



## ICPC COVERAGE

*June 2004*

<p><b>Public Agency Adoption</b></p> <p><i>Task Force Majority Recommendation: ICPC should apply to pre-adoptive placements by public agencies.</i></p>	
<p><b>Public Policy Supporting the Applicability of ICPC:</b></p> <p style="padding-left: 40px;">State governments have a substantial and compelling reason to ensure the safety of children in the custody of public welfare agencies.</p> <p style="padding-left: 40px;">Placement for adoption across state lines by a public agency falls within the pure intent of the compact: to determine the suitability of interstate placements, provide for the protection of the child, and make appropriate arrangements for the care of the child during placement.</p>	<p><b>Public Policy Against Applicability:</b></p> <p style="padding-left: 40px;">Timeliness and responsiveness have been such big barriers to interstate placements that even if ICPC applies only to public agency adoptions the reality of implementation under the compact is thwarted.<sup>1</sup></p>
<p><b>Independent and Private Agency Adoptions</b></p> <p><i>Task Force Majority Recommendation: ICPC should not apply to independent or private agency adoptions.</i></p>	
<p><b>Public Policy Supporting the Applicability of ICPC:</b></p> <p style="padding-left: 40px;">ICPC provides a safeguard to ensure that children placed for adoption through private agencies are placed in appropriate homes and do not end up in the child welfare system due to disruption in placement.</p> <p style="padding-left: 40px;">Children placed through private agencies are a vulnerable population left to exploitation.</p>	<p><b>Public Policy Against Applicability:</b></p> <p style="padding-left: 40px;">ICPC involvement with independent adoptions increases the administrative demands and case loads, takes a significant portion of time and political capital, while only representing a small number of children in the child welfare system.</p> <p style="padding-left: 40px;">Some state statutes mandate that private adoptions must be reviewed by the public agency. In these states, review by ICPC is superfluous.</p> <p style="padding-left: 40px;">States that are not involved in private agency adoptions intrastate, should not have to utilize a different standard for interstate adoptions through the ICPC.</p> <p style="padding-left: 40px;">ICPC coverage of independent adoptions does</p>

not survive a cost-benefit analysis. Some states are having a difficult time covering the costs of reviewing independent adoptions, and are attaching additional fees for service.

ICPC administrators rarely determine that an independent placement is unsuitable.

Most private/independent placements never come to the attention of ICPC administrators.

Private placements often do not involve issues regarding interstate cooperation or jurisdictional authority. Each state receiving an independent or private placement has licensing laws that protect against exploitation.<sup>2</sup>

Several state courts have held that ICPC does not apply to independent adoptions.<sup>3</sup> Administrators in those states are faced with a conflict between court rulings and the statutory language of the compact.

State courts are divided on the issue of whether ICPC violations should be grounds for revoking consent for adoption, or for dismissal of an adoption.<sup>4</sup> In cases where the placement is appropriate for the child, non-compliance with ICPC (where most private adoption placements are approved) may prevent placement for the child's best interests.

Including birth parents in the definition of "sending agency" has many unintended consequences such as birth parents having continued responsibility for their child during the pre-adoptive placement<sup>5</sup> and the right to revoke consent after the child has been residing with the adoptive parents.<sup>6</sup>

In independent or private agency adoptions where the child is eligible for a subsidy, there is a higher state interest in determining the appropriateness of the placement. However, if an adoption meets eligibility standards, subsidies are granted intrastate regardless of the appropriateness and safety of the placement. There are no intrastate quality control mechanisms to determine the appropriateness of the placement, nor should there be an interstate mechanism.

**Expectant Mother Travels to Another State to Give Birth**

*Task Force Majority Recommendation: ICPC should not apply to Expectant mothers.*

**Public Policy Supporting the Applicability of ICPC:**

Usually, when a birthmother travels to another state, gives birth, and the child is placed with a family in that state or a third state, prior arrangements have been made. Those prior arrangements are interjurisdictional in nature, and therefore fall under ICPC. Such actions subvert and avoid application of the law.<sup>7</sup>

Father's rights may be protected through compliance with the compact. Through the administrative procedures required by the compact, the sending or receiving state may make inquiries that would provide notice to a father who otherwise was not aware that his child was being placed for adoption.

The courts have held that a person's right to travel from one state to another cannot be vitiated by state action because it is an element of liberty protected by the Fourteenth Amendment. But the right does not include the right to travel for an unlawful purpose. ICPC does not restrict a birth mother's right to travel, it only regulates the interstate placement of children. Because ICPC is lawful in most states, children placed in another state must comply with the compact.<sup>8</sup>

**Public Policy Against Applicability:**

Most states have a state statute that already addresses this situation to ensure protection of a child. Therefore, ICPC is superfluous.

Situation/placement is a source of legal difficulty for states. In a case where a mother gave birth in the same state as the adoptive parents because the mother's doctor was located in that state, the court held that the mother's residence was "not determinative" to the outcome of the case and that it was not an interstate placement.<sup>9</sup>

In practice, this situation is no different than an independent adoption by a birth parent, and should not be covered by ICPC. In most of these cases, there is no issue of interstate cooperation, exploitation or jurisdictional authority, because the child is not in public/government custody.

Secretariat Opinion 49 already excludes situations where a birthmother crosses the state line for the purpose of using medical facilities located in the metropolitan area. The opinion suggests looking at the "character" of the placement, which may produce inconsistent results.

Applying ICPC provides a complex administrative process that will delay appropriate placement of the child where a state already has laws to ensure appropriate placement of children by private agencies.

Military birthmothers who chose to give birth in a military hospital in another state need not comply with ICPC.<sup>10</sup> This change creates an inconsistency for birthmothers who travel to other states to give birth, but are held to their place of residence rather than their actual location.

Provision impedes or otherwise places a burden on the right of a mother to travel.

<p>Concerns to Address:</p> <p>An expectant mother who is not required to comply with ICPC may travel to another state to circumvent a previous state’s court order regarding the status or custody of the fetus.</p>	<p>Options to Address Concerns:</p> <p>Concern can be addressed by each state revisiting the state requirements around what is expected and required of private adoption agencies.</p>
<p style="text-align: center;"><b>Inter-country Adoptions</b></p> <p style="text-align: center;"><i>Task Force Majority Recommendation: ICPC should not apply to inter-country adoptions.</i></p>	
<p>Public Policy Supporting the Applicability of ICPC:</p> <p>Children who are adopted inter-country are vulnerable and subject to informal requirements in their country of origin.</p> <p>Adopting parents often have minimal information about the needs of the child. Adoptions with high-need children sometimes disrupt, and the children are then placed into the adoptive parent’s state welfare system.</p>	<p>Public Policy Against Applicability:</p> <p>Immigration and Naturalization laws provide sufficient safeguards and the INS provides oversight for inter-country adoptions.</p> <p>The Hague Convention supersedes state law, and regulates inter-country adoptions.</p> <p><i>See “private agency adoptions” section for further discussion.</i></p>
<p style="text-align: center;"><b>Adoption by Military Families</b></p> <p style="text-align: center;"><i>Task Force Majority Recommendation: ICPC should not apply to military families who adopt.</i></p>	
<p>Public Policy Supporting the Applicability of ICPC:</p>	<p>Public Policy Against Applicability:</p> <p>Military families who adopt represent a very small percentage of ICPC cases.</p> <p>Due to the transitory nature of military families, it may become confusing when ICPC is applied. It is a disservice to make military families submit to ICPC administrative requirements and time delays.</p> <p>Federal laws that apply to military families supersedes state law, and the ICPC.</p>

**CHILD WELFARE AGENCY PLACEMENTS**

<p><b>Placement in Foster Families</b>  <i>Task Force Majority Recommendation: ICPC Should Apply.</i></p>	
<p>Public Policy Supporting Application of ICPC:</p> <p>State governments have a substantial and compelling reason to ensure the safety of children in the custody of public welfare agencies.</p> <p>Placements in foster families across state lines by a public welfare agency falls within the pure intent of the compact: to determine the suitability of interstate placements, provide for the protection of the child, and make appropriate arrangements for the care of the child during placement.</p>	<p>Public Policy Against Application of ICPC:</p> <p>None.</p>
<p><b>Placements in Residential Treatment Center</b>  <i>Task Force Majority Recommendation: ICPC Should Apply a Less Restrictive Standard of Oversight (Notification Rather than Approval) and Set Forth Responsibility of Each State for Placements that Disrupt.</i></p>	
<p>Public Policy Supporting Application of ICPC:</p> <p>When a child’s placement in an RTC disrupts, the state in which the RTC is located must call the sending state and work out arrangement for the return of the child. Where a dispute arises regarding return of a child to a sending state, ICPC protects the receiving state by clarifying the sending state’s responsibility for the child.</p> <p>ICPC should set out the financial and legal responsibility of the sending state where disruption of placement occurs, and require notification to the receiving state rather than requiring approval.</p> <p>State laws regarding licensing of RTCs should require the RTC to notify the receiving state of placement and state with responsibility of placement of care.</p>	<p>Public Policy Against Application:</p> <p>Placing a child in an RTC for treatment is not a permanent or long term solution, and is not similar to placing a child in a pre-adoptive or foster care home. A sending state has an ongoing responsibility to make sure the placement is appropriate to meet the child’s treatment needs.</p> <p>The State where the RTC is located sometimes has no more knowledge about the RTC than the state sending the child.</p> <p>The sending state is ultimately responsible for a child placed in an RTC, and must evaluate the appropriateness of the placement with or without ICPC involvement.</p> <p>ICPC does not provide substantive quality control methods for RTCs. Most applications are approved by the receiving state.</p> <p>States already address standards for health,</p>

	protection and safety of children in RTCs through licensing.
<p style="text-align: center;"><b>Reunification with Offending Parent</b>  <i>Task Force Majority Recommendation: ICPC should apply to reunification with Offending Parent.</i></p>	
<p>Public Policy Supporting Application of ICPC:</p> <p>It is undesirable to keep or send children into homes where there is a past history or danger of child abuse without prior evaluation of the present conditions and the risks or benefits to the child. ICPC provides a sending and receiving state with the necessary information to determine the appropriateness of a placement. Without ICPC compliance, a state would be unable to ensure execution of its compelling state interest to protect the safety of the child.</p> <p>When a state removes custody of a child from their parent because of abuse or neglect, and later seeks to reunify the child with the parent, the parent does not possess the full rights and protections of the parent-child relationships.</p>	<p>Public Policy Against Application:</p> <p>If a court has ordered that children be reunified with an offending parent, and there is no provision for ongoing or periodic oversight of the family by the child welfare agency, the parent’s rights are determined to be restored in full. A State no longer has a compelling interest in the family unit.</p>
<p style="text-align: center;"><b>Placements with Non-Offending Parent with Custody:</b>  <i>Task Force Majority Recommendation: ICPC should allow a sending agency flexibility to monitor a placement, but require less than full ICPC ongoing supervision.</i></p>	
<p>Public Policy Supporting Application of ICPC:</p> <p>It cannot be assumed that a mother or father is a suitable recipient of a child merely because he or she is the natural parent.<sup>11</sup></p> <p>Evidence of one parents unfitness necessitates that a state agency ascertain additional information on the alternate parent to ensure the child is not harmed for a second time.<sup>12</sup></p> <p>When a court removes a child from one parent, and places the child in “temporary custody” the public agency becomes the placer, and the placement then falls into ICPC.<sup>13</sup></p>	<p>Public Policy Against Application:</p> <p>“ICPC only applies to interstate placement of a child with his or her parent if the parent is not in full possession of rights regarding the child, thereby giving rise to a reasonable suspicion that state oversight is required to ensure the safety and well-being of a child.”<sup>15</sup></p> <p>Parents whose rights have not been limited are left to raise their children based on their own judgment, and the state should not be involved with concerns regarding the child’s safety and welfare.</p> <p>In <u>McComb v. Wambaugh</u>, the court made no distinction between parents who have</p>

<p>If a parent does not have contact with the other parent or their child for a prolonged period of time, that parent may be deemed to have abandoned the child, which can result in a loss of parental rights. Any attempt to reunify a child with that parent is considered a placement and should be pursuant to ICPC.</p> <p>A non-offending parent is properly defined as showing “unfitness.” A parent can be unfit through affirmative acts, such as abuse, or omission of acts such as failing to take reasonable steps to insulate the child from the harmful acts of the other parent’s abuse. Therefore, the non-acting parent may be considered offending as well, and ICPC is the mechanism to sort through these relevant questions.<sup>14</sup></p> <p>Because the child came into the custody of the public child welfare agency, the agency has ultimate responsibility for the safety of the child. The agency should have the flexibility to provide less supervision that required by ICPC while still maintaining a degree of oversight.</p>	<p>full parental rights and those who have lost some or all of their rights by virtue of having a child removed from custody. However, in discussing the case, AAICPC documents recognized that non-offending parents should be treated differently than offending parents under ICPC.</p> <p>The sending of a child to live with one of the parents is merely a normal incidence of the parent-child relationship which a compact administrator has no power to sanction or forbid. A public agency taking temporary custody due to a parent involved in an accident, or pursuant to an accusation should not disrupt this placement process.</p> <p>Public policy favors maintaining privacy in the home and of a parent-child relationship. The state may investigate only under specific conditions, and therefore a parent is <i>presumed</i> to be non-offending.<sup>16</sup></p> <p>If a court order grants custody and says nothing more, the proper legal conclusion is that the court has found the individual to be non-offending, that returning the child to that parent is not a placement and ICPC does not apply.</p> <p>State courts are divided on whether they request a home study of the non offending parent with custody. Varies by state court and judge’s preference.</p>
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**Placements with Non-Offending Parent Without Custody:**  
*Task Force Majority Recommendation: ICPC should apply*

<p><b>Public Policy Supporting Application of ICPC:</b></p> <p>A court’s determination that a parent will act as sole custodian of children, diminishes the other parent’s rights to their children. If a parent does not possess the full rights of the parent-child relationship, the state has a substantial and compelling interest in the safety and placement of that child.<sup>17</sup></p> <p>A parent who has limited or no legal custody of a child as the result of a divorce</p>	<p><b>Public Policy Against Application:</b></p> <p>None.</p>
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<p>or separation does not have a constitutionally protected parent–child relationship, and a later placement with that parent could subsequently be determined as either a “foster care placement” or a wrongful grant of custody.<sup>18</sup></p> <p>It is important to consider the reasons why a parent may be a non-custodial parent. If a court found that a parent was not suitable to be a custodial placement because of abuse, neglect or incompetence, the parent may be considered offending, even if charges were not brought regarding abuse or neglect. ICPC provides the framework to look into non-custodial situations to ensure a parent is really non-offending.<sup>19</sup></p> <p>If a biological parent, who lives in another state, asks for a placement, it should not be assumed that it is an appropriate placement that will meet the child’s needs. That assessment is properly conducted by ICPC.<sup>20</sup></p>	
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**Placements with Kin**

*Task Force Majority Recommendation: If Included in the ICPC, Placements with Kin should give a state flexibility in ongoing oversight requirements. If not included in ICPC, placements should be addressed through individual state law.*

<p><b>Public Policy Supporting Application of ICPC:</b></p> <p>For a state to draw down IV-E funds, they must comply with ICPC.</p> <p>Although kin need not be licensed as a foster care facility, placement with kin are considered foster care placements and therefore fall within the scope of the compact.</p> <p>Close relatives who do not have a legal obligation to support children may have family feelings for children and so be viewed as suitable substitutes for parents, requiring less investigation than strangers.<sup>21</sup></p>	<p><b>Public Policy Against Application:</b></p> <p>Placements with Kin who decline to adopt require continued oversight until the sending and receiving state concur in discharge. This type of permanent placement requires significant resources and staff time of the receiving state, when oversight is no longer necessary.</p>
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**COURT SUPERVISION**

**A Child Placed in a RTC, with a Non Offending Parent Without Custody or a Parent Under Court Supervision Moves to a Different State.**

*Task Force Majority Recommendation: ICPC Should Not Apply.*

<p>Public Policy Supporting Application of ICPC:</p> <p>None.</p>	<p>Public Policy Against Application:</p> <p>If a Child Welfare Agency does not have authority to place, ICPC is moot.</p> <p>Unnecessarily overlaps if the Interstate Compact on Juveniles.</p> <p>Article VI of the ICPC allows oversight of Delinquent Children, but does not mandate it.</p>
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## PARENTAL PLACEMENTS

<p><b>Placements in Residential Treatment Centers</b></p> <p><i>Task Force Majority Recommendation: ICPC should require notification of a placement and should set out state responsibility for placements that disrupt.</i></p>	
<p>Public Policy Supporting Application of ICPC:</p> <p>Children placed in residential care facilities by parents are not guaranteed the same monitoring services as children placed by welfare agencies. ICPC ensures children placed in RTPs receive oversight and protection afforded by child welfare agencies. ICPC provides on-going supervision to evaluate whether a placement is meeting the needs of a particular child placed in a residential treatment facility located in another state.</p> <p>Although states are suppose to inspect residential treatment facilities periodically for licensing purposes, the inspections only occur annually, and seldom include individual case reviews of children being treated. Supervision through licensure reviews is too infrequent and not specific enough to operate as the only supervision of children in residential placement.<sup>22</sup> State standards generally do not evaluate the suitability of a child's placement or ensure quality of care. Placing agents should not use licensure as a substitute for a pre-placement visit when placing children in residential facilities.<sup>23</sup></p> <p>Although institutions must display honesty, diligence and objectivity to be licensed, a treatment center may be less likely to evaluate themselves as failing to meeting the needs of the child due pressures that</p>	<p>Public Policy Against Application:</p> <p>Parents who wish to send their child(ren) to a RTC in another state can rely on the receiving state's licensing procedure to assure a facility is appropriate and safe. States already address standards for health, protection and safety of children in RTCs through licensing.</p> <p>Children with previous histories of residential care, Medicaid eligibility, abuse or involvement with the juvenile justice system tend to end up in residential treatment facilities through government placements.<sup>27</sup> Therefore, it may be appropriate to conclude that non-governmentally placed children have different circumstances that do not warrant the same strict oversight for the appropriateness of the placement as do children already involved in the juvenile justice or child welfare system.</p> <p>Parents have a constitutional right to the custody, care and control of their children, free from state interference. ICPC should allow parents to decide for themselves whether a RTC is an appropriate placement for the needs of their child. The constitutional analysis that supports ICPC as a narrowly tailored framework for providing for the compelling interest of a child's safety and welfare has only been applied to situations where a parents right's</p>

“militate against the reliability of self-assessment and reporting of individual an child’s needs.”<sup>24</sup>

The Adoption Assistance and Child Welfare Act of 1980, and the Education for All Handicapped Act, provides federal monitoring requirements for the substance and frequency of case reviews for children in RTPs. In addition to federal oversight, state laws often regulate the placement by requiring case reviews, visits, and written progress reports regarding the appropriateness of the placement.<sup>25</sup> In cases where parents voluntarily place children in RTPs, and the child is not involved in the juvenile justice or child welfare system, case reviews are not required by federal or state statute.<sup>26</sup>

Parents have a constitutional right to the custody, care and control of their children, free from state interference. States have a compelling interest in protecting children and providing for their safety and welfare. ICPC procedures for approval of out of state residential placements are narrowly defined, and balance the parent’s right to raise their child and the state’s need to protect them.

ICPC includes a parent as a sending agency. Sending agencies must abide by the ICPC for placements. (Cornhusker Children’s Home Inc. v. Department of social services of state of Nebraska)

If a parent abandons a child placed in an RTC, ICPC fixes responsibility of the sending and receiving state.

and or custody of their children has been modified. The analysis states that “ICPC only applies to parents whose rights have been limited by state action, and no longer enjoy the custody inherent to the parent-child relationship.” In situations where a parent is placing a child in a RTP located in another state, prior to any involvement with the juvenile justice or child welfare system, the parent’s rights are not suspect, and they are “left to raise their children based on their judgment because the state is not faced with concerns regarding the child’s safety and welfare.”<sup>28</sup>

Parents who live in states with a placement that is appropriate for their child are not required to comply with ICPC. If the state does not have the appropriate resources, parents who find resources out of state are subject to ICPC requirements which delay the placement and treatment of their child.

State licensing laws could hold RTCs financial responsible for disrupted placements.

## PLACEMENTS BY TRIBES

<p><b>Placement with a Member of the Tribe</b></p> <p><i>Task Force Majority Recommendation: ICPC Does Not Apply to Placements by a Federally Recognized Native American Tribe or between families in the same tribe, unless ongoing state services are needed.</i></p>	
<p>Public Policy Supporting ICPC Application:</p> <p style="text-align: center; padding: 20px 0;">None.</p>	<p>Public Policy Against Application:</p> <p style="text-align: center; padding: 20px 0;">A Federally recognized tribe is a sovereign nation. ICPC does not apply regardless of whether the Tribe land or members are located in multiple state jurisdictions.</p>

<sup>1</sup> Madelyn Freudlich

<sup>2</sup> Freudlich

<sup>3</sup> Freudlich

<sup>4</sup> In re A.M.M., 949 P.2d 1155, 24 Kan. App. 2d 605 (Kan. App. 1997); In re Adoption/Guardianship No 3598 in the Circuit Court of Harford County, 347 Md. 295, 701 A.2d 110.

<sup>5</sup> Freudlich

<sup>6</sup> Stancil v. Brock, 108 N.C. App. 745 (N.C. App. 1993)

<sup>7</sup> Sec Op 49

<sup>8</sup> Unit II page 18 of the Training Manual for Administrators and Liaisons of the Interstate Compact on the Placement of Children, published in 2001 by AAICPC.

<sup>9</sup> Yopp v Batt, 237 Neb 779 (Neb. 1991)

<sup>10</sup> Charles Edwards memo to Kate Carson, June 2001

<sup>11</sup> Sec Op 32

<sup>12</sup> Sec Op 32

<sup>13</sup> Sec Op 32

<sup>14</sup> Issue Paper #6

<sup>15</sup> AAICPC Secretariat, August 29, 2002.

<sup>16</sup> Issue paper #6

<sup>17</sup> Prepared for AAICPC Secretariat

<sup>18</sup> Sec Op 34

<sup>19</sup> Issue Paper #6

<sup>20</sup> Sec Op 34

<sup>21</sup> Sec Op 29

<sup>22</sup> . (Issue Paper #1, 1992)

<sup>23</sup> (HHS Office of Inspector General, 2000 pg 13).

<sup>24</sup> (Issue Paper #1, 1992)

<sup>25</sup> (GAO, September 1991)

<sup>26</sup> (GAO September 1991).

<sup>27</sup> GAO Report, 1985

<sup>28</sup> ." (APHSa, Prepared for AAICPC Secretariat, August 29, 2002 pg 6).