

A TIME for Change



Child Placement Compact Ready for Update

The current Interstate Compact for the Placement of Children was enacted by the states in 1960. Many child welfare stakeholders say the compact is outdated and it's time for change.

By Laura Coleman

A lot has changed since 1960.

In the past 40 years, the legal system has evolved to include administrative law provisions; technology has become an indispensable part of everyday life, from business and research to entertainment; and the interstate highway system has provided a seamless way for people to travel across the country.

At least one thing, however, has remained the same: the Interstate Compact for the Placement of Children.

Drafted in 1960, the compact is the only public law that ensures children placed across state lines for foster care or adoption are placed with safe and suitable families. About 532,000 children are currently in out-of-home placements, and 5.5 percent of those are interstate placements. Sixty-one percent of children placed across state lines are permanent placements.

In its current form, the ICPC has caused unnecessary delays and the process doesn't take into account technologies developed after 1960, says John Mountjoy, director of the National Center for Interstate Compacts at CSG.

“I think since it was developed more than 40 years ago, it hasn’t benefited from advances in society,” he said. “The interstate system was new, there wasn’t the ability to share information over e-mail and fax, and there wasn’t the volume of cases we see now either. It was developed for a particular time. It just needs to be updated so it can take advantage of the things that now exist: transportation, information sharing and modifications to administrative law and enforcements.”

But with the support of states, a revision of the compact could be in place soon.

In March 2004, The Council of State Governments and the state human service leadership of the American Public Human Services Association (APHSA) adopted a policy resolution to remedy these deficiencies of the old compact. They assembled a drafting team of human services administrators, state and local child welfare directors, compact administrators, and representatives from national organizations to rewrite the compact.

The team finished the drafting process in April 2006. Ohio enacted the new compact in June, but it needs the support of 34 more states to replace the current law.

What’s the Difference? The ‘Old’ Compact

The existing compact includes a complete home study by the receiving state. The receiving state assesses criteria such as the social and medical histories of the placement family, their backgrounds, parenting and discipline styles, employment and financial histories, and professional and personal references. That state also conducts a physical evaluation of the home and criminal and child abuse background checks. If all those assessments are adequate, the placement is determined to be “not contrary to the welfare of the child.”

APHSA administers the compact, but the agency is not currently authorized by the compact to enforce its rules. In addition, since 1960 states have “filled in the blanks,” unilaterally interpreting the compact, changing the statute, process and procedures for interstate placements. In other words, there is no longer a common agreement among the states.

Remedying the enforcement mechanism is what the new compact is about, says Mary Ball Morton, compact administrator from Delaware for both the ICPC and the Interstate Compact for the Placement of Juveniles. “I don’t want to mislead,” she said. “I think the intentions and meat of the current compact do the right thing, but it needs that stronger enforcement piece to be a consistently working tool.”

The ‘New’ Compact

The proposed ICPC provides a solid legal framework for ensuring the timely placement of children cross state lines, the suitability of prospective families, and the provision of needed support services. The updated version was composed by many stakeholders, including state human service administrators, state and local child welfare directors, compact administrators and representatives from national organizations like the United States Department of Health and Human Services and the Child Wel-

fare League of America.

To Robin Arnold-Williams, the acting chair of the proposed compact under APHSA, the complex nature of the child welfare system warranted inviting a variety of stakeholders to the table.

“There is a whole variety of very strongly held opinions on everything in child welfare,” she said. “The proposed draft really does try to take a look at everybody’s views on things and tries to come up with what’s best for children and families.”

The new draft of the compact specifically addresses details such as who the compact applies to, jurisdiction, the assessment process and enforcement.

Applicability

The draft of the proposed compact does not cover children placed by their parents into residential treatment facilities, with a relative or with a non-relative as long as that placement is not an initial step to adoption. It does not apply to foreign adoptions.

Residential facility placements require that the sending state notify the receiving state. The current compact requires approval by the receiving state prior to such placements.

The draft includes all placements made as a preliminary step to adoption, whether they are made by a public or private child placing agency, a private person or an attorney.

Jurisdiction

Under the proposed language, jurisdiction means the authority of the courts and judicial officers to take and decide cases. The language also adds three circumstances in which the sending state court will have authority to terminate jurisdiction:

- If guardianship is created in the receiving state with agreement of the sending state.
- If a tribe has petitioned for a received jurisdiction from the court in the sending state.
- If the child is reunified with the parent in a receiving state and the parent is subject of allegations or findings of abuse and neglect. This requires concurrence of the receiving state.

Assessments

The draft defines assessment as the “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.”

According to the compact’s current language, the receiving state must only determine that the placement “does not appear contrary to the interests” of the child.

Enforcement

The draft of the compact provides for mediation and binding dispute resolution, remedial training and specific technical assistance. It also provides for judicial action by member states of the Interstate Commission, which it also creates, to enforce compliance.

The Interstate Commission would be comprised of one vot-

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ing representative from each member state. That representative would be appointed by the executive head of the state human service administration who has ultimate responsibility for the child welfare program.

In addition, the legal framework of the compact has ironed out some of the kinks the old compact neglected, said Mountjoy.

“Rather than having to go back to every single signing state legislature every time you need to make changes, the legal framework allows that to happen within the rules. It’s much quicker, much more responsive to the changing world and how the placement of adoptive and foster kids is handled,” he said.

“The whole structure of the compact came as part of the Interstate Compact for Juveniles,” said Arnold-Williams.

The ICJ has been adopted by 30 states and addresses the management monitoring, supervision and return of juveniles, delinquents and status offenders who are on probation or parole and who have run away from their sentencing states.

“We are going to have to explain to legislatures to help them feel comfortable with the rule-making being done with ICPC,” said Arnold-Williams. “They obviously must have been comfortable with that because of ICJ, so they should be comfortable with ICPC.”

To Ball Morton, there is a relationship between the two compacts.

“If we’ve kept a child here in Delaware and we didn’t have the right placement—it could be a residential treatment need or being with a family elsewhere, but something different than we would be able to find here—the child might have to move around a lot, go from home to home to home here in Delaware,” she said. “If you have these mechanisms to find places in other states and can use the compact, ensure supervision, I’m sure it would save some children from ending up in the juvenile justice system.

“The juvenile compact sends children back to their families and ensures they get probation services,” Ball Morton explained. “What we try with ICPC is to have them not even get to the probation level. We help them find what they need, even if it’s in other states.”

Keeping the System From Failing

Mountjoy likes to think of a compact project as three stages.

“The first stage is exploratory, the second is education and adoption, and the third is transitioning to the new agreement,” he said. “We sent out final copy of the new compact and a survey that asked if states would support the compact in its current form with no changes. Thirty-seven of 40 states said they would. It gives us great promise going into the 2007 legislative sessions.”

Mountjoy said once 35 states join the compact, the language of the old compact will be used for at least 12 months. “Once you get there, the new interstate commission may decide to lengthen that time,” he said.

But what about the states that were party to the old compact that choose not to join this one?

After the 12-month period, the new compact rules will take effect and will only allow the new members to do business among themselves. States that have not joined the new compact after 12 months after it has been signed by the 35th state will have no meaningful way to place children in new compact states. That means they will have no way to prevent states from sending children without permission or notice.

“All players will be interested in good discussions. And we had that sitting around discussing and building the new compact,” said Arnold-Williams. “It necessitated compromise, and that will play out again in state legislatures. All stakeholders will have to discuss if they can accept the provisions we set forth. It should have those good debates, but I am very optimistic we can get it done.”

“The system has been broken for so long that we just can’t afford to have kids fall through the cracks,” said Mountjoy. “We can’t afford for placements to be delayed. What we’re concerned about is the kids. It’s about creating and promoting a new system that will positively impact a child’s outcome.”

Ball Morton agrees. “We’re talking about children here, and we’re talking about folks who need to have timely placement.”

—Laura Coleman is the associate editor for *State News* magazine.

To learn more about the Interstate Compact for the Placement of Children, visit www.csg.org/programs/ncic.