

**Interstate Compact on the  
Placement of Children**

**Idaho Assessment**

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## **I. Introduction**

The Interstate Compact on the Placement of Children (ICPC) provides uniform standards and procedures for placing children across state lines. The primary purposes of the Compact are to prevent children from being placed in unsafe homes and to help ensure that appropriate services are established for children in receiving states. The ICPC specifies the duties and responsibilities for sending and receiving states in interstate placement situations, providing clarification about matters related to jurisdiction and judicial oversight.<sup>1</sup>

The Safe and Timely Interstate Placement of Foster Children Act of 2006 (P.L. 109-239) revised the Social Security Act to require states receiving Title IV-E funding to meet certain additional requirements when placing foster children in other states. It provides that receiving states are required to complete home studies within 60 days of when they are requested. In addition, the Act established an assessment requirement for states who receive the basic Court Improvement Program (CIP) grant. As one of those states, Idaho is required to evaluate and report on the following four components of the ICPC process:

- Current state and federal laws governing interstate placements, to ensure that there are no legal barriers to timely interstate placements.
- Methods and strategies for information sharing between Idaho courts and courts in other states.
- Methods for allowing out-of-state parties to participate in child protection proceedings without requiring them to travel to Idaho.
- Methods for obtaining testimony from out-of-state parties and agencies without requiring them to travel to Idaho.

An assessment of ICPC cases in Idaho was recently conducted in order to meet this requirement. This report summarizes the results of the assessment. It includes an analysis of the four topics listed above as well as additional pertinent information about the role of Idaho courts in ICPC cases. The report concludes with recommendations for how to improve court practices related to the interstate placement process.

## **II. Methodology**

Three methods were used to conduct this assessment. First, an analysis of state and federal laws pertaining to the ICPC was undertaken as required by the Safe and Timely Interstate Placement of Foster Children Act of 2006. This analysis was completed by a professor who teaches at the University of Idaho School of Law and who is also a member of the Idaho Supreme Court Child Protection Committee, the CIP steering committee for Idaho.

Second, a set of questions related to ICPC were included in the statewide survey recently administered as part of a statewide assessment of the child protection process in Idaho. This survey was administered in the spring and the fall of 2007. Respondents included judges, public defenders, prosecuting attorneys, deputy attorneys general (DAGS), caseworkers, and Court Appointed Special Advocates (CASA) staff and volunteers.

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<sup>1</sup> Cecelia Fiermonte, *Interstate Placements: Applying the ICPC*, 21 CHILD L. PRAC. 65 (2002)

Third, key informant interviews were conducted in two phases. Interviewees were asked a set of questions related to ICPC during the above mentioned child protection assessment process, which occurred during the fall and winter of 2007. Interviewees included judges, attorneys, caseworkers, and CASA directors in five of Idaho counties: Ada, Canyon, Kootenai, Lemhi, and Madison. A second set of judge interviews were conducted during the spring of 2008. These interviews focused exclusively on ICPC. Ten magistrate judges were selected to participate based upon their caseloads and amount of experience with ICPC. In addition, Idaho's Statewide ICPC Administrator was interviewed on two separate occasions. The survey questionnaires and interview protocols used are included in Appendix A. An analysis of survey and interview data was completed by Idaho Supreme Court staff.

### **III. The Interstate Placement Process**

The basic ICPC process for public foster care/adoption cases is outlined in a flowchart included as Appendix B.<sup>2</sup> The process is initiated when a caseworker in the sending state sends an information packet to the compact administrator in the sending state. The packet must include a 100A form (official interstate compact placement request form) along with other pertinent documents including the custody order, the case plan, and the child's social and medical history.<sup>3</sup>

After reviewing it for completeness, the compact administrator in the sending state sends the packet to the compact administrator in the receiving state. The administrator in the receiving state reviews the packet to check for compliance with the laws of the receiving state and then sends it on to the local caseworker. The local worker has 60 days to complete a home study of the proposed placement and make a decision about whether the placement is contrary to the best interests of the child.<sup>4</sup>

Based on the recommendation of the local caseworker, the compact administrator in the receiving state makes a final determination about whether the proposed placement is contrary to the best interests of the child and sends notification to the compact administrator and local agency in the sending state. If the placement is approved, the child may be placed. Approval of the placement is valid for a six month period following official authorization by the receiving state compact administrator. If placement is not made within the six month period, the sending state is required to reapply for approval.<sup>5</sup>

Once a child is placed out-of-state, the sending state retains jurisdiction as well as legal and financial responsibility for the child until the child is adopted, reaches majority, becomes self-supporting, or until such time as the receiving state agrees to transfer jurisdiction. So long as the sending state has jurisdiction, it also has the authority to cause the child to be returned or transferred to a different placement.<sup>6</sup>

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<sup>2</sup> Included with permission from Erika Wainaina, Idaho Statewide ICPC Administrator.

<sup>3</sup> ICPC Regulation 1(4)(a). ICPC Regulations available at <http://icpc.aphsa.org/Home/regulations.asp>.

<sup>4</sup> P.L. 109-239, Sec. 4(a)(1)(C)

<sup>5</sup> ICPC Regulation 6(1)& (2)

<sup>6</sup> Idaho Code § 16-2101, art. V(a)

Once a child is placed out-of-state, the receiving state should maintain face-to-face contact with the family and send quarterly progress reports to the sending state. The sending state, which retains jurisdiction, continues to hold review hearings every six months per quarterly reports from the receiving state.<sup>7</sup>

## **IV. Legal Analysis**

### **A. The Idaho Child Protective Act**

The Idaho Child Protective Act (CPA) provides a comprehensive system for protecting children from abuse and neglect. Briefly, where the child is removed from the home, Idaho law requires a shelter care hearing within 48 hours of removal.<sup>8</sup> If it is determined that there is reason to believe that the child comes within the jurisdiction of the court as a result of abuse, neglect, abandonment, lack of a stable home environment, homelessness or because the court has taken jurisdiction over a sibling of the child under one of these grounds, then the child is placed in the temporary custody of the Idaho Department of Health and Welfare (the Department).<sup>9</sup> An adjudicatory hearing must be held within 30 days of the filing of a Petition under the CPA. If the court finds that the child is within the jurisdiction of the CPA at the adjudicatory hearing, the child is either returned to his or her home under protective supervision or legal custody is vested in the Department.<sup>10</sup>

Thirty days after the adjudicatory hearing a case plan hearing is held to review and approve the case plan proposed by the Department.<sup>11</sup> In addition the court must schedule review hearings at least every six months and may hold such hearings more frequently.<sup>12</sup> Finally, the court must hold a permanency hearing when the child has been in the Department's custody for one year at which the court reviews and approves the permanency plan proposed by the Department.<sup>13</sup>

### **B. Placement Authority**

Under the CPA, if the child is removed from his home, the primary responsibility for the placement of children is with the Idaho Department of Health and Welfare. The placement decision of the Department is subject to judicial review by the courts.

#### **1. The Department**

After a child is adjudicated to be within the jurisdiction of the Child Protective Act, the Magistrate Judge has three available options related to placement: protective supervision in the

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<sup>7</sup> There are no rules or regulations governing supervision by agencies in receiving states. However, according to Ericka Wainaina, Idaho Statewide ICPC Administrator, the 100A (placement request) generally includes an agreement that the receiving state will have monthly contact with the child and placement family and will submit quarterly reports.

<sup>8</sup> Idaho Code § 16-1609

<sup>9</sup> Idaho Code § 16-1603

<sup>10</sup> Idaho Code § 16-1619

<sup>11</sup> Idaho Code § 16-1621

<sup>12</sup> Idaho Code § 16-1622

<sup>13</sup> *Id.*

child's own home, vesting legal custody in the Department or vesting legal custody in another authorized agency.<sup>14</sup> An "authorized agency" is defined as:

[T]he department, a local agency, a person, an organization, corporation, benevolent society or association licensed or approved by the department or the court to receive children for control, care, maintenance or placement.<sup>15</sup>

If the Judge elects to place a child in the legal custody of the Department, as the legal custodian, then the CPA provisions regarding the "Powers and Duties of the Department" clarify that the Department has the duty to make the placement decision:

*The Department having been granted legal custody of a child, subject to the judicial review provisions of this subsection, shall have the right to determine where and with whom the child shall live, provided that the child shall not be placed outside the state without the court's consent. Provided however, that the court shall retain jurisdiction over the child, which jurisdiction shall be entered on any order or petition granting legal custody to the department and the court shall have jurisdiction over all matters relating to the child. The department shall not place the child in the home from which the court ordered the child removed without first obtaining the approval of the court.*<sup>16</sup>

The CPA definition of "legal custody" further underscores the Department's responsibility "[t]o have physical custody and control of the child, and to determine where and with whom the child shall live. . ."<sup>17</sup>

## 2. The Courts

Under Idaho law the responsibility of the court is to oversee the protection of children. The CPA contains a broad grant of oversight authority to the courts for the protection of children. Idaho Code § 16-1602 provides that:

The policy of the state of Idaho is hereby declared to be the establishment of a legal framework conducive to the judicial processing . . . of child abuse, abandonment and neglect cases, and the protection of any child whose life, health and welfare is endangered. At all times the child's health and safety shall be the primary concern. . . .<sup>18</sup>

Section 16-1629(8), which establishes the powers and duties of the Department, also emphasizes the role of the courts in reviewing the Department's placement decisions. Regarding out of state placement of the child, Idaho law requires the consent of the court although it does not establish a standard for the granting of such consent. In addition the CPA provides for continuing jurisdiction of the court over the child during the entire time of the placement: "Provided however, that the court shall retain jurisdiction over the child, which jurisdiction shall be entered on any order or petition granting legal custody to the department, and the court shall have jurisdiction over all

<sup>14</sup> Idaho Code § 16-1619(5) and I.J.R. 41.

<sup>15</sup> Idaho Code § 16-1602(5)(At the present time in Idaho, no private agency is licensed to have legal custody of children in care. All placements are made by the Department).

<sup>16</sup> Idaho Code §16-1629(8)(emphasis added).

<sup>17</sup> Idaho Code §16-1602(23).

<sup>18</sup> Idaho Code § 16-1602

matters relating to the child. The department shall not place the child in the home from which the court ordered the child removed without first obtaining the approval of the court.”<sup>19</sup>

This role in reviewing the Department’s actions regarding placement is underscored in the CPA provisions regarding the CPA decree. There the CPA provides that “[u]pon entering its decree the court shall consider any information relevant to the disposition of the child but in any event shall: . . . (b) Vest legal custody in the department . . . subject to full judicial review by the court of all matters relating to the custody of the child by the department . . .”<sup>20</sup>

To aid the court’s review of the Department’s disposition/placement decisions the CPA expressly requires that the Department provide any information necessary to the court. The CPA provides: “The department shall give to the court any information concerning the child that the court may at any time require, but in any event shall report the progress of the child under its custody at intervals of not to exceed six (6) months. . . .”<sup>21</sup>

The Idaho Courts have affirmed the primary responsibility of IDHW in making placement decisions for children within its custody.<sup>22</sup>

A comprehensive discussion of the Idaho CPA can be found in the *Idaho Child Protection Manual*.<sup>23</sup>

### **C. Interstate Placement of Children**

Idaho has adopted the Interstate Compact on the Placement of Children (“ICPC”).<sup>24</sup> The ICPC is a binding interstate agreement that has been ratified by all 50 states to govern the placement of children across state lines. The Compact requires that the ICPC administrator in the receiving state grant approval before the child can be sent there. The goal of the ICPC is to ensure that children are not sent across state lines to unsafe placements and to facilitate the provision of necessary services for children in their new home states. By delineating responsibilities of the sending and receiving states, the ICPC also protects states from being overburdened by placements referred from other states.<sup>25</sup>

The legislative findings made at the time that Idaho adopted the ICPC provide that:

[i]t shall therefore be the policy of this state, in adopting the Interstate Compact on the Placement of Children, to cooperate fully with the other states: (1) in furnishing public authorities in a receiving state with notice of the intention to place a child in the receiving

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<sup>19</sup> Idaho Code § 16-1629

<sup>20</sup> Idaho Code § 16-1619(5)(b).

<sup>21</sup> Idaho Code § 16-1629(9)

<sup>22</sup> See *In the Interest of Doe*, 134 Idaho 760, 9 P.3d 1226 (2000) (Doe 2000)(denying intervention by third parties to question the Department’s placement decision and reasoning “[o]nce the Department has legal custody of a child under the CPA, the Department and not the court has the authority to determine where the child should live...Even though the court retains jurisdiction over the child as long as state custody continues,...the CPA provides the court only limited authority to review the Department’s placement decisions.”).

<sup>23</sup> The *Manual* is available at <http://www.isc.idaho.gov/childapx.htm> .

<sup>24</sup> Idaho Code §§ 16-2101-2107.

<sup>25</sup> See Cecelia Fiermonte, *Interstate Placements: Applying the ICPC*, 21 CHILD L. PRAC. 65 (2002)

state; (2) in placing a child in a receiving state only after receiving notification from that receiving state as to suitability of the placement; and (3) in conforming with the applicable laws of the receiving state governing the placement of children therein.<sup>26</sup>

In order to facilitate the administration of interstate child placement, the ICPC provides for the appointment of a state Compact administrator, who, together with the administrators of the Compact in other participating states, is empowered to enact regulations to facilitate administration.<sup>27</sup> Pursuant to Idaho law, the ICPC administrator in Idaho is a gubernatorial appointee.<sup>28</sup>

The ICPC contains three important definitions that outline the scope of its coverage. Pursuant to the Compact a “sending agency” is:

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.<sup>29</sup>

A “receiving state” is defined as:

the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities for placement with private agencies or persons.<sup>30</sup>

Finally, a placement is defined by the ICPC 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, any hospital or other medical facility.<sup>31</sup>

The definition of “placement” is limited by Article VIII of the compact, which excludes from its reach situations in which a parent sends a child out of state to reside with a relative.<sup>32</sup> The definition of “placement” and the exclusion of interstate family-to-family placements has been

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<sup>26</sup> Idaho Code § 16-2101.

<sup>27</sup> Idaho Code 16-2102, art. VII. The state administrators are empowered to act jointly with similar officers in other states to “promulgate rules and regulations to carry out more effectively the terms and provisions of” the Compact. *Id.*

<sup>28</sup> Idaho Code 16-2103. Presently the Department requests gubernatorial appointment of a Deputy Director to serve as the Compact Administrator.

<sup>29</sup> Idaho Code 16-1202, art. II (b)

<sup>30</sup> Idaho Code 16-1202, art. II (c)

<sup>31</sup> Idaho Code 16-1202, art. II (d). ICPC Regulation 3(4) defines a “family free or boarding home” as “the home of a relative or unrelated individual whether or not the placement recipient receives compensation for care or maintenance of the child, foster care payments, or any other payments or reimbursements on account of the child’s being in the home of the placement recipient.” In addition the other exclusions for educational institutions, hospitals or other medical facilities, and institutions for the mentally ill or mentally defective are defined in ICPC Regulation 4.

<sup>32</sup> Article VIII provides specifically that “This compact shall not apply to: (a) the sending or bringing of a child into a receiving state by his parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or non-agency guardian in the receiving state . . .” Idaho Code 16-2102, art. VIII(a).

further explained in ICPC Regulation 3<sup>33</sup> which clarifies that a “placement” under the ICPC includes “the arrangement for the care of the child in the home of his parent, other relative or non-agency guardian in a receiving state when the sending agency is any entity other than a parent, relative, guardian or non-agency guardian. . . .”<sup>34</sup>

If a child is to be placed in another state the Department must first obtain the consent of the court for the out of state placement.<sup>35</sup> This requirement is independent of the ICPC. In addition pursuant to ICPC Article III(b), the Department must provide written notification to the receiving state of the intent to “send, bring, or place the child in the receiving state.”<sup>36</sup> The receiving state may request additional information supporting the out of state placement.<sup>37</sup> The child may not be sent until the Department has been notified in writing by the ICPC administrator in the receiving state that “the proposed placement does not appear to be contrary to the interests of the child.”<sup>38</sup>

When a child is sent to a receiving state, Idaho courts must retain jurisdiction over the child under the ICPC. The Compact requires that the retained jurisdiction be:

. . . 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.<sup>39</sup>

ICPC Regulation 7 provides for priority placement requests. Pursuant to the regulation a court on request of a party, the Department or on its own motion may request priority for the placement of a child. Priority placement may be requested under two circumstances. Priority is appropriate when the proposed placement is a close relative and the child is either under two years of age, is in an emergency shelter, or has spent a substantial amount of time in the home that is proposed for placement. Priority placement may also be ordered where the receiving state administrator has had the notice and documentation for over thirty business days and the sending agency has not received a notice regarding whether the child may be placed. The court must make and sign a finding under one of the two grounds that priority placement of the child is necessary. Where a court finds that priority placement is necessary, ICPC Regulation 7 provides a time frame for processing the placement request of approximately 30 days.<sup>40</sup>

The ICPC provides penalties for the illegal placement of children in violation of the Compact. Individual jurisdictions may penalize non-compliance under the laws of the state. Moreover, placement in violation of the Compact may constitute “full and sufficient grounds for the

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<sup>33</sup> The regulations adopted by the joint compact administrators are available online at <http://icpc.aphsa.org/Home/regulations.asp> .

<sup>34</sup> ICPC Regulation 3(1). The terms “guardian” and “non-agency guardian” are defined in ICPC Regulation 10.

<sup>35</sup> Idaho Code § 16-1629(8)(“ The Department having been granted legal custody of a child, subject to the judicial review provisions of this subsection, shall have the right to determine where and with whom the child shall live, provided that the child shall not be placed outside the state without the court’s consent.’)

<sup>36</sup> Idaho Code 16-2102, art. III(b)

<sup>37</sup> Idaho Code 16-2102, art. III(c)

<sup>38</sup> Idaho Code 16-2102, art. III(d). ICPC Regulation 6 provides that once the receiving state has authorized the placement, the child must be placed within six months. If the child is not placed within that time, the sending agency must ask for permission from the receiving state, although a new home study is not required.

<sup>39</sup> Idaho Code 16-1602, art. V(a)

<sup>40</sup> ICPC Regulation 7

suspension or revocation of a license, permit, or other legal authorization held by the sending agency which empowers or allows it to place or care for children.”<sup>41</sup>

Although the ICPC is mentioned in the *Idaho Child Protection Manual*, it is not discussed in any comprehensive fashion. In particular the Regulations are not mentioned. Likewise, the ICPC is not included in the Benchcards for Idaho judges in CPA cases.<sup>42</sup>

#### **D. Other Idaho Statutes and Rules Relevant to Interstate Placement**

##### 1. Termination of Parental Rights.

Idaho has amended its Termination of Parental Rights (“TPR”) statute to facilitate terminations where the parties may be located in different states. The TPR statute provides that in a consent to termination situation an Idaho court may rely on an affidavit, certificate or other showing of consent from a court of comparable jurisdiction.<sup>43</sup> It also provides that an Idaho court must accept a termination or relinquishment of parental rights from another state ordered by a court of competent jurisdiction in that state. These provisions eliminate the requirement of prior law that the consent to termination meet the specific requirements of the Idaho TPS statute and that the parent consenting to termination appear before an Idaho Court.

##### 2. Interstate Jurisdiction and Consultation.

Idaho has adopted the Uniform Child Custody Jurisdiction and Enforcement Act which provides for communication between judges in matters affecting jurisdiction.<sup>44</sup> This statutory provision facilitates the resolution of competing claims of jurisdiction between states.

##### 3. Telephonic hearings.

Idaho court rules provides for telephonic hearings in appropriate circumstances. Idaho Rule of Civil Procedure 7(b)(4) provides for the conduct of hearings telephonically. Telephonic or video teleconference hearings may be held on any motion other than a motion for summary judgment unless the parties stipulate otherwise. Telephonic hearings may be held on a motion to show cause hearing unless oral testimony is to be introduced. They may also be held for any other pretrial matter. Rule 7(b)(4) provides that the court shall cause minutes to be prepared, filed and served on all the parties. This provision permits hearings in interstate placement actions to proceed either telephonically or by video conference.<sup>45</sup>

#### **E. Recommendations**

In order to ensure better ICPC compliance and effective judicial oversight of out of state placements I recommend the following:

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<sup>41</sup> Idaho Code 16-2102, art. IV.

<sup>42</sup> The benchcards are available at <http://www.isc.idaho.gov/childapx.htm> . The Idaho Supreme Court Child Protection Committee has developed benchcards for Idaho judges covering each aspect of a Child Protective Act case.

<sup>43</sup> Idaho Code § 16-2005.

<sup>44</sup> Idaho Code § 32-11-110.

<sup>45</sup> Id. R. Civ. Pro. 7(b)(4)

- a. The Child Protection Committee should consider whether it would be appropriate to include in the CPA or the Idaho Juvenile Rules, a standard for the exercise of consent by the court for an out of state placement of the child. Current Idaho Law provides that the court must consent to out of state placement but does not provide such a standard.
- b. ICPC requirements and best practices should be integrated more thoroughly in the *Idaho Child Protection Manual*. Currently the *Child Protection Manual* does not contain a comprehensive discussion of the ICPC and the ICPC Regulations. Such comprehensive treatment of the ICPC would aid in the education and training of judges, lawyers and social workers on ICPC issues.
- c. A specific ICPC benchcard should be developed. The benchcard would provide a tool for judges to ensure they are aware of the ICPC procedures and requirements. In addition the existing benchcards should be revised to include references to the ICPC at all stages (particularly the earliest states) of a CPA case.

## **V. Analysis of Survey and Interview Data**

### **Frequency of ICPC Cases in Idaho**

According to survey and interview data, ICPC cases are rare in Idaho. Most interview respondents report that ten percent or less of their child protection caseload falls within the purview of ICPC. In larger counties, this number is slightly higher (15-20%). Of the 132 case files reviewed during the child protection reassessment, only 12 (or 9%) of them were ICPC cases. It is important to note that because ICPC cases are so infrequent, respondents have limited exposure to and knowledge of the ICPC process.

According to Erika Wainaina, Idaho Statewide ICPC Administrator, an estimated 600-700 ICPC cases are open in Idaho at any given time, with the majority of these being public foster care/adoption cases (rather than private cases). Up until August of 2007, there was no system for tracking ICPC cases. However, since that time, there has been an average of 25 new incoming and 11 new outgoing cases per month. Idaho is clearly much more of a “receiving state” than a “sending state.” At this time, no county-specific ICPC data are available.<sup>46</sup>

### **The Court’s Involvement in outgoing ICPC Cases**

In general, the role of courts in processing ICPC cases is fairly limited, and judicial oversight over Department activities related to ICPC is minimal. This may be changing somewhat, as judicial awareness about ICPC standards and procedures increases. Some judges report that their role in the ICPC process has expanded as they have become more educated about the court’s powers and duties in ICPC cases.

Judges interviewed were asked whether or not they actively inquire about potential out-of-state placements in child protection cases. Eight of the ten judges interviewed stated that they *do* inquire and that they typically do so early in the process. When judges were asked whether they are promptly notified of potential out-of-state placements once they are identified, most reported that it is difficult for them to know for sure, though most make the assumption that notification is prompt.

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<sup>46</sup> Info contained in this paragraph provided by Erika Wainaina, Idaho Statewide ICPC Administrator

All ten judges interviewed reported that they always inquire about progress made in the ICPC process once a placement has been identified.

All judges interviewed reported that in outgoing cases, they continue to hold regular review hearings, at least every six months. Many reported that they often hold reviews more frequently. It appears as though Idaho courts often have difficulty obtaining required reports from the Department in receiving states. According to interviewees, reports are typically never or rarely received, though a couple of judges indicated that Departments in some neighboring states are good about submitting reports. Idaho courts tend to get information second hand through written or oral reports from local caseworkers.

Only two judges reported that they have taken steps to try to obtain delinquent reports from receiving states. Both of these judges indicated that such steps would only be taken as a last resort. Most of those interviewed indicated that they tend to get all of the necessary information from local caseworker, but would prefer to receive information directly from the receiving state. One option available to judges who find it difficult to obtain timely reports from out-of-state caseworkers is to involve Idaho's Statewide ICPC Administrator, who can submit a request to the Administrator in the receiving state. Wainaina reports that in the past, this approach has been relatively effective.

Idaho judges generally perceive their role in ICPC cases to be minimal. Aside from asking follow-up questions of local caseworkers regarding progress in the ICPC process and requesting relevant information from local caseworkers at review hearings, the court's involvement is largely passive. In both incoming and outgoing cases, the courts rely heavily on agency workers to ensure that procedures are followed and that pertinent information is exchanged.

### **Information Sharing with Out-of-State Courts**

Data regarding information sharing between courts is somewhat mixed. According to 45% of survey respondents, Idaho courts voluntarily share information with out-of-state courts 90-100% of the time. Seventy-five percent of respondents reported that Idaho courts share information over half the time. On the other hand, 21% of respondents indicated that courts rarely or never share information. In addition, all of the judges interviewed indicated that they have rarely had occasion to share information with out-of-state courts related to either incoming or outgoing cases. In fact, only two judges reported ever having had contact with an out-of-state court.

There are a couple of possible explanations for the inconsistencies in responses. First, as indicated above, those practicing in the area of child protection tend not to be very experienced in or knowledgeable about ICPC processes, suggesting that some guesswork may have gone into answering the questions. It should also be noted that the majority of survey respondents either indicated that they did not know the answer to the questions or chose not to answer them. Although survey responses may reflect some degree of variation in practice between counties, more weight should be given to judge responses as they are based on firsthand experience.

Most judges indicated that although they rarely have occasion to communicate with out-of-state courts, they would not be opposed to sharing information in situations where there is a valid need to do so. One judge expressed concerns about whether such information sharing might be considered an ex parte communication.

## **Participation/Testimony from Out-of-State Parties**

Data related to out-of-state participation and testimony are similarly mixed, mostly likely due to reasons listed above. While around 53% of survey respondents reported that courts allow parties to participate in proceedings without traveling to Idaho most or all of the time, 24% reported that courts rarely or never allow this. Similarly, while 43% reported that courts allow out-of-state parties to testify without traveling to Idaho most or all of the time, 34% indicated that courts rarely or never allow this. Of the judges interviewed, half indicated that they have allowed parties to testify or otherwise participate without traveling to Idaho, but also reported that this practice is relatively rare. The remaining five judges reported that there has never been a need to allow out-of-state participation, though most expressed a willingness to allow it should the need ever arise.

For those judges who have allowed out-of-state participation, it has most commonly been to accommodate parents who are incarcerated in another state. However, caseworkers, GALs, attorneys, and court interpreters have reportedly also been allowed to participate telephonically.

## **Barriers to Timely Interstate Placements**

Survey respondents and interviewees were asked to identify what they perceive to be the greatest barriers to timely interstate placements. Many people chose not to answer or indicated that they were unsure what barriers exist. Many indicated that while they are aware that the process is often delayed, they are unable to identify specific factors contributing to delays.

Of those who did respond, the vast majority referred specifically to outgoing cases, reporting that the most significant barrier is the failure of receiving states to complete home studies in a timely manner. Wainaina agrees that this is the most common delay in outgoing cases. Generally, survey and interview respondent did not identify delays involved in incoming cases. However, Wainaina reports that the home study process is sometimes held up in incoming cases as well, citing delays in getting fingerprinting results, lack of cooperation from the resource family, and high case loads of caseworkers as primary reasons for the delays.

## **Miscellaneous Issues**

Our examination of the four required topic areas (legal analysis, information sharing, remote participation, and remote testimony) provided limited information. There simply has not been a great need for these practices, and the courts role in obtaining and exchanging information in ICPC cases is minimal.

However, a few unrelated issues emerged during the assessment, which are worth mentioning here. First, it appears as though Idaho courts may sometimes place children out of state without following ICPC procedures. Each of the ten judges interviewed indicated that they knew of at least one case in which children had been placed prior to the completion of a home study and approval of the placement. In addition, during the case file review which was recently conducted as part of the child protection reassessment, it was noted that in a few cases, it appeared as though out of state placements had taken place without the ICPC process being initiated at all. In these cases, it was not always clear what, if any, follow up occurred as there was not always further documentation in the file. It is important to note that many judges report experiencing tremendous frustration when working with receiving states to try to complete the ICPC process. During the

interview process, several judges expressed concerns about bureaucratic delays and complications related to conflicting laws and procedures between states. Out-going placements that are inconsistent with ICPC regulations are likely the result of procedural delays and legal barriers, which may necessitate the need to place permanency goals ahead of procedural requirements.

Second, there is some indication that Idaho courts may sometimes terminate jurisdiction prematurely in outgoing cases, without first getting concurrence from the receiving state. Wainaina reports that while this practice is rare, it does occur and is a primary concern for her. There is little evidence of this based on the judge interviews (though it should be noted that only a small percentage of Idaho magistrate judges were interviewed). All of those interviewed appeared to have a good understanding of when it is appropriate to terminate jurisdiction in outgoing cases.

The final issue involves the use of ICPC Regulation 7, a provision of ICPC that allows courts to expedite interstate placements in certain cases by requiring a receiving state to complete a home study within 30 days (see discussion include in the legal analysis). Regulation 7 can be a powerful tool for expediting priority placements when used appropriately. It is especially important in light of the delays that exist in getting home studies completed by receiving states. However, there seems to be a lack of awareness about the provision. Of the judges interviewed, most were unfamiliar with the provision, and only two had ever ordered a Regulation 7 priority placement.

## **VI. Conclusion and Recommendations**

This assessment highlights several key themes related to the role of Idaho courts in ICPC cases. First, there is no evidence of legal or procedural barriers preventing either information sharing between Idaho courts and other state courts or remote participation and testimony from out-of-state parties. Furthermore, these practices are generally viewed as permissible by Idaho courts. Second, ICPC cases are rare, and practitioners' exposure to the ICPC process is limited. As a result, judges, attorneys, and perhaps to a lesser extent, caseworkers, lack awareness about ICPC procedures, rules, and regulations. Third, the courts' role in ICPC procedures is minimal, especially relative to that of the Department. Though courts do oversee out-going interstate placements, the Department assumes primary responsibility for decision-making and case management related to interstate placements. Moreover, judicial oversight is hindered by inconsistencies in state rules and procedures governing interstate placements and by significant procedural delays unrelated to the courts' role in the process. Generally, to the extent that legal and procedural delays do exist, they seem to fall outside of the jurisdiction of state courts. Many of the major issues identified in this analysis may need to be resolved at the federal level.

There is no indication that Idaho needs to alter statutes, rules, or procedures concerning information sharing between courts nor participation and testimony from out-of-state parties. Furthermore, I can identify no changes to current judicial practices that might diminish delays in interstate placements. However, the assessment does highlight the need for increased awareness about ICPC requirements and regulations. Accordingly, I recommend that the Child Protection Committee develop a plan for offering a multidisciplinary ICPC training for judges, attorneys, caseworkers, and CASA (Court Appointed Special Advocates). In addition, magistrate judges should be trained specifically in statutory requirements and regulations pertaining to judicial oversight of interstate placements and the appropriate use of ICPC Regulation 7.

Our combined list of recommendations is as follows:

**Recommendation 1:** The Child Protection Committee should consider whether it would be appropriate to include in the CPA or the Idaho Juvenile Rules, a standard for the exercise of consent by the court for an out of state placement of the child. Current Idaho Law provides that the court must consent to out of state placement but does not provide such a standard.

**Recommendation 2:** ICPC requirements and best practices should be integrated more thoroughly in the *Idaho Child Protection Manual*. Currently the *Child Protection Manual* does not contain a comprehensive discussion of the ICPC and the ICPC Regulations. Such comprehensive treatment of the ICPC would aid in the education and training of judges, lawyers and social workers on ICPC issues.

**Recommendation 3:** A specific ICPC benchcard should be developed. The benchcard would provide a tool for judges to ensure they are aware of the ICPC procedures and requirements. In addition the existing benchcards should be revised to include references to the ICPC at all stages (particularly the earliest states) of a CPA case.

**Recommendation 4:** The Child Protection Committee should develop a plan for offering a multidisciplinary ICPC training for judges, attorneys, caseworkers, and CASA staff. In addition, magistrate judges should be trained specifically in statutory requirements and regulations pertaining to judicial oversight of interstate placements and the appropriate use of ICPC Regulation 7.

# **Appendix A**

### ICPC Survey Questions

1. In your experience as a (GAL, attorney, caseworker), have you ever had a case that falls within the purview of the Interstate Compact on the Placement of Children?
2. In your experience with cases involving an out-of-state placement, in what percentage of cases does the court in your county voluntarily share information with the other state?
3. In cases involving an out-of-state placement, in what percentage of cases are the necessary parties allowed to participate in the Idaho proceeding without traveling to Idaho?
4. In cases involving an out-of-state placement, in what percentage of cases does the court in your county allow testimony from agencies and parties from the other state without requiring them to travel to Idaho?
5. In your experience, what are the most significant barriers to the timely interstate placement of children?

### ICPC Interview Questions: Phase I

How often do child protection cases fall within the purview of the Interstate Compact for the Placement Children (ICPC)?

At what point in the process do interstate placement issues tend to arise?

What is your role (as a judge, caseworker, etc) in dealing with interstate placement issues?

What barriers or delays exist with regard to timely interstate placements?

What changes in the law, if any, are needed to expedite interstate placements?

What organizational or procedural changes are needed, if any, to expedite interstate placements?

## ICPC Interview Questions for Judges: Phase II

1. What percentage of your child protection caseload falls within the purview of ICPC?
  
2. Do you actively inquire about potential placements out-of-state? If so, when in the process?
  
3. If a potential out-of-state placement is identified for a child, is it generally brought to your attention? In general, how long after the potential placement has been identified is it brought to your attention? Do you inquire about progress in the ICPC process at subsequent hearings?
  
4. Are you aware of any cases where a child has been placed out-of-state without completing ICPC procedures?
  
5. What is the court's role once the child has been placed out-of-state? Do you continue to hold regular review hearings? Do you receive regular reports from the receiving state? If you do not receive regular reports from the receiving state, do you take any action to request the reports from the receiving state?
  
6. At what point do you terminate jurisdiction once a child has been sent out-of-state? Do you issue a court order terminating jurisdiction and closing the case?
  
7. What is the court's role, if any, in incoming cases?
  
8. Do you ever personally communicate with out-of-state parties or judges regarding either outgoing or incoming ICPC cases? If so, who have you communicated with and how?
  
9. Do you ever share information with courts in other states regarding either incoming or outgoing ICPC cases? If so, in what percentage of cases?

10. Do you ever allow out-of-state parties to participate in ICPC cases without traveling to Idaho? If so, in what percentage of ICPC cases do you allow this? How have parties participated? If not, would you be willing to allow out-of-state participation?

11. Do you ever allow out-of-state parties to testify at hearings in ICPC cases without traveling to Idaho? If so, in what percentage of ICPC cases? If not, would you be willing to allow out-of-state testimony?

12. Are you familiar with Regulation 7? Have you ever used Regulation 7 to expedite a case? If so, did the receiving state expedite the home study?

## **Appendix B**

**ICPC Process  
Public Foster Care/Adoptions**



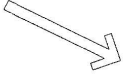
5 copies of the 100A sent from local with 3 copies of:	Custody/TPR orders Child's social history Case plan Financial/Medical plan Medical info for child and family
Sent from sending state ICPC to receiving state ICPC	



Receiving state ICPC receives packet, keeps one copy of everything, and sends one to local workers.  
Receiving state has 60 days from receiving the 100A to make a decision.

If approved: receiving state sends three copies of home eval to their ICPC.  
ICPC approves the 100A and sends to sending state ICPC. Sending ICPC notifies local and sends the approval.  
Child is placed. Sending state sends 100B with placement date  
If child NOT placed, the approval is valid for 6 months. 100B closure is sent from sending state.

If denied: receiving state sends 3 copies of home eval to their ICPC.  
ICPC denies the 100A and closes the case.  
Sending ICPC notifies local that placement may NOT be made.  
Case is closed



After a child is placed:  
Receiving state maintains monthly face-to-face visits and sends quarterly reports via ICPC channels



When child returns to Sending state, moves, or is adopted: 100B closure is sent from Sending state.