

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 While the compact has served for nearly 50 years, its governing processes and structure are now seriously outdated and in need of revision to ensure timely and appropriate placement of children.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.

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)

- 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 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.

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.
- 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.

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 Commission to enforce compliance with the compact.

FINANCING OF THE INTERSTATE COMMISSION (ARTICLE XIII)

- 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.

NATIONAL INTERSTATE DATA

- According to the most recent Adoption and Foster Care Analysis and Reporting System (AFCARS) data, 532,000 children (as of 9/30/02) are in out-of-home placements.¹
- Interstate placements constitute approximately 5.5% (43,000) of children served in foster care during a given year. Children placed with relatives outside their home state make up the largest group of these placements. Almost 40% (17,200) of the 43,000 children involved in interstate placements are placed with relatives.²
- Children placed across state lines are twice as likely to be placed in pre-adoptive homes as children placed in state (30 % vs. 15 %). Furthermore, data demonstrate that most of the placements across state lines lead to permanency. Two-thirds or 61 % of the children placed in another state were placed with families who became their permanent families.³
- As with in-state adoptions, interstate adoptions are increasing dramatically.⁴ In 2002, 39 states reported that almost 10% of the total number of children receiving Title IV-E and state-funded adoption assistance were residing in a state other than the adoption assistance state. A comparison of 1997 and 2002 state data indicates that the number of children residing in a state other than the adoption assistance state grew by 70% over that five-year period.⁵ The rise in interstate adoptions is likely to continue. Adoption exchanges report that 63% of prospective families who respond to child-specific adoption recruitment do not reside in the same state as the child.⁶

¹ AFCARS Report. Data submitted for FY 2002, 10/01/01 through 9/30/02.

² Maza, Penelope. *The Role of Interstate Placements in States' Meeting the CFSR Standards*. Presented at Association of Administrators of the Interstate Compact on the Placement of Children (AAICPC) Annual Conference, May 2003.

³ Maza, Penelope. *Does Being Placed Out of State Make a Difference for Children in Foster Care?* Presented at AAICPC annual meeting on May 1, 2001.

⁴ AFCARS data indicate that the annual number of adoptions from foster care doubled between 1995 and 2000.

⁵ Oppenheim, Elizabeth, and Gilmore, Ursula. *Interstate Movement of Children Receiving Adoption Assistance*, APHSA, December 2003.

⁶ Adoption Exchange Association. "Home for the Holidays," 2002.