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BILL



ANALYSIS

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Senate Bill 1246 (as introduced 3-25-10)
Sponsor: Senator Gilda Z. Jacobs
Committee: Families and Human Services

Date Completed: 11-3-10

CONTENT

The bill would enact the Interstate Compact for the Placement of Children (ICPC) and, when 35 states had enacted the Compact, repeal the Interstate Compact on the Placement of Children (MCL 3.711-3.717).

The ICPC applies to the interstate placement of children who are subject to court jurisdiction due to abuse, neglect, or delinquency, and the interstate placement of children by public and private child placing agencies as a preliminary step to adoption. The Compact addresses the continuing jurisdiction of a sending state, the financial responsibilities of sending and receiving states, and placement evaluation and approval; creates the Interstate Commission for the Placement of Children; provides for oversight, dispute resolution, and enforcement; and provides for the Commission to be financed by an assessment on member states.

An overview of the ICPC follows.

Article I. Purpose

Purposes of the ICPC include the following:

- To provide a process through which children subject to the Compact are placed in safe and suitable homes in a timely manner.
- To facilitate ongoing supervision of a placement, delivery of services, and communication between states.
- To promote coordination between the ICPC, the Interstate Compact for Juveniles, the Interstate Compact on

Adoption and Medical Assistance, and other compacts affecting placement.

- To provide for a state's continuing legal jurisdiction and responsibility for placement and care of a child that it would have if the placement were intrastate.

Article II. Definitions

The ICPC defines terms used in the Compact, including those described below.

"Approved placement" means that the public child placing agency in the receiving state has determined that the placement is both safe and suitable for the child.

"Assessment" means an evaluation of a prospective placement by a public child placing agency in the receiving state to determine if the placement meets the individualized needs of the child, including his or her safety and stability, health and well-being, and mental, emotional, and physical development.

"Child" means an individual who has not reached the age of 18.

"Placement" means the act by a public or private child placing agency intended to arrange for the care or custody of a child in another state.

"Provisional placement" means a determination made by the public child placing agency 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 not to delay the placement.

"Relative" means someone who is related to a child as a parent, stepparent, sibling by half or whole blood or adoption, grandparent, aunt, uncle, or first cousin, or a nonrelative with such significant ties to the child that they may be regarded as relatives as determined by the court in the sending state.

"Residential facility" means a facility providing a level of care that is sufficient to substitute for parental responsibility or foster care, and is beyond what is needed for assessment or treatment of an acute condition. Residential facilities do not include institutions that are primarily educational in character, hospitals, or other medical facilities.

Article III. Applicability

Except as otherwise provided, the ICPC applies to the interstate placement of a child subject to ongoing court jurisdiction in the sending state due to allegations or findings that the child has been abused, neglected, or deprived, as defined by the laws of that state. The placement of such a child into a residential facility requires only notice of residential placement to the receiving state before placement.

The ICPC also applies to the interstate placement of a child adjudicated delinquent or unmanageable based on the laws of the sending state and subject to ongoing court jurisdiction of that state, in situations not covered by another compact.

In addition, the ICPC applies to the interstate placement of any child by a public or private child placing agency as a preliminary step to a possible adoption.

The ICPC does not apply to circumstances listed in the Compact, including the following:

- The interstate placement of a child with a nonrelative in a receiving state by a parent with the legal authority to make such a placement, if the placement is not intended to effectuate an adoption.

- The interstate placement of a child by one relative with the lawful authority to make such a placement directly with a relative in a receiving state.
- The placement of a child who has not been abused, neglected, or deprived, into a residential facility by his or her parent.
- The placement of a child with a noncustodial parent, if certain conditions are met.

Article IV. Jurisdiction

Except as otherwise provided, a sending state retains jurisdiction over a child with respect to all matters of custody and disposition of the child that it would have if the child had remained in the sending state. This jurisdiction includes the power to order the return of the child to the sending state.

According to its own laws, the court in the sending state has authority to terminate its jurisdiction under specified circumstances, including the following:

- The child is reunified with the parent in the receiving state who is the subject of allegations or findings of abuse or neglect, only with the concurrence of the public child placing agency in that state.
- The child is adopted.
- The child reaches the age of majority or achieves legal independence under the laws of the sending state.
- A guardianship is created by a court in the receiving state with the concurrence of the court in the sending state.
- An Indian tribe has petitioned for and received jurisdiction from the court in the sending state.

When an issue of child protection or custody is brought before a court in the receiving state, that court must confer with the court of the sending state to determine the most appropriate forum for adjudication.

The substantive laws of the state in which an adoption will be finalized solely govern all issues relating to the adoption of the child, and the court in which the adoption proceeding is filed has subject matter jurisdiction regarding all substantive issues relating to the adoption, except under circumstances listed in the ICPC.

Article V. Placement Evaluation

Before sending or bringing a child into a receiving state, a public child placing agency must provide a written request for assessment to the receiving state.

For placements by a private child placing agency, a child may be sent or brought into a receiving state, upon the receipt and immediate review of the required content in a request for approval of a placement in both the sending and receiving state public child placing agencies.

Approval from the public child placing agency in the receiving state for a provisional or approved placement is required.

Upon receiving a request from the public child placing agency of the sending state, the receiving state must initiate an assessment of the proposed placement to determine its safety and suitability. If the proposed placement is with a relative, the public child placing agency of the sending state may request a determination for a provisional placement.

The public child placing agency in the receiving state must approve a provisional placement and complete or arrange for the completion of an assessment within the time frames established by the rules of the Interstate Commission.

Article VI. Placement Authority

Except as otherwise provided in the ICPC, no child subject to the Compact may be placed in a receiving state until approval for that placement is obtained.

If the public child placing agency in the receiving state does not approve the proposed placement, the child may not be placed. That determination is not subject to judicial review in the sending state.

If the proposed placement is not approved, any interested party has standing to seek an administrative review of the receiving state's determination. The administrative review and any further judicial review associated with the determination must be conducted in the receiving state.

Article VII. Placing Agency Responsibility

For the interstate placement of a child made by a public child placing agency or state court, the agency in the sending state has financial responsibility for the ongoing support and maintenance for the child during the placement, unless otherwise provided for in the receiving state. Also, as determined by the public child placing agency in the sending state, it is financially responsible for services for the child beyond the public services for which he or she is eligible in the receiving state.

The receiving state is financially responsible only for any assessment conducted by that state, and supervision conducted by the receiving state at the level necessary to support the placement as agreed upon by the public child placing agencies of both states.

The child placing agency in the receiving state must provide timely assessments, as provided for in Commission rules, and must provide or arrange for the provision of supervision and services for the child during the period of the placement.

For the placement of a child by a private child placing agency preliminary to a possible adoption, the agency is legally responsible for the child during the period of placement as provided for in the law of the sending state until the adoption is finalized. The agency also is financially responsible for the child absent a contractual agreement to the contrary.

Each member state must establish a central state Compact office, which must be responsible for state compliance with the ICPC and the rules of the Interstate Commission.

With the consent of the Commission, states may enter into limited agreements that facilitate the timely assessment and provision of services and supervision of placements under the ICPC.

Articles VIII – X. Interstate Commission for the Placement of Children

The ICPC establishes the Interstate Commission. The Commission is to consist of one commissioner from each member state who must be appointed by the

executive head of the state human services administration with ultimate responsibility for the child welfare program. Each member state represented at a meeting of the Commission is entitled to one vote.

The ICPC sets forth the powers and duties of the Interstate Commission and describes its organization and operation. Among other things, the Commission has the authority to promulgate rules and take all necessary actions to effect the purposes and obligations enumerated in the ICPC; provide for dispute resolution among member states; issue advisory opinions; enforce compliance with the Compact or the bylaws or rules of the Commission; and collect standardized data concerning the interstate placement of children subject to the Compact.

Article XI. Rule-Making Functions of the Interstate Commission

The Interstate Commission must promulgate and publish rules in order to achieve the purposes of the ICPC effectively and efficiently. Rule-making must substantially conform to the principles of the Model State Administrative Procedures Act, or other administrative procedure acts that the Commission considers consistent with due process requirements under the U.S. Constitution.

When promulgating a rule, the Commission must publish its entire text and the reason for the rule; allow anyone to submit data, opinions, and arguments, which must be added to the record and made publicly available; and promulgate a final rule based on input from state or local officials, or interested parties.

The Commission may promulgate an emergency rule only under specified circumstances.

Article XII. Oversight, Dispute Resolution, Enforcement

The Interstate Commission is required to oversee the administration and operation of the ICPC.

Upon the request of a member state, the Commission must attempt to resolve disputes that are subject to the Compact and that may arise among member states

and between member and nonmember states.

The Commission must promulgate a rule providing for both mediation and binding dispute resolution for disputes among compacting states. The costs of mediation or dispute resolution are the responsibility of the parties to the dispute.

If the Commission determines that a member state has defaulted in the performance of its obligations or responsibilities under the Compact, its bylaws, or rules, the Commission may do one of the following:

- Provide remedial training and specific technical assistance.
- Provide written notice to the defaulting state and other member states of the nature of the default and the means of curing it.
- Initiate legal action against the defaulting state to enforce compliance.
- Avail itself of any other remedies available under state law or the regulation of official or professional conduct.

Article XIII. Financing of the Commission

The Interstate Commission may collect an annual assessment from each member state to cover the cost of its operations and activities and its staff, in a total amount sufficient to cover the Commission's annual budget as approved by its members. The aggregate annual assessment amount must be allocated based on a formula determined by the Commission.

Article XIV. Member States, Effective Date & Amendment

The ICPC will become effective and binding upon its enactment by at least 35 states.

The Interstate Commission may propose amendments to the Compact for enactment by member states. No amendment will become effective and binding unless it is enacted by unanimous consent of the members.

Article XV. Withdrawal & Dissolution

A member state may withdraw from the ICPC by specifically repealing the statute

that enacted the Compact. The state will be responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal.

The ICPC will dissolve upon the withdrawal or default of the member state that reduces the membership in the Compact to one member state.

Article XVI. Severability & Construction

The provisions of the ICPC are severable and if any provision is deemed unenforceable, the remainder of the Compact is enforceable.

Nothing in the ICPC may be construed to prohibit the concurrent applicability of other interstate compacts to which the states are members.

Article XVII. Binding Effect of Compact & Other Laws

Nothing in the ICPC prevents the enforcement of any other law of a member state that is not inconsistent with the Compact. All lawful actions of the Interstate Commission are binding upon the member states. All agreements between the Commission and the member states are binding in accordance with their terms.

Article XVIII. Indian Tribes

The Interstate Commission may promulgate guidelines to permit Indian tribes to use the ICPC to achieve any or all of its purposes. The Commission must make reasonable efforts to consult with Indian tribes in promulgating guidelines to reflect the diverse circumstances of the various tribes.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The new Interstate Compact for the Placement of Children requires ratification from a minimum of 35 states and/or jurisdictions in order to be binding. The ICPC includes a provision for the creation of an Interstate Commission (IC). Initial start-up costs to implement the IC are estimated to be between \$335,000 to \$500,000 in the first year of the Compact's ratification, expenses that will be divided among a minimum of 35 and maximum of 54

jurisdictions. The estimated expense to the State General Fund is between \$9,259 and \$14,286. In subsequent years, annual membership dues will sustain the IC, with a cost of \$9,259 to \$14,286 to the State General Fund, depending on the number of jurisdictions to join (a minimum of 35 and a maximum of 54) and the pro rata fee rate to be established by the future IC.

Once the Compact took effect, some administrative procedures could change based on variable factors such as technology improvements, court settlements, or other unpredictable factors. These variables are not expected to result in any significant expenses or savings.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.