

# Adopting a New Compact

By Robin Arnold-Williams and Elizabeth Oppenheim

Renewed focus on safety and permanency for children in our public child welfare system has shined a spotlight on the Interstate Compact on the Placement of Children. While this new focus confirmed the important role the ICPC plays in ensuring appropriate placements, it has also highlighted concerns with the ICPC causing unnecessary delays. In addition, the compact's effectiveness and relevance has been compromised by the overly broad definition of its scope. In short, the ICPC is no longer contemporary for child welfare work in the 21st century. Revising the ICPC provides an excellent opportunity for states to take a fresh look at improving the timeliness of interstate placements of children.



## What is a Compact?

Compacts are agreements between two or more states that have the force and effect of statutory law. States develop and enter into compacts to establish a formal, legal relationship to address a common concern that crosses state boundaries. Compacts obligate states to the provisions just as a contract would bind an individual or a corporation in a business deal. As such, compacts are exempt from the constitutional prohibition on statutes that impair contract obligations. Compacting states must comply with the terms of the compacts they enter into even if those terms are inconsistent with other state laws.<sup>1</sup>

The U.S. Constitution dictates that Congress approve compacts. But the purpose was not to inhibit states' ability to act in concert with one another. Rather, it was to protect the preeminence of the new national government by preventing states from infringing upon federal authority. Compacts pertaining to issues where state action is usual and predominant do not require the consent of Congress. Those issues include education, child welfare, criminal law, or mental health.<sup>2</sup>

Since the end of WWII, more than 150 compacts have been created.<sup>3</sup> Today, many new compacts are under development, and older compacts, such as the Interstate Compact on the Placement of Children, are being revised. Modern compacts offer more flexible frameworks and may include clear rulemaking authority and funding mechanisms to ensure positive outcomes, collection of standardized information, and development of information sharing systems.<sup>4</sup>

## History of the ICPC

The ICPC was drafted in 1960 and has been enacted by all states, the District of Columbia, and the U.S. Virgin Islands. It ensures protection

and services to children placed across state lines for foster care or adoption by establishing procedures for ensuring that placements are safe, suitable, and able to provide proper care, as well as assigning legal and financial responsibilities for those involved in making the placements.

The ICPC process entails a thorough home study involving assessments of social and medical history and family background, parenting and discipline style, employment and finances, home physical environment, criminal and child abuse background checks, references, foster or adoptive parent training, and case worker's recommendations. Prospective foster homes must meet state licensing requirements in order to receive Title IV-E funds. Once a child is placed, the receiving state is responsible for the ongoing supervision of the placement. The state also provides support services and continuing reports to the sending state agency and court.

## Complexities in the ICPC

Over its 44-year history, the ICPC has come to encompass many populations of children due to the broad scope of the compact's language. Not all placements under the ICPC process are of children in the foster care system or of children eligible for Title IV-E. The compact currently covers foster children being placed with a relative or another caregiver, children moving across state lines with their foster parents, children placed for adoption by a public or private agency or by a private attorney, children placed in residential treatment facilities by parents, parents placing children with non-relatives, and pregnant mothers going across state lines to give birth and place their children for adoption.



# Adopting a New Compact

This growth in the populations covered has caused a logjam in cases over time, frustrating desirable interstate placements of children in the foster care system, including interstate adoptive placements. This has led states to question whether the ICPC is an appropriate regulatory system for all these interstate placement types.

The ICPC was formulated based on an assumption that each state would send the same number of children as they received, therefore the financial burden to states of conducting home studies and providing post-placement supervision for children placed in their

states would be offset by the similar costs being borne by other states in which they had sent children. However, data and anecdotal evidence show that these days many states send more children than they receive, and some states receive many more children than they send.

Placements are also not always among contiguous states. For example, North Carolina families provide permanency for a large number of children who were in the care and custody of New York. This disproportion leads to complications in receiving states' ability to access resources for home studies and ongoing supervision. Additionally, concurrent planning requires caseworkers to make multiple home study requests for one child. Each home study must be financed, but placement will occur with only one of the families studied.

The court system adds another layer of complexity. A child cannot be removed from home or placed in a foster or adoptive home without a judge's approval. Courts must ensure that reasonable efforts have been made to reunify a child with birth parents

before a petition can be filed for termination of parental rights. They also must ensure that the prospective adoptive parents are appropriate during an official waiting period of between three and 12 months before rendering a final decision.

Many of the factors that complicate the ICPC process underline struggles in the overall child welfare system, which continually contends with capacity, staffing, training and resource issues.

## Interstate Placements Today and in the Future

Interstate placements are on the rise and are expected to continue to grow as relative placements and adoption across state lines is a significant component of states' efforts to increase permanency and adoption for children. With the launch of the AdoptUSKids web site and national recruitment campaign, states are better able to find prospective adoptive families from across the nation for waiting children. Of the 542,000 children, (as of 9/30/01)<sup>5</sup> in out-of-home placement, 60 percent will be reunified with birth parents. The remaining will need permanent families. Most will be placed into homes close to their communities; for the others, the most appropriate placement may be with a family in another state. Interstate placements offer children a greater chance of getting adopted by making families of all states available to them.

Data from the Adoption and Foster Care Analysis Reporting System show that nationwide, the annual number of completed adoptions from foster care doubled between 1995 and 2000.<sup>6</sup> Researchers expect the rate of growth in adoption from foster care will exceed the rate of growth of the foster care population for at least the next two decades.<sup>7</sup>

Although adoptions have increased substantially, a considerable number of



children remain in foster care. At any given time, about 8,000 are available for adoption but have no immediate prospects for adoption.<sup>8</sup>

Currently, interstate placements constitute about 5.5 percent of children served in foster care annually, and some 4 percent in care on any given day. The largest proportion, about 40 percent, are placed with relatives in other states. This significantly exceeds the national figures of 25 percent of all children in foster care cared for by relatives. Moreover, they are twice as likely to be placed in pre-adoptive homes as in-state children. In fact, data show that many of interstate placements lead to permanency. Two-thirds of children placed in another state are adopted by the families with which they were placed.<sup>9</sup>

Even though interstate placements often result in positive outcomes for children, on average it takes one year longer for a child to be adopted in an interstate placement than in an in-state placement (four years vs. three years).<sup>10</sup> As a result, children placed out of state are on average 1 year older than children placed in state.<sup>11</sup>

These differences in adoption timeliness are also evident in states' performance reviews. Analyses of state performances on the outcome measure, "percent of children who were adopted within 24 months of entry into care," show that a smaller proportion of children placed out-of-state met this standard than those children placed within state. Although the national standard is 32 percent of children, 25.2 percent of in-state children met the standard of adoption in 2001, while only 11.4 percent of out-of-state children met the 24-month timeframe.<sup>12</sup>

The longer length of time to adoption is important for a number of reasons. As with all adoptions, time is critical because delays can significantly

affect a child's development. The longer timeframes in care also affect the age at which children are adopted. Older age is a major barrier to finding a permanent home for children in foster care, in that children age 9 and over are more likely to continue waiting than to be adopted.<sup>13</sup>

### **The Road to Change**

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, and its current structure lacks enforcement and accountability. States have concerns based on challenges they face in reciprocity and conflicting court decisions that affect their ability to administer ICPC cases.

In July 2003, APHSA formed a task force to find ways to improve the process of interstate adoption. In March 2004, APHSA state human service leadership adopted a policy resolution directing both short- and long-term ICPC reforms. The association is working with 30 states to implement the ICPC data system, and has begun convening the largest sending states and the states that receive their children to develop agreements to provide more timely response and services for ICPC cases. A common template for home studies among states is being explored. The APHSA is studying impediments to states' ability to purchase home studies and supervision from providers of these services in other states in which they have found families to foster or adopt their children in care.

All ICPC regulations and secretariat opinions are being reviewed to identify needed changes to improve understanding of the process and reduce confusion regarding ICPC's relationship to other state laws. A review of legal cases to determine the effect on ICPC is also taking place. States are

**The ICPC process entails a thorough home study involving assessments of social and medical history and family background, parenting and discipline style, employment and finances, home physical environment, criminal and child abuse background checks, references, foster or adoptive parent training, and case worker's recommendations.**


# Adopting a New Compact



Interstate placements are on the rise and are expected to continue to grow as relative placements and adoption across state lines is a significant component of states' efforts to increase permanency and adoption for children. With the launch of the AdoptUSKids web site and national recruitment campaign, states are better able to find prospective adoptive families from across the nation for waiting children.

working to refine checklists for frontline caseworkers to identify and move cases expeditiously, improve communications among staff and train caseworkers on ICPC.

APHSA has also committed to fundamental and legal changes to the compact. APHSA assembled a development and drafting team, including the National Council of State Legislatures, the National Council of Juvenile and Family Court Judges, the American Bar Association, and the American Academy of Adoption Attorneys, which has begun rewriting the compact.

The new Interstate Compact for the Placement of Children will provide a better framework for ensuring timely placement of children across state lines, the suitability of prospective placements, and the provision of needed support services. The rewrite will include: (1) a narrowing of the types of placements covered, (2) clear rulemaking and enforcement authority, (3) mandatory use of computer technology to improve the speed and quality of communication and the sharing of information, (4) a clear articulation of the administrative process and procedures, and (5) a new financing scheme for interstate placements that will support improved performance and timeliness. A rewrite of the compact is expected to be completed by December 2004. 

- <sup>1</sup> Michael H. McCabe, "Interstate Compacts: Background and History," *The Council of State Governments*, 1997.
- <sup>2</sup> Frederick L. Zimmerman and Mitch Wendell, "The Law and Use of Interstate Compacts," *The Council of State Governments*, 1976.
- <sup>3</sup> John J. Mountjoy, "Interstate Compacts-State Solutions by the States and for the States," *The Council of State Governments*, 2003.
- <sup>4</sup> Ibid.
- <sup>5</sup> The *AFCARS Report*. Data submitted for FY2001, 10/1/00 through 9/30/01.
- <sup>6</sup> Department of Health and Human Services, Administration for Children and Families, Children's Bureau, *AFCARS Report* for the period ending September 20, 2001. [www.acf.hhs.gov/programs/cb](http://www.acf.hhs.gov/programs/cb).
- <sup>7</sup> Fred Wulczyn and Kristin Brunner, *Growth in the Adoption Population, Issue Papers on Foster Care and Adoption, Topic #2*, Chapin Hall Center for Children, 2002.
- <sup>8</sup> Department of Health and Human Services, Administration for Children and Families, Children's Bureau, *AFCARS Report* for the period ending September 20, 2001. [www.acf.hhs.gov/programs/cb](http://www.acf.hhs.gov/programs/cb).
- <sup>9</sup> Penelope Maza, "Does Being Placed Out-of-State Make a Difference for Children in Foster Care," presented at AAICPC annual meeting, May 1, 2001.
- <sup>10</sup> Penelope Maza, "The Challenge of Interstate Placement for Adoption," *The Roundtable*, Volume 2, No. 17, 2003.
- <sup>11</sup> Penelope Maza, "Does Being Placed Out-of-State Make a Difference for Children in Foster Care," presented at AAICPC annual meeting, May 1, 2001.
- <sup>12</sup> Penelope Maza, "The Role of Interstate Placements in States' Meeting the CFRS Standards," presented at AAICPC annual meeting, May 2003.
- <sup>13</sup> Penelope Maza, "Who is Adopting Older Children?" *Journal of the NRCSNA*, 2002.