



ICPC DEVELOPMENT AND DRAFTING TEAM FIRST MEETING SUMMARY

July 20 -22, 2004

The first meeting of the ICPC Development and Drafting Team was convened on July 20, 2004. Present and participating were: Robin Arnold-Williams, Executive Director, Utah Department of Human Services; Martin Bauer, American Academy of Adoption Attorneys; Janis Brown, Compact Administrator, Texas Department of Protective and Regulatory Services; Patsy Buida, Foster Care Specialist, Children's Bureau; Gene Calloway, Legal Counsel, Oklahoma Department of Human Services; Cari DeSantis, Secretary, Delaware Department of Services for Children and Their Families; Kay Farley, Director of Government Relations, National Center for State Courts; Cecilia Fiermonte, Assistant Director, ABA Center on Children and the Law; Jody Racht, National Association of Attorneys General; David Simmons, Director of Policy & Research, National Indian Child Welfare Association; Jackie Rodriguez, Deputy Compact Administrator, California Department of Social Services; Nancy Rollins, Director, New Hampshire Division for Children, Youth & Families; M. Carmela Welte, Deputy Executive Director, National CASA Association; Ada White, Adoption Program Director, Child Welfare League of America; Liz Oppenheim, Director, Interstate Affairs, APHSA; Christine Lamble, Manager, AAICPC; Rick Masters, Special Counsel, Council of State Governments; and Rick Mountjoy, Associate Director for Policy, Council of State Governments. Following is a summary of the meeting discussions.

I. BACKGROUND, OBJECTIVES, ROLES, & TIMETABLE

The Interstate Compact on the Placement of Children (ICPC) was drafted in 1960. There has been growing dissatisfaction from a wide variety of sources with the compact as it is currently written and implemented. Criticisms include that its scope is overly broad, its procedures are outdated, its current structure lacks enforcement and accountability, and placements for children are not completed in a timely and effective manner. APHSA members, that is, the CEOs of the state departments of human services asked APHSA to address the issue of improving interstate placements. In July 2003, APHSA formed a task force to identify the steps necessary to improve the process of placing children across state lines. The ICPC Task Force recommended both short term and long term reforms of ICPC. The Task Force agreed that there are a number of interim steps that can be taken to improve the interstate placement process, but true reform will require revisions to the actual language of ICPC itself. In March 2004, APHSA's leadership adopted a policy resolution directing APHSA to dedicate staff time and resources to making immediate

short term improvements in the administration of the compact and long term reform entailing the redrafting of the compact and enactment by all the states.

The goal of the ICPC Development and Drafting Team (DDT) is to develop a new compact for the interstate placement of children to be presented to the state commissioners, child welfare directors, and compact administrators for review and final sign off. It is expected that the revised compact will be based on recommendations already made to APHSA by its members; observations made by the stakeholder organizations represented on the ICPC DDT; and any outside stakeholders interested in providing input into the reform process. Communication and openness lends credibility to the process and is critical to its success.

It is expected that a draft of the revision will be completed by December 2004 or no later than March 2005. The DDT will meet two more times this year; October 5-7 and November 29-December 1. Subcommittees will be put together as needed to resolve and make recommendations regarding any issues that require further research and consultation. APHSA is committed to ensuring that the process of reform is open and that all stakeholder concerns are considered resulting in a broad investment in the reform effort. To that end, a discussion was held regarding the expectations of the members of the DDT regarding communication with their members.

- It was agreed that following the first meeting members of the DDT should: (1) disseminate the APHSA Task Force Report and ICPC Resolution to its members, and (2) disseminate the DDT meeting summary. In addition, it was suggested that the DDT could outline key questions for their members at the end of each DDT meeting by which to gain input from their members.
- Members of the DDT were also asked to provide a list of other outside stakeholder groups that should be kept informed of the reform efforts and asked to provide comment and review of draft language and suggested components of the revised compact. This document should be disseminated for identification of additional outside stakeholder groups.

II. THE REWRITE UNIVERSE

The APHSA Task Force identified the following issues that need to be addressed in the rewrite of the ICPC: (1) Purpose of the compact, (2) Placements covered under the compact, (3) ICPC and its relationship to ICJ and statutes regarding jurisdiction (UCCJA,UCCJEA, PKPA), (4) Roles and responsibilities of sending and receiving states, (5) Enforcement, (6) Financing of interstate placements, (7)Rules and regulations, (8) Data and information gathering, (9) Administration, (10) Definitions, and (11) Supplementary agreements.

Other issues identified thus far by the DDT are:

- Choice of law/conflict vs. jurisdiction - choice of law is being what law applies, Jurisdiction being who has the power to make the decision.

- How the new compact could solve the problem of conflicting judicial decisions. Is congressional consent a viable and beneficial option?
- Due process issues raised around parents, children, and relatives as well as prospective foster or adoptive parents' ability to be heard.
- The intersection of federal requirements regarding foster care and adoption with any new compact developed.
- The issue of home study requirements and states' lack of acceptance of each other's home studies based on both social work practice and the states' differing legal requirements.
- Do the circumstances under which a sending state can close a case need to be changed, expanded, and clarified?
- Is there a way to improve protections for Indian children through the revised compact?

III. PURPOSE OF THE COMPACT

The DDT discussed the purpose of the compact. What is the common problem or common agenda that requires joint and cooperative action among the states that a compact needs to address? While the purpose will continue to be refined, it was agreed that, at a minimum, the compact's purpose needs to be that of ensuring that children are placed in a safe and suitable homes in a timely manner. Following is a summary of the comments and questions raised by the DDT regarding the purpose of the compact.

- **Questions** - Is the only purpose to protect children or is it to support foster and adoptive parents in the process as well? Are the old purposes of the compact still valid?
- **Reality Check** – There is a need to consider the reality of the use of technology in terms of the ability of families to know about our children, the expectations regarding timeliness and the ASFA mandate to achieve permanency more quickly. Need to consider state budgets and the allocation of resources
- **Child Focused** -Focus should never leave the child. Permanency through the child's eyes, and the interplay of extended family especially in Native American placements must be considered.
- **Outcomes**- What are the outcomes that the compact needs to achieve for children and families? Should it address disparate treatment and ensure same services? How do we ensure that receiving states do not assume the financial burden of other states?
- **Timeliness** As we talk about timeliness we need to; (1) consider resources and finances, (2) ensure that timeliness does not supplant safety, (3) consider the impact of the DeLay bill, (4) consider that there may need to be different timelines for different types of placements for children served through the new compact, (5) recognize and try to work with issues that impact timeliness including background checks, foster and adoptive training, and the completion of licensing requirements, and (6) determine the need to include time frames and outcome measures in the compact to ensure that things will happen as prescribed.

IV. COVERAGE

The DDT reviewed the types of placements that are currently "covered" by ICPC including those specifically identified and those that have been included via secretariat opinion or practice. It also reviewed the recommendations of the APHSA ICPC Task Force regarding the inclusion of

specific types of placements in the new compact and the outlined arguments regarding the public policy supporting and not supporting inclusion. (*See Attached ICPC Coverage Document*). They were asked to consider the following questions:

1. For each of the types of possible interstate placements, what concerns are raised if they are or are not covered under the revised ICPC?
2. If you have concerns regarding not including a particular type of placement in the compact, are there options for addressing your concerns?
3. What is different in an interstate placement that necessitates a different process than would be used for the same type of placement if it were intrastate?

Following is a summary of the discussion regarding each type of placement discussed:

A. *Independent & Private Agency Adoptions*

It was the general sense of the DDT that an interstate compact is not an appropriate regulatory system for independent and private agency adoptions that do not involve children who are in publicly supported foster care. Rather, issues involving these types of adoptions are best addressed through the laws of the states governing adoption and licensing laws that regulate agency practice. Currently, private placements take a small amount of time and do not add much value in terms of child protection and take the focus off children in foster care.

- In these adoptions, the role of ICPC has been to ensure compliance with the receiving state's laws including compliance with the Indian Child Welfare Act. It was the sense of the DDT that it is the role of the court, not a state child welfare agency to ensure compliance with the law.
- Concerns were also raised regarding disruption. If the compact is not involved, receiving states will be responsible for the care and placement of the child. There was a general sense that in the event of a disruption it is the receiving state's responsibility to care for the child just as if the child were abandoned or abused and or neglected while residing in their state. Should the private adoption agency be held accountable for care of the child in some way?
- Concern was also raised regarding the provision of post placement and post adoption services in private and independent adoptions. With regard to services, there was a sense that it is not the states' role to intercede when there is a private contractual agreement between the agency and the parents as to what types of services and supports will be provided.
- A concern regarding "baby selling" was raised and the DDT indicated that in any report that is presented with the new ICPC, information on how states have addressed this issue should be provided. For example, Utah law requires that documentation of the fees associated with any independent adoption be forwarded to the state licensing office prior to an adoption being finalized. In addition, further research needs to be conducted regarding the extent and nature of "baby selling," and mechanisms that could be put in place to reduce or lessen the problem.

- It was agreed that there is value in having a single point of contact in each state to ensure against adoption disruptions and challenges. It was suggested that other options need to be identified. One option was suggested that state licensing staff could be responsible for ensuring that laws are complied with. On the other hand, many DDT members felt that this was the role of the attorney or agency and the court.
- The DDT recommended that a study be conducted on what is happening with independent and private agency adoptions in this country as well as developing a mechanism for keeping track of these adoptions.

B. *Birthmothers who Travel to Place their Children for Adoption*

The DDT acknowledged that they were concerned about these types of adoptions as they raise issues regarding rights of fathers, undue influence on birth mothers, and exploitation and baby selling. However, no clearly defined role for the public agency through the ICPC in these cases was identified. In addition, there are potential constitutional issues regarding the right to travel and issues surrounding whether the fetus is a child. Further, state legislatures have not expressed an interest in regulating in this area of adoption.

A concern was also raised regarding mothers who have children in the child welfare system going across state lines to give birth so that the new baby will not be placed in foster care. There was a suggestion to look at the use of the UCCJEA.

A recommendation was put forward for the development of a federal commission to study the issue and make recommendations.

C. *Inter-country Adoptions*

In inter-country adoptions an issue arises in situations where there is private agency involvement in the adoption. The child is placed by the agency in State A with a family in State B without adoptive status (adoption from country of origin) recognized in the U.S. for purposes of lawful entry into the U.S. If the placement then disrupts prior to the finalization of the adoption in the United States, should the child be sent back to the private agency in State A for placement and care? Do we want to impose absolute liability on the private agency? Again, it was stated that just as in a private agency domestic adoption, the responsibility regarding what happens in the case of disruption should be dictated by the parent-agency agreement and whether there is abandonment or abuse and neglect that would warrant child welfare intervention. As with private and independent adoptions, there was a general sense that there was not an appropriate role for public child welfare agencies in these cases in terms of making a determination of suitability of the family to adopt. Lastly, it was indicated that research needs to be conducted on the impact of the Hague Convention on Inter-country adoptions once it is implemented in the United States.

D. Military Family Adoptions

In placements of children involving military families, one of the issues raised is determining whether a particular placement is interstate in nature. Military families may have four different states to which they are connected: (1) "Legal residence" in one state. This is the state where a military member intends to live after discharge or retirement, and which they consider their "permanent home." Legal residency determines what local (state) tax laws a military member is subject to, and in which local (city, county, state) elections they may vote. (2) "Home of record" is used to determine travel entitlements due to the service member and any dependents. The active duty service member's home of record is the place he/she was living when he/she entered active duty. (3) The PCS state (permanent change of station) is where you are permanently assigned but may or may not be physically located, and (4) a TDY (temporary duty station) in which you and, perhaps your family, is physically located.

(For Department of Defense purposes, the spouse of the service member takes the same legal residence and home of record as the service member. However, the spouse may physically reside temporarily at a location that is distant from the service member's permanent duty station and the temporary duty station, especially if the service member is deployed overseas to a combat zone.)

- The general consensus has been that for purposes of interstate placements of children with military families within the U.S., the state in which the military person(s) is physically located should be used to determine if a placement is interstate or intrastate.

The second issue that arises with military families is that some state adoption laws require legal residence, rather than physical location in a state in order to have a child placed with a family and to have an adoption finalized. These laws create barriers to military families as adoptive families for many children in foster care. If laws regarding foster care placement have similar requirements, they are likewise creating barriers to military families serving as foster families. How can we overcome this barrier through provisions in the new interstate compact on the placement of children?

- The DDT members agreed that more research was needed and a recommendation made as to how to resolve this problem through a new interstate compact.

The third issue arises when a military family is located outside the U.S. and the military determines that the child should not remain with the family but should be placed with a resource family in the States. A better understanding needs to be gained regarding the military's authority and procedures regarding child abuse cases that occur in military families located outside the U.S. and their intersection with state child welfare agency laws and procedures. What options are available to the military Services and state child welfare agencies? What impact do these options potentially have regarding interstate placements? How should these cases be handled to ensure that the child is placed with a safe and suitable family?

E. Residential Treatment Placements

1. Parental Placement of Child into Residential Treatment Facility

There was general consensus by the DDT that placements of children made by parents in out-of-state residential treatment facilities should not have to be approved by the receiving state child welfare agency. However, a few issues and suggestions were made including:

- ICJ does not cover children who are placed across state lines into a private setting that are part of the juvenile justice system.
- The new compact should not contradict the UCCJEA, but it should not be used as a default mode either.
- There was a discussion regarding the concern that the receiving states, without an interstate agreement to the contrary, would be held responsible for the child if the parents abandon the child in the facility and whether it should be the state from which the child was sent that should be responsible for the child. It was generally agreed that this was not any different than cases in which parents abandon their children across state lines in any other way. It is basic CPS practice to take the child in care and try and locate the family. The state would take emergency jurisdiction under the UCCJEA and conduct an investigation and determine the steps that need to be taken on behalf of the child.
- There was a suggestion that in these cases, states should consider requiring their residential treatment facilities to provide notification to the licensing agency to ensure that due process rights and other states laws have been complied with.

2. Child Welfare Agency Placement of Child into Residential Treatment Facility

With regard to placements of children in foster care in residential treatment facilities across states the general sense was that approval for the placement by the state in which the facility resides should not be required. There was a sense that the sending state has the responsibility for ensuring that the needs of the child are met, ensuring that the child is being visited, and his or her case plan for permanency is being implemented. Further, the court should be monitoring the placement of the child as well. With that said, the DDT did suggest the following:

- A new compact should address the need for information on the residential treatment facilities in each of the states through a national database. State information sharing laws were raised as a potential barrier that would require further research. One solution posed was a Congressional directive.
- A new compact should contain a notification requirement by the receiving state to the sending state and should clearly delineate sending state's responsibility for making sure that the child does not age out of the facility and thus become the responsibility of the receiving state.

- There was recognition that states may not have the ability to fly social workers to visit the child and supervise the placement of the child in the residential treatment facility. While under the current compact, visits and supervision are supposed to be done by the receiving state, there is a general sense that supervision or visits are not happening. There was a suggestion that if a sending state did not have the capacity to conduct the visits or provide supervision, the new compact could provide the option for sending states to request that visits and supervision be provided by the receiving state. However, they would need to work out standards for what supervision and visits would be and how they would be paid for.
 - The Indian Child Welfare Act (ICWA) requires that the appropriate tribe approve placements of Indian children into residential treatment facilities. Perhaps a new compact could require notification by the sending state to the tribe as well. Following is a case example that was provided. A Navaho child in custody of State A is placed in state B in residential treatment center. State A needs to notify the Navaho tribe of placement information and State B must be notified of potential tribe involvement. If done correctly, ensures reunification and permanency planning efforts are successful and ICWA is enforced.
- It was agreed that more understanding regarding placements of Indian children was required and a subcommittee should be developed to make recommendations on issues regarding Indian children.

F. Placements with Parents

- For all parental placements it was the general consensus that the judge in the sending state should be able override a recommendation by the receiving state with regard to safety and suitability of a placement based on the best interests of the child. The judge should also be able to rule that an out-of-state parent is fit, and to close the case. However, the receiving state should have a right to be heard in the case if the judge places the child in their state and intends to keep the case open.

1. Reunification with Offending Parent(s)

With regard to placements in which a sending state is reunifying a child with his offending parent living in another state, the DDT recommended the following:

- If the sending state court restores full parental rights, closes the case in the sending state and a determination has been made by the sending state court that there is no need for ongoing supervision, then the sending state should not be required to seek approval of the placement by the receiving state.
- If the sending state maintains ongoing court oversight of the case and/or child welfare involvement in the case, then evaluation and suitability of the placement, and a recommendation as to whether the child should be placed should be required from the sending state which may or may not require a full home study, or a different type of assessment process for determining suitability and safety.

- If the receiving state denies suitability of the placement, perhaps the court in the sending state can still place and his/her decision will be able to be appealed by the receiving state or the sending state child welfare agency. Perhaps the receiving state could be provided with the right to intervene in the case. Other compacts require mediation between members states by a Commission established through the compact.
 - If the placement disrupts prior to the rights of the parent being fully restored, there was a suggestion that the child be placed in the care of the receiving state and UCCJEA be used to determine where the child should be placed.
2. Placement with Non-Offending Parent with Joint Legal Custody

The DDT in their discussion noted the following:

- Through a new compact, the court should be able to request whatever type of assessment that may be needed ranging from a full home study to something less than a full home study.
 - In intrastate cases, a court does an assessment of the non-offending parent's situation, and keeps an open protection case on the parent who has been found to be abusive or neglectful. This should be what happens in interstate cases as well.
 - If the non-offending parent has been involved in the child's life, then is there a violation of parental rights in not allowing the child to be placed with him/her without an assessment of any degree conducted by his state of residence? Is there not presumptive suitability?
3. Placement with Non-Offending Parent without Legal Custody
- As in the cases above, it was recommended that the court determine what level of assessment would be required.

G. Placement with Kin

With regard to placement of children in foster care with kin, the DDT raised these issues and made the following suggestions:

- The current issue for receiving states is that the case and request for ongoing supervision continues indefinitely because the long-term permanency goal is one of long term foster care so that Title IV-E payments can continue to be made to the family. However, many of these families no longer require supervision and it puts an unnecessary burden on the receiving state.
- Consider the possibility of an emergency or provisional placement of children with kin across state lines pursuant to a safety assessment within 60 days.
- A summary of the financing issues in these cases needs to be developed.

G. Children Under Court Supervision

These cases involve children who are not in the physical custody of the child welfare agency but the agency is providing court ordered services to the family and the family moves to another state. The following suggestions and comments were provided:

- In developing the new compact there needs to be a consideration of parents' constitutional rights and the right to travel.
- At a minimum, states should agree to provide notice to the receiving state in these cases. They should consider the possibility of transferring the cases. The receiving state would recognize the sending state's finding of abuse and/or neglect and assume the authority to oversee the case. This will allow the receiving state to be responsive to families at risk for abuse and neglect.
- What happens if the family moves prior to adjudication of the case? Need to conduct legal research on this issue. There may be a difference between adjudication vs. pre adjudication. May drive practice to adjudicate quicker. Will have different impact in each state due to differences in state law.
- Families should know that regardless of where they go, a court will have oversight.

V. WHICH STATE, UNDER WHAT CIRCUMSTANCES SHOULD HAVE THE FINAL SAY AS TO WHETHER A PLACEMENT CAN BE MADE?

Throughout the discussions, the issue of who should have the final say as to whether a child should be placed in the receiving state with kin, foster parents, or prospective adoptive parents was raised. Should it be the court in the sending state, the child welfare agency in the sending state, or the child welfare agency in the receiving state that has the right of final decision? What should be the consequences if the sending state places contrary to the determination by the receiving state that the placement is not suitable for the child? In addition, issues were raised regarding the "rights" of kin, foster parents, or prospective adoptive parents to contest a decision not to place or a determination of safety or suitability. The following observations were made:

- We need to ensure that when a sending state is "doing business" in another state, they are not violating the laws of that state. We must be clear as to which laws will apply and ultimately be the determinative as to whether a child can be placed.
 - While safety determinations are easy to assess, suitability is much more subjective. For example a prospective adoptive family has 23 children and wants to adopt a 24th. The receiving state determines it is not a suitable placement for the 24th child due to the large number of children the family already has, the sending state may not have a problem with this large number of children.
- It was agreed that a subcommittee should be put together and chartered and more research conducted on these issues with recommendations presented for how these issues should be handled in the new compact.

VI. ISSUES INVOLVING INDIAN CHILDREN

Throughout the discussion issues were raised regarding Indian children who are placed across state lines.

- It was agreed that a greater understanding of the intersection of the Indian Child Welfare Act and interstate placements was required. Therefore, a subcommittee needed to be put together to outline the issues more clearly and make recommendations on how a new compact could address them.

VII. JURISDICTIONAL ISSUES

In discussing jurisdictional issues, it was noted that the current compact uses the word jurisdiction in a number of ways that are confusing, 'jurisdiction' needs to be clearly defined in the new compact. There should be a distinction between jurisdiction in the legal sense and the respective roles and responsibilities of the agency making the placement and the state in which the child is being placed.

In addition, there needs to be a clear understanding of any potential conflicts that a new compact may have with the other statutes that are used to determine jurisdiction in child custody proceedings as well as with the Interstate Compact on/for the Placement of Juveniles (ICJ)

- It was agreed that a subcommittee should be formed to identify the potential issues and conflicts, and make recommendations on how they should be dealt with in the new compact.

The following comments and suggestions were put forward by the DDT:

- Foster parents are using UCCJA to fight control of sending agency to reclaim child. Tries to override ICPC.
- When parent moves to another state, there should be a provision for transfer of custody to bring ICPC more in line with UCCJ(E)A.
- If another compact has jurisdiction, ICPC need not intervene. Should look at ICJ and resolve the issues regarding private placements of adjudicated delinquents into residential treatment facilities. ICJ does not currently cover private placements.
- The new ICPC could designate particular a group or groups of children that need to be covered under ICJ, although they may not be expressly covered in ICJ. ICJ can pick up this group(s) through the rule making process.
- What needs to happen in cases in which the child is both abused and delinquent?
- If under the new ICPC, parents placing in private RTC need not go through compact what should happen if there is a juvenile delinquency case in which a judge may give a parent one last chance to assist the child and the parent places in a residential treatment facility across state lines? Should there be some type of notification by the court to the receiving state?
- Transfer of a case to another jurisdiction should be an option under specified circumstances.
- Need to clarify power of courts and power of agencies.

- The new compact should focus on the authority of the court; agency retains “responsibility” not jurisdiction.
- If the court dismisses without concurrence of receiving state, and placement disrupts within, perhaps, 6 months, sending court will agree to resume jurisdiction.- amount of time should be based on research around honeymoon phases and disruptions. In the alternative, this proposal does not support the paradigm that these children are “our nation’s children” or that they are all everyone’s children and not those of one state.

VIII. NEXT STEPS/DECISIONS MADE

A. *Final Report of DDT Should Include (to date):*

- Need for data on private interstate adoptions
- Discussion regarding the reasons for not having oversight of independent and private agency adoptions be vested in a newly developed interstate compact on the placement of children
- Concerns raised by pregnant mothers crossing state lines to place their children for adoption.

B. *DDT Member Follow-Up*

- Send out ICPC Task Force Report, APHSA Resolution, DDT Charter and membership list, Coverage Document, and Meeting Summary to their constituencies
- Ask if they see any unintended consequences of not following the ICPC Task Force’s recommendations regarding what types of placements should not be included in the new interstate compact and gather responses and provide to APHSA prior to the next DDT meeting.
- Send out stakeholders list to their members for further additions.

C. *Committees Required to be Chartered for Further Work & DDT Membership & Recommended Outside Consultants*

- It was agreed that further research and discussion was needed in the following areas. APHSA would charter the committee work and then seek advice on any additional people that may be helpful to the process.
 1. **Military Family Issues** - Interstate issues for military families and how they should be resolved in the new compact.
 2. **Foreign Adoptions** - Interstate issues regarding foreign adoptions and how they should be resolved in the new compact.
 3. **UCCJEA, PKPA, ICJ & ICPC** -The Intersection of ICPC and UCCJ(E)A, PKPA, and ICJ and how the issues should be resolved in the new compact.

4. **Indian Children** -Issues regarding Indian children and how they can be addressed in the new compact.
 5. **The Final Decision to Place** - The issues surrounding the final decision to place a child across state lines.
- In addition, it was agreed that a piece on the possibility, and advantages and disadvantages of seeking Congressional consent should be developed and presented to the APHSa membership for consideration prior to the next meeting.
 - The needs to be clarity regarding conflicts of law and choice of law issues.