



The Interstate Compact on the Placement of Children and Status Offense Advocacy

To learn more about representing juvenile status offenders generally, visit the American Bar Association's website at <http://new.abanet.org/child/Pages/rjso.aspx>.

What is the Interstate Compact on the Placement of Children (ICPC)?

The ICPC is a statutory agreement between the states that governs the placement of children from one state to another.¹ It includes requirements that states must follow before a child can be placed in another state. The Compact's purpose is to ensure that children placed in another state receive the same services, oversight and protections that would be afforded if they remained in their home state.²

Current ICPC language has been in place for over forty years. Many believe it has not achieved its goals of protecting children placed across state lines. In recent years, a new version of the Compact has been drafted, but cannot be enacted until 35 states chose to implement it.³ Below is a discussion of how the current and proposed ICPC apply to status offense cases.

When does the ICPC apply to status offense cases?

Courts use the *current* ICPC in status offense cases.

In its instructional manual for judges on the ICPC, the National Council of Juvenile and Family Court Judges (NCJFCJ) states that courts must ensure that the "interstate placement of a child who is under the court's jurisdiction for any reason (i.e., abuse, neglect, delinquency or *status offenses*) follows ICPC requirements, even if custody has not been removed from the parents."⁴ Neither the current Compact nor its regulations mention status offenses specifically, but their broad definitions of placement and what constitutes foster care support NCJFCJ's recommendation. Courts generally apply the ICPC when the court or agency directs the placement of a status offender with a relative, non-relative caregiver or non-institutional placement.⁵

The *current* ICPC's institutional placement requirements may also apply.

With respect to institutional care, the Compact states that "a child *adjudicated delinquent* may be placed in an institution . . . pursuant to this Compact."⁶ The Compact does not mention status offenders in this Article. However, in practice, some states may apply the Compact when status offenders are placed in out of state institutions. This may happen in those states that allow for the secure detention of adjudicated status offenders if they are held in contempt or violate a valid order of the court.⁷

If this Article applies, the sending state must comply with the following before sending an adjudicated status offender out of state:⁸

- Do not make an institutional placement unless the child is given a court hearing.



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- Notify the child's parent or guardian and give them an opportunity to be heard prior to placement.
- The court must find that:
 - equivalent facilities are not available in the child's sending state; and
 - institutional care in another state is in the child's best interest and will not produce undue hardship.

When does the ICPC not apply?

The ICPC does not apply if the status offending child is sent by his:

- Parent;
- Stepparent;
- Grandparent;
- Adult brother or sister;
- Adult uncle or aunt; or
- Guardian

to any of these same relatives or a non-agency guardian. If a *court or agency* makes the placement with any of these relatives, the ICPC applies (except some courts have found that it doesn't when placement is made to a parent). It is less clear whether a court's ratification or approval of a relative's decision to send a child to another relative out of state triggers application of the ICPC.⁹

Courts are split on whether the Compact applies when a court transfers a child to a non-custodial parent, and some advocates have stated that application of the Compact to fit parents is unconstitutional.¹⁰ This issue is addressed in the Compact's regulations, but because they are nonbinding many courts have not relied upon them (even if some agencies follow them in practice).¹¹ Specifically, regulation 3's broad definitions of "foster care" and "placement" state that the ICPC applies to placements made with parents. Yet, the regulation also seems to indicate that placing a child with a parent and then closing the case is not considered a "placement." Regulation 3 goes on to state that the Compact *does not apply* "whenever a court transfers a child to a non-custodial parent with respect to whom the court does not have evidence before it that such parent is unfit, does not seek such evidence and does not retain jurisdiction over the child after the court transfers the child."¹²

The proposed ICPC does not apply to status offenders in some circumstances.

Although the new ICPC, like the current one, does not explicitly mention status offenders within the context of court or agency directed placements, relying on the NCJFCJ guidance, it appears that the new ICPC would continue to be applied in status offense cases. However, the new ICPC makes clear that the ICPC does *not* apply to the interstate placement of children by parents to



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residential treatment facilities, relatives or non-relatives (presuming the placement is not the first step towards adoption).¹³

If enacted, the new ICPC also clearly states that its rules on interstate residential placements apply to adjudicated “unmanageable” youth (arguably status offenders) if not otherwise covered under another compact.¹⁴

Tips for lawyers representing status offenders

If the court or agency states that the ICPC applies when your status offender client is placed out of state you must independently assess its applicability. During this assessment, also consider:

- What are your client’s wishes with respect to placement?
- Will application of the ICPC requirements delay or prevent a good placement opportunity for your client?
- Could it provide you and your client more information about a questionable placement opportunity?
- Could it afford you and your client more time to locate other alternatives?
- If out of state institutional care is proposed, do the ICPC hearing requirements add additional checks to what is currently afforded in your state’s law or practice to assure a sound decision?

If you oppose application of the ICPC . . .

- Point to the explicit language of the Compact and the fact that it does not mention status offenders.
- Find out whether your state has adopted the Compact’s regulations in statute, regulation or policy and

assess how this affects your argument.

- Assess whether the child’s stay constitutes a visit, which would not require compliance with the ICPC.¹⁵
- Collect information about the proposed placement to show why it is in your client’s interest (or not) to be placed there. This could be in the form of documentary or testimonial evidence shared with the court and parties.¹⁶
- If the proposed placement is to a non-custodial parent, cite case law finding that the ICPC is not applicable to non-custodial parent placements.

If you support application of the ICPC...

- Assess whether placement can be expedited or treated as a priority placement under the Compact’s regulation 7.¹⁷
- Contact the receiving state personnel to help address delays in completing the home study and other documentation requirements.
- Ensure the court makes necessary findings and inquiries about the child’s best interests before any out of state institutional placement is made.



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How does the ICPC relate to the Interstate Compact on Juveniles (ICJ)?

Generally, the ICPC applies to out of state foster care placements. The ICJ applies to the return of youth to their home state when they have run away and were on probation or parole. However, both compacts seem to apply when youth under state supervision need of out of state residential treatment.¹⁸ In this instance, Article XIII of the ICJ states that other state laws conflicting with the ICJ are superseded to the extent of the conflict, but state Constitutions and *other interstate compacts* are not superseded.¹⁹ The ICJ Rules further state that where both compacts apply, the ICPC controls:

All cases being transferred to another state are pursuant to the ICJ except cases involving concurrent jurisdiction under the Interstate Compact on Placement of Children, known as ICPC. A juvenile who is not eligible for transfer under this Compact is not subject to these rules and remains subject to the laws and regulations of the state responsible for the juvenile's supervision.²⁰

For more information on ICJ and its application to status offenders, see:

http://new.abanet.org/child/PublicDocuments/ICJ_fact_sheet.pdf

Additional Resources

Juvenile Status Offenders (website): <http://www.abanet.org/child/jso.shtml>.

Cecilia Fiermonte, "Interstate Placements: Applying the ICPC," *ABA Child Law Practice*, Vol. 21 No. 5, pp. 65, 66, 70-75 (July 2002).

Vivek Sankaran, "Navigating the Interstate Compact on the Placement of Children: Advocacy Tips for Child Welfare Attorneys," *ABA Child Law Practice* Vol. 27, No. 3, pp. 33, 38-41 (2008).

Association of Administrators of the Interstate Compact on the Placement of Children (website):

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

¹ ICPC Frequently Asked Questions. Association of Administrators of the Interstate Compact on the Placement of Children. Retrieved on February 24, 2010, available at <http://icpc.aphsa.org/Home/faqs.asp>.

² Guide to the Interstate Compact on the Placement of Children. American Public Human Services Association (2002), available at http://icpc.aphsa.org/Home/Doc/Guidebook_2002.pdf.

³ Judge Stephen W. Rideout, "The Promise of the New Interstate Compact for the Placement of Children." 25 *Child Law Practice* 11 (2007).

⁴ The Interstate Compact on the Placement of Children: A Manual and Instructional Guide for Juvenile and Family Court Judges. National Council of Juvenile and Family Court Judges and American Public Human Services Association (2001), available at <http://www.ncjfcj.org/content/blogcategory/368/437/>.



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⁵ The model regulations accompanying the ICPC have not been incorporated into many states via administrative procedures acts or similar regulatory authority. Despite this, the regulations have been adopted in policy by most state agencies and followed in practice. Email correspondence with Scott Trowbridge, Esq. Resource Center on Legal and Judicial Issues (February 24, 2010).

⁶ Interstate Compact on the Placement of Children, Article VI.

⁷ It may also occur because when the Compact was originally drafted many states labeled status offenses as delinquent acts. Therefore, the Compact's original intent may have been to include status offending in this Article, which may have translated to court and agency practice.

⁸ Interstate Compact on the Placement of Children, Article VI.

⁹ The Interstate Compact on the Placement of Children: A Manual and Instructional Guide for Juvenile and Family Court Judges. National Council of Juvenile and Family Court Judges and American Public Human Services Association (2001), 35-37. <http://www.ncjfcj.org/content/blogcategory/368/437/>.

¹⁰ See Vivek S. Sankaran. "Out of State and Out of Luck: The Treatment of Non-Custodial Parents Under the Interstate Compact on the Placement of Children." Yale Law and Policy Review 25, 2006, 63; compare *In re Alexis O.*, 959 A.2d 176 (N.H. 2008) with *Green v. Div. of Family Services*, 864 A.2d 921 (Del. 2004).

¹¹ Email correspondence with Scott Trowbridge, Esq. Resource Center on Legal and Judicial Issues (February 24, 2010).

¹² ICPC Reg. 3(6)(b).

¹³ New ICPC Article III (B), available at <http://www.aphsa.org/Policy/icpc2006rewrite.htm>.

¹⁴ *Ibid.* at Article III(A)(2).

¹⁵ ICPC Reg. 9 (defining a visit).

¹⁶ Vivek Sankaran, Navigating the Interstate Compact on the Placement of Children: Advocacy Tips for Child Welfare Attorneys," *ABA Child Law Practice* Vol. 27, No. 3, pp. 33, 38-41 (2008).

¹⁷ ICPC Reg. 7.

¹⁸ Interstate Commission for Juveniles, 2010 Rules of the Interstate Compact for Juveniles, Rule 4-101, available at <http://www.juvenilecompact.org/LinkClick.aspx?fileticket=hvMqJ-56kQk%3d&tabid=648> (The Rules state that: "[e]ach state that is a party to the ICJ shall process all referrals involving juveniles, for whom services have been requested, provided those juveniles are under juvenile jurisdiction in the sending state.); Interstate Compact on the Placement of Children, Article VI ("A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact.").

¹⁹ Article X of the ICPC on the other hand states that provisions of the Compact that conflict with the constitution of any state or of the United States are severable; but it does not say the same for provisions that conflict with other compacts.

²⁰ Interstate Commission for Juveniles, 2010 Rules of the Interstate Compact for Juveniles, Rule 4-101, available at <http://www.juvenilecompact.org/LinkClick.aspx?fileticket=hvMqJ-56kQk%3d&tabid=648>.