
THE INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN (ICPC)

This chapter is an overview of the Interstate Compact on the Placement of Children (ICPC).

The ICPC is a model contract that was drafted in 1960, and is legally binding on all states that adopt it. Texas adopted the ICPC in 1995 and it is codified at [Tex. Fam. Code § 162.102](#). The purpose of the ICPC is to ensure that children placed out of their home state receive the same protections and services that would be provided, if they remained in their home state.

To see any specific ICPC regulations mentioned throughout this chapter, please link to the ICPC regulations here:

<http://www.aphsa.org/content/AAICPC/en/ICPCRegulations.html>.

CPS ICPC policy can be found here:

<https://www.dfps.state.tx.us/handbooks/CPS/Menu/MenuCPS9000.asp>.

Some recent efforts to improve the Texas ICPC process include:

- The overall processing of expedited home study requests
- Regional ICPC coordinators have been tasked to assist Texas caseworkers with the ICPC process
- Texas ICPC/State office and Regional ICPC coordinators are promoting on-line easily accessible ICPC training
- Texas ICPC/State Office created a spreadsheet to use jointly with the ICPC regional coordinators to routinely track and check for the status of outgoing home study requests

DFPS is tracking the timeliness of outgoing requests.

A. Purpose of the ICPC

The purpose of the ICPC is to protect the child and the party states in the interstate placement of children so that:

- The child is placed in a suitable environment;
- The receiving state has the opportunity to assess that the proposed placement is not contrary to the interests of the child and that its applicable laws and policies have been followed before it approves the placement;

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- The sending state obtains enough information to evaluate the proposed placement;
 - The care of the child is promoted through appropriate jurisdictional arrangements; and
 - The sending agency or individual guarantees the child legal and financial protection.

B. ICPC Applicability

Generally, it applies to any interstate placement of a child over whom the court has jurisdiction. ICPC applies to the following:

- Placements that are preliminary to an adoption whether public or private adoption
- Placements in a licensed or approved foster home, including related and unrelated caregivers
- Placements with relatives when a parent or relative is not making the placement (i.e., the parent does not have legal custody / right to make the placement)
- Placements in group homes or residential placement, including accused or adjudicated delinquents placed in institutions in other states

1. The ICPC Does Not Apply to the Following:

- Birth parents placing with a non-custodial birth parent, or a relative as long as no court has assumed jurisdiction of the child to be placed
- Relatives placing with birth parents or another relative as long as no court has assumed jurisdiction of the child to be placed
- A Court with jurisdiction that transfers the child to an out of state parent.
 - note that the receiving state has no responsibility for supervision or monitoring a placement made under these circumstances
- Placements into schools where the primary purpose for the placement is educational
- Placements into medical and mental facilities
- Tribal Placements (See the Indian Child Welfare Act section below)
- Visits, as long as the visit meets the definition under the ICPC Section I.D.3 (See also Visit vs. Placement section below).

Special Issue: Placement of a Child with an Out of State Parent

State Courts throughout the nation have reached different conclusions on whether ICPC procedures apply when courts place a child with an out of state biological parent. Until 2017 Texas Courts had followed the Association of Administrators of the Interstate Compact on the Placement of Children (AAICPC) Regulations that state ICPC procedures do apply to placement with parents in certain circumstances, but no Texas court had addressed the issue directly.

In March 2016, DFPS updated its policy related to placing children with an out-of-state parent. DFPS will not initiate an ICPC home study request on a non-offending, non-custodial parent residing in another state, unless it is ordered to do so by the court with jurisdiction over the SAPCR. The new policy related to out of state placements with non-offending parents is found at Section 9300.¹

In May of 2017 the San Antonio Appeals Court ruled that despite Texas's adoption of Association of Administrators of the Interstate Compact on the Placement of Children (AAICPC) Regulations, the plain unambiguous wording of ICPC Article III excluded biological parents at placements subject to ICPC procedures. The court ruled the compact does not apply to interstate placement of children with their natural parent and therefore the determination whether to place the child with the out of state parent is left to the court's discretion.

C. Jurisdiction vs. Process

When a case comes before a juvenile or family court, the issue of jurisdiction will always precede the question of whether the ICPC applies. Thus, the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), its predecessor, the Uniform Child Custody Jurisdiction Act (UCCJA), and the Parental Kidnapping Prevention Act (PKPA) must be considered to determine whether the court and child welfare agency have continuing jurisdiction over child custody, which is precedent to the question of authority to place a child out-of-state. Case law in *J.D.S. v. Franks* differentiates between the jurisdictional components of the UCCJA and the purview of the ICPC. *J.D.S. v. Franks*, [893 P.2d 732](#) (Ariz. 1995). In *Franks*, the Supreme Court of Arizona explained that the compliance with the ICPC is not a prerequisite for exercising jurisdiction because the ICPC merely establishes a procedure to follow when a placement is made. Thus, the validity of a court's exercise of jurisdiction depends on the UCCJA (or UCCJEA) and PKPA. *Franks* spells out that the ICPC governs procedure, whereas the UCCJA (or UCCJEA) and PKPA govern jurisdiction. Likewise, in *White v. Adoption of Baby Boy D.*, the Supreme Court of Oklahoma held that the ICPC does not negate subject matter jurisdiction. *White v. Adoption of Baby Boy D.*, [2000 OK 44, 10 P.3d 212](#) (Okla. 2000).

D. Court Leadership

The National Council of Juvenile and Family Court Judges recommends close judicial monitoring to ensure the case is moving according to the ICPC timeframes. Special hearings may be required to ensure that certain activities are completed in a timely manner. Lack of understanding of the ICPC and its requirements is often cited as a problem that causes delays in an ICPC placement. Other delays are built into the ICPC process itself.

Special Issue: Many receiving states routinely deny home studies, especially on non-custodial parents, and there is no appeal process – a highly criticized flaw in the ICPC. Judges should consider directly contacting the judge in the receiving jurisdiction to ask for assistance in completing the ICPC process in the receiving state and with home studies that are stalled or denied without sufficient explanation and no recourse for reconsideration.

E. Expedited Placement Request

Under certain conditions, a court may request an expedited placement review. Cases involving a child who is under the jurisdiction of a court are eligible, if at least one of the following criteria is met:

- There is unexpected dependency due to a sudden or recent incarceration, incapacitation or death of a parent or guardian. Incapacitation means a parent or guardian is unable to care for a child due to a medical, mental or physical condition of a parent or guardian;
- The child sought to be placed is four years of age or younger, and can include older siblings sought to be placed with the same proposed placement resource;
- The court finds that any child in the sibling group sought to be placed has a substantial relationship with the proposed placement resource. Substantial relationship means the proposed placement has a familial or mentoring role with the child, has spent more than cursory time with the child, and has established more than a minimal bond with the child; or
- The child is currently in an emergency placement.

Expedited placement option is not available where:

- The child has already been placed in the receiving state in violation of the ICPC, unless a visit has been approved in writing by the receiving state Compact Administrator and a subsequent order entered by the sending state court authorizing the visit with a fixed return date in accordance with Reg. No. 9; or
- The intention of the sending state is to place the child for licensed or approved foster care or adoption.

Expedited placement, like the ICPC, does not apply at all when:

- The court places the child with a parent.

It is not within a judge's discretion to make all orders expedited. The situation must fit those criteria outlined in ICPC Regulation 7 for priority placement to be available; it is not a matter of discretion for judges. Please visit the American Public Human Services Association (APHSA) at <http://www.aphsa.org/content/APHSA/en/home.html> for more information.⁷⁹

F. Visits vs. Placement

Although some judges feel that it is within their discretion to grant “extended visits,” these may actually be deemed an illegal placement with significant consequences. ICPC Regulation 9 defines a “visit,” which is distinguished from a placement on the basis of purpose, duration, and the intention of the person or agency with responsibility for planning for the child as to the child's place of abode. For example, if the purpose of a visit is to provide the child with a social or cultural experience of short duration, such as a camp stay or visit with a friend or relative, and is less than 30 days, it will be presumed to be a visit. A stay of more than 30 days, but not longer than the duration of a school vacation period, can also be considered a visit. A stay that does not have a terminal date will be considered a proposed placement. Once a home study or supervision request has been made by the sending agency, there is a rebuttable presumption that the intent of any stay in the receiving state that exceeds 30 days is for placement and not simply a visit.

G. ICPC and Victims of Domestic Sex Trafficking

According to a Juvenile Law Advisory Committee Brief on the ICPC and Domestic Child Sex Trafficking issued by the National Council of Juvenile and Family Court Judges in 2014, and in the context of child sex trafficking victims, the ICPC is often implicated in trying to place victims in the few facilities that can provide the extensive services needed for trafficking survivors. As the needs of this population are complex and expensive, only a limited number of residential institutions can provide this high level of care. Services for victims often require multi-systemic and long-term care, and the cost of housing a child in a residential facility can be expensive. Additionally, the operation of residential facilities is legally and practically complicated, and unfeasible for many poor, small or rural counties. Thus child sex trafficking victims may not have a variety of placements which fit their needs, forcing placing agencies to look outside the home state. There are various organizations that also recommend victims be removed from the original geographic area of exploitation during restorative services. There are only a handful of facilities throughout the country that specifically provide placement and services for trafficking victims.

H. The Indian Child Welfare Act and the ICPC

Because the ICPC is a compact adopted by states as state law, the federal Indian Child Welfare Act (ICWA) preempts conflicting state law. Thus, the ICPC does not apply to interstate placements of an Indian child if the placement is being made within an Indian reservation unless:

- The tribal government requests ICPC services;
- The tribe has adopted the ICPC; or
- The tribe has an existing Title IV-E agreement with the state requiring ICPC compliance.

If an Indian child is being placed interstate but not within a reservation, the ICPC applies to that placement. However, the placement requirements of ICWA preempt any ICPC requirements that interfere with or impede the implementation of the placement required by ICWA. See [Bench Book chapter on the Indian Child Welfare Act](#) for information about placement preferences and requirements when ICWA is involved.

I. Additional Resources

[ICPC: A Manual and Instructional Guide for Juvenile and Family Court Judges, NCJFCJ](#) located at http://www.ncjfcj.org/sites/default/files/ICPCManualandGuideFullDoc_0.pdf.

Vivek Sankaran, [Foster Kids in Limbo: The Effects of the Interstate Compact on the Placement of Children on the Permanency of Children in Foster Care](#) (2014) located at <http://www.law.umich.edu/centersandprograms/pcl/Documents/Final%20Summary%20to%20Casey.pdf>

Child Welfare Information Gateway, Legal and Court Issues Regarding Inter-jurisdictional Placements located at <https://www.childwelfare.gov/topics/permanency/interjurisdictional/legal/>

Leading Cases:

In the Interest of C.R.-A.A., 521 S.W.3d 893 (Tex. App.--San Antonio 2017) established that the ICPC does not apply to an interstate child placement with that child's natural parent. The court held that the ICPC does not apply to placement with a child's non-offending parent in another state. Article III of the ICPC prohibits a state from sending to another state "any child for placement in foster care or as a preliminary to adoption." The court held that a biological parent is excluded from Article III, by both the plain, ordinary, unambiguous meaning of the term and an analysis of the ICPC's legislative history that indicates the drafters did not intend for it to apply to natural parents. Furthermore, the court reasoned that even Texas's adoption of the Association of Administrators of the Interstate Compact on the Placement of Children (AAICPC) Regulations that state ICPC procedures do apply to placement with parents in certain circumstances cannot override the plain meaning of Article III. The court concluded that it is inappropriate to resort to rules of construction or extrinsic aids when there is no ambiguity in the language and that when Texas adopted the AAICPC, it did so within the limits of state

law which specify that rules or regulations that contravene statutory language or impose additional, excessive, or contrary burdens on the statutory provision are invalid.

Rejecting the argument of prospective adoptive parents, residents of Colorado, with whom a child had been placed by the child's Texas managing conservator, that the Colorado court where the petition for adoption was pending had jurisdiction over the child, a Texas Court of Appeals in *Unger v. Baker*, [01-89-00803-CV](#) (Tex. App. Houston 1st Dist. Aug. 18, 1989)(unpublished), held that under Article V(a) of the ICPC, the managing conservator, as the sending agency, retained jurisdiction over the child because the child had not yet been adopted. Therefore, the child was subject to the jurisdiction of the Texas trial court in which the managing conservator had filed a motion to remove the child from the temporary placement with the prospective adoptive parents and overruled the prospective adoptive parents' motion for leave to file mandamus seeking rescission of the Texas trial court's order overruling their special appearance to contest the Texas court's jurisdiction.

ICPC Regulations:

<http://www.aphsa.org/content/AAICPC/en/ICPCRegulations.html>