

INTERSTATE COMPACT ON PLACEMENT OF CHILDREN (G.S. 7B-3800)

The Interstate Compact on Placement of Children (ICPC) has been adopted by all 50 states. Each state has a Compact Administrator Office. North Carolina's ICPC office is in the Division of Social Services, Department of Health and Human Services, directed by Carla McNeill at (919) 733-9464 or (919) 334-1105 (direct line). There is a National Association of Compact Administrators based in Washington, D.C. This Association has adopted ten ICPC Regulations to interpret ICPC provisions or provide further assistance with ICPC compliance. The ICPC website is <https://icpc.aphsa.org>.

Scope

The ICPC covers a wide range of interstate placements and is meant to insure that both the sending and receiving states have the most complete information possible prior to the child's placement. Article VIII specifies the ICPC does not apply to the sending or bringing of a child into a receiving state by his (1) parent (2) stepparent (3) grandparent (4) adult brother or sister (5) adult uncle or aunt or (6) his guardian AND leaving the child with any such relative or nonagency guardian in the receiving state. Regulation 3.6(a) clarifies that the person bringing the child to the receiving state must have full legal rights to plan for the child, undiminished by court order.

The ICPC applies to:

- The interstate placement of children for adoption by a child placing agency or county DSS.

- The interstate placement of a child in a foster care home by a county DSS.

- The interstate placement of a child in a child caring institution by a county DSS or parent.
- The interstate placement by the juvenile court of a child in DSS custody with a parent or relative.
- The interstate placement of a child by a parent for temporary care or adoption with a non-relative or a relative not listed in Article VIII.

North Carolina courts have held that the ICPC does not apply to juvenile court awards of full custody to an out of state parent, In re Rholetter, 162 NC App 653, 592 S.E.2d 237 (2004), and awards of guardianship to an out of state grandparent, In re J.E., 643 S.E.2d 70 (Court of Appeals, 4/17/07), because neither is an ICPC “placement”, that is, a placement for the purpose of foster care or preliminary to adoption. The latter opinion recognized that placements of children by juvenile courts for purposes of adoption by relatives would fall under the ICPC, as would placements by the court with parents or relatives when the child will remain in DSS custody.

Courts of other states have been divided on the issue of parental placements and ICPC applicability. ICPC Regulation 3, which clearly states in subsection (1) that placement with parents fall under the ICPC, was amended in 2001 to add subsection 6(b), which provides that the Compact does not apply “whenever a court transfers the child to a non-custodial parent with respect to whom the court does not have evidence before it to believe such parent is unfit, does not seek such evidence, and does not retain jurisdiction over the child after the court transfers the child.”

If the ICPC applies, the sending state retains jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child, as if the child had remained in the sending agency's state, until the child is (1) adopted (2) reaches majority (3) becomes self-supporting or (4) is discharged with the concurrence of the receiving state. This jurisdiction includes the power to effect the return of the child or its transfer to another location and the continuing financial responsibility for the support of the child. (Article V).

In Stancil v. Brock, 108 NC App 745, 425 SE 2d 446 (1993), the Court of Appeals held a North Carolina district court had no jurisdiction to hear a custody action filed by adoptive parents prior to the finalization of their adoption upon learning the Kentucky birth parents were contemplating revoking their consent to the adoption. The court held the parents were the "sending agency" under the Compact and could effect the return of the child prior to the final decree of adoption. In that case, the parents were within their three month revocation period.

Other states have ruled that failure to comply with ICPC provisions in private adoptions was a ground for voiding the placing parent's consent to that adoption, even after her revocation period had expired. See In re A.M.M., 949 P2d 1155 (Kansas 1997). In that case, the adoptive parents argued that the "best interest" of the child should govern the decision even in the face of ICPC violations. The opinion recognized that some courts have allowed a "best interest" exception, but felt doing so would permit that exception to swallow the rule and render the ICPC ineffectual. Note that G.S. 48-2-603(b) allows a North Carolina court to grant a petition to adopt even with ICPC violations, if there has otherwise been substantial compliance with Chapter 48, and the

adoption is in the child's best interest. Courts here, however, have been reluctant to do so unless ICPC compliance has been attempted, but is not possible, even retroactively.

In a case involving an agency foster care placement, the Mississippi Supreme Court held in Oktoberbeha County of Human Services v N.G.F.G., 782 So. 2d 1226 (2001), that children placed by the trial court with relatives in North Carolina were still under the jurisdiction of that court which could determine permanent custody of the children. The court was the "sending agency" and could order MS DHS to intervene in a North Carolina custody action brought by the relatives.

The ICPC applies only to interstate placements of children, and not visits, so the definition of those two terms becomes important. Regulation 9 defines a visit by looking at the purpose, duration and intention behind child's stay. The purpose of a visit is to provide the child with a social or cultural experience of short duration, such as a camp stay or visit with a friend or relative. A stay for less than 30 days with that purpose will be presumed to be a visit. A stay of more than 30 days, but not longer than the duration of a school vacation period, can be considered a visit. A stay that does not have a terminal date will be considered a proposed placement. Once a home study or supervision request has been made by the sending agency, there is a rebuttable presumption that the intent of any stay after that time is for placement and not a visit.

Procedures

Attached is a summary and checklist of information needed by the NC ICPC Office in order to process an outgoing ICPC request. All ICPC placements begin with a 100A form from the sending agency detailing the type of care requested and the current legal status of the child. That form is sent to the Division's ICPC office where it is

reviewed and signed by ICPC staff, then forwarded to the receiving state's ICPC office. The bottom of the 100A form is for the decision of the receiving state, upon receiving information from its local agency, that the placement is approved or disapproved.

There is also a 100B form which confirms the child's initial placement in the receiving state, any placement changes, and how the placement terminated, such as adoption of the child return to the home state, emancipation, etc.

If an expedited placement decision is being requested pursuant to Regulation 7, the form ICPC-101 is used by the sending state and the ICPC-102 by the receiving state. Priority ICPC status may be designated when the prospective placement is:

- (1) With a relative listed in Article VIII (parent, stepparent, grandparent, adult brother, sister, aunt or uncle) or guardian
AND
 - The child is under two years of age OR
 - The child is currently in an emergency shelter care facility OR
 - The child has spent a substantial amount of time with the prospective placement.
- (2) In any case when 30 business days have passed since the receiving state Compact Administrator received the ICPC request with proper supporting paperwork but the sending agency has not been informed whether the child may be placed in the receiving state.

These new expedited procedures are designed to be completed in 27 business days, unless the receiving and sending ICPC offices agree in writing on a different time frame or “extraordinary circumstances” make it impossible for the receiving state to comply within the 27 day time frame. In the latter case, the receiving state must notify the sending state within two business days by fax, specifying the extraordinary circumstances and the date when the placement decision will be made.

In addition to the enactment of Regulation 7 in 1996 to address delays in the ICPC process, there has been recent federal legislation which also mandates ICPC time frames. The Safe and Timely Interstate Placement of Foster Children Act of 2006 (P.L. 109-239) requires states to complete and report on foster and adoptive home studies requested by another state within 60 days, or contract with private agencies to do so. Up until 9/30/08 15 extra days could be used for circumstances beyond the State’s control, such as delays in federal agency background checks. Those 15 extra days are no longer available. The 60 days begins to run when the home study request is received by the State ICPC office, not the local agency that will complete the study. However, each state may establish its own rules for what constitutes a completed home study request and require more information from a sending state. The 60 days does not begin to run until a properly completed request is received.

While states must complete home studies within 60 days, that time frame does not apply to any education or training of prospective foster or adoptive parents. The home study also does not include federal or state criminal record checks needed for licensing or approving a placement. So it is possible that any home study completed without those components will not reach an actual case decision or lead to an immediate child

placement. For instance, DSS requests approval of an out of state relative's home for foster care. The other state must complete its home study within 60 days, but if the relative has not completed required MAPP training within that time, or her fingerprint check has not been completed, any home study completed within 60 days may not include a decision that the child can be placed.

Under P.L.109-239, interstate placements must be considered in identifying placement resources for children and in all permanency planning decisions. Once a requested home study is received, it must be accepted by the sending state unless, within 14 days of receiving the report, the sending State determines that, based on grounds specific to the report, reliance on the report would be contrary to the child's welfare. One goal of P.L. 109-239 is to place out of state options for children on a more equal footing with in state placements. The interplay of ICPC delays with our statutory priority for relative placements was at issue in In re L.L., 172 NC App 689 (2005), which held that the trial court erred in awarding custody to foster parents without making sufficient findings that placement with out of state relatives was not in his best interest.

Jane Thompson
Assistant Attorney General
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