



**ICPC Development & Drafting Team
Private and Independent Adoption Subcommittee
Discussion & Recommendations**

Recommendations

1. The new ICPC should have new requirements that apply to independent and private agency adoptions as there is a need for special protections in interstate private and independent adoptions that is not needed in intrastate private and independent adoptions.
2. The process for interstate private and independent adoptions needs to be very timely and should not exceed 5 business days.
3. The new ICPC requirements for independent and private placements should serve to address the following issues:
 - a. Determination of which state's law applies to the placement.
 - b. That consents of the birth mother, birth father and all legal or putative fathers are properly obtained according to the applicable state law.
 - If consent cannot be obtained, ICPC should ensure that an appropriate plan for addressing the rights of the non-consenting parent is provided, while allowing legal risk placements to occur.
 - c. That the adoptive parents have an approved home study conducted in compliance with the law of the State in which they reside.
 - d. That the adoptive parents have been fully informed and provided with complete documentation of the social and medical history/condition of the child prior to placement.
 - e. That a signed financial statement of all costs paid or to be paid for the adoption is provided by the adopting person or persons to ensure compliance with applicable state law.
 - f. That the placement complies with the Indian Child Welfare Act.
 - g. Child-friendly time frames for processing not exceed 5 days.
4. ICPC should not be involved in the making of placement decisions.

5. The ICPC task force should discuss the following issues:

- a. Creation of a mechanism for non-compliance of set time frames
- b. Creation of a mechanism to address ICPC non-compliance by adopting parent(s) or private adoption entities (agencies, attorneys etc)
- c. Development of a study on the impact of ICPC processing on private and independent adoptions.

Discussion

The Private and Independent Adoption Workgroup, in its discussions, reached the conclusion that there are certain differences between intrastate and interstate adoptions that signal the need for special protections with regard to private and independent adoptions that take place across state lines. Of particular concern is the fact that the laws of states differ and that without some type of oversight of the interstate adoption placement process, there may not be sufficient attention to the governing laws of each of the involved states and the adoptions that are being arranged may not comply with all legal requirements and may be subject to disruption as a result.

The Workgroup identified concerns in two key areas: the validity of consent given by birth parents and the validity of home studies of adoptive parents. It was recognized that courts in receiving states (if adoptions are being finalized in the receiving state) may not be able to readily determine whether the consent of birth parents in the sending state was secured in accordance with the sending state's law. Similarly, courts in sending states (if adoptions are being finalized in the sending state) may not be able to readily determine the validity of the home study based on the requirements of the receiving state.

With these concerns in mind, the Workgroup initially developed two guiding principles to provide assurances that the validity of consent and the validity of home studies were determined prior to the child's actual adoptive placement (concerns were expressed that if such determinations waited until the court reviewed the petition for adoption, serious safety and well being issues for the child would be raised):

1. If an adoption will be finalized in the receiving state, some type of certification from the sending state would be needed that the consent was taken in compliance with that state's law.
2. If an adoption will be finalized in the sending state, some type of certification from the receiving state would be needed that the home study was completed in compliance with the receiving state's laws.

Discussion also focused on a possible certification fee that would be paid to states for this process and the need for clearly defined timelines within which these certifications would take place.

After drafting these principles and considering them further, the Workgroup discovered that the factual scenarios that typify interstate private and independent adoptions made the principles overly simplistic. For example, the Workgroup was made aware of situations in some states that lead to birth parents giving consent not utilizing the laws of their own states of residence but the laws of the state where their child will be placed with adoptive parents. In an effort to address the range of scenarios that could arise, the Workgroup developed the following scenarios:

1. Consent in B, Finalization in B

Baby born in State A, mom wants to follow consent law of State B

State A sends an ICPC application to State B, requesting certification from B that consent was in conformity with state B's law and home study done in compliance with State B law before State A will allow child to be placed in State B.

2. Consent in A, Finalization in B

Baby born in State A, mom wants to follow consent requirements of state A, adoption being finalized in State B State A sends an ICPC application to State B certifying that consent was done in compliance with state A and requesting State B sign-off that home study was done in compliance with State B's laws.

3. Consent in A, Finalization in A

State A send ICPC application to State B stating that consent was done in compliance with State A's laws requesting certification that home study was done in compliance with State B's laws.

As the Workgroup reviewed these scenarios, a question was raised about applying these guidelines to birth fathers who live in different states than birth mothers. It became clear from the discussion that this issue alone raised a host of different factual and legal scenarios involving putative and legally recognized fathers and fathers who were legally separated and who were divorced from birth mothers. Given the range of scenarios and different legal approaches required by different by state laws and various uniform state laws on this issue, the Workgroup came to the conclusion that it needed to re-examine the certification approach. It became evident that there were so many scenarios that would need to be specifically addressed with guiding principles. In addition, the issue was raised about the initial certification also addressing the cost of the adoption in particular, the living expenses paid to the birth mother and compensation to third parties such as lawyers, agencies or facilitators, if and to the extent permitted.

The Workgroup considered how a judicial approach might be utilized to replace an administrative ICPC process. A judicial approach was rejected for various reasons including but not limited to the following:

- a. Judicial involvement might increase rather than decrease the uncertainty of which law governed the adoption. State-by-state central authority is preferable,
- b. Judges are frequently reassigned and not focused solely on adoption or aware of licensing requirements for home studies,
- c. The judicial process may delay rather than accelerate the ICPC review process.

The Workgroup also discussed a national clearing office but recommended a state-by-state approach.

Based upon the considerations, the Workgroup would continue to recommend that private agency and independent adoption interstate processing be simplified and made time sensitive separate from the foster care ICPC process. This would involve the following:

- a. For independent and private agency adoptions, guidelines should be established that the law of the state for finalizing the adoption would generally control except as to the requirements of the home study to be controlled by the adopting person(s) home state requirements.
- b. Limit ICPC reporting to matters affected by potential conflict of applicable laws identified as:
 - (1) Certification that the consent or relinquishment is in compliance with applicable law of the birth parent's state of residence or, where permitted, the laws of the state of finalization;
 - (2) a plan for properly assessing that the rights of a non-consenting parent are addressed but allowing "at risk" placements;
 - (3) the home study is in compliance with the receiving state's law;
 - (4) a financial statement of all costs of the adoption approved in writing by the adopting person or persons;
 - (5) Compliance, if applicable, with the Indian Child Welfare Act;
- (c) Set a recommended time frame for acting upon a submission for ICPC approval;
- (d) A recourse mechanism if the time frame is not met; and
- (e) A study of the impact ICPC processing related to independent and private agency adoptions.

With these exceptions, the "new ICPC" procedures related to foster children would not apply to independent and private agency adoptions. Separate administrators may be necessary but the Workgroup would not preclude the delegation of this reporting process to private agencies or entities which could involve a published processing fee.

The goal of these guidelines should be to focus on children being placed for adoption on an interstate basis with appropriately assessed adoptive parents while properly addressing the rights of the birth parents without unduly delaying the child and adopting party(ies) being able to settle into their home. These goals are placed at risk when there is uncertainty about the applicable law which the choice of law and UCCJA/UCCJEA resolve if ICPC administrators follow them and proper certifications are provided.