

## A/N/D, ICPC, and Out-of-State Parents: Say What?

If the juvenile court or county department intends to place a child in an abuse, neglect, and dependency (A/N/D) case with a parent who lives outside of North Carolina, does the Interstate Compact on the Placement of Children (ICPC) apply?

### What Is the ICPC?

The ICPC is a legally binding agreement between the fifty states, the District of Columbia, and the U.S. Virgin Islands. [Association of Administrators of the ICPC \(AAICPC\)](#). Member states cooperate with one another when children are placed in:

- foster care or
- a prospective adoption placement across state lines.

[G.S. 7B-3800, Article I](#). The purpose of the ICPC is to protect children by having the two involved states (receiving and sending) work together to place the child in a safe environment. [G.S. 7B-3800](#). An assessment of the proposed placement, including a home study, is completed by the receiving state. G.S. 7B-3800, Article III. From the date of receipt of the request, the receiving state has up to 60 days to complete the home study and up to 180 days to make a final decision regarding approval of the placement. AAICPC [Regulation No. 1 §7\(a\)](#), [Regulation No. 2 §8\(a\)](#). In certain limited circumstances, an expedited home study and approval process may be permissible for placement with an out-of-state stepparent, grandparent, adult aunt or uncle, adult sibling, parent, or guardian. AAICPC [Regulation No. 7](#). If the proposed placement is approved and the child is placed in the receiving state, the receiving state supervises the child's placement. AAICPC [Regulation No. 11](#). The sending state retains jurisdiction over and responsibility for the child who is placed in the receiving state. G.S. 7B-3800, Article V. Placements that are covered by the ICPC cannot occur unless prerequisites set out in the ICPC have been met. G.S. 7B-3800, Article III (a), Article IV.

### Placement in Foster Care: Does This Mean Placement With a Parent?

Before a child is placed out of state, the court must determine whether the child is being placed in foster care. While it may seem that placement with a parent is not a placement in foster care, this is not always the case.

### North Carolina Court of Appeals: Parents Are Not Foster Parents

In 2004, the court of appeals held that the ICPC did not apply at a permanency planning hearing when the court awarded custody to an out-of-state mother. [In re Rholetter](#), 162 N.C. App. 653 (2004). The court examined the applicable language of the ICPC statute, "[n]o sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement

in *foster care* or as a *preliminary to a possible adoption* unless the sending agency shall comply with each and every requirement set forth in this Article....' Art. III(a) (emphasis added)." *Id.* at 663-64. The court held the language of the statute was "clear and unambiguous." The ICPC did not apply because the trial court did not place the children "in foster care or as a preliminary [placement] to adoption." *Id.*

## **AAICPC Regulations Define Foster Parents to Include Parents**

Since *Rholetter* was decided, substantial amendments were made to the ICPC regulations, effective October 1, 2011. The definition of "foster care" was amended to include a parent who provides 24-hour-a-day care to his or her child "by reason of a court-ordered placement (and not by virtue of the parent-child relationship)." AAICPC [Regulation No. 3 §\(4\)\(26\)](#). This definition requires a state to comply with the ICPC when placement is made with an out-of-state parent.

## **An Exemption for Placement with Parents under AAICPC Regulations**

AAICPC regulation [No. 2 §3\(a\)](#) and [No. 3 §3\(a\)](#) exempt compliance with the ICPC when a placement is made with a child's out-of-state parent if all of the following apply:

1. the parent is not the parent from whom the child was removed;
2. the court has no evidence that the parent is unfit;
3. the court does not seek any evidence from the receiving state regarding the parent's fitness; and
4. the court relinquishes jurisdiction over the child immediately upon placement with the parent.

Because of requirement #4, the regulatory exemption will never apply to a placement with an out-of-state parent that is made before the adjudicatory hearing, i.e., nonsecure custody. A court cannot terminate its jurisdiction in the A/N/D proceeding prior to the adjudicatory hearing. [In re O.S., 175 N.C.App. 745 \(2006\)](#). For the exemption to apply after adjudication, the court would have to order a Chapter 50 custody order and the termination of its jurisdiction in the A/N/D case pursuant to [G.S. 7B-911](#).

## **Do the AAICPC Regulations Exceed the Scope of the Statute?**

Since the amendments to the ICPC regulations, the applicability of the ICPC to placements with out-of-state parents has not been addressed by a North Carolina appellate court. It has been addressed by other state courts, and the decisions are split.

The Connecticut Supreme Court held that the ICPC's statutory language, "placement in foster care or as a preliminary to a possible adoption," does not include placement with a noncustodial parent because "children in the care of their own parents are not in 'foster care' in any ordinary

sense of that phrase, and parents are not required to adopt their own children.” [In re Emoni W.](#), 305 Conn. 723, 734-36 (2012). The reasoning by the Connecticut Supreme Court is the same reasoning applied by the North Carolina Court of Appeals in *Rholetter*. The Connecticut Supreme Court further stated “it is reasonable to conclude that the drafters determined that the statute should not be applied to out-of-state parents in light of the constitutionally based presumptions that parents generally are fit and that their decisions are in the child's best interests.” *Emoni* at 736. Regarding the amended regulations, the court stated that even if the ICPC regulations have the force of law, they are invalid to the extent they impermissibly expand the scope of the compact itself. *Emoni* at 740. Similarly, but without reference to the AAICPC regulations, a California Court of Appeals held that “[c]ompliance with the ICPC is not required for placement with an out-of-state parent.” [In re Patrick S. III](#), 218 Cal. App. 4th 1254, 1264 (2013).

The Arizona Court of Appeals reached the opposite conclusion. The court held that the trial court was a “sending agency” and compliance with the ICPC regulations was required for placements with relatives and parents if none of the enumerated exceptions applied. *Arizona Dept. of Economic Sec. v. Stanford*, 234 Ariz. 477 (Ct. App. 2014). The Arizona court reasoned that the ICPC should be “interpreted liberally because ‘the primary purpose of the ICPC is to protect children by making certain they are placed in a safe environment.’” *Id.* at 481-482.

### **If the ICPC Does Not Apply, County May Request Courtesy Check**

If a court decides compliance with the ICPC is not required for a child's placement with his or her out-of-state parent, a county department may ask the receiving state to conduct a “courtesy check” of a non-removal parent's home. AAICP [Regulation No. 2 §\(3\)\(b\)](#), [No. 3 §\(3\)\(b\)](#). A courtesy check is independent of the ICPC process and does not involve a full home study. *Id.* It is in the discretion of the receiving state to conduct a courtesy check.

When placement with a non-removal parent is made without ICPC compliance or with only a courtesy check, the receiving state has no responsibility for supervising or monitoring the placement. AAICPC [Regulation No. 2 §\(2\)\(c\)](#). The county department in North Carolina would continue to be responsible for supervising the placement.

### **What Is the Ultimate Answer?**

The trial court must ultimately decide whether the ICPC applies. The issue hinges on the definition of “foster care.” The AAICPC definition of foster care is not the only definition a court may consider. Applicable federal regulations define foster care as “24-hour substitute care for children placed away from their parents or guardians and for whom the title IV–E agency has placement and care responsibility.” [45 C.F.R. § 1355.20\(a\)](#). Foster care is also defined by [N.C.G.S. 131D-10.2\(9\)](#) as “the continuing provision of the essentials of daily living on a 24-hour basis for dependent, neglected, abused, abandoned, destitute, orphaned, undisciplined or delinquent children or other children who, due to similar problems of behavior or family conditions, are living

apart from their parents, relatives, or guardians in a family foster home or residential child-care facility....”

Given these varied definitions and relevant case law, what do you think: does the ICPC apply?