



Judicial Council of California · Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on October 25, 2013

Title	Agenda Item Type
Juvenile Law: Interstate Compact on the Placement of Children Regulation Changes	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rule 5.616	January 1, 2014
Recommended by	Date of Report
Family and Juvenile Law Advisory Committee	October 8, 2013
Hon. Jerilyn L. Borack, Cochair	Contact
Hon. Kimberly J. Nystrom-Geist, Cochair	Audrey Fancy, 415-865-7706 audrey.fancy@jud.ca.gov
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Executive Summary

The Family and Juvenile Law Advisory Committee recommends amending California Rules of Court, rule 5.616, to implement recent changes in the law related to the Interstate Compact on the Placement of Children (ICPC). The national regulations implementing the ICPC have been repeatedly updated over the past three years, most recently in 2012. The California Rules of Court and Judicial Council forms regarding ICPC were extensively revised last year in response to the 2010 and 2011 changes to the regulations. Now, additional, minor changes are needed to rule 5.616 to bring the rule into compliance with the 2012 regulatory changes.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2014 amend subdivisions (b), (c), (e), and (i) of rule 5.616 (Interstate

Compact on the Placement of Children) of the California Rules of Court, to make the rule consistent with regulatory changes.

The text of the proposed rule is attached at pages 4–5.

Previous Council Action

The Judicial Council adopted rule 5.616 as rule 1428, effective January 1, 1999, to include procedures on implementing the ICPC (codified in California as Family Code section 7900 et seq.) and specifically priority placement as described in Regulation No. 7 of the national ICPC Regulations.¹ The Judicial Council amended and renumbered the rule as rule 5.616, effective January 1, 2007, and again amended the rule, effective January 1, 2013, in response to previous regulatory changes and to remove a section of the rule that had been invalidated by the Court of Appeal. (See *In re C.B.*, 188 Cal.App.4th 1024.)

Rationale for Recommendation

The ICPC is an interstate agreement that governs the placement of California children in other states, as well as the placement of out-of-state children in California. The ICPC Regulations are promulgated by the Association of Administrators of the Interstate Compact on the Placement of Children (AAICPC) to implement the ICPC. In 2012, the AAICPC amended Regulation No. 4, Residential Placement, and Regulation No. 5, Central State Compact Office. Also in 2012, the AAICPC adopted Regulation No. 12, Private/Independent Adoptions. Minor revisions to rule 5.616 are required to bring the rule into compliance with the most recent versions of the regulations.

Comments, Alternatives Considered, and Policy Implications

This proposal was circulated for comment as part of the spring 2013 invitation-to-comment cycle from April 19, 2013, to June 19, 2013. In addition to the standard mailing list for proposals—which includes appellate presiding justices, appellate court administrators, trial court presiding judges, judges, trial court executive officers, county counsel, district attorneys, parents’ and children’s attorneys, social workers, probation officers, and other juvenile court professionals—the committee sought comment from the ICPC Compact Administrator’s Office at the California Department of Social Services. The manager of the ICPC Compact Administrator’s Office forwarded the proposal to an e-mail list of ICPC liaisons in each of California’s counties. Five comments were received. All five commentators agreed with the proposal, without providing any additional comment or suggestions. No one disagreed with the proposal.

A chart listing the commentators and summarizing the comments and the committee’s response is attached at page 6.

¹ The regulations do not have a more formal name or citation but are simply known as the ICPC Regulations. They can be found in full at <http://icpc.aphsa.org/Home/regulations.asp>.

Implementation Requirements, Costs, and Operational Impacts

The changes to the ICPC Regulations impose implementation costs primarily on local and state child welfare agencies. The impact of these new requirements on the courts is minimal. This proposal creates no new hearings or new court processes. The changes in the proposed amended rule are minor, so courts are unlikely to incur any costs for training and implementation.

Attachments

1. Cal. Rules of Court, rule 5.616, at pages 4–5
2. Chart of comments, at page 6
3. Attachment A: ICPC Regulations 4, 5 and 12

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

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

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3 (a) * * *

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

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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;
10 or 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)–(2) * * *

28
29 (3) Cases in which out-of-state placement is proposed in order to place a child in
30 a residential facility or group home must meet all the requirements of
31 Regulation No. 4, except where inconsistent with California law.

32
33 (d) * * *

34
35 (e) **Placement of delinquent children in institutional care (Fam. Code, §§ 7901,**
36 **art. 6, and 7908; ICPC Reg. No. 4, § 2)**

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38 A child declared a ward of the court under Welfare and Institutions Code section
39 602 may be placed in an institution in another jurisdiction under the compact only
40 when:

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42 (1)–(2) * * *

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

(f)–(h) * * *

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

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

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

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

(j) * * *

SPR13-26**Juvenile Law: Interstate Compact on the Placement of Children Regulation Changes (Amend Cal. Rules of Court, rule 5.616)**

All comments are verbatim unless indicated by an asterisk (*)

	Commentator	Position	Comment	Committee Response
1.	California Department of Social Services By Rosalind Hyde, Manager, Out-of-State Placement Policy Unit and Deputy Compact Administrator, ICPC	A	[I] Sent [rule 5.616 proposal] to ICPC liaisons in all counties and several department personnel also had opportunity to review, and for those 11 counties that responded, all were okay as is, as am I.	No response required.
2.	Orange County Bar Association By Wayne R. Gross, President	A	No specific comment.	No response required.
3.	Superior Court of Los Angeles County	A	No specific comment.	No response required.
4.	Superior Court of San Diego County By Mike Roddy, Executive Officer	A	No specific comment.	No response required.
5.	Superior Court of Tulare County	A	In agreement with the proposed updated policy... This would ensure the most updated information is being utilized by the agency and County Clerk.	No response required.

Regulation No. 4

Residential Placement

Regulation No. 4, as adopted by the Association of Administrators of the Interstate Compact on the Placement of Children on April 20, 1983, was readopted in 1999 and amended in 2001, and is replaced by the following:

The following regulation, adopted by the Association of Administrators of the Interstate Compact on the Placement of Children, is declared to be in effect on and after October 1, 2012. Words and phrases used in this regulation have the same meaning as in the Compact, unless the context clearly requires another meaning. If a court or other competent authority invokes the Compact, the court or other competent authority is obligated to comply with Article V (Retention of Jurisdiction) of the Compact.

1. **Intent of this Regulation:** It is the intent of Regulation No. 4 to **provide for the protection and safety of children** being placed in a residential facility in another state. Residential facility is further defined in Section 3 below.

(a) **Approval by receiving state prior to placement:** Approval prior to placement is required for the protection of the child and the sending agency making the placement. **Sending agency includes** the parent, guardian, court, or agency ultimately responsible for the planning, financing, and placement of the child as designated in section I of the form 100A. (See Article II(b) or Regulation 3, Section 4. (62) for full definition of sending agency.)

(b) **Monitoring residential facility while child is placed:** While children are placed in the receiving state, the receiving state ICPC office shall keep a record of all children currently placed at the residential facility through the ICPC process. The receiving state ICPC office shall notify the sending state ICPC office of any significant change of status at the residential facility that may be “contrary to the interests of the child” (Article III(d) or may place the safety of the child at risk of which the receiving state ICPC office becomes aware.

(c) **Prevent children from being abandoned in receiving state:** Once the sending agency makes a residential facility placement, the sending agency remains obligated under Article V to retain jurisdiction and responsibility for the child while the child remains in the receiving state until the child becomes independent, self-supporting, or the case is closed in concurrence with both the receiving and sending state ICPC offices. The role of the sending and receiving state ICPC offices is to promote compliance with Article V that children are not physically or financially abandoned in a receiving state.

2. **Categories of children:** This regulation applies to cases involving children who are being placed in a residential facility by the sending agency, regardless of whether the child is under the jurisdiction of a court for delinquency, abuse, neglect, or dependency, or as a result of action taken by a child welfare agency.

Age restrictions: (Regulation No. 3 Section 1(b)) The ICPC articles and regulations do not specify an age restriction at time of placement, but rather use the broad definition of “child.” The sending state law may permit the extension of juvenile court jurisdiction and foster care maintenance payments to eligible youth up to age 21. Consistent with

Article V, such youth should be served under ICPC if requested by the sending agency and with concurrence of the receiving state.

(a) **Delinquent Child:** Placement by a sending agency involving a delinquent child must comply with Article VI, Institutional Care of Delinquent Children, which reads as follows: “A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with the opportunity to be heard prior to his being sent to such other party jurisdiction for institutional care and the court finds that:

(1) Equivalent facilities for the child are not available in the sending agency’s jurisdiction; and

(2) Institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.” (Hardship may apply to the child and his/her family.)

(b) **A child not yet placed in a residential facility in another state:** The primary application of this regulation is to request approval to place prior to placement at the residential facility.

(c) **Change of status for a child:** A new ICPC 100A and documents listed in Section 5 are required for a child who has been placed with prior ICPC approval, but now needs to move to a residential facility in this or another state, other than the child's state of origin.

(d) **Child already placed without ICPC approval:** For the safety and protection of all involved, placement in a residential facility should not occur until after the receiving state has approved the placement pursuant to Article III (d). When a child has been placed in a receiving state prior to ICPC approval, the case is considered a violation of ICPC, and the placement is made with the sending agency and residential facility remaining liable and responsible for the safety of the child. The receiving state may request immediate removal of the child until the receiving state has made a decision per ICPC, in addition to any other remedies available under Article IV. The receiving state is permitted to proceed with the residential facility request for approval, but is not required to proceed as long as the child is placed in violation of ICPC.

3. **Definition of “Residential Facility” covered by this regulation:**

(a) **Definition in ICPC Regulation No. 3** Section 4.(60) **Residential facility or residential treatment center or group home:** a facility providing a level of 24-hour, supervised care that is beyond what is needed for assessment or treatment of an acute condition. For purposes of the compact, residential facilities do not include institutions primarily educational in character, hospitals, or other medical facilities **(as used in Regulation 4, they are defined by the receiving state).** Residential facilities may also be called by other names in the receiving state, such as those listed under “Type of Care Requested on the ICPC 100A: Group Home Care, Residential Treatment Center, Child Caring Institution, and Institutional Care (Article VI), Adjudicated Delinquent.”

(b) **The type of license,** if any, held by an institution is evidence of its character but does not determine the need for compliance with ICPC. Whether an institution is

either generally exempt from the need to comply with the Interstate Compact on the Placement of Children or exempt in a particular instance is to be determined by the services it actually provides or offers to provide. In making any such determinations, the criteria set forth in this regulation shall be applied.

(c) **The type of funding source** or sources used to defray the costs of treatment or other services does not determine whether the Interstate Compact on the Placement of Children applies.

4. **Definition of institutional facilities not covered by this regulation:** In determining whether the sending or bringing of a child to another state is exempt from the provisions of the Interstate Compact on the Placement of Children by reason of the exemption for various classes of institutions in Article II(d), the following concepts and terms shall have the following meanings:

(a) **“Primarily educational institution”** means an institution that operates one or more programs that can be offered in satisfaction of compulsory school attendance laws, in which the primary purpose of accepting children is to meet their educational needs; and the educational institution *does not* do one or more of the following. (Conditions below would require compliance with this Regulation.)

(1) accepts responsibility for children during the entire year;

(2) provide or hold itself out as providing child care constituting nurture sufficient to substitute for parental supervision and control or foster care;

(3) provide any other services to children, except for those customarily regarded as extracurricular or co-curricular school activities, pupil support services, and those services necessary to make it possible for the children to be maintained on a 24-hour residential basis in the aforementioned school program or programs.

(b) **“Hospital or other medical facility”** means an institution for the acutely ill that discharges its patients when they are no longer acutely ill, which does not provide or hold itself out as providing child care in substitution for parental care or foster care, and in which a child is placed for the primary purpose of treating an acute medical problem.

(c) **“Institution for the mentally ill or mentally defective”** minors means a facility that is responsible for treatment of acute conditions, both psychiatric and medical, as well as such custodial care as is necessary for the treatment of such acute conditions of the minors who are either voluntarily committed or involuntarily committed by a court of competent jurisdiction to reside in it. Developmentally disabled has the same meaning as the phrase “mentally defective.”

(d) **Outpatient Services:** If the treatment and care and other services are entirely out-patient in character, an institution for the mentally ill or developmentally disabled may accept a child for treatment and care without complying with ICPC.

5. **Sending state case documentation for Residential Facility Request:** The documentation provided with a request for prompt handling shall be current and shall include:

(a) **Form ICPC-100A** fully completed (required for all residential facility requests).

(b) **Form ICPC-100B** required for all residential facility requests, if the child is already placed without prior approval in the receiving state.

(c) **Court or other authority to place the child:**

(1) **Delinquent child**—a copy of the court order indicating the child has been adjudicated delinquent stating that equivalent facilities are not available in the sending agency’s jurisdiction and that institutional care in the receiving state is in the best interest of the child and will not produce undue hardship. (See Article VI or Section 2.A above.)

(2) **Public agency child**—For public court jurisdiction cases, the current court order is required indicating the sending agency has authority to place the child or, if authority does not derive from a court order, a written legal document executed in accordance with the laws of the sending state that provides the basis for which the sending agency has authority to place the child and documentation that supervision is on-going or a copy of the voluntary placement agreement, as defined in Section 472(f)(2) of the Social Security Act executed by the sending agency and the child’s parent or guardian.

(3) **Child in the custody of a relative or legal guardian**—a current court order or legal document is required indicating the sending agency has the authority to place the child.

(4) **Parent placement (no court involvement)**—The 100A is required and must be signed by the sending agency with the box checked under legal status indicating the parent has custody or guardianship and any additional documents required by the sending or receiving state.

(d) **Letter of acceptance from the residential facility:** For some receiving states this is a mandatory document for all placement requests, including those submitted by a parent or guardian. It provides the receiving state ICPC office with indication that the residential facility has screened the child as an appropriate placement for their facility.

(e) **A current case history for the child:** (optional for placements requested under 5. (c) (3) and (4)), including custodial and social history, chronology of court involvement, social dynamics and a description of any special needs of the child.

(f) **Service (case) plan:** (optional for placements requested under 5.C(3) and (4))—A copy of the child’s case or service or permanency plan and any supplements to that plan, if the child has been in care long enough for a permanency plan to be required.

(g) **Financial and medical plan:** A written description of the responsibility for payment of the cost of placement of the child in the facility, including the name and address of the person or entity that will be making the payment and the person or entity who will be otherwise financially responsible for the child. It is expected that the medical coverage will be arranged and confirmed between the sending agency and the residential facility prior to the placement.

(h) **Title IV-E eligibility verification:** (not required for parent placements)—An explanation of the current status of the child’s Title IV-E eligibility under the Federal Social Security Act and Title IV-E documentation, if available. Documentation must be provided before placement is approved.

(i) **Placement Disruption Agreement:** Some states may require a signed Placement Disruption Agreement indicating who will be responsible for the return of the child to the sending state if the child disrupts or a request is made for the child’s removal and return to the sending state.

6. **Methods for transmission of documents:** Some or all documents may be communicated by express mail or any other recognized method for expedited communication, including FAX and electronic transmission, if acceptable by both the sending and the receiving state. The receiving state shall recognize and give effect to any such expedited transmission of an ICPC-100A and 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 or duly certified copies of any legal documents if it considers them necessary for a legally sufficient record under its laws. All such transmissions must be sent in compliance with state laws and regulations related to the protection of confidentiality.

7. **Decision by receiving state to approve or deny placement resource (100A).**

(a) **Receiving state decision process:** The receiving state ICPC office reviews the child specific information and the current status of the residential facility. The receiving state ICPC office approves or denies the placement based on a determination that “the proposed placement does not appear to be contrary to the interests of the child” (ICPC Article III(d)). The ICPC office may as part of its review process verify that the residential facility is properly licensed and not under an investigation by law enforcement, child protection, or licensing staff for unfit conditions or illegal activities that might place the child at risk of harm.

(1) Receiving state ICPC office may check to make sure the child is an appropriate match for the category of residential facility program.

(2) Receiving state ICPC office may check with the residential facility program to ensure that the request to place the child has been fully reviewed and officially accepted before ICPC approval is granted.

(b) **Time frame for final decision:** Final approval or denial of the placement resource request shall be provided by the receiving state compact administrator in the form of a signed ICPC 100A as soon as practical, but no later than three (3) business days from receipt of the complete request by the receiving state ICPC office. It is recognized that some state ICPC offices must obtain clearances from child protection, residential facility licensing and law enforcement before giving approval for a residential facility placement.

(c) **Expedited communication of decision:** If necessary or helpful to meet time requirements, the receiving state ICPC office may communicate its determination pursuant to Article III(d) to the sending agency’s state Compact Administrator by FAX or other means of electronic transmission, if acceptable to both receiving and sending state. 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 ICPC100A) shall be mailed, sent electronically, if acceptable, or otherwise sent promptly to meet Article III(d) written notice requirements.

(d) **Authority of receiving state to make final decision:** The authority of the receiving state is limited to the approval or denial of the placement resource. The receiving state may approve or deny the placement resource if the receiving state Compact Administrator finds based upon the review of the child specific information and on the review of the current status of the residential facility, “the proposed placement does not appear to be contrary to the interests of the child.” (ICPC Article III.(d))

(e) **Emergency Residential Facility Placement Temporary Decision:** Occasionally residential facility placements need to be made on an emergency basis. In those limited cases, sending and receiving state offices may, with mutual agreement, proceed to authorize emergency placement approval. Such emergency placement decision must be made within one business day or other mutually agreed timeframe, based upon receipt by the receiving state of the ICPC-100A request and any other document required by the receiving state to consider such emergency placement; e.g., a financial medical plan and a copy of a court order or other authority to make the placement. If emergency placement approval is temporarily granted, the formal ICPC placement approval will not be final until there has been full compliance with Sections 5 and 7 of this regulation.

8. **Authority of sending agency:** When the receiving state has approved a placement resource, the sending agency has the final authority to determine whether to use the approved placement resource in the receiving state. The receiving state ICPC-100A approval for placement in a residential facility expires thirty calendar days from the date the 100A was signed by the receiving state. The thirty (30) calendar day timeframe can be extended upon mutual agreement between the sending and receiving state ICPC offices.

9. **Submission of ICPC-100B:** Upon determination by the sending agency to use the approved resource, the sending agency is responsible for filing an ICPC-100B Notice of Placement with the Sending State ICPC office within three (3) business days of the actual placement. That notice is to be submitted to the receiving state ICPC office, who is to forward the ICPC-100B to the residential facility within five (5) business days of receipt of the ICPC-100B.

10. **Supervision Expectations:**

(a) **Residential Facility:** The residential facility is viewed as the agency responsible for the 24-hour care of a child away from the child’s parental home. In that capacity the residential facility is responsible for the supervision, protection, safety, and well-being of the child. The sending agency making the placement is expected to enter into an agreement with the residential facility as to the program plan or expected level of supervision and treatment and the frequency and nature of any written progress or treatment reports.

(b) **Receiving state local child welfare workers and probation staff are not expected to provide any monitoring or supervision** of children placed in residential facility programs. The one exception are those children who may become

involved in an incident or allegation occurring in the receiving state that may involve the receiving state law enforcement, probation, child protection or, ultimately, the receiving state court.

(c) **“Sending” agency making placement:** The frequency and nature of monitoring visits by the sending agency or individual making the placement are determined by the sending agency in accordance with applicable laws.

11. **Return of child to sending state at the request of receiving state:**

(a) **Request to return child to sending state at time of ICPC denial of placement:** If the child is already placed in the receiving state residential facility at the time of the decision, and the receiving state Compact Administrator has denied the placement, then the receiving state Compact Administrator may request the sending state ICPC office to facilitate with the sending agency for the return of the child as soon as possible or propose an alternative placement in the receiving state as provided in Article V(a) of the ICPC. The alternative placement resource must be approved by the receiving state before placement is made. Return of the child shall occur within five (5) business days from the date of notice for removal unless otherwise agreed upon between the sending and receiving state ICPC offices.

(b) **Request to return child to sending state after receiving state ICPC had previously approved placement:** Following approval and placement of the child in the residential facility, if the receiving state Compact Administrator determines that the placement “appears to be contrary to the interests of the child,” then the receiving state Compact Administrator may request that the sending state ICPC office facilitate with the sending agency for the return of the child as soon as possible or propose an alternative placement in the receiving state as provided in Article V(a) of the ICPC. That alternative placement resource must be approved by the receiving state before placement is made. Return of the child shall occur within five (5) business days from the date of notice for removal, unless otherwise agreed upon between the sending and receiving state ICPC offices.

The receiving state ICPC office’s request for removal may be withdrawn if the sending agency arranges services to resolve the reason for the requested removal and the receiving and the sending state Compact Administrators mutually agree to the plan.

12. Words and phrases used in this regulation have the same meanings as in the Compact, unless the context clearly requires another meaning.

13. This regulation was amended pursuant to Article VII of the Interstate Compact on the Placement of Children by action of the Association of Administrators of the Interstate Compact on the Placement of Children at its annual meeting May 4 through 7, 2012; such amendment was approved on May 5, 2012 and is effective as of October 1, 2012.

Regulation No. 5**Central State Compact Office**

Regulation No. 5, ("Central State Compact Office"), as first effective April 20, 1982, amended as of April 1999 and April 2002, is amended to read as follows:

1. It shall be the responsibility of each state party to the Interstate Compact on the Placement of Children to establish a procedure by which all Compact referrals from and to the state shall be made through a central state compact office. For those states that have decentralized specific activities regarding Compact referrals from the central state compact office to a county, local office, or designated agency, the county, local office, or designated agency shall have the same authority and responsibility with respect to those specific activities regarding Compact referrals as if it were the central state compact office. The Compact office shall also be a resource for inquiries into requirements for placements into the state for children who come under the purview of this Compact.

2. The Association of Administrators of the Interstate Compact on the Placement of Children deems certain appointments of officers who are general coordinators of activities under the Compact in the party states to have been made by the executive heads of states in each instance wherein such an appointment is made by a state official who has authority delegated by the executive head of the state to make such an appointment. Delegated authority to make the appointments described above in this paragraph will be sufficient if it is either: specifically described in the applicable state's documents that establish or control the appointment or employment of the state's officers or employees; a responsibility of the official who has the delegated authority that is customary and accepted in the applicable state; or consistent with the personnel policies or practices of the applicable state. Any general coordinator of activities under the Compact who is or was appointed in compliance with this paragraph is deemed to be appointed by the executive head of the applicable jurisdiction regardless of whether the appointment preceded or followed the adoption of this paragraph. No person within an agency so designated by the appropriate authority in a state to make recommendations for or against placement of a child, as evidenced by signing Form 100A, shall also conduct the home study upon which such recommendation is made.

3. Words and phrases used in this regulation have the same meaning as in the Compact, unless the context clearly requires another meaning.

4. This regulation was amended pursuant to Article VII of the Interstate Compact on the Placement of Children by action of the Association of Administrators of the Interstate Compact on the Placement of Children at its annual meeting May 4 through 7, 2012; such amendment was approved on May 5, 2012 and is effective as of July 1, 2012.

Regulation No. 12**Private/Independent Adoptions**

The following regulation, as adopted by the Association of Administrators of the Interstate Compact on the Placement of Children, is declared to be in effect on and after October 1, 2012. Words and phrases used in this regulation have the same meanings as in the Compact, unless the context clearly requires another meaning. If a court or other competent authority invokes the Compact, the court or other competent authority is obligated to comply with Article V (Retention of Jurisdiction) of the Compact.

1. Definitions:

(a) "Adoption" is the method provided by state law that establishes the legal relationship of parent and child between persons who are not so related by birth or some other legal determination, with the same mutual rights and obligations that exist between children and their birth parents. This relationship can only be termed "adoption" after the legal process for adoption finalization is complete.

(b) "Adoption Home Study" is a home study conducted for the purpose of placing a child for adoption with a placement resource. The adoption home study is the assessment and evaluation of a potential adoptive parent.

(c) "Adoption Facilitator" is an individual that is not licensed or approved by a state as an adoption agency, child-placing agency, or attorney, and who is engaged in the matching of birth parents with adoptive parents.

(d) "Independent Adoption" is an adoption arranged by a birth parent or other person or entity as designated, defined, and authorized by the laws of the applicable state or states, to take custody of and to place children for adoption.

(e) "Independent Adoption Entity" is any individual or entity authorized by the law of the applicable state or states to take custody of and to place children for adoption and to place children for adoption other than a state, county, or licensed private agency.

(f) "Intermediary" is any person or entity who is not an Independent Adoption Entity as defined above, but who acts for or between any parent and any prospective parent, or acts on behalf of either, in connection with the placement of the parent's child born in one state, for adoption by a prospective parent in a different state.

(g) "Legal Risk Placement" means a placement made preliminary to an adoption where the prospective adoptive parents acknowledge in writing that a child can be ordered returned to the sending state or the birth mother's state of residence, if different from the sending state, and a final decree of adoption shall not be entered in any jurisdiction until all required consents or termination of parental rights are obtained or are dispensed with in accordance with applicable law.

(h) "Legal Risk Medical Statement" is an acknowledgment by the prospective adoptive parents that known physical, emotional, or other relevant history of the child has been disclosed.

(i) "Private Agency" is a licensed or state approved agency whether domestic or international that has been given legal authority to place a child for adoption.

(j) "Private Agency Adoption" is an adoption arranged by a licensed or approved agency whether domestic or international that has been given legal custody or responsibility for the child including the right to place the child for adoption.

2. **Intent of Regulation No. 12:** The intent of this regulation is to provide guidance and ICPC requirements for the processing of private agency or independent adoptions. The ICPC process exists to ensure protection and services to children and families involved in executing adoptions across state lines and to ensure that the placement is in compliance with all applicable requirements. It is further the intent of Regulation No. 12 for the sending agency to comply with each and every requirement set forth in Article III of the ICPC that governs the placement of children therein.

3. **Application of Regulation No. 12:** This regulation applies to children being placed for private adoption or independent adoption whether being placed by a private agency or by an Independent Adoption Entity, as defined herein, or with the assistance of an Intermediary, as defined herein, and as in compliance with the other articles and regulations.

4. **Conditions for placement as stated in ICPC Article III:** Prior to sending, bringing, or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

- (a) The name, date, and place of birth of the child.
- (b) The identity and address or addresses of the parents or legal guardian. If the identity or address of a birth parent and/or legal parent is not provided, an explanation as to why it has not been provided shall be included to the extent that it is consistent with the laws of the applicable state.
- (c) The name and address of the person, agency, or institution to or with which the sending agency proposes to send, bring, or place the child.
- (d) A full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

Compliance with this requirement may be met by submission of the documentation required under Section 6 below.

5. **Legal and financial responsibility during placement:** For placement of a child by a private agency for independent adoption, the private agency shall be:

- (a) Legally responsible for the child, including return of the child to the sending state if the adoption does not occur during the period of placement.
- (b) Financially responsible for the child absent a contractual agreement to the contrary or a statement by the prospective adoptive parent or parents that they will assume financial responsibility.

6. Sending agency or party case documentation required with ICPC-100A private agency/independent adoption request:

(a) For placement by a private agency or independent entity, the required content to accompany a request packet for approval shall include all of the following:

- (1) ICPC-100A: Form requesting ICPC approval to make placement;
- (2) Cover letter: A request for approval signed by the person requesting approval identifying the child, birth parent(s), the prospective adoptive parent(s), a statement as to how the match was made, name of the intermediary, if any, and the name of the supervising agency and address;
- (3) Consent or relinquishment: signed by the parents in accordance with the law of the sending state, and, if requested by the receiving state, in accordance with the laws of the receiving state. If a parent is permitted and elects to follow the laws of a state other than his or her state of residence, then he or she should specifically waive, in writing, the laws of his or her state of residence and acknowledge that he or she has a right to sign a consent under the law of his or her state of residence. The packet shall contain a statement detailing how the rights of all parents shall be legally addressed;
- (4) Certification by a licensed attorney or authorized agent of a private adoption agency or independent entity that the consent or relinquishment is in compliance with the applicable laws of the sending state, or where requested, the laws of the receiving state;
- (5) Verification of compliance with Indian Child Welfare Act (25 U.S.C. 1901, et. seq.);
- (6) Legal risk acknowledgement signed by the prospective adoptive parents, if applicable in either the sending or receiving state;
- (7) Statement of authority: A copy of the current court order pursuant to which the sending agency has authority to place the child or, if the authority does not derive from a court order, a statement of the basis on which the sending agency has authority to place the child and documentation that supervision is on-going;
- (8) Current case history for the child, including custodial and social history, chronology of court involvement, social dynamics, education information (if applicable), and a description of any special needs of the child. If an infant, at a minimum, a copy of the medical records of the birth and hospital discharge summary for the child, if the child has been discharged;
- (9) Foster home license: If the receiving state placement resource previously lived in the sending state and that state has required licensure, certification, or approval, a copy of the most recent license, certificate, or approval of the qualification of the placement resource(s) and/or their home showing the status of the placement resource as a qualified placement resource, if available. If the receiving state placement resource was previously licensed, certified, or approved as a foster or adoptive parent in the sending state and such license, certificate, or approval was involuntarily revoked, a statement of when such revocation occurred and the reasons for such revocation;

- (10) Adoptive home study or approval: A copy of the most recent adoption home study or approval of the prospective adoptive family must be provided, including, in accordance with the law of the receiving state, verification of compliance with federal and state background clearances, including FBI fingerprint and Child Abuse/Neglect clearances and Sex Offender Registry clearance, a copy of any court order approving the adoptive home (if entered), and a statement by the person or entity that the home is approved or a revised current home study update if the home study is more than 12 months old;
- (11) A copy of the Order of Appointment of Legal Guardian, if applicable;
- (12) Affidavit of Expenses, if applicable; and
- (13) Copy of sending agency's license or certification, if applicable;
- (14) Biological parents' information—social history, medical history, ethnic background, reasons for adoption plan, and circumstances of proposed placement. If the child was previously adopted, the adoptive parents shall provide the information set forth in this section for the biological parents, if available;
- (15) A written statement from the person or entity that will be providing post-placement supervision (may be included in adoption home study) acknowledging the obligation to provide post-placement supervision; and
- (16) Authority for the prospective adoptive parents to provide medical care, if applicable.
- (b) If a home study is completed by a licensed private agency in the receiving state, the sending state shall not impose any additional requirements to complete the home study that are not required by the receiving state unless the adoption is finalized in the sending state.
7. **Authorization to travel**: Additional documents may be requested
- (a) Except as set forth herein, the child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child. Art. III(d).
- (b) The sending and receiving state ICPC office may request additional information or documents prior to finalization of an approved placement. Travel by the prospective adoptive parents into the receiving state with the child shall not occur until the required content of the request packet for approval has been submitted, received and reviewed by the sending and receiving ICPC offices and approval to travel has been given, provided, however, a receiving state may, at its sole discretion, approve travel while awaiting provision of additional documentation requested.
8. **Approval by the receiving state ICPC office**: A provisional or final approval for placement must be obtained in writing from the receiving state ICPC office in

accordance with the Interstate Compact on the Placement of Children. A signed Form 100A must be provided by the receiving state if the writing was in any other form. In any event, approval or denial must be given within three (3) business days of the receipt of the completed packet by the receiving state Compact Administrator.

9. Upon placement of a child by the sending agency following approval by the receiving state Compact Administrator, the sending agency shall, within five (5) business days of placement of the child, submit a completed 100B form confirming placement to the sending state Compact Administrator. Upon finalization of the adoption, if the sending agency is a private adoption agency, the private adoption agency shall provide to the sending state Compact Administrator a copy of the final judgment of adoption together with a 100B form for closure, which shall then be sent to the receiving state Compact Administrator within thirty (30) business days of entry of judgment. Upon finalization of an independent adoption, the sending agency or entity shall provide a copy of the final judgment of adoption together with a 100B form for closure within thirty (30) business days of entry of judgment to the sending state Compact Administrator who shall then send it to the receiving state Compact Administrator.

10. **Notification if child placed in violation of Article III:** A child placed into the receiving state prior to a decision for placement constitutes a violation of Article III and the laws respecting the placement of children of both states; subject to liability cited in Article IV. Penalty for Illegal Placement. All parties to the placement arrangements, including prospective resource parents, the sending agency, private licensed child-placing agency or legal counsel are responsible for notifying the appropriate ICPC authorities in both states of the circumstances and to coordinate action to provide for the safety and well-being of the child pending further action. If a child has been placed in the receiving state in violation of Article III, a Form 100B indicating the date the child was placed in the prospective adoptive home, together with items listed in Section 6 above, shall then be filed with the sending state Compact Administrator who shall forward them to the receiving state's Compact Administrator. If all required documents are provided, the sending state and the receiving state shall give due and appropriate consideration to placement as permitted under the sending and receiving state laws.

11. This regulation is adopted pursuant to Article VII of the Interstate Compact on the Placement of Children by action of the Association of Administrators of the Interstate Compact on the Placement of Children at its annual meeting May 4 through 7, 2012; such adoption was approved on May 6, 2012 and is effective as of October 1, 2012.