

### **Regulation No. 3**

#### **Definitions and Placement Categories: Applicability and Exemptions**

This Regulation No. 3 is adopted pursuant to Article VII of the Interstate Compact on the Placement of Children.

This Regulation No. 3 as first effective July 2, 2001, was amended by the Association of Administrators of the Interstate Compact on the Placement of children on May 1, 2011 and is declared to be effective as of October 1, 2011.

1. Intent of Regulation No. 3: To provide guidance in navigating the ICPC regulations and to assist its users in understanding which interstate placements are governed by, and which are exempt from, the ICPC.

(a) Nothing in this regulation shall be construed to alter the obligation of a receiving state to supervise and report on the placement; nor to alter the requirement that the placement resource(s) comply with the licensing and other applicable laws of the receiving state after placement of the child in the receiving state.

(b) Age restrictions: The ICPC Articles and Regulations do not specify an age restriction at time of placement, but rather use the broad definition of “child.” The sending state law may permit the extension of juvenile court jurisdiction and foster care maintenance payments to eligible youth up to age 21. Consistent with Article V, such youth should be served under ICPC if requested by the sending agency and with concurrence of the receiving state.

2. Placement categories requiring compliance with ICPC: Placement of a child requires compliance with the Compact if such placement is made under one of the following four types of placement categories:

(a) Four types of placement categories:

(1) Adoptions: Placement preliminary to an adoption (independent, private or public adoptions)

(2) Licensed or approved foster homes (placement with related or unrelated caregivers)

(3) Placements with parents and relatives when a parent or relative is not making the placement as defined in Article VIII (a) “Limitations”

(4) Group homes/residential placement of all children, including adjudicated delinquents in institutions in other states as defined in Article VI and Regulation No. 4.

(b) Court involvement and court jurisdiction legal status: The above placement categories may involve placement by persons and/or agencies that at the time of placement may not have any court involvement (i.e., private/independent adoptions and residential placements). Where there is court jurisdiction with an open court case for dependency, abandonment, abuse and/or neglect, the case is considered a public court jurisdiction case, which requires compliance with ICPC Article III (see Regulations No. 1, No. 2, No. 7 and No. 11) note exemption for selected “parent” cases as described below in Section 3, “cases that are exempt from ICPC regulations. In most public court jurisdiction cases the court has taken guardianship and legal custody away from the “offending” caregiver and has given it to a third party at the time placement of the child is made with an alternative caregiver. However, in select cases identified below, the sending court may not have taken guardianship or legal custody away from the parent/guardian, when the ICPC-100A

requesting permission to place is sent to the receiving state. Those cases are identified on the ICPC-100A with the legal status of “court jurisdiction only” as explained below.

(c) Court jurisdiction only: The sending court has an open abuse, neglect or dependency case that establishes court jurisdiction with the authority to supervise, remove and/or place the child. Although the child is not in the guardianship/custody of an agency or the court at the time of completing ICPC-100A, the agency or the court may choose to exert legal authority to supervise and or remove and place the child and therefore is the sending agency. As the sending agency/court it would have specified legal responsibilities per ICPC Article V, including the possible removal of the child if placement in the receiving state disrupts or the receiving state requests removal of the child. There are several possible situations where “court jurisdiction only” might be checked as the “legal status” on the ICPC-100A:

(1) Residential placement (Regulation No. 4): The court has jurisdiction, but in some situations, such as with some probation (delinquent) cases, guardianship remains with the parent/relative, but the court/sending agency is seeking approval to place in a receiving state residential treatment program, and has authority to order placement and removal.

(2) Contingency/concurrent request in cases where removal may become necessary (Regulations No. 2 or No. 7): The child may be in the custody of the offending parent or relative while the public agency tries to bring the family into compliance with court orders and or agency service (case) plan. (Some states call this an order of “protective supervision” or “show cause.”) The court may have requested an ICPC home study on a possible alternative caregiver in a receiving state. It is understood at time of placement the court would have guardianship/legal custody and Article V would be binding.

(3) Parent/relative relocated to receiving state (Regulation No. 1): If the sending court selects to invoke ICPC Article V and to retain court jurisdiction even though the family/relative has legal guardianship/custody and has moved to the receiving state, then the sending court may request a home study on the parent/relative who has moved with the child to the receiving state. By invoking ICPC the sending court is bound under Article V. If the receiving state determines the placement to be contrary to the interests of the child, the sending court must order removal of the child and their return to the sending state or utilize an alternative approved placement resource in the receiving state. The ICPC-100A must be signed by the sending judge or authorized agent of the public agency on behalf of the sending court in keeping with ICPC Article V.

### 3. Placements made without ICPC protection:

(a) A placement with a parent from whom the child was not removed: When the court places the child with a parent from whom the child was not removed, and the court has no evidence that the parent is unfit, does not seek any evidence from the receiving state that the parent is either fit or unfit, and the court relinquishes jurisdiction over the child immediately upon placement with the parent. Receiving state shall have no responsibility for supervision or monitoring for the court having made the placement.

(b) Sending court makes parent placement with courtesy check: When a sending court/agency seeks an independent (not ICPC related) courtesy check for placement with a parent from whom the child was not removed, the responsibility for credentials and quality of the “courtesy check” rests directly with the sending court/agency and the person or party in the receiving state who agree to conduct the “courtesy” check without invoking the

protection of the ICPC home study process. This would not prohibit a sending state from requesting an ICPC.

(c) Placements made by private individuals with legal rights to place: Pursuant to Article VIII (a), this Compact does not apply to the sending or bringing of a child into a receiving state by the child's parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or the child's non-agency guardian and leaving the child with any such parent, relative or non-agency guardian in the receiving state, provided that such person who brings, sends, or causes a child to be sent or brought to a receiving state is a person whose full legal right to plan for the child: (1) has been established by law at a time prior to initiation of the placement arrangement, and (2) has not been voluntarily terminated, or diminished or severed by the action or order of any court.

(d) Placements handled in divorce, paternity or probate courts: The compact does not apply in court cases of paternity, divorce, custody, and probate pursuant to which or in situations where children are being placed with parents or relatives or non-relatives.

(e) Placement of children pursuant to any other Compact: Pursuant to Article VIII (b), the Compact does not apply to any placement, sending or bringing of a child into a receiving state pursuant to any other interstate Compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law.

4. Definitions: The purpose of this section is to provide clarification of commonly used terms in ICPC. Some of these words and definitions can also be found in the Interstate Compact on the Placement of Children, ICPC Regulations, Interstate Compact on Juveniles, and federal statutes and regulations.

*(Note: source of definition is identified right after the word prior to the actual definition.)*

(1) Adoption: the method provided by state law that establishes the legal relationship of parent and child between persons who are not so related by birth or some other legal determination, with the same mutual rights and obligations that exist between children and their birth parents. This relationship can only be termed adoption after the legal process is complete (see categories or types of ICPC adoptions below).

(2) Adoption categories:

(a) Independent adoption: adoptions arranged by a birth parent, attorney, other intermediary, adoption facilitator or other person or entity as defined by state law.

(b) Private agency adoption: an adoption arranged by a licensed agency whether domestic or international that has been given legal custody or responsibility for the child including the right to place the child for adoption.

(c) Public adoption: Adoptions for public court jurisdiction cases.

(3) Adoption home study: (definition listed under "home studies")

(4) Adjudicated delinquent: a person found to have committed an offense that, if committed by an adult, would be a criminal offense.

(5) Adjudicated status offender: a person found to have committed an offense that would not be a criminal offense if committed by an adult.

(6) Age of majority: the legally defined age at which a person is considered an adult with all the attendant rights and responsibilities of adulthood. The age of majority is defined by state laws, which vary by state and is used in Article V, "...reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state" (see definition below of "child" as it appears in Article II).

(7) Approved placement: the receiving state Compact Administrator has determined that "the proposed placement does not appear to be contrary to the interests of the child."

(8) Boarding home: as used in Article II (d) of the ICPC, means the home of a relative or unrelated individual whether or not the placement recipient receives compensation for care or maintenance of the child, foster care payments, or any other payments or reimbursements on account of the child's being in the home of the placement recipient (has same meaning as family free).

(9) Case history: an organized record concerning an individual, their family and environment that includes social, medical, psychological and educational history and any other additional information that may be useful in determining appropriate placement.

(10) Case plan: (see "service plan" definition)

(11) Central Compact office: the office that receives ICPC placement referrals from sending states and sends ICPC placement referrals to receiving states. In states that have one central Compact office that services the entire state, the term "central Compact office" has the same meaning as "central state Compact office" as described in Regulation No. 5 of the ICPC. In states in which ICPC placement referrals are sent directly to receiving states and received directly from sending states by more than one county or other regional area within the state, the "central Compact office" is the office within each separate county or other region that sends and receives ICPC placement referrals.

(12) Certification: to attest, declare or swear to before a judge or notary public.

(13) Child: a person, who by reason of minority, is legally subject to parental guardianship or similar control.

(14) Child welfare caseworker: a person assigned to manage the cases of dependency children who are in the custody of a public child welfare agency and may include private contract providers of the responsible state agency.

(15) Concurrence to discharge: is when the receiving ICPC office gives the sending agency written permission to terminate supervision and relinquish jurisdiction of its case pursuant to Article V leaving the custody, supervision and care of the child with the placement resource.

(16) Concurrence: is when the receiving and sending Compact Administrator agree to a specific action pursuant to ICPC, i.e., decision as to providers.

(17) Conditions for placement: as established by Article III apply to any placement as defined in Article II(d) and regulations adopted by action of the Association of Administrators of the Interstate Compact on the Placement of Children.

(18) Courtesy: consent or agreement between states to provide a service that is not required by ICPC.

(19) Courtesy check: Process that does not involve the ICPC, used by a sending court to check the home of a parent from whom the child was not removed.

(20) Court jurisdiction only cases: The sending court has an open abuse, neglect or dependency case that establishes court jurisdiction with the authority to supervise and/or remove and place the child for whom the court has not taken guardianship or legal custody.

(21) Custody: (see physical custody, see legal custody)

(22) Emancipation: the point at which a minor becomes self-supporting, assumes adult responsibility for his or her welfare, and is no longer under the care of his or her parents or child placing agency, by operation of law or court order.

(23) Emergency placement: a temporary placement of 30 days or less in duration.

(24) Family free: as used in Article II (d) of the ICPC means the home of a relative or unrelated individual whether or not the placement recipient receives compensation for care or maintenance of the child, foster care payments, or any other payments or reimbursements on account of the child's being in the home of the placement recipient (has same meaning as boarding home).

(25) Family unit: a group of individuals living in one household.

(26) Foster care: If 24-hour-a-day care is provided by the child's parent(s) by reason of a court-ordered placement (and not by virtue of the parent-child relationship), the care is foster care. In addition to the federal definition (45 C.F.R. § 1355.20 "Definitions") this includes 24-hour substitute care for children placed away from their parents or guardians and for whom the state agency has placement and care responsibility. This includes, but is not limited to, placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions and pre-adoptive homes. A child is in foster care in accordance with this definition regardless of whether the foster care facility is licensed and payments are made by the state or local agency for the care of the child, whether adoption subsidy payments are being made prior to the finalization of an adoption, or whether there is federal matching of any payments that are made.

(27) Foster home study: (see definition under home studies)

(28) Foster parent: a person, including a relative or non-relative, licensed to provide a home for orphaned, abused, neglected, delinquent or disabled children, usually with the approval of the government or a social service agency.

(29) Guardian [see ICPC Regulation No. 10 section 1(a)]: a public or private agency, organization or institution that holds a valid and effective permanent appointment from a court of competent jurisdiction to have custody and control of a child, to plan for the child, and to do all other things for or on behalf of a child for which a parent would have authority and responsibility for doing so by virtue of an unrestricted parent-child relationship. An appointment is permanent for the purposes of this paragraph if the appointment would allow the guardianship to endure until the child's age of majority without any court review, subsequent to the appointment, of the care that the guardian provides or the status of other permanency planning that the guardian has a professional obligation to carry out.

(30) Home Study (see Safe and Timely Interstate Placement of Foster Children Act of 2006): an evaluation of a home environment conducted in accordance with applicable requirements of the state in which the home is located, to determine whether a proposed placement of a child would meet the individual needs of the child, including the child's safety, permanency, health, well-being, and mental, emotional and physical development.

(a) Adoption home study: a home study conducted for the purpose of placing a child for adoption with a placement resource. The adoption home study is the assessment and evaluation of a prospective adoptive parent(s).

(b) Foster home study: a home study conducted for the purpose of placing a child with a placement resource who is required to be licensed or approved in accordance with federal and/or receiving state law.

(c) Interstate home study (see Federal Safe and Timely Act): a home study conducted by a state at the request of another state, to facilitate an adoptive or foster care placement in the state of a child in foster care under the responsibility of the state [see foster care definition(s)].

(d) Parent home study: applies to the home study conducted by the receiving state to determine whether a parent placement meets the standards as set forth by the requirements of the receiving state.

(e) Relative home study: a home study conducted for the purpose of placing a child with a relative. Such a home study may or may not require the same level of screening as required for a foster home study or an adoptive home study depending upon the applicable law and/or requirements of the receiving state.

(f) Non-relative home study: a home study conducted for the purpose of placing a child with a non-relative of the child. Such a home study may or may not require the same level of screening as required for a foster home study or an adoptive home study depending upon the applicable law and/or requirements of the receiving state.

(g) Safe and Timely Interstate Home Study Report (see Federal Safe and Timely Act): an interstate home study report completed by a state if the state provides to the state that requested the study, within 60 days after receipt of the request, a report on the results of the study. The preceding sentence shall not be construed to require the state to have completed, within the 60-day period, the parts of the home study involving the education and training of the prospective foster or adoptive parents.

(31) ICPC: The Interstate Compact on the Placement of Children is a Compact between states and parties pursuant to law, to ensure protection and services to children who are placed across state lines.

(32) Independent adoption entity: any individual authorized in the sending state to place children for adoption other than a state, county or licensed private agency. This could include courts, private attorneys and birth parents.

(33) Intrastate: existing or occurring within a state

(34) Interstate: involving, connecting or existing between two or more states.

(35) Interstate home study: (see definition under Home studies)

(36) Jurisdiction: the established authority of a court to determine all matters in relation to the custody, supervision, care and disposition of a child.

(37) Legal custody: court-ordered or statutory right and responsibility to care for a child either temporarily or permanently.

(38) Legal guardianship (see 45 C.F.R. § 1355.20 “Definitions”): a judicially created relationship between child and caretaker that is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decision-making. The term legal guardian means the caretaker in such a relationship.

(39) Legal risk placement (legal risk adoption): a placement made preliminarily to an adoption where the prospective adoptive parents acknowledge in writing that a child can be ordered returned to the sending state or the birth mother’s state of residence, if different from the sending state, and a final decree of adoption shall not be entered in any jurisdiction until all required consents or termination of parental rights are obtained or are dispensed with in accordance with applicable law.

(40) Member state: a state that has enacted this Compact (see also definition of state).

(41) Non-agency guardian [see ICPC Regulation No. 10 section 1(b)]: an individual holding a currently valid appointment from a court of competent jurisdiction to have all of the authority and responsibility of a guardian as defined in ICPC Regulation No. 10 section 1(a).

(42) Non-custodial parent: a person who, at the time of the commencement of court proceedings in the sending state, does not have sole legal custody of the child or physical custody of a child.

(43) Non-offending parent: the parent who is not the subject of allegations or findings of child abuse or neglect.

(44) Non-relative: a person not connected to the child by blood, marriage or adoption, or otherwise defined by the sending or receiving state.

(45) Parent: a biological, adoptive parent or legal guardian as determined by applicable state law and is responsible for the care, custody and control of a child or upon whom there is legal duty for such care.

(46) Parent home study: (see definition under home studies)

(47) Physical custody: Person or entity with whom the child is placed on a day-to-day basis.

(48) Placement (see ICPC Article II (d) “Definitions”): the arrangement for the care of a child in a family free, in a boarding home or in a child-caring agency or institution, but does not include any institution caring for the mentally ill, mentally defective or epileptic, or any institution primarily educational in character, and any hospital or other medical facility.

(49) Placement resource: the person(s) or facility with whom the child has been or may be placed by a parent or legal custodian; or, placed by the court of jurisdiction in the sending state; or, for whom placement is sought in the receiving state.

- (50) Progress report: (see “supervision report” definition)
- (51) Provisional approval: an initial decision by the receiving state that the placement is approved subject to receipt of required additional information before final approval is granted.
- (52) Provisional denial: the receiving state cannot approve a provisional placement pending a more comprehensive home study or assessment process due to issues that need to be resolved.
- (53) Provisional placement: a determination made in the receiving state that the proposed placement is safe and suitable and, to the extent allowable, the receiving state has temporarily waived its standards or requirements otherwise applicable to prospective foster or adoptive parents so as to not delay the placement. Completion of the receiving state requirements regarding training for prospective foster or adoptive parents shall not delay an otherwise safe and suitable placement.
- (54) Public child-placing agency: any government child welfare agency or child protection agency or a private entity under contract with such an agency, regardless of whether they act on behalf of a state, county, municipality or other governmental unit and which facilitates, causes or is involved in the placement of a child from one state to another.
- (55) Receiving state (see ICPC Article II (c) “Definitions”): 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.
- (56) Relative: a birth or adoptive brother, sister, stepparent, stepbrother, stepsister, uncle, aunt, first cousin, niece, nephew, as well as relatives of half blood or marriage and those denoted by the prefixes of grand and great, including grandparent or great grandparent, or as defined in state statute for the purpose of foster and or adoptive placements.
- (57) Non-relative: a person not connected to the child by blood, marriage or adoption.
- (58) Relative home study: (see definition under home studies)
- (59) Relocation: the movement of a child or family from one state to another.
- (60) Residential facility or residential treatment center or group home: a facility providing a level of 24-hour, supervised care that is beyond what is needed for assessment or treatment of an acute condition. For purposes of the Compact, residential facilities do not include institutions primarily educational in character, hospitals or other medical facilities (as used in Regulation 4, they are defined by the receiving state).
- (61) Return: the bringing or sending back of a child to the state from which they came.
- (62) Sending agency: (see ICPC Article II (b) “Definitions”): a party state, officer or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency or other entity having legal authority over a child who sends, brings, or causes to be sent or brought any child to another party state.

(63) Sending state: the state where the sending agency is located, or the state in which the court holds exclusive jurisdiction over a child, which causes, permits or enables the child to be sent to another state.

(64) Service (case) plan: a comprehensive individualized program of action for a child and his/her family establishing specific goals and objectives and deadlines for meeting these goals and objectives.

(65) State: a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Marianas Islands, and any other territory of the United States.

(66) State court: a judicial body of a state that is vested by law with responsibility for adjudicating cases involving abuse, neglect, deprivation, delinquency or status offenses of individuals who have not attained the age of eighteen (18) or as otherwise defined by state law.

(67) Stepparent: a man or woman married to a parent of a child at the time of the intended placement or as otherwise defined by the sending and/or receiving state laws, rules and/or regulations.

(68) Supervision: monitoring of the child and the child's living situation by the receiving state after a child has been placed in a receiving state pursuant to a provisional approval or an approved placement under Article III(d) of the ICPC or pursuant to a child's relocation to a receiving state in accordance with Regulation No. 1 of the ICPC.

(69) Supervision report: provided by the supervising case worker in the receiving state; a written assessment of a child's current placement, school performance and health and medical status, a description of any unmet needs and a recommendation regarding continuation of the placement.

(70) Timely Interstate Home Study: (see definition under home studies)

(71) Visit: as defined in Regulation No. 9.