days + 2 for mailing	3 working days + 2 for mailing	20 days, if more than 30 days receiving ICPC office is out of compliance.
Receiving local agency completes home study and recommendation paperwork sending results to receiving ICPC office	30 days + 2 for mailing	*ASFA: 3 to 6 months or more	
Receiving ICPC office reviews material, approves or denies placement and sends results to sending ICPC office	3 working days + 2 for mailing	3 working days + 2 for mailing	
Sending ICPC office reviews material and approves or denies placement	3 working days + 2 for mailing	3 working days + 2 for mailing	1 day
Total time	60 days	120 to 210 days or more	28 days, 38 max

*The Adoption and Safe Families Act has two requirements that greatly increase the time it takes to complete the home study process.

First, before any child can be placed into a Title IV-E subsidized foster care or relative placement that placement must be licensed. This process can take between two and four months. The licensing process cannot be waived just because the child is being placed with a relative. But ICPC does approve of a child being placed with a relative going through the licensing process as long as the relative foregoes any Title IV-E payments until after they have been licensed.

Second, all prospective foster or adoptive parents must undergo a criminal background check. Federal background checks can take up to four months for completion. If a receiving agency initiates the licensing process and the background check at the same time, this can reduce the time line to two to four months. If it does not attempt to complete both requirements at the same time, it could take as long as eight months to complete the fifth step in the review process.

**To be identified as a priority placement, a case must meet some requirements. A priority placement cannot be used when:

- A placement is for foster care or adoption. These must follow licensing requirements.
- A child is already in the receiving state in violation of the ICPC.

If neither of these situations is present, the placement must meet one or more of the following circumstances to be considered a priority placement.

- The proposed placement is with a parent, grandparent, adult aunt or uncle, adult sibling, or a guardian; and
 1. the child is under two years of age; or
 2. the child is in an emergency placement; or
 3. the child has spent substantial time in the home of the placement recipient.
- The receiving state has had a completed "Request for Placement" form and supporting documentation for over 30 business days, but has not notified the sending agency whether or not the child may be placed.

Best Practices - The Importance of Following ICPC

There are several situations when a child lingering in the foster care system may appear to be better served by working around the requirements of the ICPC. However, when a child is placed out-of-state without following the ICPC, home assessments are not completed and follow-up supports and services are not provided. This can result in a child not receiving adequate services. This not only harms the child, but it could result in the loss of a placement that could have been a permanent home if proper services were provided

Illegal Practices

Following the ICPC can be a time-consuming process. As a result of delays or impatience, some courts and agencies ignore the compact and follow illegal activities to try to work around the ICPC. A court that places a child out-of-state without the receiving states permission is violating the ICPC. Most of these illegal activities fall within the following three categories:

1. Illegal placements
2. Visitation
3. Guardianship

The main issues which create illegal placements are cases where some part of the ICPC process has not been followed. For instance, be a sending agency did not make formal written notification of the proposed placement to the receiving state. Or a sending state did not wait to receive written verification from the receiving state that a placement has been determined to be in the child's best interest. An illegal placement could also be caused by a court dismissing its jurisdiction unilaterally once the child is out-of-state, or the sending state not retaining financial responsibility to support the child during the placement period.

Visitations have been used as a pretense to mask an actual intent to place a child out-of-state. Visits are not governed by the ICPC and so are not overseen by the ICPC offices. Unfortunately, these cases tend to turn up later when some sort of trouble arises or the child requires services. By using the visitation ploy, agencies are placing the child at-risk by not completing a home study or arranging for services prior to the child's arrival. Under the ICPC there is no "extended visit" concept.

Interstate placements with guardians can be exempted from the ICPC in certain cases. As a result of this exemption, there have been cases where prospective adoptive parents have been named guardians of the child they wish to adopt. The purpose of this guardianship is to evade compliance with the ICPC. Unfortunately, these parents end up being guardians only in name. Prospective adoptive parents have an inherent conflict of interest and are improper guardians for a child. A guardian's duties are supposed to include independent surveillance and protector for the child. Prospective parents have a vested interest in how they interact with the child and may place their own goals above the best interests of the child. It is important to note, however, that guardians who later wish to petition to adopt a child they are overseeing may be exempt from the ICPC guidelines.

Consequences of Illegal Placements

Illegal placements can carry certain consequences. Unfortunately, the most serious consequences directly impact the child who was supposed to be helped by the illegal placement. Several actions that can impact the child in an illegal placement are:

- Without a home study, the child may be placed in a physically or emotionally damaging environment with no one supervising the placement. If the ICPC was followed the receiving state would be obligated to provide supervision after certifying the home study.
- Illegally placed children may have problems enrolling in school and receiving publicly funded medical care. Proper services for the child are not arranged. Lack of services may lead to a strain in the placement, disruption, and even removal.
- Receiving states who discover an illegally placed child may:
 1. Make immediate arrangements to return the child to the sending state;
 2. Block pending adoption;
 3. Remove the child from the placement and place into foster care in order to develop their own permanency options; or
 4. Notify the sending state that a home study shall be completed and bring the placement into compliance.
- A legal appeal can be filed in the sending state to overturn the illegal placement made by the lower court, delaying permanency longer than ICPC could have.

Other parties can also suffer for making illegal placements. Lawyers risk corrective action from their state's Bar Association. Judges risk Judicial Review Committee action against them for violating state laws. All parties could even face liability action if the child is harmed due to the placement.

Advocating ICPC

The National CASA Association recommends volunteers use the following strategies when advocating an ICPC case.

1. Determine if the out-of-state placement is in the best interest of the child.

If the goal for permanency for a child is reunification with a parent, then it is necessary and important for the child and that parent to visit often and for that parent to remain involved in the child's activities. If the child is placed with a relative in another state, reunification will be much more difficult. A placement should always be evaluated in terms of whether it will support or hinder the permanent plan for the child. If it does not facilitate the achievement of that goal, the volunteer should explore whether there are more appropriate options available.

2. Become educated about the Interstate Compact.

Program staff as well as volunteers should understand the requirements of the Compact. They should determine who is their state's Compact Administrator and make an effort to get to know that person. If there is not a state level administrator, they should know who at the local level assigns the cases for processing. The CASA program director should work closely with the court to make sure judges understand CASA's appropriate role in these cases.

3. Be a squeaky wheel.

The volunteer can assertively advocate for the child's case to be processed as quickly as possible by closely tracking the case. Once the case is assigned to a social worker, the volunteer can make polite but firm inquiries about the status of the case, and can contact the Compact Administrator directly to urge prompt attention.

The volunteer can ask if information can be transmitted between agencies by fax or even telephone instead of waiting for reports and forms to arrive in the mail.

4. When possible, encourage the potential placement family to become proactive.

When the volunteer is able to contact the family who is the subject of the home study, the volunteer can encourage them to contact the agency instead of waiting to be contacted. The volunteer can also inform the family about what they will be required to provide in the way of documentation as part of the process.

Things will move faster if they can have available documentation of marriage, employment, income, and health.

5. Inform the court of any unnecessary delays.

6. Remember to keep the child and his or her current caretakers informed about the current status of the case.

Much of the anxiety children experience is the result of not knowing what is happening. It is not always possible to tell a child what is going to happen, but providing any information that is known can help to alleviate to some extent the child's fears.

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