

II. ICPC OVERVIEW

Interstate Compact on the Placement of Children (ICPC) Family Code section 7900 et seq.

NATURE OF ICPC

Interstate compacts, like the Interstate Compact on the Placement of Children (ICPC), are formal agreements among and between states that have the characteristics of both statutory law and contractual agreements, enacted by state legislatures that adopt reciprocal laws that substantively mirror one another. In re C.B. (App. 4 Dist. 2010) 116 Cal.Rptr.3d 294, 188 Cal.App.4th 1024.

The ICPC has been enacted in all fifty states, the District of Columbia and the U.S. Virgin Islands. (In re Alexis O., supra, 157 N.H. at p. 784.) California adopted the ICPC in 1974. (Former Civ. Code, § 264 et seq.; Stats. 1974, ch. 956, § 1, p. 1992.) (In re Emmanuel R. (2001) 94 Cal.App.4th 452, 458.)

ICPC LEGISLATIVE PURPOSE AND POLICY

Fam. Code, § 7901

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

(a) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.

(b) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.

(c) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis on which to evaluate a projected placement before it is made.

(d) Appropriate jurisdictional arrangements for the care of children will be promoted.

Purpose of the Interstate Compact on the Placement of Children (ICPC) is to facilitate cooperation between participating states in the placement and monitoring of dependent children. In re C.B. (App. 4 Dist. 2010) 188 Cal.App.4th 1024; In re Emmanuel R. (App. 1 Dist. 2001) 94 Cal.App.4th 452, 458; In re Johnny S.

(App. 6 Dist. 1995) 40 Cal.App.4th 969, review denied; Tara S. v. Superior Court (App. 4 Dist. 1993) 13 Cal.App.4th 1834.

The provisions of this compact shall be **liberally construed to effectuate the purposes** thereof. Fam. Code, § 7901, Article 10.

ICPC APPLICABILITY

- It applies to out of **state placement in foster care** or as a **preliminary to a possible adoption**. (Fam. Code, § 7901 article 3 subd.(a)) **Placement is defined** as the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution but **does not include any institution caring for the mentally ill, mentally defective or epileptic or any institution primarily educational in character, and any hospital or other medical facility**. Fam. Code, § 7901, article 2, subd (d)
- The Interstate Compact on the Placement of Children (ICPC) is intended to **apply** only to interstate placements for **foster care and preliminary to possible adoption**, and **not to placements with parent**. In re John M. (2006) 141 Cal. App. 4th 1564, 1575. [Former Rule 1428 attempts to expand the application of the ICPC to placements with out of state parents. It thus conflicts with the statutory language, which controls over the rule. Thus, to the extent that (former) rule 1428 requires ICPC compliance in the case of an out of state placement with a parent, it is ineffective.] For questionable validity of current rule 5.616, see In re C.B. (App. 4 Dist. 2010) 188 Cal.App.4th 1024. (Post.)
- There is case law that ties applicability to state's payment of moving expenses: ICPC not applicable to placement of child with natural father out of state, absent showing that state was paying any expenses associated with child's move. Tara S. v. Superior Court (App. 4 Dist. 1993) 13 Cal.App.4th 1834.
- Both See *In re Johnny S.* (1995) 40 CA 4th 969; and *Tara S. v. Superior Court* (1993) 13 CA4th 1834. concluded that ICPC application is **not mandatory** when a California Court places a child with the minor's natural parent in another State. However, in *In re John M.* (2006) 141 Cal App 4th 1564, 1572-1573 the court noted the juvenile court should have ordered the Agency to obtain information about the out of state parent, that **nothing in the ICPC prevents the use of an ICPC evaluation as a means of gathering information before placing a child with such a parent**. In that situation, however, a favorable recommendation by the agency in the

receiving state is not a prerequisite to placement if the evaluation and other evidence show that the placement would not be detrimental. The appropriate investigation is a basic one, less rigorous than the investigation necessary for placement with a more distant relative such as a cousin. **(This would be a good alternative to follow pending legislative change.)**

- **Except for the prior notice provisions** in article 3 of the interstate compact on the placement of children, the compact applies when the juvenile court places a child with a parent in another compact state. 61 Op.Atty.Gen. 535, 12-8-78.
- Chapter 31-510 of California's "Child Welfare Services Program Manual of Policies and Procedures"⁴ provides that the ICPC's notice provisions apply to an out-of-state **placement in the home of a parent**. (Available at <<http://www.dss.cahwnet.gov/ord/entres/getinfo/pdf/cws4.pdf>> [as of Sept. 21, 2010].) In 1995, however, *In re Johnny S.*, supra, 40 Cal.App.4th 969, invalidated this provision: "These regulations were promulgated by an executive agency pursuant to its rulemaking authority. To the extent that regulations conflict with statutes or decisional law, the law controls the regulations. [Citation.] The ICPC ... requirement of advance approval from the receiving state for a placement is clearly limited to cases of placement 'in foster care or as a preliminary to a possible adoption....' [Citation.] Regulations requiring such advance approval for placement with a parent are neither binding nor persuasive in light of the limitations expressed in the statute itself." (*Johnny S.*, at p. 978.) *In re C.B.*, 188 Cal. App. 4th 1024, (Cal. Ct. App. 2010)
- Cal R. of Court Rule 5.616 was adopted on June 30, 2006 and became effective January 1, 2007. Under the Rule, ICPC is applicable for placement with an out of state parent when the court retains jurisdiction. However, after the rule was adopted but before it became effective, *In re John M.* was decided on August 16, 2006. (See above) Thus, Rule 5.616(b)(1) was essentially dead on arrival. *In re C.B.*, 188 Cal. App. 4th 1024, FN:5. (Cal. Ct. App. 2010) Although the *In re C.B.* basically said CRC 5.616 was invalid, the AOC has NOT changed that rule since *In re C.B.* was published.
- The ICPC Administrators have gotten buy-in from all 50 states and just adopted new regs which went into effect 10-1-11. The new regs are consistent with Cal R. of Court Rule 5.616, and makes it clearer that ICPC is not intended to apply to out-of-state parents when you're placing and dismissing; but ICPC is intended to apply to out-of-state parents when you're placing and keeping the case open for ongoing supervision.

- However, the new regs are just regs--not changes to the actual Compact, and not changes to CA's enabling statutes (Fam Code 7900 et seq). Under In re C.B. they are probably considered invalid to the extent that they expanded the scope of the Compact or statutory language.
- There is however a new case on the ICPC. Cite as 11 C.D.O.S. 14223 In re Z. K., a Person Coming Under the Juvenile Court Law. TEHAMA COUNTY DEPARTMENT OF SOCIAL SERVICES, Plaintiff and Respondent, v. L. K., Defendant and Appellant. Third Appellate District Filed October 25, 2011, Publication order November 23, 2011. It appears to say that the new regulation adopted recently by the Compact administrators do not change California law.
- Applicability of ICPC to placement with parent is now in a state of uncertainty.

LACK OF UNIFORMITY AMONG THE STATES ON ICPC APPLICABILITY TO PLACEMENT WITH OUT OF STATE PARENT

In re C.B. (2010) 188 Cal.App.4th 1024, 1026-27

One of the key elements of any interstate compact is uniformity in interpretation. Uniformity, however, is lacking with respect to the issue of whether the [Interstate Compact on the Placement of Children (ICPC)] applies to the placement of a child with a natural parent.

California cases have consistently held that the ICPC does not apply to an out-of-state placement with a parent. They have even gone so far as to invalidate statewide rules and regulations that purported to make the ICPC apply.

Other jurisdictions that have taken the same position include **Arkansas** (Ark. Dept. of Human Servs. v. Huff (2002) 347 Ark. 553, 562–564 [65 S.W.3d 880, 886–888]), **New Hampshire** (In re Alexis O. (2008) 157 N.H. 781, 788–791 [959 A.2d 176, 182–185]), **New Jersey** (State, DYFS v. K.F. (2002) 353 N.J.Super. 623, 631–636 [803 A.2d 721, 726–729]), **Washington** (In re Dependency of D.F.-M. (2010) 157 Wash.App. 179, 182–191 [236 P.3d 961]), and **the Third Circuit** (McComb v. Wambaugh (3rd Cir. 1991) 934 F.2d 474, 481).

This brings California into conflict with those jurisdictions holding that the ICPC does apply to an out-of-state placement with a parent. These include **Alabama** (D.S.S. v. Clay Co. Dept. of Human Res. (Ala.Civ.App. 1999) 755 So.2d 584, 590), **Arizona** (Arizona Dept. of Economic Sec. v. Leonardo (2001)

200 Ariz. 74, 79–83 [22 P.3d 513, 518–522]), **Delaware** (Green v. Div. of Family Servs. (2004) 864 A.2d 921, 926–928), **Massachusetts** (Adoption of Warren (1998) 44 Mass.App.Ct. 620, 623–624 [693 N.E.2d 1021, 1024–1025]), **Mississippi** (K.D.G.L.B.P. v. Hinds County DHS (Miss. 2000) 771 So.2d 907, 913), **New York** (Faison v. Capozello (2008) 50 A.D.3d 797, 797–798 [856 N.Y.S.2d 179, 179–180]), and **Oregon** (State ex rel. Juvenile Dept. of Clackamas County v. Smith (1991) 107 Or.App. 129, 132, fn. 4 [811 P.2d 145, 147]).FN:1

FN:1. **Florida can't seem to make up its mind.** (Compare State, Dept. of Children & Family Services v. L.G. (Fla.App. 2001) 801 So.2d 1047, 1051–1052 [First Dist.], with H.P. v. Department of Children & Fam. (Fla.App. 2003) 838 So.2d 583, 585–586 [Fifth Dist.] and Department of Children & Families v. Benway (Fla.App. 1999) 745 So.2d 437, 439 [Fifth Dist.] .)

The lack of uniformity is dysfunctional, that courts and rule makers have not been able to fix it, and hence that it may call for a multistate legislative response.

PLACEMENT WITH OUT OF STATE RELATIVES

Juvenile court's placement of minor with an out-of-state relative without information regarding stability, safety or even existence of home to which minor was sent violated interstate compact on placement of children. In re Eli F. (App. 3 Dist. 1989) 212 Cal.App.3d 228.

ICPC CONDITIONS FOR PLACEMENT

Fam. Code, § 7901 article 3

(a) No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for unless the sending agency shall **comply with each and every requirement set forth in this article and with the applicable laws of the receiving state** governing the placement of children therein.

(b) Before 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:

- (1) The name, date, and place of birth of the child.
- (2) The identity and address or addresses of the parents or legal guardian.
- (3) 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.
- (4) A full statement of the reasons for the proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

(c) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to paragraph (b) of this article **may request** of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive therefrom, **supporting or additional information** as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

(d) 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.**

Note that since the ICPC does not apply to placement with parents, an ICPC home study recommending against placement with the father by the receiving state may be disregarded by the juvenile court. In re Emmanuel R. (App. 1 Dist. 2001) 94 Cal.App.4th 452.

ICPC MEMBERSHIP

Fam. Code, § 7901

ICPC Article 9. Enactment and Withdrawal

This compact shall be **open to joinder by any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and, with the consent of Congress, the government of Canada or any province thereof.** It shall become effective with respect to any of these jurisdictions when that jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until two years after the effective date of the statute and until written notice of the withdrawal has been given by the withdrawing state to the Governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties, and obligations under this compact of any sending agency therein with respect to a placement made before the effective date of withdrawal.

- Under the ICPC, a member State is required to comply with the requirements set forth in the Compact and with the applicable laws of the receiving State. Family Code Section 7901, art. 3, subd. (a). In re C.B., 188 Cal. App. 4th 1024, (Cal. Ct. App. 2010)

SENDING STATE CONTINUING JURISDICTION AND FINANCIAL RESPONSIBILITY

- Continuing Jurisdiction of sending state: The **sending agency shall retain jurisdiction** over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment, and disposition of the child which it would have had if the child had remained in the sending agency's state, **until the child is adopted, reaches majority, becomes self-supporting, or is discharged with the concurrence of the appropriate authority in the receiving state.** That **jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law.** (Fam. Code section 7901)
- A writ of mandate will lie to compel a juvenile court to reassume jurisdiction that it had terminated contrary to the provisions of the interstate compact on the placement of children. 61 Op.Atty.Gen. 535, 12-8-78.
- **The sending agency shall continue to have financial responsibility** for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein. Fam. Code, § 7901 Article 5 (a) However, **nothing is to prevent the agency in the receiving state from discharging financial responsibility** for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in paragraph (a) of this article. Fam. Code, § 7901 Article 5(c).
- **Interstate agreement to provide services:** When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of that case by the latter as agent for the sending agency. Fam. Code, § 7901 Article 5(b)
- Nothing in this compact shall be construed to prevent a **private charitable agency** authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state. Fam. Code, § 7901 Article 5(c)

ICPC RULES AND REGULATIONS

- **Compact Administrators have power jointly to promulgate rules and regulations:** The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities (Compact Administrator) under this compact in his or her jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have

power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact. Fam. Code, § 7901, Article 7.

- Various rule-making bodies, however, have battled to extend the ICPC to a placement with a parent. One such body is the Association of Administrators of the Interstate Compact on the Placement of Children (the Association). The ICPC authorizes the Association "to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact." (Fam. Code, § 7901, art. 7; see also <<http://icpc.aphsa.org/Home/about.asp>> [as of Sept. 21, 2010].) In 1978, the Association adopted its regulation III. (Available at Texas Dept. of Family & Protective Svcs., Child Protective Services Handbook, Appendix 9110-B, <http://www.dfps.state.tx.us/handbooks/CPS/Files/CPS_px_9110b.jsp> [as of Sept. 21, 2010].) In re C.B., 188 Cal. App. 4th 1024, (Cal. Ct. App. 2010)
- California's "Child Welfare Services Program Manual of Policies and Procedures" FN:4 The manual has the status of a statewide regulation. (Cal. Admin. Code, tit. 22, div. 2, pt. 1.) Chapter 31–510 of California's "Child Welfare Services Program Manual of Policies and Procedures also provide rules on ICPC. (Available at: <http://www.dss.cahwnet.gov/ord/entres/getinfo/pdf/cws4.pdf>) In re C.B., 188 Cal. App. 4th 1024, (Cal. Ct. App. 2010)
- To the extent that regulations conflict with statutes or decisional law, the law controls the regulations. (In re Johnny S. (App. 6 Dist. 1995) 40 Cal.App.4th 969, 978, review denied.) In re C.B., 188 Cal. App. 4th 1024, (Cal. Ct. App. 2010)

ICPC DOES NOT ALLOW CONDITIONAL ORDERS

In keeping with goal of protecting receiving states, Interstate Compact on Placement of Children (ICPC) prohibits conditional or contingent placement orders. In re Emmanuel R. (App. 1 Dist. 2001) 94 Cal.App.4th 452.

If a state sends a child into a home in another state for placement prior to completion of procedures required under Interstate Compact on Placement of Children (ICPC), the “sending” is equivalent to a conditional or contingent placement barred by the ICPC. In re Emmanuel R. (App. 1 Dist. 2001) 94 Cal.App.4th 452.

When prior home study of out-of-state parent pursuant to Interstate Compact for Placement of Children (ICPC) recommends against placement with that parent,

conditional or contingent placement orders disguised as “visitation” with that parent are prohibited under ICPC. In re Emmanuel R. (App. 1 Dist. 2001) 94 Cal.App.4th 452.

Juvenile court improperly authorized visit between child and her cousins in distant state where court simultaneously rendered order placing child with cousins contingent upon completion of requirements under Interstate Compact on Placement of Children (ICPC) as authorization amounted to placement order and ICPC did not permit contingent or conditional orders. In re Luke L. (App. 3 Dist. 1996) 44 Cal.App.4th 670.

ICPC AND OUT OF STATE VISITS

By its own terms, Interstate Compact on Placement of Children (ICPC) governs only the “placement” of dependent children across state lines and does not apply to mere visits. In re Emmanuel R. (App. 1 Dist. 2001) 94 Cal.App.4th 452.

Interstate Compact on Placement of Children (ICPC) had no application to juvenile court order authorizing visits by defendant child to father in another state; court limited the longest of those visits to no more than 4 weeks in accordance with presumption under applicable regulation that a stay no longer than 30 days constituted a visit rather than a placement, and court did not order visitation as a preliminary step toward placement, but merely to provide contact of short duration between child and father. In re Emmanuel R. (App. 1 Dist. 2001) 94 Cal.App.4th 452.

Visitation between parents and a child who was been declared dependent of the court may be seen as an element critical to promotion of the parents' interest in the care and management of their children, even if actual physical custody is not the outcome. In re Emmanuel R. (App. 1 Dist. 2001) 94 Cal.App.4th 452.