

**THE COUNCIL OF STATE GOVERNMENTS  
NATIONAL CENTER FOR INTERSTATE COMPACTS**

**Interstate Compact for the Placement of Children**

*Model Legislative Testimony*

January 2007

---

*The following legislative testimony talking points are developed to be used as support for oral remarks to legislative or other bodies interested in learning more about the revised compact and as support for written testimony and/or supporting articles. These talking points are designed to be used in conjunction with the ICPC FAQ documents as well as APHSA's Legislative Resource Kit.*

---

**1) Opening Statement/Comments**

The Interstate Compact for the Placement of Children, as currently written and/or utilized, is no longer an effective instrument for use by the states in the movement of children to out-of-state foster/adoptive placements. Language within the compact is outdated, governing structures established by the compact are antiquated and basic management and administration issues of the compact are either obsolete or omitted completely from the existing language. Initially adopted in 1960, the compact is in need of a massive overhaul to repair its outdated construction and enhance its national utility, visibility and effectiveness.

Specifically, the current compact makes no reference to rules or rulemaking and does not even establish or recognize its own compact administrator association or provide for either enforcement or mediation of disputes between states. The agreement does not establish a system of financial support for the compact, nor does it call for the sharing of information and data on placed children. Further, while the current compact was drafted with other related compacts in mind, these agreements themselves have been changed or are in the process of being revised, most notably the Interstate Compact for Juveniles. Finally, the overall construction of the compact should be replaced with a more comprehensive structure that is based in contemporary compact law, offering greater flexibility when faced with the need for future adaptation and change.

**2) Background/History**

The Interstate Compact on the Placement of Children ensures protection and services to children who are placed across state lines for foster care or adoption. The compact is a uniform law that has been enacted by all 50 states, the District

of Columbia, and the U.S. Virgin Islands. It establishes orderly procedures for the interstate placement of children and fixes responsibility for those involved in placing the child. The compact is typically administered through each state by its Health and Human/Family Services Agency and is managed on the national level by the American Public Human Services Association (APHSA).

Children placed out of state need to be assured of the same protections and services that would be provided if they remained in their home states. They must also be assured of a return to their original jurisdictions should placements prove not to be in their best interests or should the need for out-of-state services cease. Both the great variety of circumstances which makes interstate placement of children necessary and the types of protections needed offer compelling reasons for a mechanism which regulates those placements.

The need for a compact to regulate the interstate movement of children was recognized in the 1950s. At that time, a group of East Coast social service administrators joined informally to study the problems of children moved out of state for foster care or adoption. Among the problems they identified was the failure of importation and exportation statutes enacted by individual states to provide protection for children. They recognized that a state's jurisdiction ends at its borders and that a state can only compel an out-of-state agency or individual to discharge its obligations toward a child through a compact. The administrators were also concerned that a state to which a child was sent did not have to provide supportive services even though it might agree to do so on a courtesy basis. In response to these and other problems, the Interstate Compact on the Placement of Children was drafted, and in 1960 New York was the first state to enact it.

The compact applies to four types of situations in which children may be sent to other states:

1. Placement preliminary to an adoption;
2. Placements into foster care, including foster homes, group homes, residential treatment facilities, and institutions;
3. Placements with parents and relatives when a parent or relative is not making the placement; and
4. Placements of adjudicated delinquents in institutions in other states.

### **3) Revision Process**

In March 2004, the state human service leadership of APHSA adopted a policy resolution directing a rewrite of the ICPC. In response, APHSA assembled a development and drafting team composed of a diverse group of state human service administrators, state and local child welfare directors, compact administrators, and representatives from a broad and diverse group of stakeholders. The group was tasked with identifying keys issues to be addressed

in the revised compact and work on the development of policy solutions to be included in the new agreement. A draft compact was completed and circulated for comment from December 2004 to September 2005. The final compact, amended based on comments from the states and stakeholders, was finished in November 2005 and was released for state consideration in March 2006. Ohio became the first state to adopt the revised compact, enacting the agreement in June 2006. The revised compact must be adopted by 35 states to activate.

**4) What is wrong with the current compact?**

The significant problems which this legislation is designed to remedy are as follows:

1. Inconsistent statutory language and subsequent state-by-state rule/regulation adoptions have created a patchwork of conflicting state practices and standards that are not consistent with the intent of the original compact;
2. Lacks meaningful enforcement and dispute resolution mechanisms to enforce the provisions and rules of the compact and to resolve disputes concerning the transfer of children between states under the compact;
3. Lacks clear standards, accountability, and authority for existing rulemaking procedures;
4. Lacks mechanisms to promote the timely and accurate exchange of data among member states;
5. Lacks proper coordination with like agreements, namely the Interstate Compact for Juveniles and the Interstate Compact for Adoption and Medical Assistance; and
6. Lacks visibility in and among states.

**5) How does the new compact address these problems?**

1. Narrows applicability of the compact and specifies the circumstances under which the compact does apply;
2. Requires the development of timeframes for approval processes under the new rules and rulemaking system;
3. Creates a new third-party administrative body to oversee and govern the activities of the revised compact, known as the Interstate Commission.

The new Commission will be composed of representatives from the compacting states;

4. Provides for a formal, recognized and flexible rule-making authority seated with the new Interstate Commission;
5. Provides for significant compliance, enforcement and accountability measures;
6. Clarifies the responsibilities of states, whether sending or receiving children;
7. Allows states the ability to contract for home studies in another state;
8. Establishes the requirement to develop a national data collection and sharing system so that states may rapidly and accurately exchange relevant transfer data;
9. Establishes a financing structure to support the activities of the compact including development of the national data system, training for compact administrators and the promotion of best practices among compact officials; and
10. Provides for the proper coordination with other interstate compacts.

**6) How many children are subject to the ICPC?**

1. According to the most recent Adoption and Foster Care Analysis and Reporting System (AFCARS) data, 532,000 children (as of Sept. 2002) are in out-of-home placements.
2. Interstate placements constitute approximately 5.5 percent (43,000) of children served in foster care during a given year.
3. 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 suggests that most placements made across state lines lead to permanency with 61 percent of children placed in another state placed with families that eventually became permanent.

**7) Why Interstate Cooperation?**

Interstate compacts are one of the most powerful, durable, and adaptive tools for promoting and ensuring cooperative action among the states. As one of the oldest

mechanisms available for states to work together, their use predates the founding of the nation. Unlike federally imposed mandates that often dictate unfunded and rigid requirements, interstate compacts provide a state-developed structure and solution for collaborative and dynamic action among the states. The very nature of an interstate compact makes it the ideal tool to meet the demand for cooperative state action, to develop and enforce stringent standards and provide an adaptive structure for states that can evolve to meet new and changing demands over time. A distinctly American invention, interstate compacts promote multi-state problem solving in the face of complex public policy and Federal intervention.

### *Interstate Compacts: General Purposes*

Interstate compacts are contracts between states that carry the force and effect of statutory law. They are a tool for state governments to address regional or national policy concerns. Compacts are not a solution per se, but rather they allow a state to enter into a contract with other states to perform a certain action, observe a certain standard or to cooperate in a critical policy area. The law and use of interstate compacts is not particularly complex. Like any contract, the language of a compact needs to be identical in intent and context, if not identical in exact verbiage between the states. Generally speaking, interstate compacts:

1. Establish a formal, legal relationship among states to address common problems or promote a common agenda.
2. Create independent, multistate governmental authorities (e.g., commissions) that can address issues more effectively than a state agency acting independently, or when no state has the authority to act unilaterally.
3. Establish uniform guidelines, standards, or procedures for agencies in the compact's member states.
4. Create economies of scale to reduce administrative and other costs.
5. Respond to national priorities in consultation or in partnership with the federal government.
6. Retain state sovereignty in matters traditionally reserved for the states.
7. Settle interstate disputes.

### *Interstate Compacts: History*

Historically, compacts have been enacted for a variety of reasons, though they were seldom used until the 20th Century. Between 1783 and 1920, states approved 36 compacts, most of which were used to settle boundary disputes. But in the last 75 years, more than 150 compacts have been created, most since the end of World War II. Their purposes range from implementing common laws to exchanging information about common problems. They apply to a range of subject areas from conservation and resource management to civil defense, education, emergency management, energy law enforcement, probation and parole, transportation, and taxes.

Most interstate compacts cover rudimentary functions, such as regulating boundaries and water rights, and have less than 15 signatories. For example, the Waterfront Commission Compact between New Jersey and New York regulates the practices in handling waterfront cargo in the Port of New York. Illinois and Missouri cooperatively plan the development of St. Louis through the Bi-State Development Agency Compact.

Some compacts authorize the establishment of multistate regulatory bodies. The first and most famous of these is the New York Port Authority, which arose from a 1921 compact between New Jersey and New York. Other agreements are simply intended to establish uniform regulations without creating new agencies.

In recent years, compacts have grown in scope and number. Today, most are designed for regional or national participation. Examples include the *Emergency Management Assistance Compact*, the *Interstate Compact for the Supervision of Adult Offenders* and the *Interstate Insurance Product Regulation Compact*.

## **8) Congressional activity**

In July 2006, Congress enacted and the President signed the “Safe and Timely Interstate Placement of Foster Children Act of 2006.” A direct result of state activities surrounding revision of the ICPC, this federal legislation goes a step further by laying out specific timetables and requirements for states as related to interstate child placements. Further, the Act grants implied congressional consent to the revised compact and encourages states to adopt the new compact.

Specifically, the Act provides:

1. States shall: (1) have in effect procedures for orderly and timely interstate placement of children; (2) complete home studies requested by another state within a specified period; (3) accept such studies received from another state; and (4) not impose any restrictions on contracting with a private agency to conduct such a study.
2. Directs the Secretary of Health and Human Services to make grants for timely interstate home study incentive payments to states that have approved plans and that have completed, and provided the Secretary a report on, such studies.
3. Expresses the sense of Congress that state agencies should cooperate with courts which have authority with respect to the placement of a child in foster care or for adoption for the purpose of locating a parent of the child.

4. Amends the definition of "case review system" to: (1) increase the required frequency of state caseworker visits to a child who is placed in foster care outside the state in which the child's parents reside; (2) require a child's health and education record to be supplied to the child at no cost when he/she leaves foster care by reason of having attained the age of majority under state law; and (3) provide for a foster parent's right (currently, opportunity) to be heard in any proceeding (currently, review or hearing) respecting their foster child.
5. Requires state courts to ensure that foster parents, pre-adoptive parents, and relative caregivers of a child in foster care are notified of any such proceedings.
6. Includes among the purposes of grants to the highest state courts the assessment of the court's role in carrying out state laws requiring proceedings that determine the best strategy to use to expedite the interstate placement of children.
7. Provides for consideration of out-of-state placements in permanency hearings, case plans, and case reviews.
8. Requires each plan for child welfare services to include the assurance that the state will eliminate legal barriers to facilitate timely adoptive or permanent placements for children.