

Judicial Council of California • Administrative Office of the Courts

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INVITATION TO COMMENT SPR13-26

Title	Action Requested
Juvenile Law: Interstate Compact on the Placement of Children Regulation Changes	Review and Submit Comments by June 19, 2013
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rule 5.616	January 1, 2014
Proposed by	Contact
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Hon. Kimberly J. Nystrom-Geist, Cochair	
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Executive Summary and Origin

The interstate agreement known as the Interstate Compact on the Placement of Children, or ICPC, governs the placement of California children in other states, as well as the placement of out-of-state children in California. The national regulations implementing the ICPC have been repeatedly updated over the last three years. Most recently, they were amended effective October 1, 2012. The California Rule of Court and Judicial Council forms regarding ICPC were extensively revised last year to be consistent with 2010 and 2011 changes to the ICPC regulations. Now, additional, minor changes are needed to rule 5.616 to bring the rule into compliance with the 2012 regulatory changes.

Background

The Interstate Compact on the Placement of Children

The ICPC is a formal agreement among the 50 states, the District of Columbia, and the U.S. Virgin Islands for handling placements of children that cross state lines. The purpose of the ICPC is to establish consistent and timely practices and sharing of information among participating jurisdictions to ensure the safety and well-being of children placed in out-of-state relatives' homes, foster homes, and group homes.

The ICPC is codified in California as Family Code sections 7900–7913. The 10 articles that make up the interstate compact, found in section 7901, have remained unchanged since their endorsement by the 52 signatory members in 1974.

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

ICPC regulations

The ICPC regulations¹ provide guidance to state and local child welfare agencies and the courts on implementation of the ICPC. In contrast to the ICPC itself, the regulations are updated periodically. The ICPC regulations are promulgated by the Association of Administrators of the Interstate Compact on the Placement of Children (AAICPC), which was established in 1974 and consists of members from all 50 states, the District of Columbia, and the U.S. Virgin Islands. The AAICPC has authority under the ICPC to “promulgate rules and regulations to carry out more effectively the terms and provisions” of the ICPC. The AAICPC obtains its secretariat services from the American Public Human Services Association (APHSA) as an affiliate.

The Proposal

ICPC regulations: 2012 changes

The ICPC regulations were changed significantly three times in the past three years.² The 2010 and 2011 changes were previously incorporated into rule 5.616 and related forms. (See Spring 2012 Proposal SPR12-19.) The current proposal addresses the 2012 changes to the regulations.

In 2012, two of the ICPC Regulations were amended, and one new regulation was adopted:

1. Regulation 4, *Residential Placement*, was amended, effective Oct. 1, 2012. Previously, Regulation 4 contained only definitions. The 2012 version of the regulation contains extensive procedures related to placing children in out-of-state residential facilities and group homes. For the most part, child welfare agencies rather than the courts have the responsibility for implementing these new requirements.
2. Regulation 5, *Central State Compact Office*, was amended, effective July 1, 2012. A few new sentences were added to this regulation, to acknowledge the decentralized compact administrator structure used in some states, including California, and to describe procedures related to the use of this decentralized structure.
3. Regulation 12, *Private/Independent Adoptions*, was adopted, effective Oct. 1, 2012. This new regulation describes the procedures for private or independent adoptions across state lines.

These regulations can be found on the AAICPC website at:

http://icpc.aphsa.org/Home/home_news.asp.

¹ The regulations are known simply as ICPC regulations, with no formal name or citation by which to refer to them. They govern our proceedings in California, but are not codified in California.

² The committee has received information from the ICPC Compact Administrator’s Office at the California Department of Social Services that the ICPC regulations are not expected to be revised again in 2013.

Amendments to rule 5.616

Minor revisions to Rule 5.616 (Interstate Compact on the Placement of Children) are required to make it consistent with amended Regulations 4 and 5, and new Regulation 12.³ The proposed changes are:

- In subdivision (b)(1), the definition of “placement” is amended to remove “residential agency or institution, or group home,” and replace it with “residential facility or group home as defined in Regulation No. 4, section 3.”
- In subdivision (b)(4), Regulations 5 and 12 are added to the list of regulations that contain applicable definitions.
- Subdivision (c), “Compact Requirements” previously had two subparts, addressing Regulations 2 and 7. This proposal adds a third subpart indicating that the requirements of Regulation 4 must be followed for children who will be placed in out-of-state residential facilities or group homes.
- In subdivision (e)(3), the words “or his or her family” are added at the end of this sentence, consistent with Regulation 4, item 2(a)(2).
- Subdivision (i) is updated to add references to the probation department and to residential facilities, consistent with Regulation 4, and to add the timeline for residential facility cases.

Alternatives Considered

Alternatives to rule making, such as education, training, or guidelines, were not possible for this proposal, since the existing rule already addressed these ICPC issues, but was no longer legally accurate. Repealing the outdated rule and relying on the national regulations is also an inadequate solution, because, without the California rule and forms, it would be very difficult for judicial officers and others to determine which elements of the ICPC Regulations are applicable in California.

Implementation Requirements, Costs, and Operational Impacts

The changes to the ICPC regulations impose implementation costs primarily on local and state level child welfare agencies. The court impact of these new requirements is minimal. The amended rule does not create any new hearings or new court processes. The amended rule may require courts to incur some very minimal costs for training and implementation.

³ Not included in the proposed amendments to rule 5.616 is the one item deferred from 2012. This would have been an implementation process for the section of Regulation 7 that permits a receiving state to provide assistance to the sending state when the sending state’s judge has requested help with the expedited placement process. Regulation 7 allows the judge in the receiving state to “render such assistance, including the holding of hearings, taking of evidence, and the making of appropriate orders.” For California to hold such a hearing as the receiving state, however, would require overcoming a variety of jurisdictional and procedural hurdles, including the absence of an open court case in California, and the lack of a clear basis for court jurisdiction. In late 2012, the Family and Juvenile Law Advisory Committee considered this issue, and discussed whether to move forward with a rule proposal addressing it in 2013. The committee opted not to go forward with such a proposal this year.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal reasonably achieve the stated purpose?
- Would this proposal have an impact on public's access to the courts? If a positive impact, please describe. If a negative impact, what changes might lessen the impact?
- Have any problems with the 2012 changes to rule 5.616 and related forms (JV-565 and JV-567) been identified, that should be addressed with this proposal?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide costs savings? If so, please quantify. If not, what changes might be made that would provide savings, or greater savings?
- What are the implementation requirements for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in the case management system, or modifying the case management system.
- Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- If this proposal would be cumbersome or difficult to implement in a court of your size, what changes would allow the proposal to be implemented more easily or simply in a court of your size?

Attachments and Links

The amended rule as proposed is attached for review and comment as follows:

- Cal. Rules of Court, rule 5.616 (Interstate Compact on the Placement of Children), at pages 5–6

Supplemental documents that inform this proposal are available online via the following links:

- ICPC Regulations 4, 5, and 12, found on the home page of the Association of Administrators of the Interstate Compact on the Placement of Children (AAICPC) website: http://icpc.aphsa.org/Home/home_news.asp
- The Interstate Compact on the Placement of Children, as codified in California Family Code section 7900 et seq.:
<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=fam&group=07001-08000&file=7900-7913>

Rule 5.616 of the California Rules of Court would be amended, effective January 1, 2014, to read:

1 **Rule 5.616. Interstate Compact on the Placement of Children**

2
3 (a) ***

4
5 (b) **Definitions (Fam. Code, § 7900 et seq.; ICPC Regulations)**

6
7 (1) “Placement” is defined in article 2(d) of the compact. It includes placements
8 with a relative, as defined in Regulation No. 3, paragraph 4, item 56, a legal
9 guardian of the child, a placement recipient who is not related to the child, or
10 a residential ~~agency or institution~~ facility or a group home as defined in
11 Regulation No. 4.

12
13 (A)–(B) ***

14
15 (2)–(3) ***

16
17 (4) ICPC Regulations Nos. 3, 4, 5, 9, 10, ~~and~~ 11, and 12 contain additional
18 definitions that apply to California ICPC cases, except where inconsistent
19 with this rule or with California law.

20
21 (c) **Compact requirements (Fam. Code, § 7901; ICPC Regulations)**

22
23 Whenever the juvenile court makes a placement in another jurisdiction included in
24 the compact or reviews a placement plan, the court must adhere to the provisions
25 and regulations of the compact.

26
27 (1) Cases in which out-of-state placement is proposed in order to place a child
28 for public adoption, in foster care, or with relatives, and where the criteria for
29 expedited placement are not met, must meet all requirements of Regulation
30 No. 2, except where inconsistent with California law.

31
32 (2) Expedited placement cases must meet the requirements in (h) and of
33 Regulation No. 7, except where the requirements of Regulation No. 7 are
34 inconsistent with California law.

35
36 (3) Cases in which out-of-state placement is proposed in order to place a child in
37 a residential facility or group home must meet all the requirements of
38 Regulation No. 4, except where inconsistent with California law.

39
40 (d) ***

41

1 (e) **Placement of delinquent children in institutional care (Fam. Code, §§ 7901,**
2 **art. 6, and 7908; ICPC Reg. No. 4, § 2)**

3
4 A child declared a ward of the court under Welfare and Institutions Code section
5 602 may be placed in an institution in another jurisdiction under the compact only
6 when:

7
8 (1)–(2) ***

9
10 (3) Institutional care in the other jurisdiction is in the best interest of the child
11 and will not produce undue hardship for the child or his or her family.

12
13 (f)–(h) ***

14
15 (i) **Authority of sending court or agency to place child; timing (ICPC Reg. No. 2,**
16 **§ 8(d), and Reg. No. 4, § 8)**

17
18 (1) When the receiving state has approved a placement resource, the sending
19 court has the final authority to determine whether to use the approved
20 placement resource. The sending court may delegate that decision to the
21 sending state child welfare agency or probation department.

22
23 (2) For proposed placements of children for adoption, in foster care, or with
24 relatives, ~~The determination to place the child in the approved home must be~~
25 ~~made within the receiving state's approval expires~~ six months from the date
26 form ICPC-100A was signed by the receiving state.

27
28 (3) For proposed placements of children in residential facilities or group homes,
29 the receiving state's approval expires 30 calendar days from the date form
30 ICPC-100A was signed by the receiving state. The 30-day time frame can be
31 extended by mutual agreement between the sending and receiving states.

32
33 (j) ***