



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

Appendix A ... segment I

LRB BILL HISTORY RESEARCH APPENDIX

 The drafting file for 2007 LRB-0173/5 (For: DCF)

has been transferred to the drafting file for

2009 LRB-4096 (For: DCF)



RESEARCH APPENDIX -
PLEASE KEEP WITH THE DRAFTING FILE

Date Transfer Requested: 01/08/2010 (Per: GMM)

 The attached 2009 draft was incorporated into the new 2009 draft listed above. For research purposes, this cover sheet and the attached drafting file were copied, and added, as a appendix, to the new 2009 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

2007 DRAFTING REQUEST

Bill

Received: **09/08/2006**

Received By: **gmalaise**

Wanted: **As time permits**

Identical to LRB:

For: **Health and Family Services 261-8306**

By/Representing: **Cathy Connolly**

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

Drafter: **gmalaise**

May Contact:

Addl. Drafters:

Subject: **Children - out-of-home placement
Children - TPR and adoption**

Extra Copies:

Submit via email: **YES**

Requester's email: **ConnoC1@dhfs.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Interstate Compact for the Placement of Children

Instructions:

Draft up Interstate Compact for the Placement of Children

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>
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/1			pgreensl 10/19/2006	_____	lparisi 10/19/2006		State
/2	gmalaise 01/04/2007	kfollett 01/09/2007	rschluet 01/09/2007	_____	sbasford 01/09/2007		State
/3	gmalaise	kfollett	nmatzke	_____	sbasford		State

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/?	gmalaise 09/29/2006	kfollett 10/19/2006					State
/1		12kjf 11/9/06	pgreens1 10/19/2006		lparisi 10/19/2006		

FE Sent For:

Handwritten notes and signatures:

- 12kjf
- 11/9/06
- pgreens1
- 10/19/2006
- lparisi
- 10/19/2006
- <END>
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/?	gmalaise	11kjf 10/19	10/19 p8	10/19 p8			
FE Sent For:				<END>			

Malaise, Gordon

From: Connolly, Cathleen
Sent: Monday, June 05, 2006 12:32 PM
To: Malaise, Gordon
Cc: Campbell, Mark; Kritz, Brenda; Lehr, Lynn; Mitchell, Mark; Paul, June
Subject: Interstate Compact for the Placement of Children

Attachments: Revised ICPC Final Draft.doc; APHSA Summary of ICPC Provisions.doc



Revised ICPC Final APHSA Summary of
Draft.doc (... ICPC Provisio...

Hi Gordon,

I am attaching a new Interstate Compact for the Placement of Children, that was created by APHSA with input from the states. I am also attaching the summary of the Compact from APHSA. The Department may move forward with introducing this next session.

The Division is requesting that you draft a bill based on the Compact that we could use to discuss with potential sponsors next session.

If we could have a draft by the end of Sept. 2006 that would be helpful. If that is not possible, please let me know when you could have a draft to us.

Thank you.
Cathleen Connolly
Legislative and Policy Consultant
DHFS/DCFS/BPP
608-261-8306



INTERSTATE COMPACT FOR THE PLACEMENT OF CHILDREN

SUMMARY OF REVISIONS

Following is a summary of the major provisions of the revised Interstate Compact for the Placement of Children (ICPC).

APPLICABILITY (ARTICLE III)

- Compact does not apply to the placement of children by their parents: (1) into residential treatment facilities, (2) with a relative, or (3) with a non-relative, so long as the placement is not a preliminary step to adoption.
- Does not apply to foreign adoptions.
- Residential placements now require that only notice be made to the receiving state when a public child placing agency places a child in a residential facility in another state. The current compact requires approval by the receiving state prior to such placements.
- Provides an exemption for placements with a non-custodial parent, under certain circumstances.
- Includes the placement of a child adjudicated delinquent or unmanageable if the child is being placed in a residential facility or prospective placement in another state not covered under another compact or in a placement.
- Includes placements made as a preliminary step to adoption whether made by a public or private child placing agency, private person, or attorney.

JURISDICTION (ARTICLE IV)

- Clarifies that the retention of jurisdiction means the authority of the courts and judicial officers to take and decide cases.
- Adds three additional circumstances in which the court in the sending state shall have the authority to terminate jurisdiction. These are: (1) if a guardianship is created in the receiving state with the concurrence of the court in the sending state, (2) if a tribe has petitioned for and received jurisdiction from the court in the sending state, or (3) if the child is reunified with the parent in the receiving state who is the subject of allegations or findings of abuse and neglect if the public child placing agency in the receiving state has concurred.

ASSESSMENTS (ARTICLE V)

- An assessment is defined as an *“evaluation of the prospective placement to determine whether the placement meets the individualized needs of the child, including but not limited to, the child’s safety and stability, health and well-being, and mental, emotional, and physical development.”* Currently the receiving state determines if the placement *“does not appear contrary to the interests”* of the child.
- Allows a sending state to request a determination of whether the placement with a relative qualifies as a provisional placement. Provisional placement is defined as *“that the placement is safe and suitable, but can be made without the completion of the receiving state’s requirements regarding education and training for prospective foster or adoptive parents prior to placement.”*

- Requires establishment of rules regarding the timeframes in which the receiving state must complete the assessment.

PLACEMENT AUTHORITY (ARTICLE VI)

- Prohibits the placement of a child subject to the compact until the proposed placement has been deemed safe and suitable (approved) by the receiving state and found to be in compliance with the applicable laws of the receiving state.
- Provides for administrative review of the receiving state's decision at the request of any interested party or person, to be conducted in the receiving state.

STATE RESPONSIBILITY (ARTICLE VII)

- Continues financial responsibility by the sending state public child placing agency for the ongoing support and services of a child placed by the agency or court in another state.
- Continues financial responsibility by the receiving state for the cost of the assessment of a proposed placement and ongoing supervision of a child placed by the public child placing agency or court in the sending state.
- Allows the receiving state to charge for assessments or supervision provided for placements prior to an adoption made by private child placing agencies.
- Allows states to enter into limited agreements, with consent of the member states, to facilitate the timely assessment and supervision of placements under this compact.

INTERSTATE COMMISSION (ARTICLE VIII – X)

- Creates an Interstate Commission comprised of one voting representative from each member state who is appointed by the governor.

RULEMAKING (ARTICLE XI)

- Requires that the rules process operate openly and in accordance with applicable “sunshine” and open-meeting provisions and be developed through a process that substantially conforms to the principles of the Model State Administrative Procedures Act or other appropriate administrative procedure acts.

ENFORCEMENT (ARTICLE XII)

- Provides for mediation and binding dispute resolution, remedial training, and specific technical assistance.
- Provides for judicial action by the member states of the Interstate Authority to enforce compliance with the compact.

FINANCING OF THE INTERSTATE COMMISSION (ARTICLE XIII)

- The states that become members to the new compact that comprise the Interstate Commission will collectively agree to a budget for support of the Interstate Commission and will determine the basis for allocating the costs between the member states.

TRIBES (ARTICLE XVIII)

- Provides for development of guidelines regarding the use of the compact by Indian tribes.

HIGHLIGHTS OF PROPOSED COMPACT PROVISIONS

The proposed Interstate Compact for the Placement of Children provides a solid legal framework for ensuring the timely placement of children across state lines, the suitability of prospective families, and the provision of needed support services. The proposed compact: (1) narrows the applicability of the compact to the interstate placement of children in the foster care system and children placed across state lines for adoption; (2) requires the development of time frames for completion of the approval process; (3) establishes clear rulemaking authority, (4) provides enforcement mechanisms; (5) clarifies state responsibility; and (6) ensures states' ability to purchase home studies from licensed agencies to expedite the process.

APPLICABILITY (ARTICLE III)

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- Does not apply to foreign adoptions.
- Residential facility placements require that notice be made to the receiving state when a public child placing agency places a child in a residential facility in another state. The current compact requires approval by the receiving state prior to such placements.
- Provides an exemption for placements with a non-custodial parent, under certain circumstances.
- Includes the placement of a child adjudicated delinquent or unmanageable if the child is being placed in a residential facility or in another prospective placement in another state, and is not covered under another compact.
- Includes placements made as a preliminary step to adoption whether made by a public or private child placing agency, private person, or attorney.

JURISDICTION (ARTICLE IV)

- Clarifies that the retention of jurisdiction means the authority of the courts and judicial officers to take and decide cases.
- Adds three additional circumstances in which the court in the sending state shall have the authority to terminate jurisdiction. These are: (1) if a guardianship is created in the receiving state with the concurrence of the court in the sending state, (2) if a tribe has petitioned for and received jurisdiction from the court in the sending state, or (3) if the child is reunified with the parent in the receiving state who is the subject of allegations or findings of abuse and neglect, if the public child placing agency in the receiving state has concurred.

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- Permits a sending state to request a determination of whether a placement with a relative qualifies as a provisional placement. Provisional placement is defined as *"that the placement is safe and suitable, but can be made without the completion of the receiving state's requirements regarding education and training for prospective foster or adoptive parents prior to placement."*
- Requires establishment of rules regarding the timeframes in which the receiving state must complete the assessment.

PLACEMENT AUTHORITY (ARTICLE VI)

- Prohibits the placement of a child subject to the compact until the proposed placement has been deemed safe and suitable (approved) by the receiving state and found to be in compliance with the applicable laws of the receiving state.
- Provides for administrative review of the receiving state's decision at the request of any interested party, to be conducted in the receiving state.

STATE RESPONSIBILITY (ARTICLE VII)

- Continues financial responsibility by the sending state public child placing agency for the ongoing support and services of a child placed by the agency or court in another state.
- Clarifies that a sending state may enter into agreements with licensed agencies or persons in the receiving state to conduct assessments and provide supervision.
- Continues financial responsibility of the receiving state for the cost of the assessment of a proposed placement and ongoing supervision of a child placed by the public child placing agency or court in the sending state.
- Allows the receiving state to charge for assessments or supervision provided for placements prior to an adoption made by private child placing agencies.
- Allows states to enter into limited agreements, with consent of the member states, to facilitate the timely assessment and supervision of placements under this compact.

INTERSTATE COMMISSION (ARTICLES VIII – X)

- Creates an Interstate Commission comprised of one voting representative from each member state who is appointed by the executive head of the state human service administration who has ultimate responsibility for the child welfare program.

RULEMAKING (ARTICLE XI)

- Requires that the rules process operate openly and in accordance with applicable "sunshine" and open-meeting provisions and be developed through a process that substantially conforms to the principles of the Model State Administrative Procedures Act or other appropriate administrative procedure acts.

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- Provides for judicial action by the member states of the Interstate Commission to enforce compliance with the compact.

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- The states that become members of the new compact and whose representatives comprise the Interstate Commission will collectively agree to a budget for support of the Interstate Commission and will determine the basis for allocating the costs between the member states.

TRIBES (ARTICLE XVIII)

- Provides for development of guidelines regarding the use of the compact by Indian tribes.

Interstate Compact for the Placement of Children
 State Status

June 20, 2006

<u>State</u>	<u>Bill</u>	<u>Primary Sponsor</u>	<u>Status</u>	<u>State</u>	<u>Bill</u>	<u>Primary Sponsor</u>	<u>Status</u>
Alabama				New Jersey			
Alaska				New Mexico			
Arizona				New York			
Arkansas				North Carolina			
California				North Dakota			
Colorado				Ohio	SB 238	Niehaus	in concurrence, 5/24/06
Connecticut				Oklahoma	SB 973		removed calendar, 5/15/06
Delaware				Oregon			
Florida				Pennsylvania			
Georgia				Rhode Island			
Hawaii				South Carolina			
Idaho				South Dakota			
Illinois				Tennessee			
Indiana				Texas			
Iowa				Utah			
Kansas				Vermont			
Kentucky				Virginia			
Louisiana				Washington			
Maine				West Virginia			
Maryland				Wisconsin			
Massachusetts				Wyoming			
Michigan				Amer. Samoa			
Minnesota				Dist. of Columbia			
Mississippi				Guam			
Missouri				N. Mariana Is.			
Montana				Puerto Rico			
Nebraska				U.S. Virgin Islands			
Nevada				US Senate	S 2999	DeWine	Senate committee, 5/24/06
New Hampshire				US Congress	HR 5403	Delay	2nd read Senate, 6/5/06



Reform of the Interstate Compact on the Placement of Children

Background

The Interstate Compact on the Placement of Children (ICPC) was drafted in 1960 to ensure that children placed across state lines for foster care or adoption are placed with persons who are safe, suitable, and able to provide proper care. The Compact also fixes legal responsibility, and responsibility for supervision and the provision of services for the child. ICPC outlines the process and procedures necessary to place a child out of state, defines the types of placements subject to the law, and the specific protections, services and requirements brought by ratification of the compact. ICPC has been enacted by all 50 states, the District of Columbia, and the U.S. Virgin Islands.

Concerns about the timeliness of the ICPC process and its "overly broad" application coupled with an outdated administrative process and procedures have given rise to a great dissatisfaction with ICPC. In addition, there has been recognition that the underlying assumption of quid pro quo regarding the cost of providing home studies and supervision is no longer accurate. A new financing scheme must be developed for interstate placements that will support improved performance and timeliness.

*Problem ICPC:
- Overbroad
- Timeliness
- \$\$\$*

In an effort to address state concerns on the need to reform ICPC, the American Public Human Services Association (APHSA), the Secretariat of the Association of Administrators of the Interstate Compact on the Placement of Children, convened the ICPC Task Force in July 2003. Task Force members include state commissioners, state and local child welfare directors, ICPC administrators, and a representative from the American Association of Public Welfare Attorneys.

Recommendations for Reform

Children for whom interstate placement is in their best interest should be ensured that they will be placed with safe and suitable families in a timely manner. ICPC should not be a hindrance to their timely placement.

ICPC plays a necessary and desirable regulatory role for ensuring that children placed across state lines receive appropriate care and supervision. However, it has not been sufficiently amended in its forty-four (44) year existence.

Therefore, APHSA endorses a comprehensive reform of ICPC. The areas of reform should include, but are not limited to, the types of placements covered under ICPC, data collection and exchange, administrative practices, financing, and enforcement.

APHSA is committed to making immediate changes by July 2004, as well as recommending fundamental structural changes to the Compact by December 2004. APHSA recognizes that a number of reforms can be implemented immediately through administrative actions by state commissioners. To the extent that there is broad consensus on short-term revisions, APHSA calls for the expedited adoption and implementation of those changes by all states. With respect to the remaining fundamental and legal changes under consideration, APHSA will work with a broad and diverse group of outside stakeholders, dedicate existing staff resources, and seek additional resources to carry out the reform process. Comprehensive revisions to the Compact will be presented to our membership for consideration at the December 2004 APHSA Policy Summit.

APPROVED MARCH 28, 2004 BY THE APHSA EXECUTIVE COMMITTEE

HISTORY OF THE ICPC

Background

The current ICPC was drafted in 1960 and has been enacted by all states, the District of Columbia, and the U.S. Virgin Islands. It is the only public law in existence to ensure that children placed across state lines for foster care or adoption are placed with persons who are safe, suitable, and able to provide proper care. It also fixes legal and financial responsibility and responsibility for supervision and the provision of services for the child.

The ICPC process entails a complete home study conducted by the receiving state. This involves assessments of social and medical histories of the placement family, their backgrounds, parenting and discipline styles, employment and financial histories, physical evaluation of their home, criminal and child abuse background checks, personal and professional references, foster or adoptive parent training, and case worker recommendations. Once the placement is determined to be “not contrary to the welfare of the child” and the child is placed, the receiving state is responsible for ongoing supervision of the placement and for providing support services to the family and regular reports to the sending state agency and court. In addition, agreement must be reached between the sending and receiving states on how services and supports will be financed. This can be complex as it may involve cooperation of several systems in both states, including education, mental health, and education.

The existing compact provision and rules are administered by the Association of Administrators of the Interstate Compact on the Placement of Children (AAICPC), which is an affiliate of APHSA. It is a professional association of government officials and also serves as the administrative body charged with carrying out the terms of the current compact provisions and rules. This body, however, is not specifically designated under the compact, nor is it given specific authority to make and enforce rules or the provisions of the compact.

Road to Change

Renewed focus on safety and permanency for children in our public child welfare system brought the Interstate Compact on the Placement of Children (ICPC) into the spotlight. While this renewed focus confirmed the important role the ICPC plays in ensuring appropriate placements, it has also highlighted many problems with the compact as it is currently written and implemented. Concerns about the timeliness of the ICPC process causing unnecessary delays for children being placed across state lines, and its “overly broad” application to all interstate placements of children, not just those in the foster care system, coupled with an outdated administrative process and lack of accountability, gave rise to great dissatisfaction with the ICPC from states, outside stakeholders, and Congress. In addition, the compact language and procedures are insufficient and antiquated; its rules and procedures are not widely followed or understood; and its current structure lacks enforcement and accountability. Finally, as geographical boundaries are blurred by the Internet and interstate placements of children in foster care become a significant part of states’ efforts to find permanency for these children, the importance of a sound legal framework for interstate placements is even more critical. The compact was written before the interstate highway system, before the development of administrative law, and before the computer revolutionized the way we live. In short, the ICPC is no longer contemporary for child welfare practice in the 21st century.

In March 2004, the state human service leadership of the American Public Human Services Association (APHSA) adopted a policy resolution directing a rewrite of the ICPC. While the association members agreed that there are a number of issues that need to be addressed in order to improve the process of placing children across state lines, true reform required revisions to the language of the ICPC itself. A solid legal foundation for interstate placements was critically needed to ensure the timely placement of children. In response to this resolution, APHSA assembled a development and drafting team composed of a diverse group of state human service administrators, state and local child welfare directors, compact administrators, and representatives from a broad and diverse group of national organizations, including the U.S. Department of Health and Human Services, Administration for Children and Families and Children’s

Bureau; the Child Welfare League of America; the National Court Appointed Special Advocates Program; the American Academy of Adoption Attorneys; the American Bar Association; the Center on Children the Law; the National Council of Juvenile and Family Court Judges; the National Indian Child Welfare Association; the National Association of Attorneys General; and the Council of State Governments, to identify and provide recommendations for addressing the issues in the compact and its implementation. After intensive meetings and extensive communication with the states and outside stakeholders on the direction that a comprehensive amended compact should take, a drafting team developed and disseminated two drafts of the rewritten compact—the Interstate Compact *for* the Placement of Children—for review and comment. This circulation and review took place from December 2004 through September 2005. The comments and concerns of the states and stakeholders were compiled and integrated by APHSA staff and the drafting team. In June 2005 an issue memorandum outlining the legal and practice arguments for the remaining unresolved issues was sent to state human service administrators. Administrators were asked to submit their position on which direction the compact should go for each issue. Based on a majority of state positions, the drafting team created the final draft of the compact, which was sent to each state for final approval in November 2005. In March 2006, APHSA received the necessary support to move forward with assisting states in getting the new compact adopted nationally.

With a grant from the Dave Thomas Foundation, APHSA was able to develop legislative informational materials and begin the work of getting the new compact enacted by states, the District of Columbia, and U.S. territories.

Solutions for the Future

The proposed compact spells out the authority for the Interstate Compact for the Placement of Children to exist and operate and replaces the problematic and legally deficient language of the 1960 compact. The proposed compact will enable states to successfully address the deficiencies documented in the current compact system, including enforcement, administration, finances, communications, data collection and exchange, and training. In turn, this will improve and remove many of the barriers to the timely placement of children across state lines. The Interstate Compact *for* the Placement of Children, among other improvements, provides:

1. Clear language regarding applicability of the compact.
2. Clear rulemaking authority delegated to the Interstate Commission and provisions ensuring that the development of rules is in compliance with the due process principles of notice and comments of the Model State Administrative Procedures Act.
3. Meaningful enforcement of this important child welfare permanency tool. For the first time, the compact includes provisions that provide a wide range of tools to secure compliance, including technical assistance, mediation and arbitration, remedial training, and legal action in federal court.
4. Collection of standardized information and development of a secure and affordable information system that will facilitate timely information sharing and help ensure accountability for the interstate placements of children.
5. Clarification regarding retention of legal jurisdiction and under what circumstances jurisdiction may be terminated.
6. Administrative review of a receiving state's decision at the request of an interested party.

In summary, the new Interstate Compact for the Placement of Children will provide a better legal framework to ensure that children are placed in a timely manner with safe and suitable persons.



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Interstate Compact for the Placement of Children

The Interstate Compact on the Placement of Children, as currently written and implemented, is not an effective mechanism for the states to ensure that children placed across state lines for purposes of foster care or adoption are placed with safe, suitable parents that can provide proper care and to ensure that necessary services and supports are in place.

First drafted in the 1950s and currently enacted by all 50 states, the District of Columbia and the U.S Virgin Islands, the compact is in need of a massive overhaul to repair its outdated construction and enhance its effectiveness in ensuring that interstate placements are made in a timely and effective manner.

Language within the compact is outdated, governing structures established by the compact are antiquated and basic management and administration issues of the compact are either obsolete or omitted completely from the existing language. Its application has become "overly broad" and the underlying assumption regarding the cost of the provision of home studies and supervision would be one of quid pro quo is no longer accurate.

Specifically, the current compact suffers from several problems:

- There is no reference to rules or rulemaking and does not even establish or recognize its own compact administrator association.
- There is no provision for either enforcement or mediation of disputes between states.
- The agreement does not establish a system of financial support for the compact, nor does it call for the sharing of information and data on placed children.

There are other issues not listed here, but these serve to illustrate that the overall construction of the compact should be replaced with a more comprehensive structure that is based in contemporary compact law, offering greater flexibility when faced with the need for future.

Goal of the Project

The revised compact will be based on recommendations already made to APHSA by its members, observations made by the stakeholder organizations represented on the developing and drafting team as well as a select group of additional outside stakeholders, and compact expertise and advice from The Council of State Governments and other needed consultants. Once a new compact is approved, introduction and passage by state legislators, and implementation of the revised compact by all 50 states, the District of Columbia, and the United States territories is the goal.

Links

APHSA - Documents related to the ICPC agreement

APHSA – State ICPC contact information

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News

- State AGs to guard tobacco funds - *Stateline.org, Mar. 29, 2006*
- Stakeholders Convene to Address Low Milk Prices at Vermont Dairy Summit - *CSG-East Weekly Bulletin, Mar. 28, 2006*
- Congress could nullify 200 state food laws - *Stateline.org, Mar. 8, 2006*
- Patriot Act Includes Crackdown on Meth Use - *AccessNorthGA.com, Mar. 7, 2006*
- Compact agrees to refund more money - *JournalStar.com, Mar. 3, 2006*
- Governors defend National Guard - *Christian Science Monitor, Mar. 1, 2006*
- Law fulfills a promise to protect lake waters - *Detroit Free Press, Mar. 1, 2006*
- 11 states oppose bill on toxins - *New Haven Register, Mar. 1, 2006*

Program Highlights

- **NEW - Connections, Winter 2005** - Vol. 1, No. 2 - newsletter of the National Center for Interstate Compacts. In this issue, updates to the Interstate Compact on the Placement of Children, the Interstate Compact for Juveniles nears 35 states and the Enforcement of Interstate Compacts.
- **States see largest increase in compact adoptions since 1969** - 49 compact bills were enacted in 2005, far surpassing the average annual rate of 19 enactments seen over the last two decades. For more information on interstate compacts adopted by your state, visit our online compacts database.
- 2006 State (96) and Federal (30) interstate compact activity (legislative

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sessions; 109th Congress).

- Interstate Compact for Juveniles 29 states have enacted the compact; eight states are considering the compact (GA, HI, MA, MS, MO, NE, SC, TN) - State-by-State Status Chart. Click here for **NEW** State Officials Guide - Interstate Compact for Juveniles.
- Interstate Compact for the Placement of Children draft complete; state circulation for state agency approval/comment underway; compact to be released for 2006 legislative sessions.
- Great Lakes-St. Lawrence River Basin Water Resources Compact; language now available to the states.

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Initiatives to Improve Interjurisdictional Placement

Caseworkers who place children across State lines for foster care, kinship care, or adoption face a number of barriers. Recent developments at the national level reflect the efforts of stakeholders and the Federal Government to address these challenges.

New Interstate Compact

A new Interstate Compact for the Placement of Children (ICPC) has been written to address many of the barriers that States face when they attempt to place children across State lines. Currently, all States and the District of Columbia are members of the original ICPC, which was written in 1960 and later approved by the individual State legislatures. Despite its unanimous adoption by States, many policymakers, caseworkers, and casework supervisors have noted problems with the current ICPC, especially as it relates to timeliness for adoption.

The new compact attempts to eliminate some of the ambiguities in the original compact, as well as narrow the scope of applicability, provide for enforcement, and comply with Federal regulations for the timely placement of children. A task force of stakeholders from State social services, national organizations, the private sector, and the Federal Government has been working on the revision for 2 years, convened by the American Public Human Services Association (APHSA).

Among its highlights, this new charter:

- Narrows the applicability of the ICPC, such that it does not apply to intercountry adoptions or to most placements of children made by their parents; the focus of the new ICPC is

- on children involved with the child welfare system
- Clarifies the authority of the courts and judicial officers in the retention of jurisdiction
- Provides a child-centered definition of the assessment of a prospective placement (home study)
- Specifies the responsibilities of the sending and receiving States
- Creates an Interstate Commission, including rules for its operation, authority, and funding

As with the original ICPC, each State's legislature will need to approve this new compact before it can be applied in that State.

The full text of the proposed ICPC and a document that lists highlights are available on the APHSA website:

www.aphsa.org/Home/Doc/Interstate-Compact-for-the-Placement-of-Children.pdf (PDF - 123 KB)

www.aphsa.org/Home/Doc/Highlights-of-New-ICPC.pdf (PDF - 102 KB)

Federal Leadership in Interjurisdictional Placement

The Federal Government has provided leadership in interjurisdictional placement through Children's Bureau initiatives. In 2004, the Bureau commissioned a survey of States to identify promising practices for the placement of children across State lines. The purpose of the survey, conducted in 2005, was to inform and guide the Children's Bureau's technical assistance strategy to the States in the area of interjurisdictional placement. Information about promising interjurisdictional practices gathered from survey respondents has been shared with State foster care and adoption managers in regional round tables and with the ICPC Administrators at their annual conference. Additional activities based on the recommendations developed by the survey workgroup are planned for the future, including a cross-State website for State-specific information on home approval practices and child placement procedures. Following up on this survey, a Report to Congress was drafted to inform lawmakers about these issues and the ways in which Federal agencies and State governments have addressed interjurisdictional placement.

Related Items

Children's Bureau Express (<http://cbexpress.acf.hhs.gov>) covered the ICPC in the following articles:

- "[Placing Children Across States](#)" (February 2006)
- "[Newly Modified APHSA Database to Assist With ICPC](#)" (November/December 2001)

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PROPOSED ICPC: FREQUENTLY ASKED QUESTIONS

1. A child placement compact already exists. Why should we replace it?

The existing Interstate Compact on the Placement of Children was adopted in 1960 to address states' concerns regarding their ability to assure that children placed across state lines are afforded the same protections and services as children placed intrastate. Existing laws did not provide enough protection. Because a state's jurisdiction ends at its borders, necessary protections could not be compelled for a child placed beyond those borders. While the compact has served for nearly 50 years, its governing processes and structure are now seriously outdated and in need of revision to ensure timely and appropriate placement of children.

2. Why is it important to replace the compact right away?

The existing interstate agreement has been severely compromised by individual state actions. States have unilaterally determined the meaning and coverage of the compact, changed the statute, and changed the process and procedures for interstate placements. There is no longer common agreement between states concerning placements of foster and adoptive children. Further, the current compact lacks the ability to hold states accountable for following existing compact rules that they have mutually enacted. It is entirely possible that the existing compact could become so ineffective that a nationwide system for ensuring the protection of children would no longer exist. As early as July 1, 2007 (or upon passage by the 35th state, whichever is later), states that have passed the compact will join together and begin developing the rules and administrative processes that signatory states must follow.

3. Will the proposed compact eliminate the problems experienced under the current compact, and how will it ensure compliance by member states?

The proposed compact will not eliminate all the issues related to the interstate placement of children. Many of the factors that complicate the interstate placement of children are underlying struggles in the overall child welfare system, which continually contends with capacity, staffing, training, and resource issues. In addition, there are systems in the states that add additional layers of complexity, specifically the courts and education. However, the proposed compact will provide a critical legal foundation that will strengthen rulemaking and enforcement authority. Compliance will be encouraged by the use of a range of measures, from technical assistance and alternative dispute resolution, including mediation and arbitration, to suspension, termination, and legal action in federal court with fees and costs awarded to the prevailing party. In addition, the proposed compact will have a staff and committee structure in place that will permit swift identification of potential problems and a manageable process for addressing concerns of member states in a timely manner. This ability to address accountability and compliance concerns meaningfully during the early stages should identify and avert major conflicts.

4. Some states do not have centralized child welfare systems. What effect does this have on interstate compact enforcement?

One of the difficulties in comparing child welfare systems between states is that they are organized so differently. Some states have centralized systems, some may be decentralized, but state controlled, and still others may rely on county and local jurisdictions to administer child welfare programs. An interstate compact, however, is state law and a disagreement between states is just that...between states that have enacted the same compact. Therefore, all branches of state government and its political subdivisions must follow the mandates of the compact.

5. Who will be my states compact administrator and how much authority will they have in the rule-making process?

The compact administrator will be that person appointed by the “executive head of the state human services administration with ultimate responsibility for the child welfare program under Article VIII (b), subject to qualifications determined by each state.

6. The Interstate Commission will develop the rules after the proposed compact becomes operational. Doesn't that presume that states will “sign up blindly” before knowing the rules? Why is this necessary?

States, through the newly created Interstate Commission, cannot write the rules and regulations until the proposed compact exists and the initial member states are known. This also means that states must pass the legislation and then trust the process of the member states to develop a majority of the rules during the compact’s first twelve months of existence. If all the rules were developed before the compact is enacted, any changes to the rules would require that each state enact new legislation each time a rule change is agreed upon. This is, however, not a new concern. States are currently obligated to follow the current administrative rules as developed and passed by compact administrators through the Association of Administrators of the Interstate Compact on the Placement of Children (AAICPC). Although these rules were passed without any “sunshine” provisions or due process, as outlined in the proposed compact, it is expected that many of the current rules will serve as guidance for developing new rules. For more information on the current rules, please visit: <http://www.aphsa.org>. It is also important to note that the proposed compact creates a process for rules to be made and enforced and when necessary, to be modified without returning to each state legislature. As a safeguard for state authority, the drafters created a provision for a majority of state legislatures to nullify any rule passed by the Interstate Commission.

7. Can any of the language in the proposed compact be changed or must all states use identical language? Can my state pass only certain parts of the revised compact?

Generally, the compact language must be identical with regard to the substantive provisions of the agreement. Since the compact is contractual in nature, there must be a “meeting of the minds” as to the terms of the agreement in order for it to take effect. While allowances may be made for the format, the operative language of the agreement must be identical from state to state; otherwise material differences in language in any state statute purporting to adopt the compact could render it “void” or “voidable.”

8. Does the compact language conform to state constitutional language?

The compact language was drafted recognizing state constitutional requirements common to most state constitutions such as separation of powers, delegation of power, and debt limitations. The validity of the state authority to enter into compacts and delegate authority to an interstate agency was specifically recognized and unanimously upheld by the U.S. Supreme Court in *West Virginia vs. Sims*, 341 U.S. 22 (1951). This decision also approved a provision nearly identical to the provisions of Article XIII of the revised compact concerning constitutional debt limitations. Under Article XVII (b)(3) provisions of the compact exceeding the constitutional limits imposed on the legislature of any state are ineffective.

9. Aren't we creating an expensive bureaucracy without the promise of anything better than what we already have?

Key issues for the existing compact are accountability for member states and the ability to enforce compact rules. An interstate compact that cannot assure compliance by member states is, in effect, a “toothless tiger.” Despite remarkable efforts by those working in the current compact administration to hold the system together, governance issues have evolved to the point that greater compact authority is essential for the agreement between states to function effectively. This illustrates the continued and enhanced need for a national office and staff to oversee administrative issues. The size of such a staff is anticipated to be small, although the compact will create an administrative structure that will hold member states accountable for compliance. This will be done primarily through the efforts of the state representatives to the newly created national commission and its executive and standing committees.

10. How much will the proposed compact cost my state?

Actual costs per state will not be known until the compact is enacted by at least 35 states and the Interstate Commission (IC), by vote of member states, has made their initial set of decisions. It is estimated, based on cost data from the Council of State Governments (CSG) who is supporting the implementation of similar compacts, that the work to organize and operate the IC the first year will cost an estimated \$500,000. However, member states (through their voting representative to the Interstate Commission) will approve an actual budget and state assessment structure as part of their initial commission activities, just as they will annually in succeeding years. While the proposed budget

figure is a reasonable and informed estimate, it is possible that member states could decide on a budget that is higher or lower and they could alter the allocation formula. It is also important to note that states are protected from unauthorized spending (Article XIII) in that the commission may not incur obligations prior to securing adequate funding; nor may they pledge the credit of any of the compact states, except by and with the authority of the compact state.

11. What happens if my state does not pass the compact? Will we still be able to make interstate placements?

Once the 35th state adopts the “new” compact, none of those states will be party to the “old” compact and their contractual relationship with other states will be limited to states who have also passed the new compact. However, under the terms of the new compact, the old compact’s rules will remain in effect among both old and new compact states for the first twelve months until new rules can be adopted. This will allow interstate placements to be made in both old and new compact states during that twelve-month period. After that time, new compact rules promulgated under the new agreement will only allow new compact states to do business with each other. It is hoped that the remaining states will pass the legislation during the twelve-month transition period. Any states that have not joined the new compact after the transition period has expired would have no meaningful way to place children in new compact states and no means to prevent those states from sending children to such a nonmember state without permission, rules, or notice.

UNDERSTANDING THE INTERSTATE COMMISSION

1. *What is the Interstate Commission?*

The proposed governing structure described in Articles VIII, IX, & X of the Interstate Compact for the Placement of Children is conceptually like the existing one. An interstate administrative body is created (Interstate Commission), made up of state representatives with more explicit authority to promulgate rules and to enforce compliance with the new compact. This increased authority will remedy the issues of lack of uniformity in administration and interpretation of the compact that plague the current ICPC and will promote greater accountability among the member states.

2. *Why is it necessary for the proposed compact to have a more formal governance structure?*

The new governing structure will address: (1) the inability of member states to ensure adherence to the rules developed by the current Association of Administrators of the ICPC, (2) the lack of accountability of member states in developing the rules, (3) the unenforceability and differential interpretation of the rules and requirements of the compact by the courts and agencies administering it, and (4) the lack of enforcement tools to ensure compliance with the compact. In summary, the current compact lacks a needed formal governing structure that is essential in order for the proposed compact to function effectively.

3. *Why are there so many provisions regarding procedures for openness of the records and meetings of the Interstate Commission? (Article VIII, G, H, I)*

Provisions regarding procedures for openness of the records and meetings of the Interstate Commission are provided because of concerns about discrepancies in state laws governing open records and meetings. For that reason, the proposed compact provides uniform standards for open meetings and records and are based on the principles of the federal open meetings and records statutes found in the "Government in Sunshine Act" 5 U.S.C. s552(b).

4. *Why is there so much language in the proposed compact dedicated to the powers, duties, organization, and operation of the Interstate Commission? (Articles IX & X)*

Since the Interstate Commission is, in effect, an administrative agency of the collective members of the compact, the language must provide, in sufficient detail, its composition, character, internal management, and powers. Without providing resolution of these issues in the compact itself, the question would inevitably arise as to which laws were to be applied to the Interstate Commission. Upon enactment of the compact, these provisions will govern the Interstate Commission in each of the party jurisdictions.

5. *What is the reason for the indemnity language concerning lawsuits against the interstate commission, its officers, and staff in Article X?*

State officials, including those engaged in activities concerning the placement of children, are generally protected from lawsuits under the sovereign immunity provided to most state employees. The U.S. Supreme Court has held that immunity protection will not be presumed to apply, in the context of administering an interstate compact, unless there is good reason to believe (such as the language of the compact provisions) that the states structured the compact with the intent to protect it with their own immunity (see *Lake Country Estates, Inc. v. Tahoe Regional Planning Agency*, 440 U.S. 391 (1979)). The language in Article X is designed to leave no room for doubt in the mind of a reviewing court that the states entering the proposed compact intend to "immunize" the officials involved in administering the compact and to provide for their

legal defense in the event that they are sued, unless the alleged injury to another occurs as a result of a willful, intentional, or malicious act that is clearly outside the scope of authority under the ICPC.

6. *Why is it necessary to provide for such a lengthy explanation of the rulemaking process in the new compact and what limitations are provided? (Article XI)*

The rulemaking functions of ICPC governing body are not new. The current compact, from its inception, has provided for the authorized representatives of the member states “. . . *who acting jointly with like officers of other party jurisdictions, shall have the power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact*” (see ICPC, Article VII). The current compact, however, does not provide any details or limitations on the manner in which the rules are currently promulgated nor the parameters of the types of rules that can be created. Article XI of the proposed compact provides more accountability to the member states and those potentially affected by the rules in the rulemaking process. The proposed compact establishes rulemaking procedures that are consistent with those required for a state or federal agency. It insists upon customary due process procedures, including advance notice and publication of rules promulgated by the governing authority, adequate opportunity for debate and deliberation by the party states, and an opportunity for public comment. By linking the process of the development of the rules in the proposed compact with the principles of the Model State Administrative Procedures Act, the rules of the proposed compact will be given legal status that will be recognized by the courts and more enforceable between the states.

7. *Is rulemaking by an interstate compact agency permitted by the U.S. Constitution?*

Yes. The constitutional validity of the authority of states to enter into interstate compacts and delegate rulemaking authority to an interstate agency created under the compact was specifically recognized and upheld by the U.S. Supreme Court in the case of *West Virginia, ex rel Dyer vs. Sims*, 341 U.S. 22 (1951). In deciding this issue the Court observed, “*That a legislature may delegate to an administrative body the power to make rules and decide particular cases is one of the axioms of modern government.*” Referring to the delegation of such power to an administrative agency as a “*conventional grant of legislative power*” the court upheld the validity of the compact rule in question. Given the Supreme Court’s decision in *West Virginia, ex rel Dyer vs. Sims*, the legislative delegation of rulemaking authority to an interstate compact agency (such as the Interstate Commission included in the proposed ICPC) is not conceptually different from that granted by a state legislature to one of its in-state administrative agencies. Accordingly, such delegations of authority are subject to the limitation that the rules promulgated do not exceed the scope of the statutorily delegated authority. Therefore, it is critical that the authority to make rules be clearly articulated in the compact language.

8. *Since the rules under the proposed compact will not be developed until after it is enacted, doesn’t that mean that states are expected to sign a “blank check” before knowing what is contained in the rules?*

Because the proposed compact must be adopted by a minimum of two-thirds (35) of states before it becomes operational (including its ability to make rules) it will be necessary for member states to “trust the process” for the proposed governing commission to promulgate appropriate rules. However, as already discussed, there are substantial safeguards built into the process by which the rules will be promulgated, allowing for full and fair deliberation, debate, and public comment prior to adoption of the rules. It is also important to keep in mind that the governing body will not be “writing rules on a blank slate.” This is because a substantial body of rules and regulations, which have already been promulgated over the decades of the existence of the current compact, have provided extensive experience for compact administrators to

know which rules are working well and which rules are “broken” and should be discarded or that need revising.

9. *What safeguards exist in the event that a state or minority group of states disagrees with a particular rule or rules?*

The governing commission is comprised of one voting representative from each member state. These representatives are entitled to receive advance notice of all proposed compact rules governing structure. These proposed rules are required to be published in advance of any meeting at which such rules will be voted upon for approval. Thus, every state will have an equal opportunity for input before a vote is taken, and member states will have ample opportunity to have their position heard and to advocate for passage or defeat of any proposed rules. The compact also allows any interested party, including a state, to challenge a rule promulgated by the compact governing authority within 60 days by filing a lawsuit in federal court. In addition, a majority of legislatures may veto any compact rule or regulation that they find objectionable. Finally, a state may withdraw from the compact by enacting a statute specifically repealing the statute that enacted the compact into law in that state.

10. *Under what circumstances may litigation be used against a member state of the compact to enforce compliance?*

Judicial enforcement through legal action against a noncompliant state is authorized only after a majority vote of the interstate commission. Injunctive relief may be sought, as well as damages, including the award of litigation costs and expenses (including attorney fees) for the prevailing party.

11. *Under what circumstances may suit be brought against the Interstate Commission, that is, the collective members of the compact?*

Under the provisions of the draft compact, in general, the only legal action contemplated against the Interstate Commission is an action filed by a member state for judicial review of a rule promulgated by the Commission based on a “substantial evidence” standard. Such an action is required to be brought no later than sixty (60) days after the rule in question was promulgated.

12. *Can individuals bring suit against the member states of the Interstate Commission if they feel they have been aggrieved by the compact or the administration of the compact in a particular state?*

In general, interstate compacts do not create any privately assertable rights. In *Kansas v. Colorado*, 533 U.S. 1,7 (2001) the U.S. Supreme Court considered the limitations on actions to recover damages from states and held that the Eleventh Amendment bars direct action by citizens against a state. This same principle was earlier applied with respect to litigation involving interstate compacts (see *Texas v. New Mexico*, 482 U.S. 124, 130 (1987)). It appears that standing to sue under an interstate compact, which has congressional consent, is subject to the same considerations applicable to plaintiffs who challenge actions under any other federal statute. See *Bootery Inc. v. Washington Metro Area Transit Authority*, 326 F. Supp. 794, 798-99 (D.D.C. 1971), also *Ass’n of Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 150 (1970). Utilizing these standards, the determination of whether individuals have standing to sue under a compact will turn on the extent to which such parties can conclusively demonstrate that the actions of the member states of the Interstate Commission have directly impinged upon some protected interest and that they have or will suffer injury as a direct result of such action by the member states of the Interstate Commission. The compact, however, in no way diminishes a child or an affected party’s rights in an individual case to raise substantive issues regarding placement decisions in the appropriate state court.