



Department of

**Children's Services**

# Interstate Placement of Children

## Exploring ICPC and Border Agreements

*2024 Court Improvement Program*

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# Interstate Compact on the Placement of Children (ICPC)

- **What is it?**

- **Developed to address the regulation of interstate placements of children in foster care.**
- **First draft submitted January 1960.**
- **By 1990, it was enacted by all 50 states, the District of Columbia, and the U.S. Virgin Islands.**
- **A revision was proposed in 2005. It must be enacted by 35 states to become binding law. As of May 2024, 18 states have approved the revision.**

# ICPC Goals

- To maximize opportunity for placement
- To maximize information for the receiving state
- To maximize information for the sending state
- To resolve jurisdictional conflicts
- To ensure protection and services for children placed across state lines for **foster care, temporary residential treatment, or preliminary to adoption**
- To address legal and financial responsibilities for the child post-placement

# ICPC Codification

- The ICPC contains **10 Articles** outlining the purpose, definitions, conditions of placement, and roles of the states.
- The articles are **identical** for all member states.
- The ICPC Articles provide **uniform guidelines and procedures** to ensure that placements across state lines promote the best interests of each child.
- T.C.A. §§ 37-4-201 *et seq.*

# The Articles

- Article I – Purpose and Policy
- Article II – Definitions
- Article III – Conditions for Placement
- Article IV – Penalty for Illegal Placement
- Article V – Retention of Jurisdiction
- Article VI – Institutional Care of Delinquent Children
- Article VII – Compact Administrator
- Article VIII – Limitations
- Article IX – Enactment and Withdrawal
- Article X – Construction and Severability

# The Regulations

- The ICPC Regulations are formulated by the Association of Administrators of the Interstate Compact on the Placement of Children (AAICPC), and they work to **clarify and formalize certain definitions, processes, and applications** in the ICPC.
- <https://aphsa.org/icpc-resources/>

# The Regulations

- No. 0.01 – Forms
- No. 1 – Conversion of Intrastate Placement into Interstate Placement; Relocation of Family Units
- No. 2 – Public Court Jurisdiction Cases: Placements for Adoption or Foster Care in Family Settings and/or with Parents, Relatives
- No. 3 – Definitions and Placement Categories: Applicability and Exemptions
- No. 4 – Residential Placement
- No. 5 – Central State Compact Office
- No. 6 – Permission to Place Child: Time Limitations, Reapplication
- No. 7 – Expedited Placement Decision
- No. 8 – Change of Placement Purpose
- No. 9 – Definition of a Visit
- No. 10 – Guardians
- No. 11 – Responsibility of States to Supervise Children
- No. 12 – Private/Independent Adoptions

# Regulation No. 2

- No. 2 – Public Court Jurisdiction Cases: Placements for Adoption or Foster Care in Family Settings and/or with Parents, Relatives
  - addresses when ICPC/supervision applies, referral documentation, timeframes, reconsideration, denial/disruption/return of child within 5 days
- ICPC applies to placement with a proposed caregiver for adoption, foster care, or with parents/relatives, including:
  - Children not yet placed,
  - Change of status for children already placed with ICPC approval, and
  - Child already placed without ICPC approval.
    - **This is a violation of ICPC.** The sending state bears full liability and responsibility for the safety of the child. The receiving state may request immediate removal of the child until an ICPC approval decision is made. Receiving state may, but is not required to, proceed with home study/decision process as long as placement remains in violation. Receiving state may, but is not required, to open a courtesy supervision case under Regulation No. 1.



# Regulation No. 2 – cont.

- ICPC Home Study does NOT have to be requested for placement with a parent from whom the child was not removed, IF AND ONLY IF:
  - The Court has no evidence parent is unfit, and
  - The Court does not seek evidence that parent is fit or unfit, and
  - The Court relinquishes jurisdiction over the child immediately upon placement.
- Receiving state has no responsibility for supervision or monitoring of these placements.
- Sending Court may request a courtesy check at discretion of receiving state.
- Sending Court may opt to comply with full ICPC Home Study.
  - Also see Regulation No. 3.

# Regulation No. 2 – cont.

- When the receiving state has APPROVED the placement:
  - The sending Court has final authority to determine placement.
  - Approval **expires in 6 months**.
  - Receiving state may revoke approval.
    - If the child has already been placed, the receiving state may demand return of the child to the sending state or movement to an alternative placement. Return/move must occur within 5 working days unless otherwise agreed by both states.
- When the receiving state has DENIED the placement:
  - The sending Court may request reconsideration within 90 days if the reason for denial has been remedied.
  - A reconsideration decision must be issued by the receiving state within 60 days.
  - The original denial stands if no request for reconsideration is submitted within 90 days, and a new ICPC request must be submitted for a later study.

# Regulation No. 3

- No. 3 – Definitions and Placement Categories: Applicability and Exemptions
  - ICPC APPLIES TO CERTAIN AGES:
    - Determined by sending state's law, **up to age 21**.
  - ICPC APPLIES TO THESE PLACEMENT CATEGORIES:
    - **Adoptions** (independent, private, or public) regardless of whether pre-adoptive parent has been granted full guardianship pursuant to surrender or termination of parental rights
    - Licensed or approved **foster homes** (relatives or non-relatives)
    - With **parents or relatives** when parent or relative not making placement (note exemption for non-offending parent)
    - **Group homes and residential facilities**, including placement of adjudicated delinquents

# Regulation No. 3 – cont.

- PLACEMENTS THAT **DO NOT** REQUIRE ICPC REQUESTS:
  - If exempted by Court and jurisdiction is released, with a non-offending parent from whom the child was not removed
  - By private individual with legal authority to place
    - Applies to sending AND receiving by the child's parent, stepparent, grandparent, adult sibling, adult aunt or uncle, or legal guardian
  - Pursuant to divorce, paternity, custody, or probate Court action when child is placed with parents, relatives, or non-relative persons
    - Only when the case is not regarding dependency, abandonment, abuse, and/or neglect
  - Pursuant to another Compact (e.g., ICJ)

# Regulation No. 4

- RESIDENTIAL FACILITY PLACEMENT:
  - ICPC applies when placement is sought by the parent, guardian, Court, or agency responsible for the planning, financing, and placement of the child.
  - Receiving state monitors\* placement facility and notifies sending state of any significant change of status at the residential facility.
  - Sending person, Court, or agency retains jurisdiction and responsibility until child becomes independent and self-supporting (or age 21) or until the case is closed with concurrence in both states
  - Placement of delinquent child must include Court finding that:
    - Equivalent facilities are not available in sending state
    - Institutional care is in the best interest of the child and will not produce undue hardship to the child or family
  - Placement made in violation of ICPC may result in request for immediate removal or courtesy oversight pending approval

# Regulation No. 4 – cont.

- RESIDENTIAL FACILITY, TREATMENT CENTER, OR GROUP HOME DEFINITION:
  - Facility providing 24-hour, supervised care that is beyond what is needed for assessment or treatment of an acute condition
  - Does not include primarily educational institutions, hospitals, or other medical facilities
  - The type of license, if any, held by the institution is evidence of its character but not determinative of need to comply with ICPC
  - The type of funding source does not determine whether ICPC applies

# Regulation No. 7

- EXPEDITED PLACEMENT DECISION
  - Applies only to proposed placement with a **parent, stepparent, grandparent, adult aunt or uncle, adult sibling, or legal guardian**
  - Applies only to Court cases involving child welfare agencies where the child has been removed from the parent
  - **Must also meet one of these criteria:**
    - Unexpected dependency due to sudden or recent incarceration, incapacitation, or death of a parent or guardian
    - Youngest child of sibling group is 4 years old or younger
    - Any child in the sibling group has a “substantial relationship” with the proposed placement (familial or mentoring role, more than cursory time spent with the child, and established more than a minimal bond)
    - Child is currently in an emergency placement\*

# Regulation No. 7 – cont.

- Does NOT apply if the child has already been placed in violation of ICPC unless
  - (1) a “visit” has been approved in writing by the receiving state and
  - an order was entered by the sending state Court authorizing the “visit” with a fixed return date (see Reg. No. 9)
- Timelines and protocols are also established (covered later)



# Regulation No. 9

- VISIT
  - A “visit” and a “placement” are not the same. They are distinguished by:
    - **Purpose**
      - The purpose of a “visit” is to provide the child with a social or cultural experience of short duration (e.g., summer camp, holiday/summer school break, staying with relative or friend that doesn’t have legal custody).
    - **Duration & Intent**
      - If intended for no longer than 30 days and meets the above-stated purpose, it is presumed to be a “visit” rather than a “placement”.
      - If intended for longer than 30 days, it is presumed a “placement” except that a longer stay may be a “visit” if it begins and ends within a period of the child’s school vacation.
  - “Visits” may not be extended or stacked.
  - If the stay does not have an expected termination date, it is a “placement”.

# Regulation No. 12

- PRIVATE/INDEPENDENT ADOPTIONS
  - Legal and financial responsibility for the child remain with the private person or agency.
  - Authorization for travel, provisional approval, or final approval is granted by receiving state within 3 business days if placement does not appear to be contrary to child's best interest.
  - The final adoption decree is provided to the sending state by the agency or person, and the sending state transmits it to the receiving state, all within 30 business days of entry of judgment.

# Biggest ICPC complaint: it takes too long!

- Standard Placement:
  - Initial home study report due in **60 days**
    - Approval may be conditioned upon compliance with licensing or educational requirements in the receiving state
  - Final decision within **180 days** (good for 180 days)
  - Receiving state provides monthly face-to-face visits with the child at least once each month

# Faster please!

- Expedited (Reg 7) Placement:
  - Provisional approval may be requested and provided **by agreement of receiving state** within 7 days for provisional placement pending final approval.
  - Court order required
  - Criteria:
    - (a) unexpected dependency due to sudden or recent incarceration, incapacitation, or death of parent or guardian
    - (b) child (or at least one child in sibling group) is age 4 or under
    - (c) any child in the sibling group has substantial relationship with the proposed placement (familial or mentoring role, more than cursory time, more than minimal bond)
    - (d) child is currently in an emergency placement
  - + 2 business days – court transmits order to state agency
  - + 3 business days – agency transmits packet to state ICPC office
  - + 2 business days – state ICPC office transmits to receiving state ICPC office
  - + 20 business days – receiving state transmits placement decision
  - Timeframe provides for **5 ½ week turnaround** from entry of order.

# What if Nana only lives 20 minutes away?

- Maybe there's a border agreement!
- ICPC Article V, paragraph (b):
  - 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 (1) or more services in respect of such case by the latter as agency for the sending agency.
- TCA § 37-4-205
  - The officers and agencies of this state and its subdivisions having authority to place children are empowered to enter into agreements with appropriate officers or agencies of or in other party states pursuant to paragraph (b) of Article V of the Interstate Compact on the Placement of Children. Any such agreement which contains a financial commitment or imposes a financial obligation on this state or subdivision or agency thereof shall not be binding unless it has the approval in writing of the commissioner of children's services in the case of the state and of the chief local fiscal officer in the case of a subdivision of the state.

# Border Agreements

## - Purpose

To facilitate

- **voluntary** and
- **temporary**
- family-based placement
- of non-custodial children
- who are subject to ongoing child protective services investigations, family assessments, or family preservation cases,
- with relative or kin caregivers who reside relatively nearby but over the state border

# Border Agreements

## - Application

- Placements must comply with
  - the **terms of the agreement**;
  - the designated **policy of each state**; and
  - **ICPC provisions** for placement/approval.
- Agreements include provisions for:
  - Implementation of Safety Plan Agreement and Permanency Plan
  - Completion and Approval/Denial of Expedited Safety Study
  - Placement, Monitoring, and Jurisdiction Responsibilities
  - Next Steps and Expiration/Termination of BA Placement
  - Training, Data Collection, and Reporting
  - Maintenance, Review, and Termination of BA
- Legal custody remains unchanged for the duration of the BA placement
  - Unless removal into state custody is obtained during placement
- Jurisdiction remains unchanged for the duration of the BA placement
- Placements are time-limited and allow for immediate placement and transition to ICPC-compliant placement or other transfer/termination

# Current Border Agreements

## Georgia/Tennessee

- Current version effective October 1, 2010 (*revision in progress*)

## Alabama/Tennessee

- Current version effective February 13, 2023

## Kentucky/Tennessee

- Current version effective May 1, 2015

## Virginia/Tennessee

- Current version effective February 13, 2023

*Missing: Mississippi, Missouri, Arkansas, North Carolina.*



# Not all border agreements are the same!

- County/distance designations
- Time frames for response
- Length of placement
- Custody vs. Non-custody
- ICPC implications

# How do they generally work?

- The sending agency case manager initiates request by contacting the receiving state hotline/responder.
- The receiving state hotline/responder **quickly** contacts the local office to initiate a safety study.
- Receiving state case manager **quickly**
  - contacts sending state case manager to confirm receipt, exchange information, and discuss completion of the safety study;
  - Completes safety study; and
  - Reports results (approval/denial) of safety study to sending state case manager.

# Safety Study

- The safety study of the proposed placement is conducted according to the **receiving state's** policies and procedures.
- Includes:
  - Assessment of risks and appropriateness
  - Capacity of proposed caregiver (and others in home) to support the child
  - Results of local background checks, verifications, criminal record checks, and abuse registry checks for all adults in the home
  - Verification of proposed caregiver's understanding of the terms of placement
  - Determination of appropriateness of placement and impact upon safety and well-being of child
  - Reasons for approval/denial, including any terms or conditions

# Approved? Yay! Next steps...

- Transportation to placement
- Child and Family Team Meeting (CFTM) and permanency planning
- Monitoring
- Court action?
- ICPC referral?

# If placement is made, which state controls?

- The **sending state retains jurisdiction** for the duration of the border agreement placement.
- The **sending agency is responsible for next steps** to confirm/extend the temporary placement (via court involvement) or terminate the safety placement.
- The sending state retains jurisdiction until terminated or transferred pursuant to ICPC or UCCJEA.

# How does placement end?

CIRCUMSTANCE	DETAILS	CLOSURE CODE
RETURN OF CHILD	<ul style="list-style-type: none"> <li>• Sending state requests return of the child (e.g., parent/guardian able to resume care, better in-state placement, etc.)</li> </ul>	“Child Returned to Sending State”
PARENTS RETURN TO RECEIVING STATE	<ul style="list-style-type: none"> <li>• Parents were in sending state on a temporary basis and are “otherwise free to leave”</li> <li>• Parents return to receiving state</li> <li>• Parents may request appropriate services from receiving state agency</li> <li>• Note: Receiving state may file petition.</li> </ul>	“Parents Return to Receiving State”
PRIVATE PETITION	<ul style="list-style-type: none"> <li>• Parents/custodians/placement petition for D&amp;N adjudication with disposition of custody or protective order to the proposed caregiver</li> <li>• Agencies abide by Court determination of jurisdiction, subject to appeals</li> </ul>	“Adjudication and TPO” or “Adjudication and Disposition to Relative or Kin”

# How does placement end? ... cont.

CIRCUMSTANCE	DETAILS	CLOSURE CODE
AGENCY PETITION TO KIN OR TPO	<ul style="list-style-type: none"> <li>• Sending state petitions for D&amp;N adjudication and disposition of custody to kin or temporary protective order</li> <li>• <b>If custody granted to kin, sending state retains jurisdiction for a minimum of 6 months.</b></li> </ul>	“Adjudication and Disposition to Kin” or “Adjudication and TPO”
AGENCY CUSTODY OR PROTECTIVE JURISDICTION	<ul style="list-style-type: none"> <li>• Sending state petitions for D&amp;N custody or protective jurisdiction</li> <li>• If order for custody or protective jurisdiction issues, placement may continue pending ICPC Reg. 7 Decision</li> <li>• Within 2 business days, sending state must request ICPC Reg. 7 Order and follow ICPC timeline for submission</li> <li>• If Expedited Study not fully approved within ICPC timeline, child must be returned to sending state</li> </ul>	“Regulation No. 7 initiated – agency custody” or “Regulation No. 7 initiated – agency emergency custody” (if in response to parental revocation of agreement)

# How does placement end? ... cont.

CIRCUMSTANCE	DETAILS	CLOSURE CODE
AGENCY CUSTODY	<ul style="list-style-type: none"> <li>• Sending state petitions for D&amp;N state custody</li> <li>• If agency custody granted, placement continues either (a) as a “visit” for 30 days if relationship does not qualify for Reg. 7 Expedited Placement, or (b) pending Reg. 7 Priority Placement Home Study Approval</li> <li>• Sending state must simultaneously request ICPC Reg. 7 or Reg. 9 Home Study and follow ICPC timeline for submission</li> <li>• All protections, services, and supervisory responsibilities remain with the sending state pending ICPC Home Study Approval</li> <li>• Reg. 9 “visit” placements must terminate after 30 days</li> </ul>	<p>“Regulation No. 7 initiated – agency custody” or  “Regulation No. 7 initiated – agency emergency custody”</p>



# How does placement end? ... cont.

CIRCUMSTANCE	DETAILS	CLOSURE CODE
OTHER COURT ACTION	<ul style="list-style-type: none"><li>Any other court action is initiated to terminate the placement</li></ul>	“Termination by Court Action”
PARENT TERMINATES SAFETY PLACEMENT AGREEMENT	<ul style="list-style-type: none"><li>Either state may file a D&amp;N petition seeking protective jurisdiction, TRO, or custody</li></ul>	See above.

*Note: If either state takes the case to court for any reason, the other state’s case managers will cooperate and participate in the legal process.*

# Thank you!

<https://www.tn.gov/dcs/program-areas/interstate-compact/icp/contact.html>

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# Questions?