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The Lost Ones of the Interstate Compact of the Placement of Children

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NOTE

THE LOST ONES OF THE INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

I. INTRODUCTION

Nine-year-old Samantha and her younger brother were removed from their parents' home by child welfare officials of the State of Washington. Already having gone through the trauma of being torn from their home, the children's experience would soon worsen. That day began their experience in the foster care system. Even though there were relatives willing to take responsibility of and care for the children, formal requests, home inspections, and approvals would prevent those relatives from immediately gaining custody because they resided outside the State of Washington. Accordingly, this situation was subject to the Interstate Compact for the Placement of Children ("ICPC"). If Samantha's family members had lived within the State of Washington, they most likely would have gained custody sooner. Instead, the children were forced to remain in foster care until the situation was sorted out—a process that carried on for months and, in some states, could last more than a year. In the meantime, Samantha's family was put through a series of steps to ensure their home was safe for the children. This nightmare that Samantha endured is one that thousands of children across the nation live through and encounter daily.

2. See id.
3. See id.
4. ICPC REGULATIONS (AM. PUB. HUM. SERVS. ASS'N 2012), http://www.aphsa.org/content/AICPC/en/ICPCRegulations.html; see Eckholm, supra note 1.
5. See Eckholm, supra note 1.
6. See id.
7. See id.
8. See id.
The ICPC is a compact that has been adopted by every state in the country. The ICPC monitors the out-of-state placements of children in the foster care system. It prevents children in foster care from being sent to an out-of-state placement without approval from the receiving state. Approval of the home in the receiving state is designed to ensure the safety of that home. Without review of both the proposed placement and the relative volunteering to take the child, the sending state would be unable to ensure the safety of the child in the same manner it would as if the child remained in its jurisdiction. Many officials agree that the ICPC process has its drawbacks and could use reform. However, the alternative of simply sending children blindly into homes, in a manner potentially detrimental to their well-being, is not an acceptable option. To be approved under the ICPC, the receiving state must complete a home study. The home study determines whether the proposed placement is against the best interests of the child. However, experts have criticized the ICPC itself as going against the best interests of the child. The ICPC has been challenged for "inflicting unnecessary emotional harm on children." A child in Samantha’s shoes may feel abandoned or punished by the long waiting period for ICPC approval.

The plain language of the ICPC states that the ICPC shall not apply to the sending or bringing of a child by a "parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or . . . guardian and leaving the child with any such relative or non-agency guardian in

9. Guide to the Interstate Compact on the Placement of Children, AM. PUB. HUM. SERVS. ASS’N 3 (2002), http://www.aphsa.org/content/dam/AAICPC/PDF%20DOC/Resources/Guidebook_2002.pdf: There is currently a new ICPC that has been approved by thirteen states. Id. For the purpose of this Note, the new ICPC will not be discussed.
10. Id.
11. Id. at 5.
12. Id. at 4-5.
15. Id. at 8.
17. Id. at 5.
20. See id. (stating that the subject-children could feel punished by the waiting period and a "few months’ delay can seem like eternity").
the receiving state.” However, state case law, as well as revised ICPC regulations, have expanded the reach of the ICPC to cover those previously excluded relatives. Currently, all familial relatives are required to go through the ICPC process before a placement is made.

Though the ICPC is well-intentioned, in practice it removes children from their homes and causes them to wait in foster care while relatives receive approval from the receiving states. ICPC requests leave families in a state of limbo waiting for potential approval. Children are left in foster care, unsure and confused why they cannot live with relatives who offer to care for them.

Part II of this Note provides background information on the ICPC, an overview of why it was implemented, and when it applies. Part III discusses how the ICPC effectively contravenes the best interests of the child standard due to its underlying problems. This Note argues for modifications that can be made to the ICPC statute and regulations to create a more efficient ICPC process that will promote the best interests of a child.

II. THE INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

The ICPC was adopted to provide states with safer options when placing children in out-of-state homes. Subpart A introduces the ICPC


22. See, e.g., In re J.T., 2008 N.Y. Slip. Op. 52607(U) (Fam. Ct., Bronx Cnty. 2008) (stating that an ICPC was necessary for an out-of-state father who sought to take the children into his care and move to North Carolina); see also Proposed ICPC: Frequently Asked Questions, AM. PUB. HUM. SERVS. ASS’N, http://www.aphsa.org/content/dam/AAICPC/PDF%20DOC/PROPOSED%20ICPC%20FAQs.pdf (last visited Apr. 10, 2016) (explaining that if a child is in a sending state’s custody, an ICPC is necessary even if the child is being sent to a relative in a receiving state).


26. See Eckholm, supra note 1.

27. See infra Part II.

28. See infra Part III.

29. See infra Part IV.

30. Guide to the Interstate Compact on the Placement of Children, supra note 9, at 3; History of the ICPC, AM. PUB. HUM. SERVS. ASS’N, http://www.aphsa.org/content/dam/AAICPC/PDF%
and provides its history. Subpart B explains why the ICPC was created. Subpart C elaborates on the circumstances of when and to whom the ICPC applies. Subpart D discusses why the ICPC applies to relatives. Finally, Subpart E describes how the ICPC works and elaborates on its procedural requirements and exceptions.

A. What Is the Interstate Compact on the Placement of Children?

The ICPC is a model contract that was drafted in 1960 after a group of social service administrators and state legislators joined together to research out-of-state adoption and foster care. The research group identified three problems: (1) state statutes failed to provide protection to children that left their borders; (2) sending states—the state requesting the child be placed out-of-state—were unable to ensure that children received proper supervision once they entered a placement in receiving states—the state where the potential placement is located; and (3) no methods existed that would force receiving states to provide necessary services to a child in an out-of-home placement. The research group realized that their biggest difficulty was maintaining jurisdiction. A state’s judiciary was unable to ensure a child’s safety beyond its borders because its jurisdiction could not reach persons and activities in other states. These findings led the New York State Legislature to draft the ICPC, which has now been adopted by all fifty states, the District of Columbia, and the Virgin Islands. The main focus of the ICPC is the welfare of children in foster care and adoption placements.

31. See infra Part II.A.
32. See infra Part II.B.
33. See infra Part II.C.
34. See infra Part II.D.
35. See infra Part II.E.
37. TEXT OF INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN, art. II (AM. PUB. HUM. SERVS. ASS’N 2015), http://www.aphsa.org/content/AAICPC/en/TextoflContheplacementofchildren.html (providing the definition of a sending agency).
38. Sankaran, supra note 24, at 68.
39. Lore, supra note 36, at 71; Guide to the Interstate Compact on the Placement of Children, supra note 9, at 3.
40. See Lore, supra note 36, at 71; see also Madelyn D. Freundlich, Reforming the Interstate Compact on the Placement of Children: A New Framework for Interstate Adoption, U. PA. J.L. & SOC. CHANGE, Spring 1997, at 15, 16; Guide to the Interstate Compact on the Placement of Children, supra note 9, at 3 (stating that New York was the first state to enact the ICPC).
41. Freundlich, supra note 40, at 16. This Note only focuses on children in foster care.
The ICPC is legally binding on all states that adopt it. It is made up of ten articles that specify what placements are subject to the law, what procedures should be followed, and what protections and services it provides. When the states adopted the ICPC, they agreed to adopt it in whole. However, the ICPC’s authority has been expanded differently based on state interpretations, opinions, and regulations.

The ICPC includes procedural requirements that must be followed by the sending agency to receive permission from the receiving state before the child is placed somewhere out-of-state. The ICPC defines a sending agency as “a party state, 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.” Under the ICPC, the 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 or for placement with private agencies or persons.” For interstate foster care placements, the sending agency would usually involve a combination of the county child welfare agency, family court, or juvenile court. While the terminology of the ICPC uses the phrase, “sending agency,” interstate foster care placements will usually deem the sending state as the sending agency.

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43. Guide to the Interstate Compact on the Placement of Children, supra note 9, at 3.
44. Proposed ICPC: Frequently Asked Questions, supra note 22.
46. Freundlich, supra note 40, at 16.
47. TEXT OF INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN, art. II (AM. PUB. HUM. SERVS. ASS'N 2015), http://www.aphsa.org/content/AAICPC/en/TextofContheplacementofchildren.html; Freundlich, supra note 40, at 18. For example, if a child is sent by the state of New York to live with a grandparent in Florida, the sending agency would be New York. See id. at 18-19. If an employee of a child welfare agency arranges an out-of-state placement for a child, the welfare agency would be considered the sending agency. See id. at 19.
48. TEXT OF INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN, art. II(c).
49. Freundlich, supra note 40, at 19.
50. Id.
B. Why Was the Interstate Compact on the Placement of Children Created?

The ICPC was created to prevent states from “dumping” their financial responsibility to care for a child in foster care on another state. By adopting the ICPC, a sending state can no longer deny its financial responsibility for a child that remains in foster care because, under the ICPC, the transfer of a child to the receiving state does not end financial obligations owed by the sending state. The ICPC was also created so states could continue supervision over a family who moved out of state with an open child protective case. Previously, when a child was placed in an out-of-state home, there was no way to assure the child’s safety or the continuation of necessary services. Now, with the ICPC, a sending state can ensure that a placement is safe before sending the child to a receiving state and that the child continues to remain safe for the duration of the placement. The requirement of a financial plan in the ICPC ensures that funding is available for the subject-child to continue receiving necessary services. Additionally, the advanced
planning required by the ICPC allows the sending and receiving states to identify the potential special needs of the child.57

The ICPC has four main objectives:58 "determination of the suitability of the interstate placement; determination of any circumstances bearing on the protection of the child; obtaining of complete information on which to ‘evaluate a projected placement before it is made’; and promoting ‘appropriate jurisdictional arrangements for the care of the children placed.’"59 These objectives correlate with the different steps of the ICPC.60 The home study is in place as a requirement to determine whether or not a placement would be contrary to a child’s best interests before the child arrives.61

C. When Does the Interstate Compact on the Placement of Children Apply and to Whom Does It Apply?

The ICPC applies mandatorily to four different situations in which a child is sent to another state:62 It applies when there is a placement preliminary to an adoption.63 An ICPC is necessary for placements into out-of-state foster care homes.64 Additionally, if a child is to be placed with a parent or relative when it is not the parent or relative making the placement, the ICPC is also necessary.65 Finally, for placements of adjudicated delinquents in institutions in other states, the ICPC applies.66 In addition to the mandatory applications, the ICPC may also apply if the party making the placement is related to the child but the person receiving the child is not.67

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57. Gilmore et al., supra note 56, at 64.
60. Id. at 17 (“The first three objectives address the approval process that is considered critical to ensuring the safety and well being of a child placed in another state. The fourth objective addresses the promotion of appropriate jurisdictional arrangements.”).
61. Sankaran, supra note 24, at 69.
63. DEP’T OF HEALTH & HUM. SERVS., supra note 13, at 2; Guide to the Interstate Compact on the Placement of Children, supra note 9, at 4.
64. DEP’T OF HEALTH & HUM. SERVS., supra note 13, at 2 (categorizing placements to foster homes, group homes, residential treatment facilities, and institutions as foster care placements); Guide to the Interstate Compact on the Placement of Children, supra note 9, at 4.
65. DEP’T OF HEALTH & HUM. SERVS., supra note 13, at 2; Guide to the Interstate Compact on the Placement of Children, supra note 9, at 4.
67. Id. at 6 (stating the ICPC also applies to children from foreign countries).
Article III of the ICPC explains that parties are required to follow ICPC regulations when a child is being sent, brought, or “cause[d] to be sent or brought into any other party state.”68 Although parents and relatives are included in the definition of a sending agency under certain circumstances,69 the sending agency is usually a government agency that is legally and financially responsible for the subject-child.70

The ICPC refers to the potential home as a “placement.”71 Article II(d) defines placement as “the arrangement for the care of a child in a family free or boarding home or in a child caring agency or institution.”72 The terms “family free” and “boarding home” refer to foster care.73 Article II(d)74 specifically excludes “institution(s) caring for the mentally ill, mentally defective or epileptic or any institution primarily educational in character, and any hospital or other medical facility” from the definition of placement.75 Under Article VIII, the ICPC is also meant to prevent “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.”76 However, this language has been interpreted to mean that both parties must be from the specified class of individuals to be excluded.77 If one party is an agency, then the ICPC must be used.78 Once a child is under the care of an agency, an ICPC is required to send the child to any placement in another state, even if the placement is with a family member.79

70. Freundlich, supra note 40, at 19 (stating that if a child is in foster care, a governmental entity would be legally and financially responsible for the child).
71. TEXT OF INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN, art. II.
72. Id. The term “family free” refers to a home where there is no charge for the child’s care and the child would receive care that she would usually receive from her parents. Freundlich, supra note 40, at 26.
73. Freundlich, supra note 40, at 26.
74. See TEXT OF INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN, art. II(d).
75. See id.
76. Id. art. VIII.
77. Guide to the Interstate Compact on the Placement of Children, supra note 9, at 4. For the parties to be excluded from the ICPC under this clause, both parties need to be from the identified class. Id. For example, a mother would have to be bringing the child to live with a relative. See id.
78. Id.
D. Why Apply the Interstate Compact on the Placement of Children to Relatives?

The text of the ICPC excludes from its required process a relative who is bringing a child from the sending state into the receiving state. However, the reach of this provision has been expanded by case law, interpretations, opinions, and regulations. The expansion of ICPC authority is recognized to be under Article VII.

Today, parents and relatives are no longer considered excluded from the ICPC process. ICPC authority has primarily been expanded by way of the ICPC Regulations. While the drafters of the ICPC stated that regulations couldn't expand the present coverage of the ICPC, they can be used to provide "sharper legal interpretation."

Currently, the ICPC is required when a court or an agency places a child with an out-of-state parent if there is evidence that the receiving parent may be unfit to care for the child. A court or agency may also require individuals to comply with the ICPC if it seeks to evaluate the parent's caretaking ability. Additionally, the ICPC applies to "any

80. TEXT OF INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN, art. VIII(a).
81. See In re J.T., 2008 N.Y. Slip. Op. 52607(U) (N.Y. Fam. Ct., Bronx Cnty. 2008) (holding that an ICPC was needed when an out-of-state father sought to take his children into his care and move to North Carolina); see also Libow, supra note 45, at 20 (stating that the ICPC authority has been expanded under Article VII); Vivek S. Sankaran, Navigating the Interstate Compact on the Placement of Children: Advocacy Tips for Child Welfare Attorneys, 27 CHILD L. PRAC. 33, 38 (2008) ("Courts have been reluctant to defer to the broad language in the nonbinding regulation and have independently examined the issue."). The Secretariat of the ICPC issued non-binding advisory opinions in support of the expansion of authority. Sankaran, supra note 24, at 72-73. The Secretariat stated that the ICPC would apply to parents and relatives, even without an accusation of wrongdoing. Id. The Secretariat noted that without the expansion of ICPC authority, agencies might send a child to another state to "rid themselves of unwanted financial obligations or to close a court case." Id.
82. Libow, supra note 45, at 20; see also TEXT OF INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN, art. VII (stating that the officer chosen as the general coordinator of activities can act jointly with officers of other jurisdictions to "promulgate rules and regulations to carry out more effectively the terms and provisions of this compact").
83. See, e.g., In re J.T., 2008 N.Y. Slip. Op. 52607(U); see also In re Shaida W., 649 N.E.2d 1179, 1182 (N.Y. 1995) ("The Appellate Division failed to appreciate that the children were not legally ‘sent’ to California with their grandmother . . . . New York’s Department of Social Services alone is the ‘sending agency’ within the meaning of the statute. When the children relocated to California, they were still in the ‘custody’ of the New York City Department of Social Services . . . .")
84. See Libow, supra note 45, at 20. See generally ICPC REGULATIONS (AM. PUB. HUM. SERVS. ASS’N 2012), http://www.aphsa.org/content/AAICPC/en/ICPCRegulations.html (describing in depth the different rules and procedures behind the articles of the ICPC).
85. Libow, supra note 45, at 20.
86. See Proposed ICPC: Frequently Asked Questions, supra note 22.
87. Id.
placement with a parent if and when it is known that the child will remain a ward of the court or will remain in the custody of a public child welfare agency after going to live with the parent.”

Previously, courts had ruled that changes made to the ICPC after a state’s adoption of it were invalid. However, recent cases have found adoption of the ICPC to mean that the state has implicitly agreed to accept and abide by the rules and regulations created by the Association of Administrators of the Interstate Compact on the Placement of Children (“AAICPC”).

Inclusion of parents and relatives under the ICPC requirements is necessary because the child’s welfare may still be at risk even when she is placed with them. A court has no way to know that the relative coming forward is able to provide a safe environment for the child without the ICPC. When the Secretariat of the ICPC issued the advisory opinion on the topic of applying ICPC regulations to relatives and parents, he stated that “[e]ven though the intended placement is with a biological parent in another state, it should not be assumed that the conditions in the home are necessarily appropriate for the child’s needs.” In another opinion, the Secretariat stated as follows:

In general, close relatives who do not have a legal obligation to support children may be prima facie considered to have family feelings for them and so to be so suitable as substitute parents as to require less investigation than strangers. However, it cannot be demonstrated that any such generalization is really protection for a particular child in a particular situation.

88. Id.
89. See McComb v. Wambaugh, 934 F.2d 474, 479, 481 (3d Cir. 1991) (affirming the decision holding that the ICPC did not apply where a Virginia court directed the child be removed from foster care and sent to live with his parents in Pennsylvania); Libow, supra note 45, at 20-21.
90. Ariz. Dept of Econ. Sec. v. Leonardo, 22 P.3d 513, 518 (Ariz. Ct. App. 2001) (stating that “[b]y adopting the ICPC, enacting § 8-548.02, and delegating a representative of this state to participate in activities of the AAICPC, Arizona has implicitly agreed to accept and by rules or regulations duly promulgated by the AAICPC,” but the court is “mindful of the general rule that an agency or administrative body may not enact rules or regulations that conflict with a statute”). If adopted, the newly proposed ICPC rules would “supersede any state law, rule or regulation to the extent of any conflict.” Larry S. Jenkins, The Interstate Compact for the Placement of Children: Taking a Big Step Back, CHILD. LEGAL RTS. J., Fall 2007, at 72, 77.
91. BARBARA SEIBEL, THE INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN 1, 15-16 (2001), http://www.ncjfcj.org/sites/default/files/ICPCManualandGuideFullDoc_0.pdf; see also ICPC Secretariat Opinion No. 32 (Sept. 8, 1976) (stating that “[i]t cannot be assumed that a mother or father is a suitable recipient of a child merely because he or she is the natural parent”).
92. Sankaran, supra note 24, at 73 (quoting ICPC Secretariat Opinion No. 34).
93. Id. (quoting ICPC Secretariat Opinion No. 29 (Apr. 7, 1976)). Under this opinion, the Secretariat established that placements with relatives are controlled by the ICPC. ICPC Secretariat Opinion No. 29 (Apr. 7, 1976).
The ICPC provides a way to ensure that all parties—the receiving state, the sending state, the court, and the child’s parents and relatives—consistently act in the child’s best interests.\textsuperscript{94} Without it, there is no way to assure that the needs of the child will be prioritized first.\textsuperscript{95}

The removing agency in the sending state is responsible for ensuring that the child is placed in a safe environment. Requiring that relatives who seek to house a child go through the ICPC process provides some assurance that the prospective home is safe.\textsuperscript{96} Placing children in homes that are not properly vetted can lead to severe consequences.\textsuperscript{97} Including relatives in the ICPC’s requirements allows the subject-child to continue receiving necessary services that she may have been receiving while living in the sending state.\textsuperscript{98} Without supervision under the ICPC, there is no way to guarantee that a child’s relative will continue providing any such necessary services.\textsuperscript{99} Ensuring that a potential placement is safe also means establishing a financial and educational plan for the child.\textsuperscript{100} The sending and receiving states need to know that when a child is placed with relatives, those relatives are able to adequately provide for the child and that she will not become burdensome to the receiving state.\textsuperscript{101}

\textbf{E. How Does the Interstate Compact on the Placement of Children Work?}

The ICPC process includes a series of steps that must occur for a placement decision to be made.\textsuperscript{102} Each step must be properly completed or the process may be delayed.\textsuperscript{103} There are three main components of

\begin{itemize}
\item \textsuperscript{94} Sankaran, supra note 24, at 73.
\item \textsuperscript{95} Id.; Understanding Delays in the Interstate Home Study Process, AM. PUB. HUM. SERVS. ASS’N 7 (2002), http://www.aphsa.org/content/dam/AAICPC/PDF%20DOC/Resources/home_study_report.pdf.
\item \textsuperscript{96} Guide to the Interstate Compact on the Placement of Children, supra note 9, at 5.
\item \textsuperscript{97} See Ginger Adam Otis, Administration for Children’s Services Failing to Prevent Tragedies Despite City Efforts to Make Changes, N.Y. DAILY NEWS (Feb. 9, 2014, 9:54 AM), http://www.nydailynews.com/new-york/administration-children-services-failing-prevent-tragedies-article-1.1607516 (describing different instances where improper placements led to the deaths of children). While the deaths referred to in the article are all in instances of in-state placements, lack of supervision and proper placement evaluations were leading factors in the children’s deaths. Id.
\item \textsuperscript{98} Understanding Delays in the Interstate Home Study Process, supra note 95, at 7.
\item \textsuperscript{99} Id.
\item \textsuperscript{100} Gilmore et al., supra note 56, at 62-65.
\item \textsuperscript{101} Id. at 62.
\item \textsuperscript{102} Id. at 64-65; Understanding Delays in the Interstate Home Study Process, supra note 95, at 9-10.
\item \textsuperscript{103} Understanding Delays in the Interstate Home Study Process, supra note 95, at 14.
\end{itemize}
the ICPC process. First, there is paperwork and communication that must be completed. Second, there is the home study. Third, there is the review and approval of a financial plan for the child. Sometimes, the ICPC process is composed of a fourth component under regulation 7 under the ICPC ("Regulation 7"). Additionally, along with the ICPC, states are allowed to enter into border state agreements so that a child is able to enter the potential placement sooner, without violating the ICPC. Below, this Subpart discusses the procedural and home study requirements of the ICPC. Next, this Subpart discusses Regulation 7 and what requirements are necessary for it to apply. Finally, this Subpart discusses border state agreements, which have been used as an alternative to Regulation 7 as a way to more quickly situate children in a placement.

1. Interstate Compact on the Placement of Children Procedural and Home Study Requirements

Once it is determined that an ICPC applies to the case at hand, a series of events must occur. The sending state prepares a report to be sent through the sending state’s local office. The report includes information about the “unique needs and strengths of the child.” The report details what type of family would best provide the subject-child with a safe and nurturing environment. The report also provides the prospective caregivers with information on the child’s needs, so

104. Id. at 8.
105. Id.
106. See Gilmore et al., supra note 56, at 58, 61 (explaining that the home study is the most critical portion of the ICPC); see also Understanding Delays in the Interstate Home Study Process, supra note 95, at 8 (describing the multiple steps of the interstate home study process).
110. See infra Part II.E.1.
111. See infra Part II.E.2.
112. See infra Part II.E.3.
113. See Gilmore et al., supra note 56, at 64-65; Understanding Delays in the Interstate Home Study Process, supra note 95, at 8 (elaborating on the ICPC steps and procedures).
115. Gilmore et al., supra note 56, at 64-65.
116. Id. at 65. For example, if the child has special needs the agency will determine if the potential home is equipped to provide the child with the necessary attention. Id. at 61.
that they can make an informed decision on their ability to care for the child.\textsuperscript{117}

After reviewing the packet to ensure that it is complete, the sending state’s Compact Administrator requests an ICPC approval from the receiving state’s Compact Administrator.\textsuperscript{118} The receiving state’s ICPC office forwards the request to the local agency in the community where the potential placement is located.\textsuperscript{119} The caseworker assigned to the case then begins the home study and evaluation.\textsuperscript{120} The home study is the main process for determining whether the placement will be approved and must be done to complete an ICPC request.\textsuperscript{121}

The home study is comprised of several components.\textsuperscript{122} The prospective guardians must be screened, complete a criminal background check, and go through multiple assessments to determine their resources and readiness to parent the child.\textsuperscript{123} States have adopted different ways to conduct home studies, but most look for the same general information.\textsuperscript{124} The receiving state’s home study is completed in accordance with requirements of that state, but the sending state’s ICPC office is still responsible for ensuring that the placement does not violate its own laws.\textsuperscript{125} When determining whether to recommend placement approval, agencies look to see if the placement is in furtherance of the child’s best interests.\textsuperscript{126} To make that decision, caseworkers look at several factors, including the caretakers’ finances,

\begin{itemize}
\item \textsuperscript{117} Id.
\item \textsuperscript{118} Id. at 65; Lore, \textit{supra} note 36, at 74-75.
\item \textsuperscript{119} Boyer, \textit{supra} note 114, at 3.
\item \textsuperscript{120} Lore, \textit{supra} note 36, at 75. Each state has appointed Compact Administrators to manage the ICPC. \textit{Id.} at 72; \textit{Guide to the Interstate Compact on the Placement of Children, supra} note 9, at 5. Those administrators form the Association of Administrators of the Interstate Compact on the Placement of Children (“AAICPC”), which is an affiliate of American Public Human Services Association (“APSHA”). \textit{History of the ICPC, supra} note 30; see Lore, \textit{supra} note 36, at 72. States also appoint Deputy Administrators who are in charge of overseeing and performing the ICPC process. \textit{Guide to the Interstate Compact on the Placement of Children, supra} note 9, at 5. ICPC offices are located in the same place as the department of public welfare or the state’s equivalent agency. \textit{Id.} Compact Administrators are at the center of the ICPC process—they are the ones authorized to conduct investigations of the proposed placement and to determine whether or not the placement is suitable. \textit{Id.} When determining if a placement is suitable, the agency uses the best interests of the child standard. \textit{Id.}
\item \textsuperscript{121} \textit{Understanding Delays in the Interstate Home Study Process, supra} note 95, at 4.
\item \textsuperscript{122} \textit{Id.}
\item \textsuperscript{123} \textit{Id.}
\item \textsuperscript{124} \textit{Id.} at 5.
\item \textsuperscript{125} Gilmore et al., \textit{supra} note 56, at 65.
\item \textsuperscript{126} Sankaran, \textit{supra} note 25, at 442.
\end{itemize}
health status and history, preferred parenting style and disciplinary approach, as well as the physical environment of the home and proposed sleeping arrangements.127

Along with the home study evaluation, the prospective guardians must meet the state’s licensing requirements.128 State licenses usually require an evaluation of the home’s fire and safety inspections, a determination of the number of people that can live in the home based on its size, and water and tuberculosis tests.129 In some states, the process of receiving a state license is different depending on whether the placement is for adoption or foster care.130 Foster care placements are usually required to receive state licenses, while adoptive placements are normally not required to meet the licensing requirements.131

Once the home study process is completed, the local agency caseworker in the receiving state makes her recommendation and forwards it to the ICPC office of the receiving state.132 Based on that recommendation, the Compact Administrator in the receiving state decides to approve or deny the placement and sends all the information back to the sending state’s Compact Administrator.133 To receive approval, both the sending and the receiving state must agree to a financial and medical support plan for the subject-child.134 They must also agree upon a plan to pay for the child’s education costs before placement in the receiving state.135 If the receiving state approves the placement, the sending state must decide whether that is where they will place the child.136 If the receiving state denies the placement, the sending state will also deny it.137 It is possible for both the receiving state and the sending state to require “additional information, clarification, or documentation from the other state’s local child-placing agency” before

127. Id. at 442-43; Understanding Delays in the Interstate Home Study Process, supra note 95, at 5.
128. Understanding Delays in the Interstate Home Study Process, supra note 95, at 5.
129. Id.
130. Id. at 5-6. Some states are moving toward a process known as dual licensure. Id. Dual licensure requires both foster and adoptive parents to go through the same state licensing and home evaluation process. Id.
131. Id. at 5.
132. Gilmore et al., supra note 56, at 65; Understanding Delays in the Interstate Home Study Process, supra note 95, at 8.
133. Gilmore et al., supra note 56, at 65; Understanding Delays in the Interstate Home Study Process, supra note 95, at 8.
134. Gilmore et al., supra note 56, at 65.
135. Id.
136. Id.
137. Id. at 65-66.
completing the evaluation process.\textsuperscript{138} This could lead to potential delays.\textsuperscript{139} The model ICPC suggests that the decision be given thirty working days after the evaluation is received.\textsuperscript{140} However, that suggestion is not strictly adhered to, and actual ICPC regulations provide a longer and more complex time period.\textsuperscript{141}

2. Regulation 7

Currently, the ICPC model code contains a provision for temporary child placements under Regulation 7, but it only applies in specific circumstances.\textsuperscript{142} Regulation 7 is intended to expedite the ICPC process in situations where the prospective placement is with a parent, stepparent, grandparent, adult uncle or aunt, adult brother or sister, or the child's guardian.\textsuperscript{143} It is also meant to "[h]elp protect the safety of children while minimizing the potential trauma to children caused by interim or multiple placements while ICPC approval to place with a parent or relative is being sought."\textsuperscript{144}

For cases involving a child removed from her home for child welfare reasons, one of the following requirements must be met before a Regulation 7 request can be made:

(a) unexpected dependency due to a sudden or recent incarceration, incapacitation or death of a parent or guardian. Incapacitation means a parent or guardian is unable to care for a child due to a medical, mental or physical condition of a parent or guardian; or (b) the child sought to be placed is four years of age or younger, including older siblings sought to be placed with the same proposed placement resource; or (c) the court finds that any child in the sibling group sought to be placed has a substantial relationship with the proposed placement resource. Substantial relationship means the proposed placement has a familial or mentoring role with the child, has spent more than cursory time with the child, and has established more than a minimal bond with the child; or (d) the child is currently in an emergency placement.\textsuperscript{145}

\textsuperscript{138} Id. at 66.
\textsuperscript{139} Id. If forms are missing or clarifications are needed, the process is delayed until the error is fixed. Id. at 81; Understanding Delays in the Interstate Home Study Process, supra note 95, at 14.
\textsuperscript{140} Guide to the Interstate Compact on the Placement of Children, supra note 9, at 7.
\textsuperscript{141} Vivek Sankaran, Foster Kids in Limbo: The Effects of the Interstate Compact on Children in Foster Care, 33 CHILD. L. PRAC. 140, 141 (2014).
\textsuperscript{142} ICPC REGULATIONS, Reg. No. 7(4) (AM. PUB. HUM. SERVS. ASS’N 2012), http://www.aphsa.org/content/AAICPC/en/ICPCRegulations.html.
\textsuperscript{143} Id. at Reg. No. 7(5).
\textsuperscript{144} Id. at Reg. No. 7(3)(a).
\textsuperscript{145} Id. at Reg. No. 7(5)(a)–(d).
There are three instances in which Regulation 7 cannot apply where: (1) the child was already placed in the receiving state in violation of the ICPC; (2) the sending state intends to have the prospective placement licensed or approved for foster care or adoption; and (3) the child is placed with a parent not responsible for removal and "the court has no evidence the parent is unfit, does not seek any evidence from the receiving state the parent is either fit or unfit, and the court relinquishes jurisdiction over the child immediately upon placement with the parent." 146

As previously stated, when a child has been removed by welfare agencies, Regulation 7 can only apply if the child is then placed with specific types of relatives and is under the age of four, is in an emergency shelter, or has already spent a considerable amount of time with the proposed placement. 147 Currently, to receive a provisional ICPC decision, the sending agency must request that the receiving state make a provisional placement approval or denial. 148 However, the receiving state does not have to comply with the request. 149

If the receiving state decides to comply with the request, it must complete the following steps to make a provisional determination of the proposed placement: (1) performing a walk-through of the prospective placement's home to assess for risks and appropriateness for placement of the child; 150 (2) searching the child protective services database for prior reports or investigations on the prospective placement; 151 (3) conducting a criminal background check on the prospective placement; 152 (4) "undertaking other determinations as agreed upon by the sending and receiving state Compact Administrators"; and (5) providing a provisional written report to the receiving state Compact "Administrator as to the appropriateness of the proposed placement." 153 According to the ICPC regulations, all this must be done within seven days from the receipt of the request. 154 If a provisional placement were approved, the child would be allowed to stay in the placement pending the final approval or denial. 155

146. Id. at Reg. No. 7(4)(c).
147. Understanding Delays in the Interstate Home Study Process, supra note 95, at 11.
148. ICPC REGULATIONS, Reg. No. 7(6)(a).
149. Id. at Reg. No. 7(6)(a).
150. Id. at Reg. No. 7(6)(a)(1).
151. Id. at Reg. No. 7(6)(a)(2).
152. Id. at Reg. No. 7(6)(a)(3).
153. Id. at Reg. No. 7(6)(a)(4)–(5).
154. Id. at Reg. No. 7(6)(c).
155. Id. at Reg. No. 7(6)(d).
3. Border State Agreements

Article V(b) of the ICPC allows for public sending agencies to enter into agreements with authorized public or private agencies in receiving states.156 Border state agreements are contractual agreements between states that are created to decrease the lengthy process of an ICPC.157 Border state agreements are not limited to ICPC child placement issues.158 They can be utilized any time interstate cooperation is necessary for the use of resources regarding any subject.159 A border state agreement, regarding the placement of a child with an out-of-state home, would allow for a child to be placed even if the ICPC process is incomplete; the states would just need to agree to the studies, clearances, and time frames.160 Article V(b) of the ICPC gives states the authority to conduct such border state agreements.161 Usually, contracting states have requirements before such as border state agreement can be implemented.162 For example, some states require a child placed under a border state agreement to originate from one of the counties covered by the agreement in the sending state and be placed with a relative in one of the counties covered by the receiving state.163 Generally, for a border state agreement to occur, the two states need to regularly conduct business together or be close geographically.164 A state with frequent ICPC placements would be allowed to use a border state agreement to alleviate the delays of the ICPC process.165 Some states limit the number of border state agreement requests they approve.166

For some states, border state agreement provisions were built to allow the sending state’s social workers to conduct the home study in the receiving state.167 Allowing a social worker from the sending state to


157. SEIBEL, supra note 91, at 102.

158. Id. at 103.

159. Id.


161. TEXT OF INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN, Art. V(b).


163. Id.

164. Post, supra note 160.

165. SEIBEL, supra note 91, at 102.

166. Interstate Compact on the Placement of Children Border State Agreement, supra note 109.

167. SEIBEL, supra note 91, at 102.
conduct the home study of the potential placement can save significant
time if the potential placement is geographically close to the sending
state. The sending state may also have more motivation to conduct a
speedy home study. However, while some border state agreements
were implemented with the primary intention that the sending state’s
social worker would conduct the home study, most states acknowledge
that it is primarily the receiving state’s responsibility to conduct the
home study if ICPC approval has been requested. However, certain
extenuating circumstances may justify the sending state’s personnel
conducting the home study.

Border state agreements are a quicker way of ensuring a child’s
proposed placement is approved while still keeping some safety
assurances in place. To conduct an initial emergency out-of-state
placement pursuant to a border state agreement, a request must be faxed
by the sending state with relevant documents attached. The receiving
state must then respond and acknowledge receipt of the request within
one hour. Once acknowledgement of receipt is sent, the receiving state
needs to conduct an immediate safety study, which would include a
narrative report with information regarding the potential relative
placement. There are a few things that report should include: “[(1)] all
household members and their home environment, [(2)] a determination
regarding the appropriateness of the placement and impact on the safety
and well-being of the child, and [(3)] results of local background checks
or verifications as well as state child abuse records.” The written
report, along with the other materials, is then forwarded to the sending
state within one business day.

Some states even mandate a pre-screening process before a request
for border state agreements can be made. During pre-screening
sessions, the sending state’s caseworker would conduct a phone

168. Id.
169. Id. at 102-03.
170. Id. at 102.
171. Id.
172. Post, supra note 160 (stating that, after negotiations, an agreement was reached allowing
for an emergency placement within twenty-four hours).
173. Id.
174. Id.
175. Id.
176. Id.
177. Id.
178. Interstate Compact on the Placement of Children Border State Agreement, supra note
109.
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The interview determines whether or not the potential placement family is willing, able, and fit to care for the child. This interview is also a way for the sending state’s caseworker to advise the prospective placement of their responsibility for ensuring a “timely decision from the receiving state concerning provisional placement approval.”

III. PROBLEMS WITH THE INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

While the ICPC was created to ensure that a potential out-of-state placement is in a child’s best interests, there are considerable drawbacks to the process. Due to these drawbacks, some courts choose to not comply with the regulatory framework of the ICPC. This judicial non-compliance with the ICPC regulations is a sign there are significant inefficiencies within the ICPC. Courts are still placing children across state lines in violation of the ICPC, often disguising these placements as temporary visits. A direct violation of the ICPC creates a potential risk to the children being sent without appropriate approval because, without the home study evaluation, the sending state has no way of knowing if safety standards are being met in the potential placement. Subpart A discusses how the lengthy ICPC process is a large concern. Subpart B discusses how a lack of interstate communication and understanding of the ICPC process makes the delays worse and negatively affects the children placed out-of-state. Subpart C discusses how arbitrary ICPC

179. Id.
180. Id.
181. Id.
182. DEP’T OF HEALTH & HUM. SERVS., supra note 13, at 7. A report on the ICPC identified four of its main weaknesses: (1) judges, attorneys, and caseworkers lack knowledge about the ICPC; (2) placements continue to be made in violation of the ICPC; (3) the ICPC process is lengthy; and (4) states have different adoption laws that may delay placements. Id. at 7-9. Studies show that delays can often be caused by missing paperwork or incomplete referral packets. Id. at 8; Understanding Delays in the Interstate Home Study Process, supra note 95, at 18. The ICPC administrator from the sending state is responsible for reviewing the necessary ICPC paperwork and ensuring it is complete. Id. at 8. Caseworkers have large caseloads and are thus spread very thin. Id. at 19. Additional funding directed toward hiring more caseworkers may lighten their workload and prevent mistakes from being made. Id. at 25. However, this proposed solution is beyond the scope of this Note.
183. Lore, supra note 36, at 75.
184. Id. at 64, 75.
185. Id. at 63, 75.
186. Id. at 61.
187. See infra Part III.A.
188. See infra Part III.B.
denials are increasing, affecting those that are in need of a thorough ICPC process. Finally, Subpart D elaborates on the harm done to a child when the ICPC process is delayed.

A. The Inordinate Length of Time Required to Effectuate an Interstate Compact on the Placement of Children

One of the biggest issues concerning the ICPC is that it can take a considerable amount of time to receive an approval or denial. Some Compact Administrators believe that the delays in the ICPC process have led to the reluctance of caseworkers to comply with the ICPC. Some argue that keeping a child in foster care for a long period of time may be contrary to what is in the child's best interests.

Some of the leading causes of delay include a home study that does not address the child's specific needs, incomplete packets, missing court orders, and inadequate financial plans. For example, states have different home study requirements, which means that a sending state may send an ICPC request packet to the receiving state without a piece of information the receiving state requires. The receiving state cannot assess the prospective placement if the ICPC request is missing information and, therefore, a placement cannot be approved. Also, for an out-of-state placement to be approved, an adequate financial plan must be in place, but this is a challenging task because different states have regulations that can make providing assistance difficult.

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189. See infra Part III.C.
190. See infra Part III.D.
191. DEP'T OF HEALTH & HUM. SERVS., supra note 13, at 8.
192. Id.
193. Lore, supra note 36, at 65 n.25 (explaining how children who remain in foster care for long periods may become unable to form solid bonds with adults and that foster children are more likely to experience abuse than the general population).
194. Understanding Delays in the Interstate Home Study Process, supra note 95, at 15-18. Eight states listed that their primary reason for delays was that the home study did not address the specific needs of the child. Id. at 17. There was no elaboration on this point, but it was suggested that the quality of the home study was problematic. Id. The other factors listed included the fact that there was no clear recommendation, and there was a lack of communication between the ICPC administrator and the staff of the local agencies. Id.
196. Id.
197. Id. § 1.2.4, at 1-8. The following excerpt highlights how certain regulations can create difficulties in providing assistance:

For children receiving Medicaid, certain costs, such as mental health or dental services, are more difficult to cover because of States' variability in coverage and the lack of providers accepting Medicaid payment in some areas. In addition, some receiving States
Similar to the requirement of a complete ICPC request packet, a potential placement cannot be approved without an agreed upon financial plan for the child.198

The American Public Human Services Association recommends that the ICPC process be completed within sixty days.199 However, that sixty-day period does not begin until the receiving state receives the necessary materials from the sending state.200 In fact, it currently takes thirty days or more for the sending state to gather the necessary documents.201 Data has shown that “30% percent of home studies take longer than ninety days to complete.”202 According to ICPC rules and regulations, the final decision regarding the placement should be provided no later than 180 days from the receipt of the initial ICPC request.203 During the time it takes for the required parties to send or receive the necessary documents, complete the home study, and make the final decision regarding the placement, the child is still waiting in care, potentially to her detriment.204

In an effort to decrease the delays caused by the ICPC, a joint committee of the AAICPC passed Regulation 7 in 1996.205 This regulation created a priority placement status to expedite the placement of children who met the requirements under Regulation 7.206 For Regulation 7 to apply, the child must be under the age of four, in an emergency shelter, or be found to have spent a “substantial amount of
time in the home of the proposed placement recipient.” However, Regulation 7 has not solved the issue of ICPC delays. Attorneys have stated that even with a Regulation 7 request, decisions can still take months. Some have said Regulation 7 is not being used efficiently. For example, an Arkansas study revealed that of the fifty-six priority requests sent by Arkansas to other states, only seven were completed within the required thirty days, forty-two were completed after the thirty-day limitation, and seven were not completed at all. Further, reports published in 1999 and 2003 regarding ICPC inefficiencies stated that delays were still a problem.

B. The Lack of Interstate Communication and Understanding of the ICPC by the Parties Involved

The ICPC was implemented to expand a state’s jurisdiction over a child being sent to a different state. However, the ICPC does not solve the communication problems between the sending and receiving states. Even if the receiving state recommends approval, direct communication with the sending state alone cannot be considered an acceptance. There have been instances where children were sent to out-of-state placements without having the necessary documents signed, meaning those children were in a receiving state without any safeguards or anyone legally bound to check in on them.

Even if the ICPC is properly executed, the current regulations and requirements are doing little to address the communication problems.

207. Id. at Reg. No. 7(5)(a)–(d); Lore, supra note 36, 73 n.72.
208. Lore, supra note 36, at 73.
209. Post, supra note 160.
211. ARK. SUP. CT. AD HOC COMM. ON FOSTER CARE AND ADOPTION, supra note 202, at 31-32.
212. Id.
213. Lore, supra note 36, at 73.
215. See Understanding Delays in the Interstate Home Study Process, supra note 95, at 17-18 (listing several issues that stem from communication issues between the sending and receiving states such as missing paperwork and improper home studies); see also ARK. SUP. CT. AD HOC COMM. ON FOSTER CARE AND ADOPTION, supra note 202, at 62 (identifying what surveyed respondents believe to be barriers to complying with and completing the ICPC home study process).
216. Libow, supra note 45, at 22.
217. O’Matz & Kestin, supra note 18. However, a release of records from the Department of Children & Families shows that a caseworker has maintained contact with Texas school authorities to monitor a ten-year-old child even though Texas refused to approve the ICPC. Id.
between the sending and receiving states. Some assert that the sending state forgets the children once they are placed out-of-state, and the receiving state does little to monitor them. Losing children after out-of-state placements are made is not an uncommon occurrence. In June of 2002, Florida's Department of Children and Families ("DCF") reported that 421 children who were placed in out-of-state homes or facilities had not been seen by social workers in a month. Moreover, Florida's DCF was still searching for a missing nine-year-old child who had been placed in the Bronx, New York more than a year after placement. The child's records illustrated that the family moved one year earlier, but DCF had not heard from them since then. Lack of communication between the sending and receiving state is also a reason that ICPC home studies and evaluations can be delayed. As previously stated, delays in the ICPC process may occur when ICPC requests are not complete when sent to the receiving state. However, delays can also occur after the receiving state has completed its home study. When a home study is completed, the receiving state must send the sending state an extensive report on the family's finances, medical history, and parenting style. If any of that required information is missing, the process may be delayed until the information is obtained.


219. O'Matz & Kestin, supra note 18; O'Matz & Kestin, supra note 218.

220. O'Matz & Kestin, supra note 18; O'Matz & Kestin, supra note 218 (stating Professor Michael Dale's opinion that "the receiving state doesn't watch after [the children, and they] get lost because the sending state forgets about them").

221. See, e.g., O'Matz & Kestin, supra note 18; O'Matz & Kestin, supra note 218 (describing several cases where children are missing).

222. O'Matz & Kestin, supra note 18; O'Matz & Kestin, supra note 218. Two weeks after the report was released, DCF stated that they were unable to comment on whether or not those children were safe in those placements. Children Lost, supra note 18.

223. O'Matz & Kestin, supra note 18.

224. Id.

225. See Understanding Delays in the Interstate Home Study Process, supra note 95, at 14 (describing how missing portions of the ICPC can cause delays).

226. Id.; see supra Part III.A.


228. Id.

229. Id.
The longer it takes for the state to send the required information, the longer the child remains in foster care awaiting a decision. There also may be conflicts between the sending and receiving states’ policies regarding the child’s financial support plan, which could lead to delays until the conflict is resolved.

More training may also be needed on the ICPC. Some judges, as well as attorneys, believe that attorneys, judges, and caseworkers may not be aware of the ICPC or understand it. Some bypass the ICPC requirements under the disguise of extended visits because of the lengthy approval process. They may not be using Regulation 7 to their advantage. ICPC administrators have also stated that caseworkers may purposely bypass the ICPC requirements because they do not understand or know the standard. This noncompliance with the ICPC poses a potential harm to the children being sent to the receiving state (for example, a court chose to ignore the ICPC requirement and sent children to live with their out-of-state aunt). The children were sent without the court setting up the necessary foundation: ensuring the aunt’s financial ability to care for the children, sending all necessary medical paperwork, and providing copies of the children’s birth certificates. Eventually, the aunt became frustrated and sent the children back to their mother.

230. Id. (noting that resolving financial plans and incomplete information on the prospective family was cited as one of the top four factors in ICPC delays).
231. Id. The article states that the phrase “financial issues cannot be negotiated” was cited by sixty percent of respondents as contributing often or sometimes to delays. Id. at 17. Fifty-three percent of responding states cited incomplete information as one of the main reasons for an ICPC delay. Id. Fifty-three percent of responding states also listed the home study not meeting the child’s needs as contributing often or sometimes to delays. Id.
233. Id.; DALBERT ET AL., supra note 195, § 1.2.3, at 1-7.
234. See Lore, supra note 36, at 75; see also DEPARTMENT OF HEALTH & HUMAN SERVICES, supra note 13, at 8 (stating that ICPC administrators believe that violations are occurring but are unsure of the numbers). Only a few local state workers believed that placements in violation of the ICPC were of potential harm to the child. Id. Some caseworkers complained about delays caused by procedural regulations. Id. For example, one worker stated her ICPC returned a case document because she had not made three copies as required. Id. Some believe that placement violations continue because the ICPC is unenforceable. Id. While Article IV of the ICPC permits the revocation or suspension of any license, permit, or legal authorization held by the sending agency when a placement violation is committed, this recourse is not used. Id.
235. DEPARTMENT OF HEALTH & HUMAN SERVICES, supra note 13, at 8. One judge believed that placements in violation of the ICPC were worse before the creation of Regulation 7. Id.
236. Id.
237. SEIBEL, supra note 91, at 15-16.
238. Id.
239. Id.
The aunt did not know that the children were removed due to the mother’s boyfriend sexually abusing them—or that the boyfriend and mother were still living together. Education on the importance of appropriately applying the ICPC could prevent incidents like this one from occurring.

C. Arbitrary Denials

During the ICPC process, there is a chance that arbitrary denials may be issued. Caseworkers have extremely large caseloads and may not be able to focus on ensuring paperwork is done correctly. There is also concern that caseworkers from sending states resent inter-jurisdictional responsibilities because those placements are not always included as part of their official caseload. Therefore, a sending state’s caseworker may categorize out-of-state placements as a lower priority, meaning their focus may not be on ensuring paperwork accuracy.

On average, the overall denial rate for an ICPC placement request is about forty percent. Once the home study is completed, the agency in the receiving state has sole discretion to approve or deny a placement. The agency is told to reject a placement if it is contrary to the best interests of the child. However, there is no formal assessment standard to determine what is contrary to the best interests of a child.

240. Id. at 16.
241. Id. at 17-18.
242. Sankaran, supra note 141, at 140-41 (depicting a graph that contains several states and their percentage of outgoing denial requests).
243. Vivek Sankaran, Judicial Oversight Over the Interstate Placement of Foster Children: The Missing Element in Current Efforts to Reform the Interstate Compact on the Placement of Children, 38 CAP. U. L. REV. 385, 391 (2009) (stating that families often complain about being unable to contact their caseworker); Understanding Delays in the Interstate Home Study Process, supra note 95, at 19. Half of the forty-five states that responded to a question regarding the cause of delays at the local level identified staffing and workload issues as the most frequent causes. Id. The staffing concerns included inadequate staff at the local agency level as well as the ICPC level, delays of case assignments, inadequate training and staff resources, and high staff turnover and vacancies. Id. Thirty-two states listed workload and staffing issues as the leading cause of delays. Id.
244. DALBERTH ET AL., supra note 195, § 1.2.3, at 1-7 to 1-8.
245. Id.
246. Sankaran, supra note 141, at 141 (using data from nineteen states to establish an average denial rate of 41.25%).
247. Sankaran, supra note 243, at 398.
248. Id.
249. Id.
Agencies are allowed to make their decisions without fear of judicial review because there is no formal review available, which may leave families with the belief that they received an improper denial and unsure of what to do next. For example, one study showed that 681 respondents were denied by a particular receiving state, even though they would have been approved in another. Only nineteen percent of those respondents challenged the decisions. Fourteen percent of that nineteen percent reported a successful outcome. Another twelve percent reported being unsuccessful and seventy-four percent reported not knowing the outcome of their challenge.

Caseworkers provide local ICPC administrators with their recommendations as to whether homes should be approved. ICPC administrators will most likely follow a caseworker’s recommendation. Caseworkers are given significant discretion to deny placements. Often, their denials can be based on subjective opinions. Instead of allowing subjective opinions to form the basis of a denial, the home study should be limited to obtaining objective facts about the proposed placement—such as whether the inhabitants have a criminal record and means to support the child—so that the caseworker’s potential biases do not affect their recommendation.

Data showing a high percentage of ICPC denials is suggestive of agencies may be abusing their power. Normally, parents and relatives of a child would receive some constitutional protection due to their

250. Id. at 398-99.
251. See Ark. Sup. Ct. Ad Hoc Comm. on Foster Care and Adoption, supra note 202, at 34-35.
252. Id. at 34.
253. Id. at 34-35.
254. Id. at 35.
255. Id.
256. See Gilmore et al., supra note 56, at 65; Understanding Delays in the Interstate Home Study Process, supra note 95, at 8.
257. See Gilmore et al., supra note 56, at 65; Understanding Delays in the Interstate Home Study Process, supra note 95, at 8.
259. Id. at 398, 400.
260. Id. at 399-400 (describing several reasons that were given for a placement denial).
261. Id. at 399 (using Arkansas data to show that a large number of placement denials are received and given). Fifty percent of Arkansas’ home study requests were denied and Arkansas denied seventy percent of home studies. Id. Michigan denied forty percent of the home studies it completed and its ICPC requests were denied in fifty percent of all cases. Id. These denial statistics are illustrative of ICPC denial statistics in states across the country. Id.
relationship with the child, but because state intervention was necessary, constitutional protection is no longer available. This means placements with parents and relatives can be denied. Records of the precise reasons for denials are not kept, so it is usually impossible to know why a placement was denied. However, some advocates, like author Vivek Sankaran, have discovered a “pattern of arbitrary decision-making.” Some denials are based on subjective determinations, like inadequate living space, lack of parenting skills, or even insufficient income, but the family members are given no further information and other agency officials do not closely examine the decisions to see if any errors were made. Some believe that the high percentage of denials could be due to agencies attempting to prevent “dumping” or even that agencies are so busy that they give out denials because of their inability to conduct a thorough investigation. Currently, Article IV of the ICPC states that if an agency violates the ICPC, that agency could have their license or permit revoked. But, no individual has the power to sanction an agency if its decision is found to be arbitrary, and no state has ever attempted retaliation for arbitrary denials—meaning that there are no real checks on an agency’s decision.

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262. Id.
263. Id. (stating that a large number of potential parent and relative placements applying for ICPC approval are denied).
264. Id.
265. Sankaran, supra note 141, at 140; Sankaran, supra note 243, at 399-400. Parents with criminal records were denied even though the convictions were over fifteen years old. Id. at 399. Spanish-speaking relatives were denied as a placement because they refused to participate in parenting classes that were only taught in English. Id.
266. Sankaran, supra note 243, at 400.
267. See In re Shaida W., 649 N.E.2d 1179, 1182 (N.Y. 1995) (noting that the ICPC is in place to prevent “dumping” a child on the receiving state); see also Sankaran, supra note 141, at 140-41 (stating that child welfare agencies deny approximately forty percent of ICPC requests and that some denials occur for arbitrary reasons).
269. Sankaran, supra note 141, at 141 (stating that although home study denials are unreviewable by judges and administrative hearing officers, some state agencies have an administrative appeal process within the agency for foster parents whose licenses have been revoked or denied, but such hearings are unavailable for parents and relatives); Sankaran, supra note 243, at 395 & n.47. Some studies indicate that individual states may also adopt sanctions for those that choose to violate the ICPC. See Florida Court Improvement Program Interstate Compact on the Placement of Children Assessment, supra note 268, at 8. This way, a state can hold attorneys and caseworkers accountable for the parts of the ICPC that they are responsible for. See id.
D. Harm Done to the Child During the Interim Period in Foster Care

Some studies have shown that the longer it takes for an ICPC decision to be made, the more harm is caused to a child waiting in foster care.\textsuperscript{270} When determining whether to approve a home, caseworkers must necessarily determine if the placement is in the best interests of the child.\textsuperscript{271} However, in the time it takes to make that determination, the subject-child has to stay in foster care, which may cause her emotional harm.\textsuperscript{272}

Staying in foster care can have a severely detrimental effect on a child.\textsuperscript{273} A lengthy ICPC process that forces a child to remain in foster care may lead to further harm to the child.\textsuperscript{274} A foster care placement is expected to provide a child with a safe and secure home, but there is no way to ensure the placement meets those criteria and children often fall through the cracks.\textsuperscript{275} Data has shown children in foster care are abused at a higher rate than those in the general population.\textsuperscript{276}

Being in foster care typically means a child is forced to move from home to home, which leads to instability in the child’s life.\textsuperscript{277} The uncertainty of foster care placements can create psychological issues for

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  \item[270.] Sankaran, supra note 25, at 445; see also Paul Chill, Burden of Proof Begone: The Pernicious Effect of Emergency Removal in Child Protective Proceedings, 41 FAM. CT. REV. 457, 462 (2003) (explaining that a child who remains in foster care for more than a few weeks may experience multiple home placements, and because of that, the child may develop post-traumatic stress disorder, reactive attachment disorder, or other psychiatric illnesses).
  \item[271.] Sankaran, supra note 25, at 442.
  \item[272.] Id. at 445; see also Michael Wald, State Intervention on Behalf of "Neglected" Children: A Search for Realistic Standards, 27 STAN. L. REV. 985, 995 (1975) (explaining the various psychological difficulties that could affect a child who is forced to remain in foster care).
  \item[273.] Sharon Balmer, From Poverty to Abuse and Back Again: The Failure of the Legal and Social Services Communities to Protect Foster Children, 32 FORDHAM URB. L.J. 935, 937-38 (2005); Sankaran, supra note 243, at 389 n.17.
  \item[274.] See Balmer, supra note 273, at 937-38 (describing the potential negative effect foster care can have on a child); see also Sankaran, supra note 141, at 141 (discussing the delays caused by the ICPC procedure).
  \item[275.] Balmer, supra note 273, at 937-38; Wald, supra note 272, at 994 ("Yet foster homes, while providing a family situation, are subject to a number of defects. First, it is difficult to find well-qualified foster parents capable of caring for the type of children who need foster homes. As a result, many children removed from their own families spend considerable time in institutions, often extremely inadequate institutions.").
  \item[276.] Balmer, supra note 273, at 937-38. The belief is that this statistic is actually higher, but many cases go unreported. Id. at 938.
  \item[277.] Id. at 937; Wald, supra note 272, at 994 ("Even after initial placement in a foster home, children are frequently subjected to numerous moves, each destroying the continuity and stability needed to help a child achieve stable and emotional development.").
\end{itemize}
a child\textsuperscript{278}—she may feel that foster care is a punishment.\textsuperscript{279} For a child who knows she has relatives in other states, the waiting period may create a feeling of abandonment.\textsuperscript{280}

Statistics show the effects of foster care placements go beyond emotional damage.\textsuperscript{281} Forty percent of children in foster care end up on welfare or in prison.\textsuperscript{282} Children in foster care are also sixty-seven times more likely to be arrested than children who are not in foster care.\textsuperscript{283}

The ICPC process may take a year or longer.\textsuperscript{284} During that time, a child is forced to remain in foster care.\textsuperscript{285} Remaining in foster care for long periods of time leaves a child susceptible to a comprehensive list of emotional damage.\textsuperscript{286} Due to the current faults in the ICPC process, a child is not only placed in a situation where she is at risk but also left in that position for excessive periods of time.\textsuperscript{287}

IV. PROPOSED SOLUTION

As indicated by the issues discussed above, reforms to the ICPC are necessary.\textsuperscript{288} Subpart A suggests clarifying the ICPC to include a list of causes for denial of a placement.\textsuperscript{289} Subpart B encourages more attorneys to use border state agreements.\textsuperscript{290} Subpart C suggests a modification to Regulation 7.\textsuperscript{291} Subpart D suggests that ICPC training be provided to judges, attorneys, and caseworkers so they are able to better understand how the ICPC works.\textsuperscript{292}

\textsuperscript{278} Wald, \textit{supra} note 272, at 995.
\textsuperscript{279} \textit{Id.}
\textsuperscript{280} Sankaran, \textit{supra} note 24, at 92; Wald, \textit{supra} note 272, at 995 ("[C]hildren placed in foster homes experience identity problems and conflicts of loyalty, and often suffer from anxiety generated by uncertainty about their future.").
\textsuperscript{281} Balmer, \textit{supra} note 273, at 937-38; Wald, \textit{supra} note 272, at 995 ("It is our conviction that no child can grow emotionally while in limbo . . . He cannot invest except in a minimal way . . . if tomorrow the relationship may be severed.") (quoting Marvin E. Bryce & Roger C. Ehert, \textit{144 Foster Children}, \textit{50 Child Welfare} 499, 503 (1971)).
\textsuperscript{282} Balmer, \textit{supra} note 273, at 937.
\textsuperscript{283} \textit{Id.}
\textsuperscript{284} Sankaran, \textit{supra} note 25, at 445.
\textsuperscript{285} \textit{Id.}
\textsuperscript{286} Sankaran, \textit{supra} note 24, at 91; Sankaran, \textit{supra} note 25, at 445 (stating that children may form emotional attachments to their foster parents or group home staff, which may create additional trauma if they are later removed).
\textsuperscript{287} Sankaran, \textit{supra} note 25, at 445-46.
\textsuperscript{288} See \textit{supra} Part III (discussing the problems with the current ICPC process).
\textsuperscript{289} See \textit{infra} Part IV.A.
\textsuperscript{290} See \textit{infra} Part IV.B.
\textsuperscript{291} See \textit{infra} Part IV.C.
\textsuperscript{292} See \textit{infra} Part IV.D.
A. Amending the Interstate Compact on the Placement of Children to Define the Terms for a Denial

Caseworkers are given a lot of discretion to deny placements.\textsuperscript{293} Often, their denials can be based on subjective opinions.\textsuperscript{294} To prevent some of those arbitrary denials, the ICPC should include a list of what are appropriate reasons for a denial.\textsuperscript{295} The caseworker should not need to be confined to that list, but if she does recommend a denial for a reason not listed, then her report should expand on why.\textsuperscript{296} This would take some of the discretion away from caseworkers and decrease arbitrary denials.\textsuperscript{297} The following is a draft proposal for a modified ICPC Regulation 1(7):\textsuperscript{298}

7. Final Approval or Denial:
   (a) Pursuant to Article III(d), final approval or denial of the placement resource request shall be provided by the receiving state compact administrator as soon as practical but no later than one-hundred and eighty days (180) days from receipt of the initial home study request.\textsuperscript{299}
   (b) Prior to approving or denying a placement, workers must consider the following:\textsuperscript{300}
      1. The relationship between the child and the relative(s) in the potential placement;
      2. The ability for the potential placement to provide for the child;

\textsuperscript{293} Sankaran, supra note 243, at 398.
\textsuperscript{294} Id. at 399-400.
\textsuperscript{295} Id. at 402 (suggesting the home study includes less subjective opinions).
\textsuperscript{296} See id. (explaining that caseworkers who conducted the evaluation should include a statement on whether the placement would serve the child’s best interests); see also Ark. Sup. Ct. Ad Hoc Comm. on Foster Care and Adoption, supra note 202, at 34-35 (showing the statistics of respondents who believe their ICPC denials were improper and respondents who are unsure of the status of their ICPC challenges).
\textsuperscript{297} See, e.g., Sankaran, supra note 243, at 404 (proposing that the child welfare agency in the receiving state be stripped of its power to control the placement as a way of removing arbitrary denials).
\textsuperscript{298} Proposed additions to the current Regulation 1(7) are indicated by italics.
\textsuperscript{300} See Sankaran, supra note 243, at 402 (suggesting that the home study should be in place to ascertain certain facts).
3. The criminal records of those who reside in the home of the potential placement; and
4. Specific information on the caretaker’s home. 301

Agencies will most likely disagree with this proposal because it would impose a check on their power; 302 however, it still allows them to be the sole decision maker on whether a placement receives approval, while still providing a safeguard against arbitrary denials. 303 Having a specific list that caseworkers will look to before making their decision forces both sides to be accountable and provides transparency. 304

Additionally, though some may disagree, the sending state should not have the power to review the ICPC recommendation report or be the one to approve a placement. 305 Allowing the sending state to have all decision-making powers may increase the length of the ICPC process because a court in the sending state will most likely have to review the decision in addition to any other necessary paperwork. 306 Also, this suggested procedure would infringe on the sovereignty of the receiving state, which would decrease a state’s incentives to enact a new ICPC. 307

B. Increasing Usage of Border State Agreements in the ICPC Process

The ICPC process is lengthy and can force a child to remain in foster care for a considerable amount of time. 308 However, some

301. See Sankaran, supra note 243, at 402 (suggesting that the home study consider such facts as the caretakers’ past relationship with the child); Understanding Delays in the Interstate Home Study Process, supra note 95, at 14, 17 (listing different aspects of the home study, including elements that delay the process).

302. Sankaran, supra note 243, at 404.

303. Cf. Sankaran, supra note 243, at 404-05 (discussing how judicial oversight would completely strip local agencies of their power to control placement, but allow every state to keep their sovereignty).

304. Id. at 402 (suggesting what the home study should ascertain); see DALBERTH ET AL., supra note 195, at tbl.2-1. (stating that more than fifty percent of states thought a uniform home study process would be more effective).

305. See Sankaran, supra note 243, at 400 (explaining the risk of a sending state “dumping” foster care children in a receiving state and refusing to take responsibility).

306. See Understanding Delays in the Interstate Home Study Process, supra note 95, at 14 (discussing how the current ICPC process creates delays in a decision).

307. Cf. Sankaran, supra note 243, at 404-05 (describing a proposal where the sending state would not be in breach of the receiving state’s sovereignty because it would not be issuing any order that could bind the receiving state agency).

308. Post, supra note 160.
attorneys have utilized border state agreements to decrease the lengthy ICPC process.309 Under Article V(b), a state can enter into any type of agreement regarding the required home studies and procedural time frame.310 The states do not need to border each other to enter into a border state agreement. Rather, they just have to regularly conduct business together.311 Therefore, caseworkers should increase their use of border state agreements because they are even more efficient than Regulation 7 applications when the receiving state is slow in giving a response.312 If the receiving state is geographically close to the sending state, the sending state’s caseworker should negotiate for the ability to conduct the home study themselves.313 For some states, this is an option when they enter border state agreements; unfortunately, not enough caseworkers use these border state agreements.314 Encouraging border state agreements is essential to improving the ICPC process.315

C. Modifying and Increasing the Use of Regulation 7 Placements

The ICPC should be amended to include a provision allowing a child to remain in the care of the proposed placement during the time it takes to complete the ICPC process.316 Having such a provision would decrease the emotional harm done while the child is waiting for a decision because the child would not be waiting in foster care.317 This would also allow the caseworker to evaluate how the child fits into the prospective placement.318

The current provisional placement clause under Regulation 7 is not enough.319 It excludes a number of placements, which leaves a

309. Id.
310. Id.
311. Id.
312. See id.
313. SEIBEL, supra note 91, at 102.
314. Id. at 102-03.
315. Id. at 103.
316. See supra Part II.E.2–3 (discussing how provisional placements under Regulation 7 and border state agreements are used to place a child before the ICPC is completed).
317. See supra Part III.D (discussing the different harms a child may endure while in care).
318. See Gilmore et al., supra note 56, at 64-65 (discussing how the sending state’s report should include what type of family would be best with the child and information on the child’s needs).
319. See supra Part II.E.2 (discussing how Regulation 7 only applies to a limited group).
significant amount of children waiting in foster care.\(^\text{320}\) Also, many are unaware the provision exists.\(^\text{321}\) For the ICPC to become more efficient and truly serve the best interests of the child, these problems need to be resolved.\(^\text{322}\) The ICPC should be modified to include a clause that provides for a child to stay with a relative during the interim if the preliminary home study shows no potential dangers.\(^\text{323}\) There should be a clause allowing this provision to apply in cases where a child has already spent thirty days in a foster care placement.\(^\text{324}\) Regulation 7 should be amended\(^\text{325}\) to include the following under subsection 5:\(^\text{326}\)

\begin{itemize}
  \item[(d)] the child is currently in an emergency placement;
  \item[(e)] the child has spent over thirty days in foster care and the receiving state has not submitted the home study in the required time.\(^\text{327}\)
\end{itemize}

Considering the emotional harms that could arise for a child in foster care, this expansion of the provisional placement could be a small step toward solving the problems currently inherent in the ICPC.\(^\text{328}\)

\section*{D. Training Attorneys and Judges About the Interstate Compact on the Placement of Children}

Judges and attorneys have commented on the lack of knowledge by many who deal with the ICPC on how its process works.\(^\text{329}\) This lack of knowledge may delay the ICPC process or encourage caseworkers to ignore the regulations, which may lead to potential dangers.\(^\text{330}\)

\begin{itemize}
  \item[320.] ICPC REGULATIONS, Reg. No. 7 (AM. PUB. HUM. SERVS. ASS’N 2012), http://www.aphsa.org/content/AAICPC/en/ICPCRegulations.html (listing the requirements a case must meet before applying for Regulation 7).
  \item[321.] DEP’T OF HEALTH & HUM. SERVS., supra note 13, at 7.
  \item[322.] See Sankaran, supra note 141, at 142.
  \item[323.] See ICPC REGULATIONS, Reg. No. 7 (AM. PUB. HUM. SERVS. ASS’N 2012), http://www.aphsa.org/content/AAICPC/en/ICPCRegulations.html.
  \item[324.] Lore, supra note 36, at 80 (suggesting a requirement of seven days for the initial home study to be completed).
  \item[325.] Proposed additions to the current Regulation 7 are indicated by italics.
  \item[326.] See ICPC REGULATIONS, Reg. No. 7(5) (AM. PUB. HUM. SERVS. ASS’N 2012), http://www.aphsa.org/content/AAICPC/en/ICPCRegulations.html.
  \item[327.] See id.
  \item[328.] See supra Part III.D.
  \item[329.] DEP’T OF HEALTH & HUM. SERVS., supra note 13, at 7; SEIBEL, supra note 91, at 17-18.
  \item[330.] DEP’T OF HEALTH & HUM. SERVS., supra note 13, at 8 \(\text{(stating that some feel that placements in violation of the ICPC leave children vulnerable and without protection)}\); SEIBEL, supra note 91, at 15-16.
\end{itemize}
ICPC training should be implemented for all attorneys who practice family law.\textsuperscript{331} This training could expand on how the ICPC works and teach attorneys, judges, and caseworkers what they can do to ensure the ICPC process is being properly and efficiently completed.\textsuperscript{332} Creating an open line of communication between the different parties involved in the ICPC process would allow for members of the receiving or sending state to feel comfortable with the established professional relationships and invite attempts to solve the issues that are causing the delay of a placement decision.\textsuperscript{333}

V. CONCLUSION

Reforms to the ICPC are necessary to truly do what is in the best interests of a child.\textsuperscript{334} Currently, local officials and judges often ignore the ICPC regulations, which is a sign that the current ICPC is inefficient.\textsuperscript{335} The ICPC is in place to encourage interstate communication, but parties from the sending and the receiving states are still not communicating properly.\textsuperscript{336} To solve this problem of ineffective communication, the AAICPC should clarify the ICPC to list explicit reasons that would be grounds for a placement denial.\textsuperscript{337} Attorneys should also increase their usage of border state agreements and Regulation 7.\textsuperscript{338} Both of these provisions could create an expedited ICPC process.\textsuperscript{339} Attorneys, judges, and caseworkers should also be provided with adequate ICPC training.\textsuperscript{340} Training would help the listed participants understand how the ICPC works and provide

\begin{itemize}
\item \textsuperscript{331} See Seibel, supra note 91, at 18.
\item \textsuperscript{332} See Sankaran, supra note 81, at 38-41 (suggesting different ways an attorney could facilitate the ICPC process).
\item \textsuperscript{333} Id. at 39; Seibel, supra note 91, at 18. This idea may bring up concerns of judicial ex parte communications; however, when a judge makes an \textit{ex parte} contact with an agency in a sending or receiving state or a juvenile judge in the receiving state regarding a stalled ICPC case, \textit{and} when the investigation of the out-of-state placement is part of a court-approved plan of which all parties are knowledgeable, \textit{and} when the judge makes both the plan to make the contact and the results from the contact available to all parties, the \textit{ex parte communication does not appear to violate ABA Canon 3B(7)}.
\item \textsuperscript{334} Id. at 20-21; see also Post, supra note 160 (citing her experience of a judge contacting the receiving state).
\item \textsuperscript{335} See supra Part III.
\item \textsuperscript{336} Dept’t of Health & Hum. Servs., supra note 13, at 8.
\item \textsuperscript{337} Dalberth et al., supra note 195, § 1.2.6, at 1-9 to 1-10.
\item \textsuperscript{338} See supra Part IV.A.
\item \textsuperscript{339} See supra Part IV.B–C.
\item \textsuperscript{340} See supra note 91, at 62, 102.
\end{itemize}
them with skills to ensure the process is moving timely and as scheduled. Reforming the ICPC could decrease the time children spend in foster care and increase the efficiency and success of interstate communication.

C. Nneka Nzukwu*

341. DALBERTH ET AL., supra note 195, § 1.2.2, at 1-7; Sankaran, supra note 81, at 39 (suggesting attorneys address the delays in the ICPC process).

342. See DALBERTH ET AL., supra note 195, § 1.2.1, at 1-6, § 1.2.6, at 1-9 to 1-10.

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