

Interstate Issues in Juvenile Cases



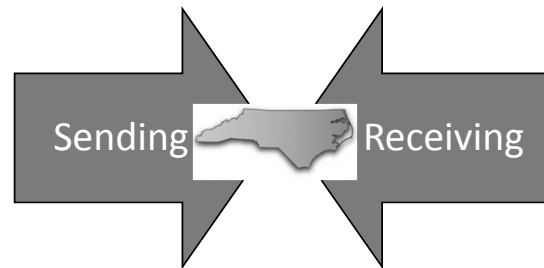
UCCJEA Jurisdiction

- G.S. 50A
 - 201: initial
 - 202: exclusive continuing
 - 203: modification
 - 204: temporary emergency
- G.S. 7B-402, petition ... G.S. 50A-209
- G.S. 7B-1101, court find jurisdiction
- G.S. 7B-1104(7), not circumvent UCCJEA

ICPC

- G.S. 7B-3800
- AAICPC Regulations
- NC DHHS Family Support and Child Welfare Manual
 - Chapter XI
- Standard forms

Application



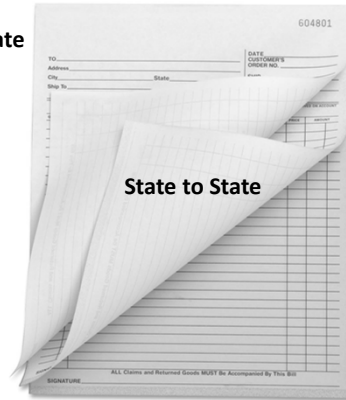
Structure

Central Compact Office



- Officer, designated by executive to be general coordinator of activities

Local to State



State to Local

- Divorce/paternity/n...
- Placement with legal sibling,
- Placement Compacts

NO!

Who Does it Apply to?

- Placement
 - Foster Home
 - Preliminary to possible adoption
 - Residential Placement
 - Institutional Care of Delinquent Children





- 9 y.o. child is removed from mother in NC and nonsecure custody is obtained by DSS. Father (paternity has been established), who lives in FL, is notified and asks that child be sent to live with him and his wife and their 3 year old child in FL. Adjudication hearing is pending, and father will appear with court appointed counsel. Does the ICPC apply?

In re Rholetter, 162 N.C. App. 653 (2004)



Parent Placement

- Regulation No. 3 definition of “foster care”
 - Incorporates def. under 45 CFR 1355.20
 AND
 - “if 24-hour-a-day care is provided by the child’s parent(s) by reason of a court-ordered placement (and not by virtue of the parent-child relationship)”

Regulation 3: Parent Placement

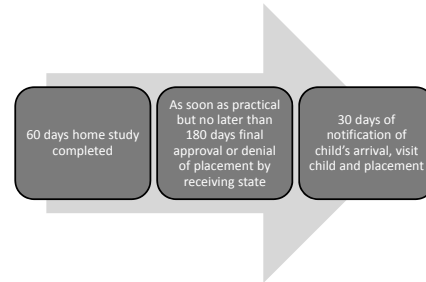
- Non-removal parent
 - Court has no evidence parent unfit
 - Court not seek evidence of fitness
 - Court immediately relinquish jurisdiction upon placement



Can You Reconcile the Two?

- G.S. 7B-3800 Article II(d): Placement vs. Regulation No. 3
- What about parent’s constitutional rights?
- In re Emoni W., 305 Conn. 723 (2012)
- Can request a courtesy check
- Expedited home evaluation request

Timing



Standard: laws of receiving state; best evidence available to it
 Best interests – safety and suitability of placement and ability to meet child’s needs

REQUEST DENIED

- Sending state: 90 days from date signed to request reconsideration
 - With or without request for new home study
 - New home study if reason for denial corrected (i.e., locks on doors)
- Receiving state: 60 days to make decision
- 5 working days to remove child unless agreed to

Expedited home study: Reg No. 7

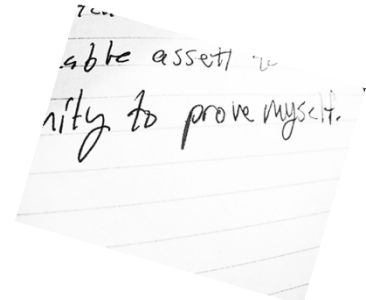
- Placement with parent/step/grand; sibling, aunt/uncle, non-agency guardian
- Criteria
 - Unexpected dependency – sudden or recent death, incarceration, or incapacitation of parent
 - Child = 4 or younger (includes older siblings)
 - Any child in sibling group has substantial relationship
 - Child currently in emergency placement

Provisional approval/denial

- Requires Court Order
- Complete within 7 days of receipt of completed packet
- Provisional denial
 - until home study/assessment completed
- Parent
 - Sending state can ask that both states relinquish juris. after final approval

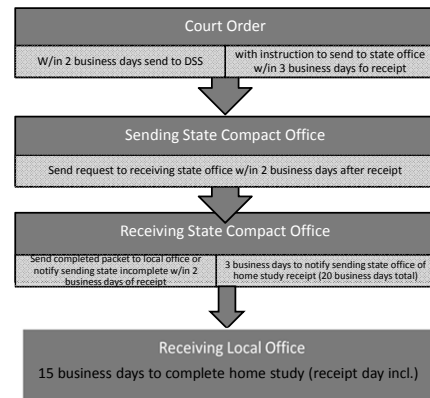
DSS: Before submit request to court


- Statement of interest from potential placement



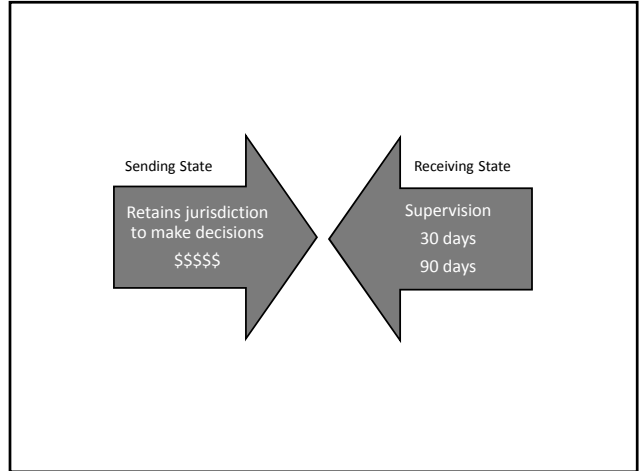
Court order

- Factual basis Reg No. 7 applies
- Provisional or not approval requested
- Form 101






- notify sending state
- If out of compliance, sending state court can notify receiving state court and request assistance, including holding of a hearing



Return of child

- w/in 5 business days of request unless agreed to other time



Report of abuse/neglect in receiving state

THE 3 R'S OF REPORTING CHILD ABUSE

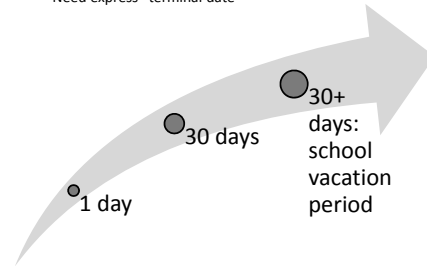
-  **RECOGNIZE**
-  **RESPOND**
-  **REPORT**



- Child has been adjudicated neglected and in initial disposition is placed in a foster home here in NC. Child has an adult sister who lives in VA. The adult sister has requested child visit with her for Christmas for the entire 2-week winter school vacation. Is an ICPC needed?

Visits – Regulation No. 9

Social or cultural experience of short duration
Need express "terminal date"



Request for home study: rebuttable presumption intent is proposed placement

- It's now 6 months later and the adult sister, who has had regular contact with the her sibling in foster care, has requested placement with her. DSS is recommending cease reunification with both parents and permanent guardianship with the adult sister. Is an ICPC needed?

Back to The Law

- Disposition: G.S. 7B- 903
 - *In re V.A.* (2012) –
 - Maternal great grandmother in SC
 - adoption
- Nonsecure: G.S. 7B-505 and -506
- Regulation No. 3: Relatives



In re J.E., 182 N.C. App. 612 (2007)
not apply to PPO of guardianship to
grandparents in VA
(relied on Rholetter reasoning)

Violations

- Receiving state does not have to supervise
- Receiving state may request immediate removal

Termination of ICPC Placement

- Child returned to sending state
- Legal custody to parent/relative
- Final adoption
- Emancipation/age out
- Agreement of the two states to terminate sending state jurisdiction (rare)

Interstate Compact for Juveniles (ICJ)

NC District Court Judges Summer Conference
Wrightsville Beach, NC


LaToya Powell
June 18, 2014



www.sog.unc.edu


Topics

- The Law
 - Old Compact (Art. 28 of Ch. 7B)
 - Revised ICJ (Art. 40 of Ch. 7B)
- Who's Covered?
- Rules and Procedures
 - Transfer of Supervision
 - Return of Runaways
 - Return of Other Out-of-State Juveniles




The Law

“Revised” ICJ




Interstate Commission
for Juveniles
Serving Juveniles While Protecting Communities

- Est. 2008
- Article 40 of Ch. 7B
 - no specific rules or procedures
 - only purposes, definitions,
 - and role of Interstate Commission for Juveniles
- Replaces “Old” Compact
 - Art. 28 of Ch. 7B (for contingent repeal)
- Adopted by all states
 - GA was last to sign; effective 7/1/14




ICJ Rules

- Promulgated by Interstate Commission
- Resources:
 - <http://www.juvenilecompact.org>
 - ICJ Rules
 - Directory of ICJ Officials (by State)
 - Forms
 - Bench Book
 - “Quick Reference Guide” (pp. 11-27)



ICJ Officials in NC

<p><u>Commissioner (main contact)</u> Traci Marchand (919) 716-3145 traci.marchand@ncdps.gov</p>	<p><u>Administrative Assistant</u> Rachel Johnson (919) 324-6409 rachel.johnson@ncdps.gov</p>
<p><u>Deputy Compact Admin.</u> Stephen Horton (919) 733-3388 stephen.horton@ncdps.gov</p>	<p><u>Administrative Assistant</u> Denise Barrs (919) 324-6407 denise.barrs@ncdps.gov</p>



Who's Covered?

Revised ICJ applies to:

1. Runaways who run to or from NC,
2. Juveniles who are **“adjudicated delinquents”** or **“adjudicated status offenders”** in one state and need to be supervised in a different state,
3. Juveniles who are **“accused delinquents”** or **“accused status offenders”** in one state and are located in a different state.

Definition of “Juvenile”



Juvenile - Any person defined as a juvenile in any member state or by ICJ rules.

Transfer of Supervision

- ICJ Officials
 - Complete forms
 - Waiver (ICJ Form IA/VI)
 - Process referrals
 - Approve or deny transfer requests



District Court Judges have no authority to authorize or deny transfer of supervision.

Transfer Eligibility Requirements

- defined as “juvenile” in sending state
- subject to some form of supervision
 - adjudicated delinquent, adjudicated status offender
 - or deferred adjudication
- still under jurisdiction of sending state
- length of relocation and supervision are both > 90 days
- juvenile will either:
 - reside with parent, legal guardian, relative, non-relative, or live independently (not in residential facility); or
 - be a full-time student.



ICJ Rule 4-101

Residential Facilities

- No transfer of supervision for placement in out-of-state residential treatment facility
 - ICJ Rule 4-101(2)(f)

- But, ICPC may allow placement
 - Only certain facilities (e.g., PRTF, YDC)
 - See, e.g.,
 - G.S. 7B-3800, Art. VI
 - G.S. 7B-3805

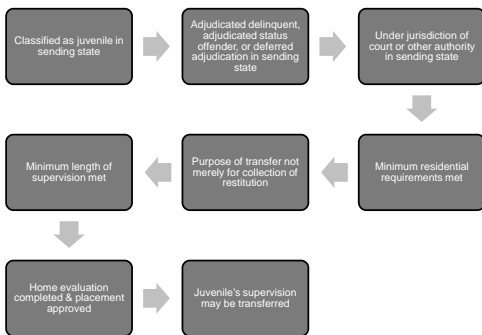
Restrictions on Transfer

Transfer may be denied if:

- sole purpose is to collect restitution
- home evaluation finds placement “unsuitable”
- juvenile is not in “substantial compliance” with terms of supervision

❖ Except when juvenile’s only parent or legal guardian is located in receiving state ICJ Rule 4-104

Approval Process



Special Considerations

- Jurisdiction
 - Remains with sending state
 - Sending state handles:
 - Violations
 - Termination of supervision
 - Transportation

- Cost of Treatment
 - Paid by sending state, if not covered by Medicaid or private insur. (unless provided by supervising agency)

- Juvenile Sex Offenders
 - Laws of receiving state govern
 - Sex offender registration, Victim notification, DNA testing



Retaking / Failed Placement

- Sending state can:
 - Enter and retake juvenile
 - w/o court procedures, if juvenile signed waiver form (ICJ Form IA/VI)
 - Issue warrant for arrest (if retaking not practical)
- Retaking requires consent of receiving state
 - If juvenile has pending charge there

ICJ Rule 5-103



ICJ vs. Extradition

- Uniform Criminal Extradition Act (UCEA) permits extradition of juveniles
 - If charged/adjudicated offense is a “crime”
 - » *In re Boynton*, 302 Mich. App. 632 (2013)
 - » *State v. J.M.W.*, 936 So.2d 555 (Ala. Crim. App. 2005)
 - » *But see, People v. Butts*, 14 N.Y.S.2d 881 (1939, Supp)
 - ICJ Form IA/VI waives any extradition rights
- ❖ UCEA inapplicable to runaways



Return of Out of State Juveniles

May occur in 1 of 4 ways:

1. Retaking (upon failed placement)
2. Release of Runaway to Parent/Guardian
 - w/n 24 hrs (excluding wknds & holidays)
3. Voluntary Return (ICJ Form III)
4. Non-Voluntary Return (Requisition Form I or II)



Release to Parent/Guardian

- Permitted w/n 24 hrs of detainment
 - unless abuse/neglect suspected
- Beyond 24 hrs
 - Notification of home state's ICJ Office required
 - ICJ due process hearing
 - Secure custody

ICJ Rule 6-101



Abuse/Neglect Allegation

"Holding" State must:	"Home" State must:
<ul style="list-style-type: none"> • Notify home state's ICJ Office • Hold juvenile in secure custody (max. 90 days) until . . . <ul style="list-style-type: none"> – Voluntary return (Form III) – Requisition I 	<ul style="list-style-type: none"> • Facilitate juvenile's safe return with appropriate authority (i.e. DSS) • Initiate requisition, if juvenile not returning to parent/guardian <u>and</u> <ul style="list-style-type: none"> – does not consent to voluntary return

UNC SCHOOL OF GOVERNMENT

Voluntary Return (Form III)

- Due Process Procedures:
 - Hearing held in holding state
 - Advisement of rights (see ICJ Form)
 - Counsel and/or guardian ad litem appointed
 - Form III (signed by juvenile & judge)
 - Return to home state w/n 5 days

Applies to any out-of-state juvenile

ICJ Rule 6-102

UNC SCHOOL OF GOVERNMENT

Non-Voluntary Return Runaways and Accused Status Offenders

Procedure in home state:

- Parent/Guardian files petition w/ ICJ Office

- ICJ Office files "Requisition I"

- Judge must find:
 - Petitioner entitled to legal custody
 - Juvenile ran away w/o consent
 - Juvenile not emancipated
 - Return is in juvenile's best interests

- Requisition packet forwarded to holding state

ICJ Rule 6-103

UNC SCHOOL OF GOVERNMENT

Non-Voluntary Return Runaways and Accused Status Offenders

Court in holding state must:

- Hold hearing w/n 30 days of receipt
- Decide whether to appoint counsel and/or guardian ad litem
- Determine
 - "if the Requisition Form I is in order"

Judge "shall order the juvenile's return" to home state if requisition is found to be in order.

ICJ Rule 6-103(5)


UNC SCHOOL OF GOVERNMENT

Non-Voluntary Return
Escapee, Absconder, Accused Delinquent

Procedure in home state:

- ICJ Office files "Requisition II"
 - w/ supporting documentation (petition, orders, etc.)
- Judge signs requisition
- Requisition packet forwarded to holding state

ICJ Rule 6-103A




Non-Voluntary Return
Escapee, Absconder, Accused Delinquent

Court in holding state must:


- Hold hearing w/n 30 days of receipt
- Decide whether to appoint counsel and/or guardian ad litem
- Determine
 - "if the Requisition Form II is in order"

Judge "shall order the juvenile's return" to home state if requisition is found to be in order.


ICJ Rule 6-103A(5)



Required Findings

In re Teague, 91 N.C. App. 242 (1988) 

- Trial court's finding that "requisition is in order" was insufficient to return escaped juvenile to SC.
- Held that ICJ (implicitly) required trial court to find that the juvenile being requisitioned is same juvenile before the court.



Non-Voluntary Return

Additional Procedures
(applicable to any non-voluntary return):

- Home state returns juvenile w/n 5 days of receipt of order granting requisition
- Denial of requisition requires written findings
- Juvenile may be held in secure custody for max. of 90 days pending return

