



**ICPC Development & Drafting Team
Final Decision Making Subcommittee**

REPORT

A. For Placements Traditional Placement with Kinship, Foster & Prospective Adoptive Parents

Recommendations

- 1) If the placement resource is determined to be ineligible to be a placement resource base on the laws ***and/or regulations of the receiving state***, then the sending state may not place the child with that resource.
- 2) If the receiving state has determined that the placement is not suitable, but not in violation of state law and/or regulation, but rather based on policy (practice or protocol) violations or concerns regarding the health, safety, and ability to provide for the well-being of the child, then if the sending state wants to place contrary to the receiving state’s recommendation then the sending state must be provided an opportunity to make the placement after court review and findings of fact made on the record.

Discussion

The subcommittee generally agreed that if you are going to place a child in another state you should have to abide by the laws of that state. “If you are going to play in someone else’s playground you have to follow their rules.” For example, if the receiving state precludes fostering or adoption by gay and lesbian couples or adoption of more than 10 children from foster care by one family, or does not allow a family member to have had a conviction for assault and battery in the last 2 years, then the sending state can not place contrary to these laws even if their own state laws would not have prohibited the placement.

It was discussed that “social work” decisions are much more subjective and may be able to be addressed through services or other remedies. It was agreed that the sending state should have an opportunity to place contrary to the recommendation of the receiving state only after a hearing has been held and the receiving state has been provide an opportunity to participate in the hearing. The following process was outlined by the subcommittee members.

If the sending state wants to place contrary to the receiving state’s recommendation then the following must occur:

- a. the sending state shall present the receiving state’s home study to the court in the sending state and the policies that the opposition is based upon, and

- b. the sending state judge shall review the home study and make specific written findings of fact regarding the health, safety, and ability to provide for the child's well-being concerns raised in the home study, and the receiving state's reason for opposition ;
- c. If the sending state court judge wants to make the placement, then the court must provide written findings as how the concerns will be addressed.
- d. The receiving state must be given written notification ten (10) days prior to the hearing and provided an opportunity to participate in the hearing via teleconference and/ or the sending state would have the power to require the receiving state to present additional information at this hearing via teleconference.
- e. Prospective foster and adoptive parents will also be given an opportunity to participate in the hearing via teleconference. If sending state court needs oral testimony from the receiving state then the sending state would have to set hearing at the convenience of the receiving state, but within a 30-day time period.

➤ One possible unintended consequence was raised: Will this result in social workers spending all their time in court in-state and via teleconference in other states?

B. Placement with a Parent in another State (Placement while parent trying to get child back)

Recommendations

- 1) If the receiving state has legal prohibitions regarding giving legal and/ or physical custody to a biological parent, then the sending state cannot place with the biological parent contrary to those prohibitions.
- 2) If the receiving state does an assessment (home study but not licensing assessment) of the biological parent, and finds that the child's safety is at risk, then sending state must follow procedure in situation A above.

Discussion

Again, the subcommittee agreed that a sending state should not be able to place in violation of a receiving state's laws, yet should be provided an opportunity to review the receiving state's assessment of safety. Further, a parent should not have to meet the licensing requirements of the receiving state.

C. Reunification with Parent who has moved to another state – Court still has custody of child, mom is in another state.

Recommendations

- 1) The sending state court should have the authority to makes the final decision regarding placing the child with the parents. However, the court must make written findings of fact that the parent has corrected the conditions that led to the removal of the child(ren) and address any concerns raised by the receiving state after conducting an assessment as in A above.

2) The sending state must provide notification to the receiving state that the placement will be made.

Discussion

The following was also suggested:

- Require sending state to keep jurisdiction open for 6 months.

D. Review of Draft Compact Language

Draft compact language was developed based on the above recommendations of the subcommittee. On November 23, 2004, the subcommittee met and provided comments on the draft article of the new compact, Article VI.

General Comments

- How will article VI address the issue regarding the length of time it takes to move children from one state to another?
- Everett Thornton was not in agreement with these subcommittee recommendations after a discussion by the group as to why these recommendations are being made.

Comments on Article VI, B

- There needs to be a consistent use of the term assessment and determination
- What happens if the law was applied incorrectly? Perhaps, the sending state should be able to appeal the decision to the receiving state judge on the narrow issue of whether it the decision was in violation of state law in the receiving state. This raised a number of practical issues regarding how the sending state's attorneys would practice in the receiving state. It was suggested that if an administrative appeal, based on the record and interpretation of that documentation, was conducted you would not need a complicated appellate process
- It was recommended that the regulations should address how "violates its laws" is evidenced by the receiving state. Possibilities suggested included an opinion by the state attorney general, a court decision, or an administrative decision supported by a statement of the law.
- It was recommended that there be a possibility for remedying the violation of law.
- A question was raised whether it needed to include violations of state law and whether regulations would be included. It was agreed that if regulations have the effect and force of law in a state then they are state law and should be applied uniformly whether it is an interstate or an intrastate case.

Comments on Article VI, C

- Attorneys have to have some authority to participate via teleconference in a proceeding in another state. How do we address this?
- The subcommittee discussed who should have the right to challenge the receiving state determination. It was agreed that the parties to the case in the sending state should be able to appeal the decisions. However, it should be noted that the compact should not create a right of redress by a party in the receiving state if they are not a party to the matter in the sending state. Sending state will provide notice to the parties as required by their state law.
- Need to define what is "suitable" with regard to Article VI. May also consider that the placement is still in the best interests of the child.

- Need to be real careful that the compact does not give placement authority to the court in states where they currently do not have the authority.
- Provision in the compact requires the sending state to pay for services that they request. What happens if the sending agency object to the sending state judge's decision, but the sending state child welfare agency has to provide services? Can the sending state court order the sending state agency to pay for services in the receiving state? This scenario must be resolved. Part of the solution may be that the judge has to find it is in the best interests of the child by clear and convincing evidence and services are available at a reasonable cost to the sending state to remedy these issues or paid for by the parties requesting the placement.

Revisions to the first draft of the compact were made based on these suggestions and recommendations.