

LEGAL FACT SHEET

Placement of Children in State Custody for Adoption or Foster Care Across State Lines*

Sometimes, a child in foster care may be sent to live in another state, with a relative such as an aunt, grandparent or sibling in another state. To assist in coordinating the safe transfer of children who are currently in state or foster custody to relatives or caregivers in other states, most states have enacted the Interstate Compact on Placement of Children (ICPC).¹ The purpose of the ICPC is to provide protections to children in state care who are placed (moved from state to private care) across state lines for purposes of foster care and adoption. This interstate compact is supervised in each state by state administrators, who coordinate through the Association of Administrators of the Interstate Compact on the Placement of Children (AAICPC) which provides public information online at <http://icpcstatepages.org/>. This is a good place to start for anyone who is going to be involved in out-of-state placements. It has an easy-to-use index linking to each of the states' compact administrators' offices: (<http://icpcstatepages.org/>).

Under ICPC², the state that places a child in out-of-state foster care must retain jurisdiction sufficient to determine all matters in relation to custody, supervision, care, treatment, and disposition of child, until the child is adopted, reaches age of majority, becomes self-supporting, or is discharged with concurrence of appropriate authority of receiving state.³ Under ICPC, the financial burden of achieving goal of placing children out of state in suitable environment and providing children with most appropriate care available remains with the sending state.^{4, 5}

The state where the child was originally in foster care is responsible for the child, even after the child is placed in another state.

Before the child can be sent to the proposed placement for adoption or foster care, there must be an investigation to determine if that placement is a good setting in the best interests of the child. The home state's court is not going to allow the child to be sent somewhere that is not safe for the child.⁶ The purpose is to allow the "authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child."⁷ There are penalties for failure to comply with the requirements of the ICPC's provisions.⁸ Nevertheless, some judges ignore the requirements, viewing them as causing delays or as onerous⁹.

To do this, the original court contacts the administrator of the proposed state and arranges for a home visit and investigation of the proposed caregiver, under the supervision of the other state's local court. The child will not be moved, in the usual circumstance, unless the compact administrators first give the okay on the new caregiver

¹ Codified in New York as McKinney's Social Services Law §374-a

² McKinney's Social Services Law §374-a

³ *Williams v. Glass*, 664 N.Y.S.2d 792, N.Y.App.Div.1.Dept., 1997

⁴ McKinney's Social Services Law § 374-a, subd. 1, Art. V(a)

⁵ *Matter of H./M. Children*, 634 N.Y.S.2d 675, N.Y.App.Div.1.Dept., 1995

⁶ McKinney's Social Services Law §374-a, Article III(a), (Conditions for Placement)

⁷ McKinney's Social Services Law §374-a, Article I(b) (Purpose and policy)

⁸ "Sending agency" which must comply with requirements of the Interstate Compact on the Placement of Children and may be penalized for illegal placement includes not only parent or entity which places the child, but the recipient of child if recipient causes child to be sent or brought across state lines. McKinney's Social Services Law § 374-a, subd. 1, Arts. III, IV, *Matter of Adoption of Male Infant A.*, 578 N.Y.S.2d 988

⁹ *In re Ryan R.*, 29 A.D.3d 806, 815 N.Y.S.2d 221 (2006)

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and home. Unfortunately, this can take a while, although recent public attention on this problem has focused on shortening the time necessary while children may unnecessarily languish in state care awaiting transfer.

ICPC Does not Apply to Non-State Custody of Children

The ICPC has many limits.

ICPC is inapplicable to any case in which the child is being transferred from natural parent to court-appointed guardian, either temporary or otherwise¹⁰ or by private placements by parents. *See* the Navigator's legal fact sheet on interstate rules for non-state custody of children.

It is limited by the application of UCCJEA. It does not apply to:¹¹

(a) The sending or bringing of a child into a receiving state by his parent, step-parent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or non-agency guardian in the receiving state.¹²

(b) Any placement, sending or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law.

In other words, nothing stops a custodial parent or other close relative as described here from taking their child with them anywhere they want to go as long as there is no court order denying them custody or limiting travel or relocation.

Recent Amendments: Safe and Timely Interstate Placement of Foster Children (2006)

To address the growing problem of foster children waiting for unnecessarily long periods of time, often up to a year or more, in their home state custody until there is approval of the compact administrators' and the receiving state's home study for the proposed relative or adoption placement, the Safe and Timely Interstate Placement of Foster Children Act,¹³ amends Subchapter IV, Part E of the Social Security act¹⁴, to pay a \$1,500 bonus to receiving states for each request for home studies returned to the sending state for approval within 30 days.

The state in which a child from out of state would be placed (receiving state) has 60 days to complete a home study. The state sending the child (sending state) has 14 days after receiving the home study to decide that the study is acceptable, or to decide that making a decision that relies on the report would be contrary to the welfare of the child. The act has other provisions such as requiring a case worker to visit a child every six months in the placement, rather than a year as before. The law went into effect on October 1, 2006.

¹⁰ McKinney's Surrogate Court Procedure Act §1725; McKinney's Family Court Act §661. *Matter of Adoption of Baby Boy, O.G.*, 547 N.Y.S.2d 806 (1989)

¹¹ McKinney's Social Services Law §374-a, Article VIII (a), (b) (Limitations)

¹² McKinney's Domestic Relations Law §77-a

¹³ PL 109 239, Title IV-E, Foster and Adoptive Home Study Requirements

¹⁴ More specifically 42 U.S.C. 673b

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