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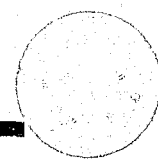
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Interstate Compact on the Placement of Children

Issue Paper

APPLICABILITY OF ICPC TO "NONOFFENDING PARENTS"

Introduction

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Restrictions and Removals from Parental Homes

McComb v. Wambaugh

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Secretariat services provided by the American Public Welfare Association
810 First Street, N.E., Washington, D.C. 20002-4267
Phone: (202) 682-0100 FAX: (202) 289-6555

APWA

APPLICABILITY OF ICPC TO "NONOFFENDING PARENTS"

There appears to be considerable confusion concerning the applicability of the Interstate Compact on the Placement of Children (ICPC) to the sending of a child to a "nonoffending parent" in another state. There are a large number of specific fact situations which give rise to minor children living apart from one or both parents. While an unusual set of facts will occasionally arise which requires special analysis, an understanding of the several categories of cases discussed below should answer the question in the great majority of instances.

In order to be clear about this subject, it is necessary to recognize that the term "nonoffending parent" involves a conclusion as well as establishment of a set of facts in each individual case. From the facts it must be appropriate to conclude that the parent has done nothing constituting abuse or neglect of the child and that there has been no finding of the parent's incompetence to meet the needs of the child. Where the parent's status or conduct has been called into question in a legal proceeding, the judgment in the proceeding will determine whether the parent is properly considered to be "nonoffending." Most parent-child relationships run their course without anyone raising questions about abuse, neglect or incompetence. Where no formal charges have been brought and adjudicated, it is presumed that the parent is "nonoffending": i.e. has done nothing to imperil the safety or welfare of the child and is competent to meet the child's needs.

LEGAL SEPARATION AND DIVORCE

Couples who have one or more children frequently enter into legal separations or obtain divorces. Custody of a minor child becomes a matter that needs to be settled. Even if both parents are nonoffending, the child cannot live simultaneously in the separate households. Unless there is an order for joint custody, one parent will receive custody and will become primarily responsible for the care of the child. The noncustodial parent may have some financial responsibilities for child support, but that parent will not have the

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child living with him or her. Arrangements for a child to live apart from one of its parents is not a reflection on the nonoffending character of the non custodial parent. It is merely a recognition of a practical fact: the child can only live in one place at a time. The nonoffending parent's rights are not terminated or abridged in any way, except that a necessary decision is made as to where the child will live.

Sometimes the condition of one or the other of the parents will figure in the custody determination accompanying a separation or divorce. If there is a judicial finding that custody is given to one parent rather than the other because the noncustodial parent has committed abuse or neglect or is incompetent to care for the child, the noncustodial parent is not properly to be classified as nonoffending.

Unless the legal proceedings for separation or divorce (or some other legal proceeding) establishes that the noncustodial parent is not truly to be considered nonoffending, these cases do not involve any applicability of ICPC. Neither the original assignment of custody to one parent, or any subsequent transfer to the other parent is a "placement." The sending of the child to live with one of the parents is merely a normal incidence of the parent-child relationship which a compact administrator has no power to sanction or forbid.

If the separation or divorce involves joint custody of the child, both parents will be properly classifiable as "nonoffending." The discussion about arrangements for single custody applies. Subsequent transfer of custody from one parent to the other is an incident of the parent-child relationship and is not a "placement" in the sense intended by ICPC.

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VOLUNTARY AGREEMENTS

Circumstances arise in which a couple or a single parent comes to the conclusion that they are unable (at least for the time being) to take care of their child. The difficulty may be financial or it may result from physical or mental illness. They may turn the child over to a public agency under a voluntary agreement. Such agreements often provide that the parents have a right to reclaim the child at any time. Sometimes, the agreement is not explicit on this score but the laws of the state concerned are to this effect. Other times, the agreement contains specific provisions and procedures for the return of custody to the parents. In cases of voluntary agreements, the return of custody to the parents (or to either parent) is not a placement within the meaning of ICPC. If there has been no judicial proceeding finding the parent(s) unfit, return of custody does not involve ICPC, even if they have moved to another state.

Circumstances do arise with respect to voluntary agreements that may color an otherwise simple return of the child(ren) to a parent. If one or both of the parents have failed to keep in touch with the child over a long period of time one could argue that the parent has failed to show reasonable interest in the child after surrendering its care; in essence abandoning the child. If an abandonment is established, a loss of parental rights might ensue. It is also possible that an effort at family reunification be made before terminating said parental rights. In that situation, the state "places" the child in the parental home and ICPC should be used to accomplish the placement. Only if and when reunification succeeds will the placement end, the ICPC no longer be applicable, and the case closed (for ICPC purposes).

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RESTRICTIONS AND REMOVALS FROM PARENTAL HOMES

Many children are allowed to remain in the homes of their parents or sent back to them, but only under supervision or with other conditions that the parents must meet. Other children are removed from the parental home and placed in some form of substitute care. In these cases, the parent(s) are clearly not to be classified as nonoffending. Court orders lodging children in parental homes are placements, not returns to the normal parent-child relationship. However, there can be many nuances in these situations and endless variety in the specific facts. The trouble may be caused by one of the parents who is a substance abuser, while the other is not. One parent may abuse the children, while the other may not. If the parent whose conduct is not of the kind just mentioned leaves the home and establishes a separate residence, he or she may be considered a nonoffending parent. However, these cases can raise further questions. Did the parent whose conduct was not overtly harmful take reasonable steps in an effort to stop the harmful conduct or insulate the child from it? Did the supposedly nonoffending parent take reasonable steps to keep undesirable persons out of the home? Was that parent merely passive?

The word "nonoffending" can be misunderstood. If it is interpreted to mean refraining from actions which are positively harmful to the safety or welfare of the child, part of the point may be missed. The key is whether the parent's conduct (omissions as well as acts of commission) is established to show "unfitness." Parenting has affirmative responsibilities as well as obligations to refrain from certain kinds of actions. If the person passes both the affirmative and negative tests, he or she can properly be classified as nonoffending. But it is also essential to bear in mind the conditions under which inquiry can be made. Undoubtedly, there are many homes in which abuse or neglect of children occurs and where the conditions remain undetected. Our laws and public policies favor

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the privacy of homes and of the parent-child relationship. The state may investigate only upon allegations presented in proper legal form and intervene only upon an adjudication of abuse, neglect or other dependency. Consequently, a parent is presumed to be nonoffending, unless the designation is found to be unmerited in a proper legal proceeding.

The foregoing is addressed primarily to circumstances wherein there are either specific concrete facts that can show abuse, neglect or incompetence which actually or potentially harm the child or an absence of allegations justifying inquiry and surveillance of a private family relationship. Another type of case also needs attention. Sometimes a parent will leave the child with the other parent or in some other custodial situation and will be out of contact with the child for an extended period of time--perhaps many years. When the child's existing custodial arrangement disrupts, the long absent parent (either because of notification from a court or department of social services or becoming aware in some other way) appears and offers to take the child or the court becomes aware of the existence of the absent parent and desires to reunite parent and child. These situations almost always involve court activity to determine what should be done with the child. The disposition is made by court order. If such an order is made for giving custody of the child to the long absent parent, the question is whether this means that the parent is "nonoffending".

If the court specifically finds the parent "nonoffending" that finding (unless appealed and overturned) is determinative of the question. But often neither the court order or any other record made by the judge addresses the matter. The court's order may simply confer custody on the until recently absent parent, or it may direct that such custody is subject to supervision and/or to other conditions. Somewhat akin to the latter situation is the case in which the court fills out an ICPC-100A and requests a home study to determine whether the long absent parent is fit to be entrusted with his or her child.

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If the court merely orders that custody be with that parent and says nothing more, the proper legal conclusion is that the court has found the individual to be a nonoffending parent. The father or mother, as the case may be, is simply resuming active exercise of parental rights. This does not involve a "placement" of any kind. If one wishes to characterize it, the case is one of resumption or recognition of the normal parent-child relationship in which no further state intervention is warranted.

If supervision is ordered, or if any other condition is laid down involving surveillance of any kind, the conclusion must be that the person is not to be considered a nonoffending parent. Compulsory intervention is justified only on evidence resulting in a court determination that the new custodial parent does present a risk of harm to the child. Nevertheless, a court may find it appropriate to attempt to establish or maintain a suitable family situation for the child and may impose conditions in order to assist in the attempt to reunify parent and child. In any of these situations, the giving of custody to a parent is properly called a placement and, if interstate, ICPC applies to it.

Doubts created by a parent's long absence and lack of information about that person's recent history can be very real. Public authorities seeking to protect children may wish to be sure that reunification of an absent parent and his or her child is safe. A parent who has walked away from the child and who has not followed the child's progress and problems can be held to have abandoned the child. Abandonment is a form of neglect. A parent who is guilty of it cannot properly be classified as "nonoffending". The test for abandonment is whether or not the absent parent has made reasonable and continuing efforts to keep in touch with the child and its custodial situation.

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What is reasonable and how frequent contacts must be in order to be called continuing will depend on the circumstances of the case and often requires interpretation and judgment. It is the place of a court to make such determinations. If the court does not make them overtly, the nature of the court's conclusion must be inferred from what it does and what it omits to do.

In all these cases, it must be emphasized that the presumption in our law is in favor of the suitability and right of a parent. The state exceeds its authority if it intervenes by placing restrictions on the parent-child relationship, unless it finds that there is enough evidence to justify such intervention.

McCOMB v. WAMBAUGH

In 1991, the U.S. Court of Appeals for the Third Circuit decided McComb v. Wambaugh. That case held ICPC inapplicable to placements with parents, whether offending or nonoffending. If one accepts the McComb decision as governing law, the entire discussion in this memorandum is beside the point. However, the Secretariat and the Compact Administrators Association as a whole consider McComb to be unsound. During the past two years, compact administrators have largely declined to follow that case. Presumably, this means that compact administrators expect that others also will continue to apply ICPC to parents in all appropriate circumstances. What will happen in any given case to enforce the administrator's position if it is resisted or ignored remains an open question.

A.I.Q. No.6
(Administrative Policy Question)
Office of ICPC Secretariat
December 2, 1993

DEFINITION OF VISIT

1. A visit is not a placement within the meaning of the Interstate Compact on the Placement of Children. Visits and placements are distinguished on the basis of purpose, duration and the intention of the person or agency with responsibility for planning for the children as to the child's place of abode.
2. The purpose of a visit is to provide the child with a social or cultural experience of short duration, such as a stay in a camp or with a friend or relative who has not assumed legal responsibility for providing child care services.
3. It is understood that a visit for twenty-four hours or longer will necessarily involve the provision of some services in the nature of child care by the person or persons with whom the child is staying. The provision of these services will not, of itself, alter the character of the stay as a visit.
4. If the child's stay is intended to be for no longer than thirty days and if the purpose is as described in Paragraph 2, it will be presumed that the circumstances constitute a visit rather than a placement.
5. A stay or proposed stay of longer than thirty days is a placement or proposed placement, except that a stay of longer duration may be considered a visit if it begins and ends within the period of a child's vacation from school as ascertained from the academic calendar of the school. A visit may not be extended or renewed in a manner which causes or will cause it to exceed thirty days or the school vacation period, as the case may be. If a stay does not from the outset have an express terminal date, or if its duration is not clear from the circumstances, it shall be considered a placement or proposed placement and not a visit.
6. A request for a home study or supervision made by the person or agency which sends or proposes to send a child on a visit will conclusively establish that the intent of the stay or proposed stay is not a visit.

Adopted April 26, 1983 by the Association of Administrators of the Interstate Compact on the Placement of Children.

GUIDELINES FOR INTERSTATE RELOCATION OF FOSTER PARENTS
WITH THEIR FOSTER CHILDREN

1. Purpose.

The purpose of these Guidelines is to facilitate the lawful relocation from one state to another of family units which include foster parents and foster children.

2. Interstate Relocations on Adequate or Short Notice

(a) On a regular and continuing basis, compact administrators should do their best to keep foster care agencies and personnel aware that foster care parent(s) who are preparing to relocate into another state with a foster child will be engaged in an interstate placement subject to ICPC and that such placements must be undertaken and consummated in compliance with ICPC and its procedures.

(b) If the child is to be sent or brought to the receiving state more than forty-five (45) days in the future, the normal procedures of ICPC for an interstate placement should be initiated. However, the ICPC-100A and the information accompanying it should make it specific and clear that the relocation of a foster family is involved and that the family home is not yet in the receiving state. As much information as reasonably possible should be given to the receiving state concerning the location and character of the intended family home in the receiving state.

(c) In any instance where the decision to relocate into another state is not made until forty-five (45) days or less before the date on which it is intended to send or bring the child to the receiving state, an ICPC-100A and its supporting documentation should be prepared immediately upon the making of the decision, processed promptly by the sending agency's state compact administrator and transmitted to the receiving state compact administrator. The sending agency's state compact administrator should request that the receiving state provide priority handling of the case with due regard for the desired time for the child to be sent or brought to the receiving state.

(d) The documentation provided with a request for priority handling shall include:

1. A form ICPC-100A as fully completed as the circumstances reasonably permit.

2. A copy of the court order pursuant to which the sending agency has custody to place the child or, if custody does not derive from a court order, a statement of the basis on which the sending agency has custody to place the child.

3. A case summary for the child.

4. A copy of the most recent license, certificate or approval of the qualification of the foster parent(s) and/or their home showing the status of the foster parent(s) as qualified foster parent(s).

5. A copy of the most recent license, certificate or approved home study.

6. If not fully apparent from the case history, a description of the child's needs.

7. An explanation of the current status of the child's Title IV-E eligibility.

(e) Requests for priority handling shall be as provided in subparagraph (c). Some or all documents may be communicated by telephone, by "FAX", or by express mail or any other recognized method for expedited communication. The receiving state shall recognize and give effect to any such expedited transmission of an ICPC-100A and/or supporting documentation, provided that it is legible and appears to be a complete representation of the original. However, the receiving state may request and shall be entitled to receive originals if it considers them necessary for a legally sufficient record under its laws.

(f) In any case which meets the description set forth in subparagraph (c) of this paragraph, the receiving state should give effect to the fact that the foster parent(s) hold a current license, certificate or approval as qualified foster parent(s) from the sending agency's state and (unless the receiving state has substantial evidence to the contrary) shall consider it to be sufficient evidence to support a determination that placement with such foster parent(s) would appear not to be contrary to the best interests of the child. If in the particular case the sending agency's state law does not require such license or other authorization, the receiving state should accept and give effect to a statement from the sending agency's compact administrator that the foster parent(s) are in good standing as such.

(g) The receiving state may decline to provide a favorable determination pursuant to Article III(d) of ICPC if its compact administrator finds that the child's needs cannot be met under the circumstances of the proposed relocation, or until it has the documentation identified in subparagraph (d) hereof.

(h) If necessary or helpful to meet time requirements, the receiving state may communicate its determination pursuant to Article III(d) to the sending agency and the sending agency's state compact administrator by "FAX" or other means of facsimile transmission. However, this may not be done before the receiving state compact administrator has actually recorded the determination on the ICPC-100A. The written notice (the completed ICPC-100A) should be mailed or otherwise sent promptly due to Article III(d) written notice requirements.

3. Compliance With ICPC and Other Laws

(a) These Guidelines are primarily directed toward Article III(d) determinations by the receiving state compact administrator which must be obtained before placement of a child in the receiving state. The Guidelines describe the evidence which a compact administrator should regard as sufficient to make an affirmative determination pursuant to Article III(d) in the case of an already established foster parent(s)-foster child relationship when the family unit is moving into the receiving state (especially when the family unit is moving on short

notice). It is recognized that the discontinuance of one residence by a family and its establishment of a new abode involves a transition period and the making of adjustments which are often necessary for the preservation and wellbeing of an already established family unit and that the preservation of his or her family status in the home of the fosterparent(s) is frequently in the interest of the child.

(b) If an existing fosterparent(s) or foster home license, certificate or approval from the sending agency's state is soon to expire and if it is desired that the child remain with the fosterparent(s), it is appropriate for such license, certificate or approval to be extended or renewed so as to allow it to be in force during the family unit's transition period and until such reasonable time as is necessary to allow compliance with any laws of the receiving state the requirements of which cannot be fully met before the home in the receiving state has been fully established.

(c) Nothing in these Guidelines shall be construed to exempt the fosterparent(s) from the need to meet any licensing or other requirements in the receiving state when they are established there.

May 1992

GUIDELINES FOR TERMINATION OF INTERSTATE PLACEMENTS

PREAMBLE

The Interstate Compact on the Placement of Children (ICPC) is not to be construed as inconsistent with P.L. 96-272, the Adoption Assistance and Child Welfare Act of 1980. The ICPC is the means embodied in state laws for assuring children crossing state lines the procedural safeguards necessary for children served by P.L. 96-272.

The standards for the making of case decisions relating to termination of placements pursuant to the ICPC are intended to be those which constitute good administrative, social work and legal practice in the states.

It is not the purpose of the ICPC to create barriers, such as residency requirements, to the receipt of services when such services are necessary for the protection of children and for the achievement of permanent plans for children in care.

1. In General

1.01. The purpose of an interstate placement pursuant to the Interstate Compact on the Placement of Children (ICPC) is to provide protection, care and nurture for the child in a home or institutional environment (whichever is suited to the circumstances) until a longer lasting status is established. The successor status may be achieved by family reunification, adoption, reaching of the age of majority, emancipation or, in the case of institutionalization, the conclusion of a program of treatment or rehabilitation and return of the child to the sending agency for such further disposition as it may determine to be appropriate pursuant to the Compact or otherwise in accordance with law. In any of the foregoing categories of cases, the termination of the placement occurs by operation of fact or law and usually does not involve a conscious decision on the part of the sending agency or the receiving state to terminate the placement, although it may involve specific clinical decisions (as in the case of treatment or rehabilitation) as to the condition and prognosis for the child.

1.02. As used in these Guidelines and with reference to placements pursuant to ICPC, the word "termination" means the ending of a placement by any act or circumstance which in fact or in law brings the placement status to an end. "Discharge" (a particular kind of termination) is defined in Section 2.02.

1.03. In the categories of cases referred to in Section 1.01, the function of the receiving state is to provide appropriate supervision and to make reports on the conditions and circumstances of the placement and upon progress. The receiving state may make recommendations with respect to termination, but the decision is with the sending agency. Nevertheless, it should be recognized that the receiving state is in the best position to observe placement conditions. When the receiving state (based on such observations reported to the sending agency) recommends that the sending agency return the child, it should do so, unless it has compelling reasons to pursue a different course. It is not a sufficient reason for the receiving state to recommend return of the child merely because dealing with the child is difficult.

1.04. If, during the continuance of the placement, the sending agency decides to seek or make another placement of the child in the receiving state or into a third Compact state, it must employ the procedures of ICPC; including the sending of a new Notice of Intention to Place (ICPC Form 100A), the following of all requirements of Article III (a), (b) and (c) and the placement of the child only if a favorable response to the 100A is received by the sending agency as required by Article III (d).

2. Discharges With Concurrence of Receiving State

2.01. A decision of the sending agency to terminate a placement by returning the child to the sending agency does not require the concurrence of the receiving state, although the receiving state may make recommendations with respect thereto and will normally do so if its supervision experience with the case so warrants.

2.02. When a placement is terminated (other than by family reunification, adoption, reaching of the age of majority, or emancipation), the termination must be only with the concurrence of the Compact Administrator of the receiving state. Such a termination is a discharge of the placement as provided in Article V (a). Any termination which constitutes a "discharge" of the placement should not be initiated or carried out without full consultation and agreement thereon by the sending agency and the Compact Administrator of the receiving state.

2.03. As used in these Guidelines, the term "family reunification" means resumption of full legal custody by the parent(s) of the child and the restoration of the full parent-child relationship, without retention by a court, agency or other entity of any jurisdiction or right of supervision or control.

2.04. Family reunification which is accomplished by agency action or court order restoring parental rights, terminating

supervision or dismissing or vacating court or agency jurisdiction constitutes a discharge within the meaning of Article V (a) of ICPC. Accordingly, termination of the type described in this paragraph (b) requires the concurrence of the receiving state compact administrator.

2.05. Discharge of a placement made pursuant to ICPC may be initiated by the sending agency, or by a court which has jurisdiction over the child and his or her legal custodian (whether or not the court is the sending agency). The discharge should receive the concurrence of the Compact Administrator of the receiving state whenever the circumstances are as described in one or more of the following paragraphs:

- (a) When the placement is with a relative of a category enumerated in Article VIII of ICPC and the case history (including information from supervision) supports a reasonable conclusion that the child will continue to be supported and properly cared for by the relative and/or by public aid for which eligibility is based on residence in the receiving state.

If the relative is a biological or adoptive parent of the child, the presumption should be against discharging the placement unless the successor status is to be family reunification. A relative (other than a parent) does not have a legal obligation to support and care for a child and so can not reasonably be expected to continue performing the child rearing responsibilities without adopting the child. In the case of a parent, one would expect something less than family reunification to signify some impairment or absence of ability or willingness to provide for the child's needs without supervision. Consequently, justification of a placement discharge should require a preponderance of evidence of special circumstances which make such an action reasonable and prudent.

- (b) (1) When the child has no family ties in the sending agency's state or in the state from which the placement was originated; and (2) the placement is working well, without any financial assistance from the sending agency or any public agency of the sending agency's state or the state from which the placement originated. It is a prerequisite for concurrence in a discharge of a placement that the person or entity who will continue to have responsibility for the child have or receive sufficient legal custody to perform all necessary and appropriate functions that have been the responsibility of the sending agency with respect to the child.

- (c) When, for any reason, the Compact Administrator of the receiving state finds that the welfare of the child would be furthered or would not be adversely affected by a discharge and that it is appropriate for the receiving state to assume such governmental responsibility as may attach in the particular case.
- (d) However, in the case of a preadoptive placement, the sending agency should not be relieved of responsibility by a termination or discharge of the placement until the adoption is consummated, unless the Compact Administrator of the receiving state concurs for reasons covered by Paragraph (c) hereof.

2.06. The receiving state Compact Administrator should act on a request for discharge of a placement with reasonable promptness. Whenever the request for discharge is denied, the receiving state Compact Administrator should so inform the sending agency, and the requesting court (where applicable) in writing of the denial and the reasons therefor. It is not an acceptable reason for denying concurrence that the termination of the placement status could at some time in the future result in the receiving state or a local public agency therein becoming responsible for the care or support of the child.

May 1989

May 1990

LA Bar Response Committee

The Association of Administrators of the Interstate Compact on the Placement of Children (AAICPC), as well as many courts, placing and receiving agencies, is very concerned about the time it takes to forward an Interstate Placement Request and obtain a response. A Committee of the AAICPC has examined this issue and reports to the AAICPC the following:

PROBLEM:

The AAICPC recommended processing time frame for ICPC Requests is not being met in many cases.

ANALYSIS:

The AAICPC Response Committee has studied this issue over the past year. A brief, small survey of case processing time was undertaken. While not a large or proportional survey, the results confirmed single state surveys and the experience of ICPC Administrators. The results demonstrated that the actual time a Request spends in a Compact Administrator's office is only a small portion of the overall Request processing time. Transit time from the local sending agency, or from one Compact Administrator to another Administrator was also a minor factor.

The longest time occurred between a court ordering an interstate study and the local sending agency initiating the Interstate Placement Request. Please see the attached report for a description of the Interstate Placement process.

The interstate placement process can be viewed as a consortium. As in any consortium, each partner needs to do its job in order to have a successful result. The courts, local agencies, acting as sending and supervising agencies, ICPC Administrators in both involved states and the proposed placement resource all have a critical role to play if a Request is to be processed in a timely fashion. The lack of timely and proper action on any one partner's part affects the whole.

Administrators of the ICPC are and should be held accountable for time that a Request spends in their control. By the same token, local agencies need to examine their internal processing of the Interstate Placement Requests. At this juncture, the AAICPC feels that reviewing the processes of the local sending agency in preparing and submitting the initial Interstate Placement Request (ICPC-100A) and the needed supporting documentation would be the single most effective step that would result in a more efficient and timely processing of interstate placements.

Local agencies also impact the overall ICPC Request processing when they are asked, by their state's Compact Administrator, to conduct the investigation of the planned placement resource. The

staffing of local offices and the priorities given to interstate requests have a direct influence on the ICPC process.

Public agencies have experienced increased caseloads and requests for their attention. This is true at both state and local levels. While the AAICPC strongly supports the efficient and timely processing of Interstate Placement Requests, it recognizes that compact administrators by themselves have limited power to influence the overall process and the priorities of state and local social services administrators.

RECOMMENDATIONS:

The Response Committee makes the following recommendations to promote and encourage the efficient and timely processing of Interstate Placement Requests:

A. That the AAICPC provide that state ICPC Compact Administrators may, at their option, accept facsimile transmitted action responses from other ICPC Administrators. These ICPC 100A's would be accepted when legible, fully and properly signed by the receiving state's Compact Administrator and the original ICPC-100A is immediately forwarded by mail.

B. That the AAICPC adopt and forward a letter to all state Child Welfare Services Administrators stressing the increasing interstate movement of children and the critical part the ICPC

Administrators play in that process and urging that the ICPC Administrator's office be adequately staffed to insure the efficient and timely processing of these Requests.

C. That the AAICPC work with other interested associations and parties to educate and involve them in the Interstate Placement process and how they can have a positive impact on that process.

D. That the AAICPC assist individual state ICPC Administrators to inform local courts and agencies of the critical role they play in the interstate placement process.

The Interstate Compact on the Placement of Children ("ICPC") is a contractual agreement among all 50 states, the District of Columbia and the Virgin Islands. It has been enacted by them into statutory law. ICPC governs the rights and obligations of all state and local governmental officials and of private persons in the situations to which it applies. The provisions of the Compact and the regulations and procedures implementing it, constitute a system for making, supervising and terminating interstate placements of children in foster care, preliminary to possible adoption and in certain instances where adjudicated delinquents are confined in private institutions in other states.

The courts and public child welfare agencies of each state administer their separate laws (juvenile codes, etc.) in making or regulating intrastate placements. All states have recognized that interstate placements present special problems for which agreed provisions of law and procedures are necessary. Consequently, they have adopted the Compact. In addition to its status as statutory law, this legal form is a contract among the states which binds them and their officials to follow ICPC as a contractual obligation. The Contract Clause of the Federal Constitution provides that "No State shall impair the obligations of a contract." It follows that ICPC is not an optional system for placing children into another state. It must be employed in all cases to which its provisions make it applicable.

A major purpose of ICPC is to protect the safety and well-being of children intended for interstate placements by assuring that the designated public authorities have examined the actual situation before a child is placed; and to establish and operate a practical and effective system for monitoring the placement.

An ICPC placement is authorized when the compact administrator of the receiving state (the state into which the child is proposed to be brought or sent) determines that it "does not appear contrary to the interests of the child." (See Article III(d).) Once a determination has been made, the compact administrator must send written permission or denial for the placement to the sending agency. The process of making the preplacement home studies and the collection and evaluation of an adequate body of information about each individual case (including on-site investigation of the proposed placement environment and assessment of the intended custodians) takes time. An unreasonable delay is not endemic in the ICPC system. All participants in the ICPC process should perform their functions so as to take no more time than necessary to assure protection of the child(ren) involved and equitable distribution of responsibility among states.

The ICPC process is begun by a sending agency. Article II (b) defines sending agency:

"Sending agency" means a party state, officer or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency or other entity which sends, brings, or causes to be sent or brought any child to another party state. (Emphasis added)

The purpose of this report is to identify and discuss the interrelationship between courts as sending agencies and time delays often attributed to the ICPC.

THE COURT AS THE SENDING AGENCY

A court can acquire the status of a sending agency by virtue of many differing fact situations. Illustrative, but by no means all inclusive examples are abuse and neglect

proceedings. If a court finds that a child is the victim of abuse or neglect, or is otherwise in sufficient danger, it can issue an order directing that the child be made the subject of a placement. Upon identification of an intended placement resource by the court on its own or with advice from a social service agency or other party all necessary investigations and arrangements should be made promptly.

The steps leading up to an ICPC placement are:

1. A court order or other decision to make (or at least to investigate) a specific proposed placement of the child.
2. Preparation and submittal of a Notice of Intention to place the child (ICPC Form 100-A and supporting documents) with the sending agency's interstate compact office.
3. Review and transmittal by the sending agency's compact office to the compact office of the receiving state.
4. Acquisition by the receiving state compact office of relevant and sufficient information about the placement environment (either by its own work or by gathering the materials for others) upon which to base its positive or negative determination.
5. Making the determination.
6. Communicating the determination - in writing - to the sending agency and the sending agency's state compact office.
7. Actual placement of the child by the sending agency.

TIME DELAYS IN STAGES 1 - 7

STAGE 1

Once a court has identified an intended placement recipient(s) on a court order, Step 1 has been completed. The facts needed to fill out an ICPC-100A must be known to the court

and the documentation necessary to accompany the ICPC-100A should also be in the court's possession.

STAGE 2

With the facts and the documentation already in hand, the ICPC-100A should be prepared coincidentally with the issuance of the placement order. The court itself, or the public agency into whose custody the child is given should be able to send the completed ICPC-100A and its supporting material on to the sending agency's state compact office forthwith. But experience shows that in a significant number of cases this does not happen. Numerous instances known to compact administrators are characterized by delays running into months (occasionally over a year) before the notice of intention to place the child is filed with the sending agency's state compact administrator. There is good reason to believe that these initial delays as well as delays in Stage 4 are among the longest encountered in the entire placement process. The courts can play a central role in improving this initial part of the interstate placement process. It would be prudent for the court which has made a placement order to pursue its inquiry to find out when the completed ICPC-100A was actually sent to the compact administrator in the initiating jurisdiction. The processing of an interstate placement request cannot begin until a compact administrator has been given the documents which that office is to check and transmit to the receiving state.

STAGE 3

When a compact office receives an ICPC-100A from a sending agency for transmittal to a receiving state, its task is not normally onerous or time consuming. Its function is limited to examining the ICPC-100A to make sure that it has been completely filled out and that the items of required supporting information

are attached. Evaluations and decisions concerning the proposed placement are made by the sending agency in determining whether to consider a particular interstate placement; by the receiving state in ascertaining or checking the character of the proposed custodian(s) and placement environment in connection with the needs of the child; and when a favorable Article III(d) notice has resulted, by the sending agency which then makes the decision to place the child.

If information on the ICPC-100A or its accompanying documentation is missing or obviously unresponsive, time will be lost. In fact, such errors and insufficiencies are a major source of delay. They make it necessary for the sending agency's compact office to return the Notice of Intention to place the child (ICPC-100A) to the sending agency and request the missing information. If a clearly inadequate or improperly documented 100A is sent to the receiving state, it will cause that office to make inquiry of the sending agency and ask that something more be supplied. This inevitably slows the placement process.

STAGE 4

The purpose of the safeguards provided by ICPC procedures is primarily to see that a child is placed in a safe and suitable environment rather than in a dangerous or otherwise harmful home or facility.

Courts waiting for home study evaluations and placement assessments will usually receive better service if the sending agency has done its job fully and promptly in the beginning of the ICPC process. With social history and other documentation that should accompany a properly completed 100A in hand, a social worker should be able to do a home study and verification of other information quickly enough in most instances. Where delays are caused by uncooperative sending agencies or prospective

placement recipients, they should not be heard to complain about alleged inefficiencies and unreasonable time periods for completing the work. In fact, affected parties who obstruct or fail to assist in the placement process should not expect the placement to occur.

Usually, the investigative work is done by field personnel who are based in local offices fairly close to the locations, facilities and/or persons on whom they must report. Staffing, case worker familiarity with ICPC requirements and procedures, and an effective administrative organization are the prime requisites in making it possible for the work to be done expeditiously.

It is often during this stage that the question of priorities assigned to local versus interstate cases is likely to have its greatest importance.

STAGE 5-6

Once the compact administrator has the decision-making information in hand, the time taken to allow or deny the placement should not be great. The two factors which are most likely to lengthen the period are:

1. A failure of the local investigator to clearly convey his or her findings coupled with the subsequent need for additional field office-central office communications (and perhaps a need for further information gathering); and
2. Work loads and work habits in the interstate office. A problem can be the shortage of personnel in the interstate office. Once a decision on a 100A is made, it must be communicated to the sending agency. If 100As which are ready for return to the sending agency remain in the compact office because there is insufficient staff to type the correspondence or to send

out the mail, the process may not be completed in a timely fashion and the placement may be unduly delayed. There are demands (unfortunately often granted) to communicate a favorable Article III(d) determination by telephone and for sending agencies to act on the basis of them. Verbal permissions are contrary to the requirements of Article III of the Compact which specifically mandates "written" communication of the decision made pursuant to Article III(d). Moreover, where the safety and basic welfare of the child(ren) involved is clearly a major consideration, good records of the action taken are essential. Many placement catastrophes that have in fact occurred are traceable in whole or in part to "oral approvals" and their attendant practices.

Shortages of personnel adversely affect virtually all children's services, including those provided by the courts and public agencies. Unless these deficiencies are significantly ameliorated, they will continue to be obstacles to the delivery of service in the manner one would like to see. However, so far as the communications required to make the ICPC process work effectively are concerned, modern technology and organization can solve much of the time problem. "FAX" is coming into widespread use. When rapid communication is important, it can avoid mail delays. A receiving state compact administrator can FAX 100As (with manually completed findings if necessary). Very little writing is needed. Also, greater use of the various forms of overnight mail delivery can be used to transmit lengthy documents.

STATE 7

It is usually assumed that as soon as the sending agency has a favorable 100A in hand, it makes the placement. Experience shows that this is not necessarily the case. A 100A may represent only one of two or more dispositions being considered for the child. If another placement is chosen, a

favorable determination on one of them may not be used. Indecision as to which placement resources to use (if there is any choice) can delay a placement.

For judicially ordered placements the courts, and the local child welfare agencies which may assist them, control schedules and time delays in Stages 1,2, and 7 (initiating placements and actually making them). Slowness in accomplishing these parts of the work keep children in the limbo of temporary care no less than does the time taken to investigate and evaluate proposed placements. Moreover, the delays in Stages 1,2 and 7 are all the more regrettable because they add nothing to protection of the child, the placement recipients or the interests of the states involved. Generally, they increase public expense by causing or prolonging the most expensive and least useful kind of foster care.

Time is consumed by the middle stages of the ICPC process. Actual investigation of proposed home locations, investigations of the intended custodians, and evaluation of the specific environment in the context of the child's needs must be allowed a reasonable amount of time. Where these functions are performed inefficiently, remedial measures should be taken no less than for the aspects of the placement process under the control and subject to the responsibility of sending agencies. However, the Compact embodies a policy decision that it is better to have responsible personnel take a specific look at the proposed placement circumstances and environment before the child is committed to them rather than to proceed without information on the basis of superficial appearances and judgments. Where the placement is in a jurisdiction other than the one where the court sits, the court is not in a position to know first hand whether or not there are substantial risks of physical or mental harm to the child that would be incurred by making the placement. ICPC provides the means of providing vital information and assessments to the sending agency.

I. Returns to Nonoffending Parents

As explained at the Association's Annual Meeting, parents whose rights have not been limited or terminated (nonoffending parents) do not receive placements within the meaning of the Compact (ICPC) when their children are returned to them. However, the phrase "nonoffending parent" could give rise to some misunderstanding. It also could be thought to include parents who have lost custody of their children because of inability to care for them, even though they have not committed any "offense". So that we can be clear on the types of cases involved, it is desirable to provide some examples.

1. Parents receive a divorce. Neither of them is found unfit or unsuitable as a parent, but for one or another of several possible reasons, only one parent is given custody of the children. The noncustodial parent may be described as "nonoffending". If the court later determines to give custody to this nonoffending parent, the proceeding does not involve a "placement" within the meaning of ICPC. However, if the child has been placed in foster care, or if the parent's rights have been limited in any way other than solely the conferring of custody by the divorce decree, the transfer of custody to the parents would be a placement and would require the use of the ICPC. If a considerable time has passed since the nonoffending parent has had or shared custody, a further question would be whether he or she has kept in communication with the child and shown sufficient evidence of maintaining a continuing interest in the child.
2. A parent entrusts a child to a relative or friend for a trip. The child is left in a Los Angeles bus station and picked up by the police. Los Angeles County provides temporary shelter and care until the circumstances can be deciphered and arrangements made for the child's return. Return of the child to the parent in another state is not a placement and does not involve ICPC. If, however, there are facts which show that the chain of events involve an actual abandonment by the parent of the child, then a return should be on a trial basis and would involve the ICPC.
3. A single parent becomes mentally ill, physically disabled or otherwise unable to care for and protect a child. The child is placed in foster care in State A (with or without a court finding of dependency). Subsequently, that parent who is now in State B is claimed to have recovered or now to be able to resume full parental responsibilities.

If the state or local agency in State A which has the child in foster care seeks to return the child to the parent in State B it will usually make a placement under the Compact in order to provide a trial of the parent's actual ability to resume the full rights of parenthood. However, if the parent commences a proceeding in State A so as to obtain the return of the child, the court may or may not be required to use the Compact. If the Court proposes to return the child for the trial period to determine the parent's actual fitness and retains jurisdiction, it must use the ICPC. On the other hand, if the Court finds that it has sufficient evidence before it and determines the parent to be fit it can remove the child from the agency's jurisdiction, return it to the parent and dismiss its own jurisdiction. In the later event the return is not a placement under the Compact.

4. A father, mother and their child are residents of State A. The mother is indicted or convicted in State B of a crime. The father goes to State B in order to be near the mother and leaves the child in State A where it is placed in foster care. After a time, the father requests that he have the child in his home in State B.

Since the situation is one in which State A has performed care and protective services, the return of the child to the father is a placement and must be made under ICPC. There is need to determine whether the situation (including but not limited to the home environment) is one which makes return appropriate. The required method for doing that is the ICPC procedure.

Some states enter into "voluntary placement agreements" with parent in situations similar to the foregoing. If a voluntary placement agreement were entered into specifying the conditions on which the parent could demand return of the child, and if the parent has performed all of the conditions, return of the child would not be a placement under the ICPC. In such cases, there can also be a question as to whether the father has shown sufficient and continuous interest in the child during the non-custodial period or whether a failure to do so is evidence of abandonment. In that event, restoration would require use of the Compact.

GUIDELINES FOR RECEIPT AND TRANSMISSION OF FAX MATERIALS

I. Purpose and Scope

The purpose of these Guidelines is to set forth operating practices with respect to the receipt and transmission of telephonic facsimile ("FAX") in the administration of cases pursuant to the Interstate Compact on the Placement of Children ("ICPC"). The Guidelines apply to the sending and receiving of such communications by the ICPC Compact Administrator and to the status of FAX documents.

II. FAX Defined

As used in these Guidelines, facsimile transmission ("FAX") means any process for the transmission and reproduction of papers, documents or records by telephone or other wire or wireless communication which results in the receipt by the addressee of a facsimile of the original paper, document or record. It does not include any public or private mail, message or package delivery service which transmits the original paper, document or record to the addressee.

III. Receipt of FAXed Material

Papers, documents, and records may be filed with the department and the compact administrator by means of FAX as hereinafter provided by these Guidelines.

(a) The Department and the ICPC Compact Administrator will accept FAXed papers, documents, and records in accordance with its customary operating procedures for the receipt of such

materials. ICPC cases are generally subject to statutory and other requirements for confidentiality. Neither the Department nor its ICPC Compact Administrator will assume responsibility for the confidentiality of FAXed material which it receives or for any information contained therein, until the FAXed material actually reaches the Compact Administrator's office or the office of another appropriate addressee within the Department.

(b) Papers, documents, or records may be received for filing by the compact administrator only in cases of emergency, and only if an oral request for permission to send a FAX has first been tendered and approved by the compact administrator who considers that its receipt will be appropriate and useful.

(c) Papers, documents, or records filed by means of facsimile transmission will be received in order to add a corrected or missing page to a referral package previously submitted to the compact administrator.

IV. Procedure

(a) In all instances, including emergency situations, the compact administrator must first be notified of the sending parties intention to transmit documents by FAX. The sending party must be advised by the compact administrator that approval to FAX has been granted before any document may be transmitted.

(b) In all cases where a document has been telephonically transmitted pursuant to these Guidelines, a FAXed ICPC 100A or any other FAXed document or communication relating to an ICPC case, the sending party must send the original document to the compact administrator by a legally sufficient means of mail or message delivery within two (2) business working days of the date of the FAX.

(c) Review and processing of all ICPC referral documents shall be based on the chronological order of date and time received in the compact office. Receipt of FAXed papers, documents, or records shall not result in expedited review, priority handling or response of the case unless the Compact Administrator determines that the circumstances so warrant.

V. Sending of Materials by FAX

The Department will send materials by FAX, in its discretion, as a means of expediting communications when the Department deems it feasible and appropriate or considers transmission by FAX to be a useful means of providing information rapidly. The Department does not accord the same status to FAXed materials as to legally acceptable originals. Except in unusual circumstances and where the Department is satisfied that compelling reasons exist, the Department will not FAX an entire ICPC request for placement and its supporting documentation, but it may send a copy of an ICPC-100A or some other specific document by FAX.

VI. Costs

The party wishing to file a paper, document or record by FAX shall be responsible for all costs of the telephonic transmission.