

DRAFT Talking Points for S.72 – Interstate Compact on the Placement of Children

Background

- ICPC regulates the placement of all child-welfare involved cases and domestic adoptions across state lines
 - Includes interstate placements of:
 - Foster care
 - Kinship care
 - Placements with non-custodial parents
 - Conditional custody orders
 - Residential care
 - Adoptions (public and private)
 - ICPC does not apply to out-of-state placements in:
 - Hospitals
 - Psychiatric hospitals
 - Educational facilities – like boarding schools
- Vermont DCF values placing children with family when possible and we need the compact in order to do that
 - The compact allows us to provide services to families who reside out-of-state and to also assess their suitability for placement
- The existing compact was written around 1960 and adopted by Vermont in 1971 – it's governing process and structure are outdated
- The new ICPC, which is the subject of this bill, will remove and reduce many of the barriers that we have now when trying to timely place children out-of-state
- New ICPC was drafted in 2004 with a team of folks across the country, including a Vermont Assistant Attorney General

What is a Compact?

- Compacts are formal agreements between states – hybrid area of the law that combines state laws and contracts
- In order for a compact to be effective, each state who is signing onto a compact must adopt the exact same language
 - This ensures that every state is agreeing to the same terms

New ICPC

- In order to adopt the new ICPC, the Vermont General Assembly must pass the compact language into law – H.424
- New compact is not in effect between states until at least 35 states adopt
- 13 other states have adopted the new compact
- Vermont hopes to be the 14th – history lesson/connection 😊
- We want to be one of the first 35 states to adopt the new compact so that we have a role and equal seat at the table in the new compact rulemaking process
- Vermont cannot change any of the compact language (neither can any other state) – all states must adopt the exact same language
 - Language in the bill is the same language every other state has adopted/will adopt
 - Changing the compact language voids Vermont's participation in the compact and will mean that we can't place children out-of-state

- While we wait for the 35th state to adopt, we need to keep the old compact language in law, which is 33 VSA chapter 59
 - This means that we need both the old compact language in law as well as the new compact language
 - The effective date sections of the bill allow for the repeal of the old compact and effective date of the new compact to both occur 18 months following the date the 35th state adopts the new compact
 - Once the 35th state adopts, new compact rulemaking begins
 - Vermont will have an equal seat at the rulemaking table as all other states who were early adopters
 - 18-month effective date timeline gives the states time to draft and adopt the new ICPC rules that will apply to all states

Major Differences between the old compact and the new compact

- The New Compact updates the legal framework to address needs and infrastructure for servicing children and families in the 21st Century
- The New compact distinguishes between an assessment (5902 #2, page 3, line 9) and home study (5902 # 6, page 4, line 1)
- The New Compact creates one home study template that would be used by all jurisdictions. This is a problem now with different requirements in each state- this is something that would be put in the rules.
- The New Compact permits a sending state to request a determination of whether a placement qualifies a provisional placement (meaning “*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.*”) (5902 (17), page 6 line 3); (5905 (f) page 16, line 7 & (h) page 16 line 16)
- The New Compact will increase timely placements in other states (5907 (c) page 19, line 8)
- New compact clarifies the applicability of ICPC to non-custodial parents. States have differing interpretations now (5903 #5 (a,b,c), page 10, line 3).
- Provides administrative review of denials in the receiving state – no review required now under the current compact (5906 (c), page 17, line 14)
- The New Compact only requires notification to states when children are placed in residential programs vs. needing prior approval prior to placement (5902 #14, page 5, line 10); (5903 #1, page 8, line 14)
- One-state one-vote body to make rules and regulations for signatories and provides opportunities for public input and public comment (not available now under current compact)- (5908 (2) & (2a), page 21 line 3); (5910 (2), page 25, line 5); (5911 (c), page 29,30, line 20)
 - Rules can be changed more frequently and easier so that compact can remain current- (5911 (c), page 29,30, line 20); (5909 (1,2), page 22, line 6)
- The New Compact strengthens enforcement- (5912, page 32, line 16); (5912 (c) (1,2,3,4); (5909 (4), page 22 line 12)
 - Provides mediation and binding dispute resolution (5912 (b)(1), page 33, line 16)
 - Remedial training- (5912 (c)1, page 33, line 7)
 - Technical assistance - (5912 (c)1, page 33, line 7)

Letters of support for adoption of the new ICPC included:

- Letter from Chief Justice of the Vermont Supreme Court to Governor of Vermont dated February 22, 2019 urging adoption of the new compact because:
 - New compact applicable to the 21st century
 - Addresses deficiencies caused by the opioid crisis and ability to make timely placements of children out-of-state with family
 - New compact requires transparency in the adoption of rules
 - Sets up an effective governance system
 - Better enforcement mechanisms between states
- January 2020 letter from New England Regional Judicial Opioid Initiative Leadership Committee urging all New England states to adopt the new compact for reasons similar to those articulated above

Highlights of S.72 Bill Sections

Section 1

- repeals the old compact language
- effective 18 months from the date on which the new compact (section 2 of the bill) is enacted into law by 35 states

Section 2 - new compact language

- Subchapter 1 of chapter 59, title 33 – Articles of the new compact. This is the compact language that cannot be changed:
 - Article 1 of the compact – section 5901 of title 33 states the compact purpose
 - Article 2 – section 5902 – definitions
 - Article 3 – section 5903 – explains what types of placements the compact applies to
 - Article 4 – section 5904 – details jurisdiction of courts in the sending and receiving states
 - Article 5 – section 5905 – placement evaluation requirements
 - Article 6 – section 5906 – placement authority
 - Article 7 – section 5907 – placing agency responsibility
 - Article 8 – section 5908 – creates the interstate commission, which is an administrative body made up of state representatives.
 - Each state has one representative
 - Body that adopts rules that will apply to each state
 - Enforces compliance with the compact
 - Article 9 – section 5909 – powers and duties of the interstate commission
 - Article 10 – section 5910 – organization and operation of the interstate commission
 - Article 11 – section 5911 – rulemaking functions of the interstate commission
 - Article 12 – section 5912 - details oversight, dispute resolution and enforcement of the compact
 - Article 13 – section 5913 – financing of the commission
 - Article 14 – section 5914 - member states, effective date
 - New compact is not effective until it is adopted by at least 35 states
 - We don't know when this will happen
 - In New England, Maine has passed it and legislation is pending in NH
 - Article 15 – section 5915 - withdrawal and dissolution from the compact
 - Article 16 – section 5916 – severability and construction
 - Article 17 – section 5917 -binding effect of the compact and other laws

- Article 18 – section 5918 – Indian Tribes
- Subchapter 2 of chapter 59, title 33 – this is the section where Vermont can explain what terms in the compact mean. There are no substantive changes in this subchapter as compared to existing law
 - Sections 5921 – language that we have now in subchapter 2
 - Section 5922 – defines DCF as Vermont’s child welfare agency and central state compact office
 - Section 5923 – language we have now in subchapter 2
 - Section 5924 – process for out-of-state hearings before a child in DCF custody is placed out-of-state – no substantive policy changes – this process and similar language is in existing law
 - Court decides that the out-of-state residential placement is appropriate because:
 - Equivalent facilities for the child are not available in this state
 - Care in the other state is in the best interest of the child and will not produce undue hardship
 - Including this language in section 5924 was crucial to the Defender General’s office in its support of this bill
 - Section 5925 – language that we have now in subchapter 2

Section 3 – effective dates

- Sections 1 and 2 take effect 18 months after 35 states adopt the new compact
- Section 3 – effective upon passage