
INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN (ICPC)

The Interstate Compact on the Placement of Children (ICPC) was created to safeguard children who were placed across state lines for foster care or adoption. The ICPC is a uniform law which has been adopted by all 50 states as well as the District of Columbia and the Virgin Islands. Each signatory state has codified the compact verbatim into its statutes and has appointed an administrator to govern the application of the compact. The purpose of the ICPC is to ensure that children who are placed outside of their home state receive services and supervision, and that the placement is in their best interests.

LEGAL SIGNIFICANCE

Interstate compacts are binding agreements between the signatories. A compact is enacted into law by the state legislature, and has the effect of statutory law. Michael L. Buenger, *Interstate Compacts*, 2004, <http://icpc.aphsa.org/documents.asp>, last visited 1/11/06. Additionally, when the states enter a compact, the compact becomes a contract between the parties and is not subject to unilateral amendment or modification. Nebraska v. Cent. Interstate Low-Level Radioactive Waste Comm'n, 207 F.3d 1021, 1026 (8th Cir. 2000). A state may not enact legislation which would burden the compact without approval of the other parties. *Id.*

As such, a compact is both binding state law and a contract between the member states, and the terms of the compact take precedence over contrary state statutes and state constitutional provisions. *See* Bruener (*citing* McComb v. Wambaugh, 934 F.2d 474, 479 (3d Cir. 1991); Wash. Metro. Area Transit Auth. v. One Parcel of Land, 706 F.2d 1312, 1318 (4th Cir. 1983)). In essence, the states have contractually agreed that the terms of the compact supersede any conflicting state law. *See* Bruegner. Finally, since a state is required to enforce the compact, no court has the authority to provide relief that is inconsistent with the terms of the compact, but can merely interpret the compact. *See* Bruger (*citing* Texas v. New Mexico, 462 U.S. 554, 103 S.Ct. 2558 (1983)).

APPLICATION OF THE ICPC

The text of the ICPC has been codified into statute at Section 409.401, Florida Statutes, 2006. The ICPC consists of 10 articles that define its application, establishes the procedures to place children interstate, and sets the responsibilities of each participant in the process. In addition, 10 Regulations have been developed to assist the states in applying the articles.

In the dependency arena, three types of placements are covered by the ICPC:

- Placements preliminary to possible adoption. Art. III; Reg. No. 10.
- Placements into foster care. Art. III.

- Placements with a parent or relative, when the child is not sent by a parent or relative. Art. VIII; Reg. Nos. 3 and 7.

Article VIII specifically states that the ICPC does not apply when a parent, stepparent, grandparent, adult brother or sister, adult aunt or uncle, or his guardian brings or sends the child into the receiving state to any such relative. Art. VIII; Reg. No. 3. However, if the parents' rights have been diminished, and they no longer have legal custody of their children, the ICPC applies. Placements include family free or boarding homes, and therefore relative placements, other than those expressly excluded, are subject to the ICPC. Art. II(d); Reg. No. 3. Also excluded from the ICPC are placements in medical facilities, mental health facilities, boarding schools or any institution that is primarily educational in nature. Art. II(d); Reg. No. 4.

After it is determined that the placement falls under the ICPC, it must be determined whether the participants are required to comply. Article II defines sending agency and receiving state. A sending agency is a party state, including officers or employees; a court of a party state; a person, corporation, association, charitable agency, or other entity which sends, brings, or causes to be sent or brought any child to a party state. Art. II(b). A receiving state is the state to which the child is sent, brought, whether by public authorities or private person or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons. Art. II(c). Basically, when custody of the child is placed with an agency, and the agency seeks to place the child across state lines for either relative placement or foster care, or the child is being placed for adoption, the ICPC is triggered, and the placement must be in compliance with its terms.

The ICPC provides the family, the sending state, and the receiving state certain guarantees. When the compact has been complied with, all participants can be ensured that the placement is not contrary to the interests of the child. The sending agency is able to have the potential placement evaluated by having the receiving state conduct a home study and a criminal background check. The receiving state is able to make certain that its laws and policies regarding placements have been followed. The sending state is able to obtain supervision of the child and services. Both states are able to fix the financial and medical responsibilities of each state prior to the placement taking place. And finally, the ICPC provides that the sending state retains jurisdiction over the child once the child leaves its borders. Art. V.

PROCEDURE

To initiate a placement under the ICPC, jurisdiction of the court in the sending state over the child must be established. In Florida, this is accomplished by the department motioning for the court to issue an Order of Compliance with the Compact. CF Operating Procedure 175-54. This is simply an order which designates the department as the sending agency and shows that the child has been adjudicated dependant. Once the order is obtained, the caseworker prepares the ICPC packet. The packet consists of the District Compact Transmittal Form; the ICPC 100A form; three copies of the cover letter that specifies the identification of the potential placement, ongoing needs of the child, any special requirements for the child, and a paragraph setting out the financial/medical plan; three copies of a social assessment of the child or the pre-dispositional study, three copies of the most recent court order showing dependency and the legal status of supervision; and the Order of Compliance. Most states require a permanency plan for the child. The packet may also contain any other information about the child or the placement that the caseworker feels may aid the receiving state caseworker. Additionally, if the request is for an interstate adoption, the packet must contain

three copies of the TPR order or the order setting the adjudicatory hearing; and an application for an adoption home study, or a copy of the home study if it has already been completed.

Once the local caseworker has completed the packet, they send it to the district Family Safety and Preservation Compact Specialist. The district specialist will review the packet for completeness and either forward the packet to the ICPC Administrator's Office in Tallahassee or request more information from the caseworker. When the Administrator's office receives the packet, they must review the packet for completeness, sign off on the ICPC 100A form, and forward the packet to the ICPC Administrator's Office in the receiving state within 3 business days of receipt. CF Operating Procedure No. 175-54.

Upon receipt of the packet in the receiving state compact administrator's office, the packet will be reviewed for completeness, and forwarded to the local office where the potential placement resides. A caseworker in the local office will then conduct the background checks and home study, make a recommendation regarding the placement and write a report. Home studies and placements are determined in compliance with the law of the receiving state. The caseworker in the receiving state will send their report and recommendation to the receiving state compact administrator. If the placement is approved, the compact administrator will sign the ICPC 100A form and send it and the home study to the sending state compact office. If the placement is denied, then the placement cannot be made until the situation that resulted in the denial is remedied. The sending state compact office will forward the documents to the local the department office. At that point, the local caseworker and the caseworker in the receiving state will finalize arrangements for supervision, funding, and travel. CF Operating Procedure 175-54.

To expedite the processing of the ICPC request, the department recommends that the caseworker in Florida stay in contact with the caseworker in the receiving state, so that decisions can be communicated and preparations begun before the official paperwork is received. CF Operating Procedure 175-54. the department also encourages the caseworker in the receiving state to fax a copy of the home study to the local office at the same time as they fax their compact office if it is allowed by the receiving state. CF Operating Procedure 175-54. If the approval is verbal, no formal placement action can take place until a signed copy of the ICPC 100A form is received, either by fax or hard copy. The completed ICPC 100A form, signed and dated by the receiving state compact administrator, is a legal document that is evidence the child can legally be placed, as long as placement occurs after the date it is signed. CF Operating Procedure 175-54. The approval is valid for 6 months from the day the receiving state compact administrator signs the form. Reg. No. 6.

Several issues are important to know when dealing with the ICPC. First, the sending state must maintain jurisdiction over the child while the child remains in the receiving state. The receiving state may recommend that supervision be terminated after 6 months, however, Florida, as the sending state must agree. If supervision is terminated, all that means is that the receiving state no longer has to monitor the placement. Florida will still be legally and financially responsible for the child. There are only three ways that jurisdiction may be terminated by the sending state: the child is adopted, the child reaches majority or the child becomes self-sufficient. Art. V(a). If a termination of jurisdiction is sought without one of the above events occurring, the compact administrator in the receiving state must concur.

Florida's continuing jurisdiction over the child is important for several reasons. The main reason is that the department and the Florida courts have the continuing authority to decide matters of custody, supervision, care, treatment and disposition of the child. Art. V(a). It is also important

because the Florida court can have the child returned to the state and can reunify the child with the parent. Without maintaining jurisdiction, Florida could not compel services and supervision for the child in the receiving state, nor could it guarantee the child's return.

REGULATION NO. 7

Regulation No. 7 is the expedited ICPC request, known as priority placement. This regulation is applicable in limited circumstances and has strict time limits which cannot be deviated from without a written agreement from the court which issued the priority order, the sending agency, and the receiving state and sending state compact administrators, and apply only to the specific case. Reg. No. 7 (7).

To apply, a court in the sending state must find entitlement and issue an order with express findings and factual basis. The court must find that:

- a). the proposed placement recipient is a relative belonging to a class of persons who, under Art. VIII(a), could receive a child from another person without complying with the compact and
 1. is under 2 years of age; or
 2. is in an emergency shelter; or
 3. has spent a substantial amount of time in the home of the proposed placement.
- b). the receiving state compact administrator has had a properly completed ICPC 100A for more than 30 business days, but the sending state has not received notice the child may be placed.

Reg. No. 7 (6). If any of those circumstances exist, an expedited ICPC request can be submitted, as long as the child is not already in the receiving state or allowed to go the receiving state before the request is approved.

The Process for a Priority Placement

- The court must send the order for priority placement to the sending agency within 2 business days. It must contain the judge's telephone and fax number.
- The sending agency shall submit the order, the ICPC 100A and supporting documents to the compact administrator's office in Tallahassee within 3 business days.
- Within 2 business days, the sending state compact administrator shall send the packet and a notice that the request is for priority placement to the receiving state compact administrator's office by overnight mail. The sending state has 2 business days to determine if the packet is complete and to request additional information from the sending agency by fax.
- The receiving state compact administrator shall make a placement determination as soon as practicable, but not more than 20 business days from receipt of the packet, unless it is determined the packet is incomplete. If the packet is incomplete, the receiving state compact administrator shall notify the sending state compact

administrator within 2 business days that more information is needed. The decision is then due 20 business days from the date the information is obtained.

- The completed ICPC 100A must be sent by overnight mail to the sending state compact administrator.

If a state is determined to be in non-compliance with the time limits of Regulation No. 7, the court that issued the order may provide the documents to a judge in the receiving state and request assistance. While it is frustrating that placements take so long, it is important that Regulation No. 7 requests be limited to those cases which truly need expedited placement. If all placements are labeled as priority, then Regulation No. 7 requests will become equally slow, and the process will be frustrated.

REASONS FOR DELAY

As anybody who has ever had a case that involved an ICPC request knows, the process takes a long time—approximately 6 to 9 months for a regular ICPC or 3 to 6 months for a Regulation No. 7 request. The recommended time for a receiving state to process the application is 30 working days or 6 weeks. However, for a variety of reasons, many ICPC requests take far longer.

PRACTICE TIP: It is crucial that the program attorney identify any potential out-of-state placements as early in the case as possible and ICPC is ordered as the process can take a long time. Follow-up is mandatory.

The American Public Human Services Association (ASPHA) conducted a detailed study in 2002, and discovered the most common causes of delay. *Understanding Delays in the Interstate Home Study Process*, <http://icpc.aphsa.org/documents/home%20study%20report.pdf>, last visited January 13, 2006. According to the study, the most common reasons for delay were: resolving the financial or medical issues, obtaining the criminal background and abuse checks, incomplete information of the family, the home study did not meet the needs for the child, missing court orders, and incomplete request packets. *Id.* Additional important factors were staffing and workloads at the local levels, and that ICPC requests were given a low priority at the local level. *Id.* at 19. A final factor not included in the study that results in delay is the requirement of many states that the potential placement become licensed as a foster parent.

Of all of these factors, the criminal background checks are particularly important. Criminal background checks take a significant amount of time, and have been reported as taking two to four months. *Understanding Criminal Records Checks*, <http://icpc.aphsa.org/documents/Survey-CRCF.pdf>, last visited January 13, 2006. The criminal records check is a critical and necessary portion of the home study process. As a guardian ad litem, we cannot effect the time it takes to process the check, so it is important we understand what excludes a person from being a placement in both Florida and the receiving state so time is not wasted.

The guardian ad litem also cannot affect the funding or staffing issues. This is why it is extremely important to start the ICPC process early. A child must be adjudicated dependant before the placement occurs, however, the guardian ad litem Program can start identifying relatives and gathering information from the onset of the case. Additionally, a request can be processed with an Emergency Shelter Order, as long as the child is adjudicated dependant prior to the placement being approved and the order adjudicating the child dependant is forwarded to the sending state compact office. A guardian ad litem can help the process along by relaying to the caseworker that

they should maintain contact with the caseworker in the receiving state. Many caseworkers do not understand the process and believe it is out of their hands once the packet is submitted. However, if the caseworkers stay in contact, a decision may become known sooner, or questions could be easily resolved. Finally, the guardian ad litem program attorney can become familiar with the ICPC requirements and request that a copy of the packet be submitted to the court and parties, so that its completeness may be determined and to ensure timely preparation.

REGULATION NO. 9

One of the most common violations of the ICPC is the 30 day visit. A visit, as defined by Regulation No. 9, is not a placement under the ICPC, and is not subject to the compact. A visit is characterized by its duration, purpose and intention of the person placing the child.

Regulation No. 9 defines a visit as a stay of not more than 30 days, or longer if it is within the period of a school vacation, that is for the purpose of providing the child with a social or cultural experience. A visit may not be extended or renewed past 30 days or the school vacation period. If a visit does not have an express termination date or clearly defined duration, it will be deemed a placement and a violation of the ICPC. Reg. No. 9(5). Additionally, if there has been a request for a home study or supervision by the sending agency which is pending at the time of the visit, there is a rebuttable presumption that the intent of the stay is a placement. Reg. No. 9(6).

While it is frustrating that the ICPC process takes so long, it is important that the guardian ad litem object to extended or renewing visits. Since the visit is not subject to the ICPC, there is no safeguard of the child's interests. There is no home study of the home being visited and the child will not receive services. Moreover, since the ICPC has not been complied with, the court in the sending state has no mechanism to have the child returned, other than sanction the parents. It is safest to allow the ICPC to take place, and only send children on true visits.

NON-CUSTODIAL PARENTS

A unique situation occurs when there is a non-offending, non-custodial parent who resides out of state. Regulation No. 3(6)(b) provides that the ICPC does not apply when the court transfers the child to a non-custodial parent with respect to whom the court does not have evidence before it that the parent is unfit, does not seek such evidence, and does not retain jurisdiction after the child is placed. However, under Florida law, the court must obtain a home study before it places a child with a non-offending, non-custodial parent. §39.521(3)(b). The Florida courts have expanded this by holding that "[o]nce a court has legal custody of a child, it would be negligent to relinquish that child to an out-of-state parent without some indication that the parent is able to care for the child appropriately." Dep't of Children & Fams. v. Benway, 745 So. 2d 437, 439 (Fla. 5th DCA 1999). The court in Benway stated that the ICPC provided a good mechanism to evaluate the placement and keep an eye on it. Id.; see also Dept' of Children & Fams. v. Fellows, 895 So. 2d 1181 (Fla. 5th DCA 2005)(extending application of the ICPC to relatives). In the Interest of B.I.A., 539 So. 2d 540 (Fla. 1st DCA 1989) (step-relatives fall within the ICPC). The Fifth DCA summed this up by finding that the ICPC is applicable to the placement of a child with a non-resident parent with no previous custodial rights. H.P. v. Dep't of Children & Fams., 838 So. 2d 583, 586 (Fla. 5th DCA 2003). The court explained that when a court takes jurisdiction, determines a child's residence and maintains supervision and authority over the child's custodian, the child is in a placement, and the parent is now like a foster parent. Id.; cf. Dep't of Children & Fams. v. L.G. and L.G., 801 So. 2d 1047 (Fla. 1st DCA 2001)(holding that when the court maintains a dependant child with the mother, it is not a

placement within the definition of Art. III, and therefore the relocation of the family unit out-of-state did not need to comply with the ICPC).

The triggering event for the ICPC to apply to a non-resident parent is that the parent must be non-custodial. Where the parent holds a valid custody order in their state of residence, the state in which the order originated was the children's home state at the time it was entered, and the home state has not declined to exercise jurisdiction, the ICPC does not apply and the child should be returned to the out-of-state parent. See In the Interest of D.N. & K.N., 858 So. 2d 1087 (Fla. 2nd DCA 2003)(ICPC did not control proceeding where non-offending father in Hawaii with a valid custody order sought the return of his children). So, if there is a non-resident parent with a valid custody order, the child should be returned to them. However, if there is no custody order, and the parent has no custodial rights, the ICPC should be complied with to guarantee the placement is in the children's best interests. Also, the court should order a placement, and the guardian ad litem should not agree with placing the child with the non-custodial parent and dismissing the action without an order. This would leave the child's custody in limbo, and possibly expose the child to the offending parent seeking the return.

CONCLUSION

The ICPC is a slow, detailed process. But currently, it is the only mechanism there is to ensure a child's best interests once they cross state lines. While it is frustrating that the placement process takes so long, it is important that the ICPC be complied with so the child receives services and the placement is determined to be safe. There is pending legislation to change the process, and make it quicker. But, until that occurs, the guardian ad litem can help the process along by making sure the ICPC is begun early, by being familiar with the procedure and the different states' requirements, and by not letting the dependency action stall while waiting on an ICPC request.

ⁱ The ICPC also applies when delinquent children are placed in out of state institutional settings. Art. VI.