

2009 DRAFTING REQUEST

Bill

Received: **01/08/2010**

Received By: **gmalaise**

Wanted: **As time permits**

Identical to LRB:

For: **Children and Families 7-2073**

By/Representing: **Julie Majerus**

This file may be shown to any legislator: **NO**

Drafter: **gmalaise**

May Contact:

Addl. Drafters:

Subject: **Children - out-of-home placement**

Extra Copies:

Submit via email: **YES**

Requester's email: **julie.bachir@wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Interstate Compact for the Placement of Children

Instructions:

See attached--redraft 07-0173/5 with attached changes

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	gmalaise 01/08/2010	kfollett 01/20/2010		_____			State
/1			phenry 01/20/2010	_____	cduerst 01/20/2010 cduerst 01/20/2010		State
/2	gmalaise 01/28/2010	kfollett 01/28/2010	jfrantze 01/28/2010	_____	sbasford 01/28/2010	sbasford 02/01/2010	

For Assembly +
Sent to Rep Seide 1 per
e-mail

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Fixed email address

FE Sent For:

Handwritten signatures and dates: 1/28, JF, 1/28

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1?	gmalaise	1/16/10 1/20	V h ph				

FE Sent For: <END>

Malaise, Gordon

From: Bachir, Julie S - DCF [Julie.Bachir@wisconsin.gov]
Sent: Thursday, January 07, 2010 1:29 PM
To: Malaise, Gordon
Cc: Collins, Kimmie L - DCF; Kritz, Brenda R - DCF
Subject: ICPC
Attachments: 07-01735.pdf

Hi Gordon,

Attached is LRB 07-0173/5, which is the bill you drafted in 2007 for the new ICPC. The bill we want to introduce this year will be the same, with some changes I will forward to you next. Last year APHSA made some changes to the ICPC so we'll need to reflect those changes in our bill.

Thank you,

Julie S. Majerus
Policy Advisor
Division of Safety and Permanence
Department of Children and Families
Phone: 608-267-2073

Malaise, Gordon

From: Bachir, Julie S - DCF [Julie.Bachir@wisconsin.gov]
Sent: Thursday, January 07, 2010 1:35 PM
To: Malaise, Gordon
Cc: Collins, Kimmie L - DCF; Kritz, Brenda R - DCF
Subject: Revised ICPC
Attachments: The New ICPC.doc; The New ICPC Color Coded.doc; The New ICPC.pdf

Hi Gordon,

Attached is the new version of the new ICPC. The most useful is the Word document that is color coded, because the changes made to the compact are in color. (The different colors – blue, red and green – just signify the purpose for the changes).

We may also want to add some language about border agreements to the bill but I need to check further on that issue. I will get back to you as soon as I learn more.

Julie S. Majerus
Policy Advisor
Division of Safety and Permanence
Department of Children and Families
Phone: 608-267-2073

01/08/2010

1 H. Provide for the promulgation of guidelines, in collaboration with Indian
2 tribes, for interstate cases involving Indian children as is or may be
3 permitted by federal law.
4

5 ARTICLE II. DEFINITIONS

6 As used in this compact,

7 A. "Approved placement" means the public child placing agency in the
8 receiving state has determined that the placement is both safe and
9 suitable for the child.

10 B. "Assessment" means an evaluation of a prospective placement by a
11 public child placing agency in the receiving state to determine if the
12 placement meets the individualized needs of the child, including but not
13 limited to the child's safety and stability, health and well-being, and
14 mental, emotional, and physical development. [An assessment is only
15 applicable to a placement by a public child placing agency.]

16 C. "Child" means an individual who has not attained the age of eighteen
17 (18).

18 D. "Certification" means to attest, declare or **swear** to before a judge or
19 notary public.

20 E. "Default" means the failure of a member state to perform the obligations
21 or responsibilities imposed upon it by this compact, the bylaws or rules
22 of the Interstate Commission.

1 (F.) "Home Study" means an evaluation of a home environment conducted in
2 accordance with the applicable requirements of the state in which the
3 home is located, ^{that} and documents the preparation and the suitability of
4 the placement resource for placement of a child in accordance with the
5 laws and requirements of ^{that} the state in which the home is located.

Insert
7-6

6 G. "Indian tribe" means any Indian tribe, band, nation, or other organized
7 group or community of Indians recognized as eligible for services
8 provided to Indians by the Secretary of the Interior because of their
9 status as Indians, including any Alaskan native village as defined in
10 section 3 (c) of the Alaska Native Claims settlement Act at 43 USC
11 §1602(c).

12 H. "Interstate Commission for the Placement of Children" means the
13 commission that is created under Article VIII of this compact and which
14 is generally referred to as the Interstate Commission.

15 I. "Jurisdiction" means the power and authority of a court to hear and
16 decide matters.

17 J. "Legal Risk Placement" ^{and} "Legal Risk Adoption" means a placement made
18 preliminary to an adoption ^{in which} ~~where~~ the prospective adoptive parents
19 acknowledge in writing that a child can be ordered ^{to be} returned to the
20 sending state or the birth mother's state of residence, if different from the
21 sending state, and ^{in which} a final decree of adoption ^{may} ~~shall~~ not be entered in any

Insert
7-14

1 jurisdiction until all required consents are obtained or are dispensed
2 with in accordance with applicable law.

3 K. "Member state" means a state that has enacted this compact.

4 L. "Non-custodial parent" means a person who, at the time of the
5 commencement of court proceedings in the sending state, does not have
6 sole legal custody of the child or has joint legal custody of a child, and
7 who is not the subject of allegations or findings of child abuse or neglect.

8 M. "Non-member state" means a state which has not enacted this compact.

9 N. "Notice of residential placement" means information regarding a
10 placement into a residential facility provided to the receiving state
11 including, but not limited to the name, date and place of birth of the
12 child, the identity and address of the parent or legal guardian, evidence
13 of authority to make the placement, and the name and address of the
14 facility in which the child will be placed. Notice of residential placement
15 shall also include information regarding a discharge and any
16 unauthorized absence from the facility.

17 O. "Placement" means the act by a public or private child placing agency
18 intended to arrange for the care or custody of a child in another state.

19 P. "Private child placing agency" means any private corporation, agency,
20 foundation, institution, or charitable organization, or any private person
21 or attorney that facilitates, causes, or is involved in the placement of a

1 child from one state to another and that is not an instrumentality of the
2 state or acting under color of state law.

3 Q. "Provisional placement" means a determination made by the public child
4 placing agency in the receiving state that the proposed placement is safe
5 and suitable, and, to the extent allowable, the receiving state has
6 temporarily waived its standards or requirements otherwise applicable to
7 prospective foster or adoptive parents so as to not delay the placement.
8 Completion of the receiving state requirements regarding training for
9 prospective foster or adoptive parents shall not delay an otherwise safe
10 and suitable placement.

11 R. "Public child placing agency" means any government child welfare agency
12 or child protection agency or a private entity under contract with such an
13 agency, regardless of whether they act on behalf of a state, county,
14 municipality or other governmental unit and which facilitates, causes, or
15 is involved in the placement of a child from one state to another.

16 S. "Receiving state" means the state to which a child is sent, brought, or
17 caused to be sent or brought.

18 T. "Relative" means someone who is related to the child as a parent, step-
19 parent, sibling by half or whole blood or by adoption, grandparent, aunt,
20 uncle, or first cousin or a non-relative with such significant ties to the
21 child that they may be regarded as relatives as determined by the court
22 in the sending state.

- 1 U. "Residential Facility" means a facility providing a level of care that is
2 sufficient to substitute for parental responsibility or foster care, and is
3 beyond what is needed for assessment or treatment of an acute
4 condition. For purposes of the compact, residential facilities do not
5 include institutions primarily educational in character, hospitals or other
6 medical facilities.
- 7 V. "Rule" means a written directive, mandate, standard or principle issued
8 by the Interstate Commission promulgated pursuant to Article XI of this
9 compact that is of general applicability and that implements, interprets
10 or prescribes a policy or provision of the compact. ["Rule" has the force
11 and effect of an administrative rule in a member state, and includes the
12 amendment, repeal, or suspension of an existing rule.]
- 13 W. "Sending state" means the state from which the placement of a child is
14 initiated.
- 15 X. "Service member's permanent duty station" means the military
16 installation where an active duty Armed Services member is currently
17 assigned and is physically located under competent orders that do not
18 specify the duty as temporary.
- 19 Y. "Service member's state of legal residence" means the state in which the
20 active duty Armed Services member is considered a resident for tax and
21 voting purposes.

1 Z. "State" means a state of the United States, the District of Columbia, the
2 Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American
3 Samoa, the Northern Marianas Islands and any other territory of the
4 United States.

5 AA. "State court" means a judicial body of a state that is vested by law
6 with responsibility for adjudicating cases involving abuse, neglect,
7 deprivation, delinquency or status offenses of individuals who have not
8 attained the age of eighteen (18).

9 BB. "Supervision" means monitoring provided by the receiving state
10 once a child has been placed in a receiving state pursuant to this
11 compact.

12
13 ARTICLE III. APPLICABILITY

14 A. Except as otherwise provided in Article III, Section B, this compact shall
15 apply to:

- 16 1. The interstate placement of a child subject to ongoing court
17 jurisdiction in the sending state, due to allegations or findings that
18 the child has been abused, neglected, or deprived as defined by the
19 laws of the sending state, provided, however, that the placement of
20 such a child into a residential facility shall only require notice of
21 residential placement to the receiving state prior to placement.

- 1 2. The interstate placement of a child adjudicated delinquent or
2 unmanageable based on the laws of the sending state and subject to
3 ongoing court jurisdiction of the sending state if:
 - 4 a. the child is being placed in a residential facility in another
5 member state and is not covered under another compact; or
 - 6 b. the child is being placed in another member state and the
7 determination of safety and suitability of the placement and
8 services required is not provided through another compact.
- 9 3. The interstate placement of any child by a public child placing agency
10 or private child placing agency as defined in this compact as a
11 preliminary step to a possible adoption.
- 12 B. The provisions of this compact shall not apply to:
 - 13 1. The interstate placement of a child in a custody proceeding in which a
14 public child placing agency is not a party, provided, the placement is
15 not intended to effectuate an adoption.
 - 16 2. The interstate placement of a child with a non-relative in a receiving
17 state by a parent with the legal authority to make such a placement
18 provided, however, that the placement is not intended to effectuate an
19 adoption.
 - 20 3. The interstate placement of a child by one relative with the lawful
21 authority to make such a placement directly with a relative in a
22 receiving state.

- 1 4. The placement of a child, not subject to Article III, Section A, into a
2 residential facility by his parent.
- 3 5. The placement of a child with a non-custodial parent provided that:
4 a. The non-custodial parent proves to the satisfaction of a court in
5 the sending state a substantial relationship with the child; and
6 b. The court in the sending state makes a written finding that
7 placement with the non-custodial parent is in the best interests of
8 the child; and
9 **c. The court in the sending state dismisses its jurisdiction [in**
10 **interstate placements in which the public child placing agency**
11 **is a party to the proceeding.]**
- 12 6. A child entering the United States from a foreign country for the
13 purpose of adoption or leaving the United States to go to a foreign
14 country for the purpose of adoption in that country.
- 15 7. Cases in which a U.S. citizen child living overseas with his family, at
16 least one of whom is in the U.S. Armed Services, and who is stationed
17 overseas, is removed and placed in a state.
- 18 8. The sending of a child by a public child placing agency or a private
19 child placing agency for a visit as defined by the rules of the Interstate
20 Commission.
- 21 C. For purposes of determining the applicability of this compact to the
22 placement of a child with a family in the Armed Services, the public child

1 placing agency or private child placing agency may choose the state of
2 the service member's permanent duty station or the service member's
3 declared legal residence.

4 D. Nothing in this compact shall be construed to prohibit the concurrent
5 application of the provisions of this compact with other applicable
6 interstate compacts including the Interstate Compact for Juveniles and
7 the Interstate Compact on Adoption and Medical Assistance. The
8 Interstate Commission may in cooperation with other interstate compact
9 commissions having responsibility for the interstate movement,
10 placement or transfer of children, promulgate like rules to ensure the
11 coordination of services, timely placement of children, and the reduction
12 of unnecessary or duplicative administrative or procedural requirements.

13
14 ARTICLE IV. JURISDICTION

15 A. Except as provided in Article IV, **Section H** and Article V, Section B,
16 paragraph two and three concerning private and independent adoptions,
17 and in interstate placements in which the public child placing agency is
18 not a party to a custody proceeding, the sending state shall retain
19 jurisdiction over a child with respect to all matters of custody and
20 disposition of the child which it would have had if the child had
21 remained in the sending state. Such jurisdiction shall also include the
22 power to order the return of the child to the sending state.

Insert
12-17

1 B. When an issue of child protection or custody is brought before a court in
2 the receiving state, such court shall confer with the court of the sending
3 state to determine the most appropriate forum for adjudication.

4 **C. In cases that are before courts and subject to this compact, the**
5 **taking of testimony for hearings before any judicial officer may**
6 **occur in person or by telephone, audio-video conference, or such**
7 **other means as approved by the rules of the Interstate Commission;**
8 **and Judicial officers may communicate with other judicial officers**
9 **and persons involved in the interstate process as may be permitted**
10 **by their Canons of Judicial Conduct and any rules promulgated by**
11 **the Interstate Commission.**

Interstate
12-24

12 D. In accordance with its own laws, the court in the sending state shall have
13 authority to terminate its jurisdiction if:

- 14 1. The child is reunified with the parent in the receiving state who is the
15 subject of allegations or findings of abuse or neglect, only with the
16 concurrence of the public child placing agency in the receiving state;
17 or
- 18 2. The child is adopted; or
- 19 3. The child reaches the age of majority under the laws of the sending
20 state; or
- 21 4. The child achieves legal independence pursuant to the laws of the
22 sending state; or

1 5. A guardianship is created by a court in the receiving state with the
2 concurrence of the court in the sending state; or

3 6. An Indian tribe has petitioned for and received jurisdiction from the
4 court in the sending state; or

5 7. The public child placing agency of the sending state requests
6 termination and has obtained the concurrence of the public child
7 placing agency in the receiving the state.

8 E. When a sending state court terminates its jurisdiction, the receiving state
9 child placing agency shall be notified.

10 F. Nothing in this article shall defeat a claim of jurisdiction by a receiving
11 state court sufficient to deal with an act of truancy, delinquency, crime
12 or behavior involving a child as defined by the laws of the receiving state
13 committed by the child in the receiving state which would be a violation
14 of its laws.

15 G. Nothing in this article shall limit the receiving state's ability to take
16 emergency jurisdiction for the protection of the child.

17 H. The substantive laws of the state in which an adoption will be finalized
18 shall solely govern all issues relating to the adoption of the child and the
19 court in which the adoption proceeding is filed shall have subject matter
20 jurisdiction regarding all substantive issues relating to the adoption,
21 except:

when any of the
following applies:

Insert
13-23

- 1 1. when the child is a ward of another court that established
- 2 jurisdiction over the child prior to the placement; or
- 3 2. when the child is in the legal custody of a public agency in the
- 4 sending state; or
- 5 3. when a court in the sending state has otherwise appropriately
- 6 assumed jurisdiction over the child, prior to the submission of the
- 7 request for approval of placement.

Insert
13-23

- 8 I. A final decree of adoption shall not be entered in any jurisdiction until
- 9 the placement is authorized as an “approved placement” by the public
- 10 child placing agency in the receiving state.

11

12 ARTICLE V. PLACEMENT EVALUATION

- 13 A. Prior to sending, bringing, or causing a child to be sent or brought into a
- 14 receiving state, the public child placing agency shall provide a written
- 15 request for assessment to the receiving state.

- 16 B. For placements by a private child placing agency, a child may be sent or
- 17 brought, or caused to be sent or brought, into a receiving state, upon
- 18 receipt and immediate review of the required content in a request for
- 19 approval of a placement in both the sending and receiving state public
- 20 child placing agency. The required content to accompany a request for
- 21 approval shall include all of the following:

Insert
14-16

Insert 14-16

- 1 1. A request for approval identifying the child, birth parent(s), the
2 prospective adoptive parent(s), and the supervising agency, signed by
3 the person requesting approval; and
 - 4 2. The appropriate consents or relinquishments signed by the birth-
5 parents in accordance with the laws of the sending state, or where
6 permitted the laws of the state where the adoption will be finalized;
7 and
 - 8 3. Certification by a licensed attorney or authorized agent of a private
9 adoption agency that the consent or relinquishment is in compliance
10 with the applicable laws of the sending state, or where permitted the
11 laws of the state where finalization of the adoption will occur; and
 - 12 4. A home study; and
 - 13 5. An acknowledgment of legal risk signed by the prospective adoptive
14 parents.
- 15 C. The sending state and the receiving state may request additional
16 information or documents prior to finalization of an approved placement,
17 but they may not delay travel by the prospective adoptive parents with the
18 child if the required content for approval has been submitted, received and
19 reviewed by the public child placing agency in both the sending state and
20 the receiving state.

1 D. Approval from the public child placing agency in the receiving state for a
2 provisional or approved placement is required as provided for in the rules of
3 the Interstate Commission.

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14-16

4 E. The procedures for making and the request for an assessment shall contain
5 all information and be in such form as provided for in the rules of the
6 Interstate Commission.

7 F. Upon receipt of a request from the public child placing agency of the
8 sending state, the receiving state shall initiate an assessment of the
9 proposed placement to determine its safety and suitability. If the proposed
10 placement is a placement with a relative, the public child placing agency of
11 the sending state may request a determination for a provisional placement.

12 G. The public child placing agency in the receiving state may request from the
13 public child placing agency or the private child placing agency in the
14 sending state, and shall be entitled to receive supporting or additional
15 information necessary to complete the assessment or approve the
16 placement.

17 H. The public child placing agency in the receiving state shall approve a
18 provisional placement and complete or arrange for the completion of the
19 assessment within the timeframes established by the rules of the Interstate
20 Commission.

21 I. For a placement by a private child placing agency, the sending state shall
22 not impose any additional requirements to complete the home study that

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15-7

1 are not required by the receiving state, unless the adoption is finalized in
2 the sending state.

ISA
15-7

3 J. The Interstate Commission may develop uniform standards for the
4 assessment of the safety and suitability of interstate placements.

6 ARTICLE VI. PLACEMENT AUTHORITY

7 A. Except as otherwise provided in this Compact, no child subject to this
8 compact shall be placed into a receiving state until approval for such
9 placement is obtained.

10 B. If the public child placing agency in the receiving state does not approve
11 the proposed placement then the child shall not be placed. The receiving
12 state shall provide written documentation of any such determination in
13 accordance with the rules promulgated by the Interstate Commission.
14 Such determination is not subject to judicial review in the sending state.

15 C. If the proposed placement is not approved, any interested party shall
16 have standing to seek an administrative review of the receiving state's
17 determination.

18 1. The administrative review and any further judicial review associated
19 with the determination shall be conducted in the receiving state
20 pursuant to its applicable **Administrative Procedures Act**.

21 2. If a determination not to approve the placement of the child in the
22 receiving state is overturned upon review, the placement shall be

1 deemed approved, provided however that all administrative or judicial
2 remedies have been exhausted or the time for such remedies has
3 passed.

4
5 ARTICLE VII. PLACING AGENCY RESPONSIBILITY

6 A. For the interstate placement of a child made by a public child placing
7 agency or state court:

8 1. The public child placing agency in the sending state shall have
9 financial responsibility for:

10 a. the ongoing support and maintenance for the child during the
11 period of the placement, unless otherwise provided for in the
12 receiving state; and

13 b. as determined by the public child placing agency in the sending
14 state, services for the child beyond the public services for which
15 the child is eligible in the receiving state.

16 2. The receiving state shall only have financial responsibility for:

17 a. any assessment conducted by the receiving state; and

18 b. supervision conducted by the receiving state at the level necessary
19 to support the placement as agreed upon by the public child
20 placing agencies of the receiving and sending state.

21 3. Nothing in this provision shall prohibit public child placing agencies in
22 the sending state from entering into agreements with licensed

1 agencies or persons in the receiving state to conduct assessments and
2 provide supervision.

3 B. For the placement of a child by a private child placing agency preliminary
4 to a possible adoption, the private child placing agency shall be:

5 1. Legally responsible for the child during the period of placement as
6 provided for in the law of the sending state until the finalization of the
7 adoption.

8 2. Financially responsible for the child absent a contractual agreement
9 to the contrary.

10 C. The public child placing agency in the receiving state shall provide timely
11 assessments, as provided for in the rules of the Interstate Commission.

12 D. The public child placing agency in the receiving state shall provide, or
13 arrange for the provision of, supervision and services for the child,
14 including timely reports, during the period of the placement.

15 E. Nothing in this compact shall be construed as to limit the authority of
16 the public child placing agency in the receiving state from contracting
17 with a licensed agency or person in the receiving state for an assessment
18 or the provision of supervision or services for the child or otherwise
19 authorizing the provision of supervision or services by a licensed agency
20 during the period of placement.

21 F. Each member state shall provide for coordination among its branches of
22 government concerning the state's participation in, and compliance with,

1 the compact and Interstate Commission activities, through the creation
2 of an advisory council or use of an existing body or board.

3 G. Each member state shall establish a central state compact office, which
4 shall be responsible for state compliance with the compact and the rules
5 of the Interstate Commission.

6 H. The public child placing agency in the sending state shall oversee
7 compliance with the provisions of the Indian Child Welfare Act (25 USC
8 1901 et seq.) for placements subject to the provisions of this compact,
9 prior to placement.

10 I. With the consent of the Interstate Commission, states may enter into
11 limited agreements that facilitate the timely assessment and provision of
12 services and supervision of placements under this compact.

13
14 ARTICLE VIII. INTERSTATE COMMISSION FOR THE PLACEMENT OF
15 CHILDREN

16 The member states hereby establish, by way of this compact, a commission
17 known as the "Interstate Commission for the Placement of Children." The
18 activities of the Interstate Commission are the formation of public policy and
19 are a discretionary state function. The Interstate Commission shall:

20 A. Be a joint commission of the member states and shall have the
21 responsibilities, powers and duties set forth herein, and such additional

1 powers as may be conferred upon it by subsequent concurrent action of
2 the respective legislatures of the member states.

3 B. Consist of one commissioner from each member state who shall be
4 appointed by the executive head of the state human services
5 administration with ultimate responsibility for the child welfare program.
6 The appointed commissioner shall have the legal authority to vote on
7 policy related matters governed by this compact binding the state.

8 1. Each member state represented at a meeting of the Interstate
9 Commission is entitled to one vote.

10 2. A majority of the member states shall constitute a quorum for the
11 transaction of business, unless a larger quorum is required by the
12 bylaws of the Interstate Commission.

13 3. A representative shall not delegate a vote to another member state.

14 4. A representative may delegate voting authority to another person from
15 their state for a specified meeting.

16 C. In addition to the commissioners of each member state, the Interstate
17 Commission shall include persons who are members of interested
18 organizations as defined in the bylaws or rules of the Interstate
19 Commission. Such members shall be ex officio and shall not be entitled
20 to vote on any matter before the Interstate Commission.

1 D. Establish an executive committee which shall have the authority to
2 administer the day-to-day operations and administration of the Interstate
3 Commission. It shall not have the power to engage in rulemaking.
4

5 ARTICLE IX. POWERS AND DUTIES OF THE INTERSTATE COMMISSION

6 The Interstate Commission shall have the following powers:

7 A. To promulgate rules and take all necessary actions to effect the goals,
8 purposes and obligations as enumerated in this compact.

9 B. To provide for dispute resolution among member states.

10 C. To issue, upon request of a member state, advisory opinions concerning
11 the meaning or interpretation of the interstate compact, its bylaws, rules
12 or actions.

13 D. To enforce compliance with this compact or the bylaws or rules of the
14 Interstate Commission pursuant to Article XII.

15 E. Collect standardized data concerning the interstate placement of children
16 subject to this compact as directed through its rules which shall specify
17 the data to be collected, the means of collection and data exchange and
18 reporting requirements.

19 F. To establish and maintain offices as may be necessary for the transacting
20 of its business.

21 G. To purchase and maintain insurance and bonds.

- 1 H. To hire or contract for services of personnel or consultants as necessary
2 to carry out its functions under the compact and establish personnel
3 qualification policies, and rates of compensation.
- 4 I. To establish and appoint committees and officers including, but not
5 limited to, an executive committee as required by Article X.
- 6 J. To accept any and all donations and grants of money, equipment,
7 supplies, materials, and services, and to receive, utilize, and dispose
8 thereof.
- 9 K. To lease, purchase, accept contributions or donations of, or otherwise to
10 own, hold, improve or use any property, real, personal, or mixed.
- 11 L. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise
12 dispose of any property, real, personal or mixed.
- 13 M. To establish a budget and make expenditures.
- 14 N. To adopt a seal and bylaws governing the management and operation of
15 the Interstate Commission.
- 16 O. To report annually to the legislatures, governors, the judiciary, and state
17 advisory councils of the member states concerning the activities of the
18 Interstate Commission during the preceding year. Such reports shall
19 also include any recommendations that may have been adopted by the
20 Interstate Commission.

1 P. To coordinate and provide education, training and public awareness
2 regarding the interstate movement of children for officials involved in
3 such activity.

4 Q. To maintain books and records in accordance with the bylaws of the
5 Interstate Commission.

6 R. To perform such functions as may be necessary or appropriate to achieve
7 the purposes of this compact.

8
9 ARTICLE X. ORGANIZATION AND OPERATION OF THE INTERSTATE

10 COMMISSION

11 A. Bylaws

12 1. Within 12 months after the first Interstate Commission meeting, the
13 Interstate Commission shall adopt bylaws to govern its conduct as
14 may be necessary or appropriate to carry out the purposes of the
15 compact.

16 2. The Interstate Commission's bylaws and rules shall establish
17 conditions and procedures under which the Interstate Commission
18 shall make its information and official records available to the public
19 for inspection or copying. The Interstate Commission may exempt
20 from disclosure information or official records to the extent they
21 would adversely affect personal privacy rights or proprietary interests.

22 B. Meetings

1 1. The Interstate Commission shall meet at least once each calendar
2 year. The chairperson may call additional meetings and, upon the
3 request of a simple majority of the member states shall call additional
4 meetings.

5 2. Public notice shall be given by the Interstate Commission of all
6 meetings and all meetings shall be open to the public, except as set
7 forth in the rules or as otherwise provided in the compact. The
8 Interstate Commission and its committees may close a meeting, or
9 portion thereof, where it determines by two-thirds vote that an open
10 meeting would be likely to:

11 a. relate solely to the Interstate Commission's internal personnel
12 practices and procedures; or

13 b. disclose matters specifically exempted from disclosure by federal
14 law; or

15 c. disclose financial or commercial information which is privileged,
16 proprietary or confidential in nature; or

17 d. involve accusing a person of a crime, or formally censuring a
18 person; or

19 e. disclose information of a personal nature where disclosure would
20 constitute a clearly unwarranted invasion of personal privacy or
21 physically endanger one or more persons; or

1 f. disclose investigative records compiled for law enforcement
2 purposes; or

3 g. specifically relate to the Interstate Commission's participation in a
4 civil action or other legal proceeding.

5 3. For a meeting, or portion of a meeting, closed pursuant to this
6 provision, the Interstate Commission's legal counsel or designee shall
7 certify that the meeting may be closed and shall reference each
8 relevant exemption provision. The Interstate Commission shall keep
9 minutes which shall fully and clearly describe all matters discussed in
10 a meeting and shall provide a full and accurate summary of actions
11 taken, and the reasons therefore, including a description of the views
12 expressed and the record of a roll call vote. All documents considered
13 in connection with an action shall be identified in such minutes. All
14 minutes and documents of a closed meeting shall remain under seal,
15 subject to release by a majority vote of the Interstate Commission or
16 by court order.

17 4. The bylaws may provide for meetings of the Interstate Commission to
18 be conducted by telecommunication or other electronic
19 communication.

20 C. Officers and Staff

21 1. The Interstate Commission may, through its executive committee,
22 appoint or retain a staff director for such period, upon such terms

1 and conditions and for such compensation as the Interstate
2 Commission may deem appropriate. The staff director shall serve as
3 secretary to the Interstate Commission, but shall not have a vote. The
4 staff director may hire and supervise such other staff as may be
5 authorized by the Interstate Commission.

- 6 2. The Interstate Commission shall elect, from among its members, a
7 chairperson and a vice chairperson of the executive committee and
8 other necessary officers, each of whom shall have such authority and
9 duties as may be specified in the bylaws.

10 D. Qualified Immunity, Defense and Indemnification

- 11 1. The Interstate Commission's staff director and its employees shall be
12 immune from suit and liability, either personally or in their official
13 capacity, for a claim for damage to or loss of property or personal
14 injury or other civil liability caused or arising out of or relating to an
15 actual or alleged act, error, or omission that occurred, or that such
16 person had a reasonable basis for believing occurred within the
17 scope of Commission employment, duties, or responsibilities;
18 provided, that such person shall not be protected from suit or liability
19 for damage, loss, injury, or liability caused by a criminal act or the
20 intentional or willful and wanton misconduct of such person.

- 21 a. The liability of the Interstate Commission's staff director and
22 employees or Interstate Commission representatives, acting within

1 the scope of such person's employment or duties for acts, errors,
2 or omissions occurring within such person's state may not exceed
3 the limits of liability set forth under the Constitution and laws of
4 that state for state officials, employees, and agents. The Interstate
5 Commission is considered to be an instrumentality of the states for
6 the purposes of any such action. Nothing in this subsection shall
7 be construed to protect such person from suit or liability for
8 damage, loss, injury, or liability caused by a criminal act or the
9 intentional or willful and wanton misconduct of such person.

- 10 b. The Interstate Commission shall defend the staff director and its
11 employees and, subject to the approval of the Attorney General or
12 other appropriate legal counsel of the member state shall defend
13 the commissioner of a member state in a civil action seeking to
14 impose liability arising out of an actual or alleged act, error or
15 omission that occurred within the scope of Interstate Commission
16 employment, duties or responsibilities, or that the defendant had a
17 reasonable basis for believing occurred within the scope of
18 Interstate Commission employment, duties, or responsibilities,
19 provided that the actual or alleged act, error, or omission did not
20 result from intentional or willful and wanton misconduct on the
21 part of such person.

1 c. To the extent not covered by the state involved, member state, or
2 the Interstate Commission, the representatives or employees of the
3 Interstate Commission shall be held harmless in the amount of a
4 settlement or judgment, including attorney's fees and costs,
5 obtained against such persons arising out of an actual or alleged
6 act, error, or omission that occurred within the scope of Interstate
7 Commission employment, duties, or responsibilities, or that such
8 persons had a reasonable basis for believing occurred within the
9 scope of Interstate Commission employment, duties, or
10 responsibilities, provided that the actual or alleged act, error, or
11 omission did not result from intentional or willful and wanton
12 misconduct on the part of such persons.

13
14 **ARTICLE XI. RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION**

15 A. The Interstate Commission shall promulgate and publish rules in order
16 to effectively and efficiently achieve the purposes of the compact.

17 B. Rulemaking shall occur pursuant to the criteria set forth in this article
18 and the bylaws and rules adopted pursuant thereto. Such rulemaking
19 shall substantially conform to the principles of the "Model State
20 Administrative Procedures Act," 1981 Act, Uniform Laws Annotated, Vol.
21 15, p.1 (2000), or such other administrative procedure acts as the
22 Interstate Commission deems appropriate consistent with due process

1 requirements under the United States Constitution as now or hereafter
2 interpreted by the U. S. Supreme Court. All rules and amendments shall
3 become binding as of the date specified, as published with the final
4 version of the rule as approved by the Interstate Commission.

5 C. When promulgating a rule, the Interstate Commission shall, at a
6 minimum:

- 7 1. Publish the proposed rule's entire text stating the reason(s) for that
8 proposed rule; and
- 9 2. Allow and invite any and all persons to submit written data, facts,
10 opinions and arguments, which information shall be added to the
11 record, and be made publicly available; and
- 12 3. Promulgate a final rule and its effective date, if appropriate, based on
13 input from state or local officials, or interested parties.

14 D. Rules promulgated by the Interstate Commission shall have the force
15 and effect of administrative rules and shall be binding in the compacting
16 states to the extent and in the manner provided for in this compact.

17 E. Not later than 60 days after a rule is promulgated, an interested person
18 may file a petition in the U.S. District Court for the District of Columbia
19 or in the Federal District Court where the Interstate Commission's
20 principal office is located for judicial review of such rule. If the court
21 finds that the Interstate Commission's action is not supported by

1 substantial evidence in the rulemaking record, the court shall hold the
2 rule unlawful and set it aside.

3 F. If a majority of the legislatures of the member states rejects a rule, those
4 states may by enactment of a statute or resolution in the same manner
5 used to adopt the compact cause that such rule shall have no further
6 force and effect in any member state.

7 G. The existing rules governing the operation of the Interstate Compact on
8 the Placement of Children superseded by this act shall be null and void
9 no less than 12, but no more than 24 months after the first meeting of
10 the Interstate Commission created hereunder, as determined by the
11 members during the first meeting.

12 H. Within the first 12 months of operation, the Interstate Commission shall
13 promulgate rules addressing the following:

- 14 1. Transition rules
- 15 2. Forms and procedures
- 16 3. Time lines
- 17 4. Data collection and reporting
- 18 5. Rulemaking
- 19 6. Visitation
- 20 7. Progress reports/supervision
- 21 8. Sharing of information/confidentiality
- 22 9. Financing of the Interstate Commission

1 10. Mediation, arbitration and dispute resolution

2 11. Education, training and technical assistance

3 12. Enforcement

4 13. Coordination with other interstate compacts

5 I. Upon determination by a majority of the members of the Interstate
6 Commission that an emergency exists:

7 1. The Interstate Commission may promulgate an emergency rule only if
8 it is required to:

9 a. Protect the children covered by this compact from an imminent
10 threat to their health, safety and well-being; or

11 b. Prevent loss of federal or state funds; or

12 c. Meet a deadline for the promulgation of an administrative rule
13 required by federal law.

14 2. An emergency rule shall become effective immediately upon adoption,
15 provided that the usual rulemaking procedures provided hereunder
16 shall be retroactively applied to said rule as soon as reasonably
17 possible, but no later than 90 days after the effective date of the
18 emergency rule.

19 3. An emergency rule shall be promulgated as provided for in the rules of
20 the Interstate Commission.

21
22 ARTICLE XII. OVERSIGHT, DISPUTE RESOLUTION, ENFORCEMENT

1 A. Oversight

- 2 1. The Interstate Commission shall oversee the administration and
3 operation of the compact.
- 4 2. The executive, legislative and judicial branches of state government in
5 each member state shall enforce this compact and the rules of the
6 Interstate Commission and shall take all actions necessary and
7 appropriate to effectuate the compact's purposes and intent. The
8 compact and its rules shall be binding in the compacting states to the
9 extent and in the manner provided for in this compact.
- 10 3. All courts shall take judicial notice of the compact and the rules in
11 any judicial or administrative proceeding in a member state pertaining
12 to the subject matter of this compact.
- 13 4. The Interstate Commission shall be entitled to receive service of
14 process in any action in which the validity of a compact provision or
15 rule is the issue for which a judicial determination has been sought
16 and shall have standing to intervene in any proceedings. Failure to
17 provide service of process to the Interstate Commission shall render
18 any judgment, order or other determination, however so captioned or
19 classified, void as to the Interstate Commission, this compact, its
20 bylaws or rules of the Interstate Commission.

21 B. Dispute Resolution

1 1. The Interstate Commission shall attempt, upon the request of a
2 member state, to resolve disputes which are subject to the compact
3 and which may arise among member states and between member and
4 non-member states.

5 2. The Interstate Commission shall promulgate a rule providing for both
6 mediation and binding dispute resolution for disputes among
7 compacting states. The costs of such mediation or dispute resolution
8 shall be the responsibility of the parties to the dispute.

9 C. Enforcement

10 1. If the Interstate Commission determines that a member state has
11 defaulted in the performance of its obligations or responsibilities
12 under this compact, its bylaws or rules, the Interstate Commission
13 may:

14 a. Provide remedial training and specific technical assistance; or

15 b. Provide written notice to the defaulting state and other member
16 states, of the nature of the default and the means of curing the
17 default. The Interstate Commission shall specify the conditions by
18 which the defaulting state must cure its default; or

19 c. By majority vote of the members, initiate against a defaulting
20 member state legal action in the United State District Court for the
21 District of Columbia or, at the discretion of the Interstate
22 Commission, in the federal district where the Interstate

1 Commission has its principal office, to enforce compliance with the
2 provisions of the compact, its bylaws or rules. The relief sought
3 may include both injunctive relief and damages. In the event
4 judicial enforcement is necessary the prevailing party shall be
5 awarded all costs of such litigation including reasonable attorney's
6 fees; or

7 d. Avail itself of any other remedies available under state law or the
8 regulation of official or professional conduct.
9

10 ARTICLE XIII. FINANCING OF THE COMMISSION

11 A. The Interstate Commission shall pay, or provide for the payment of the
12 reasonable expenses of its establishment, organization and ongoing
13 activities.

14 B. The Interstate Commission may levy on and collect an annual
15 assessment from each member state to cover the cost of the operations
16 and activities of the Interstate Commission and its staff which must be in
17 a total amount sufficient to cover the Interstate Commission's annual
18 budget as approved by its members each year. The aggregate annual
19 assessment amount shall be allocated based upon a formula to be
20 determined by the Interstate Commission which shall promulgate a rule
21 binding upon all member states.

1 C. The Interstate Commission shall not incur obligations of any kind prior
2 to securing the funds adequate to meet the same; nor shall the Interstate
3 Commission pledge the credit of any of the member states, except by and
4 with the authority of the member state.

5 D. The Interstate Commission shall keep accurate accounts of all receipts
6 and disbursements. The receipts and disbursements of the Interstate
7 Commission shall be subject to the audit and accounting procedures
8 established under its bylaws. However, all receipts and disbursements of
9 funds handled by the Interstate Commission shall be audited yearly by a
10 certified or licensed public accountant and the report of the audit shall
11 be included in and become part of the annual report of the Interstate
12 Commission.

13
14 **ARTICLE XIV. MEMBER STATES, EFFECTIVE DATE AND AMENDMENT**

15 A. Any state is eligible to become a member state.

16 B. The compact shall become effective and binding upon legislative
17 enactment of the compact into law by no less than 35 states. The
18 effective date shall be the later of July 1, 2007 or upon enactment of the
19 compact into law by the 35th state. Thereafter it shall become effective
20 and binding as to any other member state upon enactment of the
21 compact into law by that state. The executive heads of the state human
22 services administration with ultimate responsibility for the child welfare

1 program of non-member states or their designees shall be invited to
2 participate in the activities of the Interstate Commission on a non-voting
3 basis prior to adoption of the compact by all states.

4 C. The Interstate Commission may propose amendments to the compact for
5 enactment by the member states. No amendment shall become effective
6 and binding on the member states unless and until it is enacted into law
7 by unanimous consent of the member states.

8
9 ARTICLE XV. WITHDRAWAL AND DISSOLUTION

10 A. Withdrawal

11 1. Once effective, the compact shall continue in force and remain
12 binding upon each and every member state; provided that a member
13 state may withdraw from the compact specifically repealing the
14 statute which enacted the compact into law.

15 2. Withdrawal from this compact shall be by the enactment of a statute
16 repealing the same. The effective date of withdrawal shall be the
17 effective date of the repeal of the statute.

18 3. The withdrawing state shall immediately notify the president of the
19 Interstate Commission in writing upon the introduction of legislation
20 repealing this compact in the withdrawing state. The Interstate
21 Commission shall then notify the other member states of the
22 withdrawing state's intent to withdraw.

1 4. The withdrawing state is responsible for all assessments, obligations
2 and liabilities incurred through the effective date of withdrawal.

3 5. Reinstatement following withdrawal of a member state shall occur
4 upon the withdrawing state reenacting the compact or upon such
5 later date as determined by the members of the Interstate
6 Commission.

7 B. Dissolution of Compact

8 1. This compact shall dissolve effective upon the date of the withdrawal
9 or default of the member state which reduces the membership in the
10 compact to one member state.

11 2. Upon the dissolution of this compact, the compact becomes null and
12 void and shall be of no further force or effect, and the business and
13 affairs of the Interstate Commission shall be concluded and surplus
14 funds shall be distributed in accordance with the bylaws.

15
16 ARTICLE XVI. SEVERABILITY AND CONSTRUCTION

17 A. The provisions of this compact shall be severable, and if any phrase,
18 clause, sentence or provision is deemed unenforceable, the remaining
19 provisions of the compact shall be enforceable.

20 B. The provisions of this compact shall be liberally construed to effectuate
21 its purposes.

1 C. Nothing in this compact shall be construed to prohibit the concurrent
2 applicability of other interstate compacts to which the states are
3 members.

4
5 ARTICLE XVII. BINDING EFFECT OF COMPACT AND OTHER LAWS

6 A. Other Laws

7 1. Nothing herein prevents the enforcement of any other law of a
8 member state that is not inconsistent with this compact.

9 B. Binding Effect of the Compact

10 1. All lawful actions of the Interstate Commission, including all rules
11 and bylaws promulgated by the Interstate Commission, are binding
12 upon the member states.

13 2. All agreements between the Interstate Commission and the member
14 states are binding in accordance with their terms.

15 3. In the event any provision of this compact exceeds the constitutional
16 limits imposed on the legislature of any member state, such provision
17 shall be ineffective to the extent of the conflict with the constitutional
18 provision in question in that member state.

19
20 ARTICLE XVIII. INDIAN TRIBES

21 Notwithstanding any other provision in this compact, the Interstate
22 Commission may promulgate guidelines to permit Indian tribes to utilize

1 the compact to achieve any or all of the purposes of the compact as
2 specified in Article I. The Interstate Commission shall make reasonable
3 efforts to consult with Indian tribes in promulgating guidelines to reflect
4 the diverse circumstances of the various Indian tribes.

5
6

Malaise, Gordon

From: Bachir, Julie S - DCF [Julie.Bachir@wisconsin.gov]
Sent: Thursday, January 07, 2010 1:38 PM
To: Malaise, Gordon
Cc: Collins, Kimmie L - DCF; Kritz, Brenda R - DCF
Subject: ICPC - Final E-mail

Hello,

I'm sending you one more email in case you find it useful for organizational purposes. It explains the different color codes and also provides an outline of the different changes.

Thanks again,

Julie S. Majerus
Policy Advisor
Division of Safety and Permanence
Department of Children and Families
Phone: 608-267-2073

From: Fults, Carla [mailto:CFults@aphsa.org]
Sent: Monday, January 26, 2009 1:55 PM
Subject: New ICPC Language and Next Steps
Importance: High



TO: Child Welfare Directors, Compact Administrators, Deputy Compact Administrators, ICPC Staff

FROM: Carla Fults
Project Manager

DATE: January 26, 2009

SUBJECT: New ICPC Language and Next Steps

The American Public Human Services Association (APHSA), the Association of Administrators of the Interstate Compact on the Placement of Children (AAICPC), our partner, the Council of State Governments (CSG), state government agencies (States), stakeholders and other interested parties have been in negotiation, review and amendment of the proposed language of the New ICPC since June of

Language in June 2006. If you have questions, or if you would like to arrange technical assistance for your state in reviewing, introducing or enacting the New ICPC, please contact me at cfults@aphsa.org or at (202) 682-0100, ext. 242. Thank you and we look forward to working with you.

Amendments to the New ICPC

- ❖ **Red** font represents changes made to improve the New ICPC and to address private and independent adoptions.
- ❖ **Blue** font represents changes made to prevent conflicts with the Uniform Child Custody and Jurisdiction Enforcement Act (UCCJEA).
- ❖ **Green** font represents changes made to ensure judicial authority in facilitating interstate placements, and other necessary cleanup language to ensure the Compact is clear and its purpose and intent are apparent.

Articles Amended 1/08 (Red Font)

Article II. Definitions (Assessment, Home Study; other definitions were added to support overall changes)

Article IV. Jurisdiction (Choice of Law)

Article V. Placement Evaluation (Provisional Travel/Placement)

Article XI. Rulemaking Functions of the Interstate Commission (Interstate Commission)

Articles Amended 1/08 (Blue Font)

Article III. B (1) (Prevent conflict with UCCJEA by clarifying that ICPC does not apply to private custody proceedings)

Article IV. A ((Prevent conflict with UCCJEA by clarifying that the sending state does not retain jurisdiction in private custody cases where the state is not party to the cases)

Articles Amended as of 12/08 (Green Font)

Article III. B (5 (c) (Clarify termination of the court's jurisdiction when placing with a non-custodial parent, if the state is a party to the case)

Article IV. A. (Sequential Ordering Correction)

Article IV. A, Paragraph C (Judicial authority to facilitate interstate placements)

Article IV. C (1) (Clarify Administrative Procedures Act as governing act)

2006. After painstaking review, research, consultation and consideration, the New ICPC in its current form now encompass the *necessary* provisions which represent an improved, balanced and compromised document. The New Compact now reflects both technical and substantive changes which are critical to providing the necessary foundation upon which the impending Interstate Commission can write future rules and construct a new and improved administrative process for placing children across state lines.

At this juncture, we are confident that we can address any future concerns or additions to the New ICPC through the rulemaking process or through individual state enabling legislation without materially changing the Compact language or its intent. Most important, to immediately address questions or concerns from the states and to assist states with introduction and enactment of the New ICPC, the AAICPC Secretariat (APHSA) along with its partner and compact expert CSG is available to provide technical assistance to the states and to state legislatures. The following services are available through technical assistance:

- Develop boiler-plate legislative testimony to be used during legislative committee hearings and/or other public events where the primary goal is education on the ICPC
- Provide customized model testimony for a variety uses, champions and staff.
- Respond to specific questions from the states.
- Convene meetings via teleconference with your attorney general or other state/agency officials to provide clarification of provisions contained within the Compact.
- If necessary, convene an on-site briefing with key legislators, legislative staff, executive branch and agency officials and relevant stakeholder groups.
- Provide tailored assistance to individual states at your request.
- Provide experts to testify with you.
- Work with your attorney general or your ICPC staff to include necessary state legislative language which does not alter or change the intent or foundation of the Compact

As part of next steps, we will begin a comprehensive campaign at every level of state government and work through strategic channels of the state legislature to secure passage and ratification of the New ICPC. APHSA, AAICPC, the National Association of Public Child Welfare Administrators (NAPCWA), the National Council of Juvenile and Family Court Judges (NCJFCJ), the National Conference of Commissioners on Uniform State Law (NCCUSL), the American Academy of Adoption Attorneys (AAAA) and other stakeholders have endorsed the New ICPC and will be listed in the coming weeks on the APHSA and ICPC websites as supporters. In addition, the Secretariat will complete a side-by-side which illustrates the differences in the New ICPC and the current ICPC. We urge states to move quickly to enact the New ICPC to ensure that this area of child welfare continues to be regulated by state government.

At last, the American Public Human Services Association (APHSA) and the Association of Administrators of the Interstate Compact on the Placement of Children (AAICPC) is pleased to submit the language of the **New Interstate Compact for the Placement of Children (New ICPC)**. Please find attached the New ICPC formatted as a *Word document, Adobe pdf, and a highlighted version* in color coded font which identifies changes made after distribution of the original version of the Proposed ICPC

Malaise, Gordon

From: Bachir, Julie S - DCF [Julie.Bachir@wisconsin.gov]
Sent: Thursday, January 07, 2010 1:29 PM
To: Malaise, Gordon
Cc: Collins, Kimmie L - DCF; Kritz, Brenda R - DCF
Subject: ICPC
Attachments: 07-01735.pdf

Hi Gordon,

Attached is LRB 07-0173/5, which is the bill you drafted in 2007 for the new ICPC. The bill we want to introduce this year will be the same, with some changes I will forward to you next. Last year APHSA made some changes to the ICPC so we'll need to reflect those changes in our bill.

Thank you,

Julie S. Majerus
Policy Advisor
Division of Safety and Permanence
Department of Children and Families
Phone: 608-267-2073