THE INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN: 
TIME TO RETHINK A GREAT IDEA*

Larry S. Jenkins, Wood Crapo LLC, U.S.A.¹
Lance D. Rich, Wood Crapo LLC, U.S.A. ²

The Interstate Compact on the Placement of Children (“ICPC”) was conceived, in theory, as a mechanism to facilitate the interstate placement of children, while at the same time protecting those children, their birth parents, and adoptive parents by ensuring that the laws and proper procedures were followed. As it has evolved, however, the ICPC has not been much of a protector of children, and in the context of private agency and independent adoptions has become an impediment to those adoptions because of arbitrary standards imposed by ICPC administrators in the various states not found in the ICPC itself. This paper briefly examines the ICPC and the problem that exists, the current movement afoot to attempt to correct the problem, and then proposes a change to the ICPC that could be a solution to the problem.

¹ Mr. Jenkins is a senior partner at the law firm of Wood Crapo LLC and member of the American Academy of Adoption Attorneys.

² Mr. Rich is an associate attorney at the law firm of Wood Crapo LLC where his practice consists primarily of adoption cases. He is a 2004 graduate of the University of Michigan Law School.
I. History of the ICPC

The ICPC is a legally-binding compact that contains ten articles.\textsuperscript{3}

\textsuperscript{3}\textit{Utah Code. Ann. § 62A-4a-701 (2005).}
These articles “define the types of placements and placers subject to the law; the procedures to be followed in making an interstate placement; and the specific protections, services, and requirements brought by enactment of the law.” The ICPC has been adopted in all fifty states, the District of Columbia, and the Virgin Islands.

The ICPC was adopted to facilitate the interstate placement of children for adoption “in much the same way and with the same services as though they were being conducted within a single state.” The drafters of the ICPC recognized that it was important to foster cooperation between the states for three primary reasons. First, fostering cooperation was important to protect the interests of children. Second, fostering cooperation was important because the “number of children requiring placements and the numbers and kinds of adults anxious and able to receive them [is almost never] in balance within any state or local area.” Third, fostering cooperation was important due to the reality that families move between states during the adoption process, and, as a result, they require an interstate mechanism to address their needs.

Additionally, the ICPC was adopted to address abuses that were occurring as a result of

---

4 Guide to the Interstate Compact on the Placement of Children, pg. 2

5 Id.

6 Compact Administrators' Manual for the Interstate Compact on the Placement of Children, Volume 1, pg. 1.1.


8 Compact Administrators’ Manual for the Interstate Compact on the Placement of Children, Volume 1, pg 1.0.

9 Id.
the lack of regulation once a child was placed across state lines.\textsuperscript{10} Indeed, in response to several reports of adoption abuse, an anti-child-trafficking bill was introduced in the United States Senate in 1957 that would have required an investigation of any adoption across state lines and would have only allowed approved adoption agencies, rather than facilitators, to provide certain adoption services.\textsuperscript{11} Although this federal solution to the problem was abandoned, individual states attempted to halt the abuses by adopting their own anti-trafficking statutes. Eventually, in the effort to achieve more uniformity and better coordinate regulation of interstate placements, states, starting with New York in \textenquote{_______}, signed onto the ICPC..

II. What needs to happen for compliance

A. Plain language:

Article I of the ICPC lays out its purposes and policies, two of which impact on private agency and independent adoptions.\textsuperscript{12} Subsection (b) requires that \textquoteleft\textquoteleft[t]he appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.\textquoteright\textquoteright\textsuperscript{13} Subsection (c) requires that \textquoteleft\textquoteleft[t]he proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to

\textsuperscript{10}Guide to the Interstate Compact on the Placement of Children, pg.2


\textsuperscript{13}Id.
evaluate a projected placement before it is made.\textsuperscript{14}

Article III of the ICPC governs the conditions for placement.\textsuperscript{15} Subsection (a) requires that

\[\text{n}o \text{ sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.}\]

A “sending agency” is defined as “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 which sends, brings, or causes to be sent or brought at child to another party state.”\textsuperscript{16} Note that it is the “sending agency” that is required to comply with the law, and it is the laws of the “receiving state” that must be followed, not the laws of the state where the child was born or any other state. In fact, the term “sending state” is not even defined in the ICPC.

Subsection (b) requires that “prior to sending, bringing, or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving

\begin{itemize}
  \item \textsuperscript{14} Id.
  \item \textsuperscript{15} Id.
  \item \textsuperscript{16} Id.
  \item \textsuperscript{17} Id.
\end{itemize}
state with written notice of the intention to send, bring, or place the child in the receiving state.”\(^{18}\)

Again, it is the “sending agency” providing notice to the “receiving state” that the child will be coming into the state. And, finally, subsection (d) requires that “[t]he child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.”\(^{19}\) Thus, it is the “receiving state” that, according to the plain language of the ICPC, has the deciding say in whether the child may be transported to that state for placement for possible adoption.

**B. Actual practice:**

Despite the plain language, both Article II and Article III have been interpreted as granting significant power to so-called “sending states.” Although Article II, subsection (c) does grant some powers to states from where the placement is made to obtain information, there is nothing in the rest of the ICPC that grants states, which have come to be known as “sending states,” the authority to veto a placement.

Nevertheless, the ICPC has been interpreted to grant that authority to sending states. Similarly, Article III’s conditions for placement do not include a requirement for approval by the sending state, and such a requirement is not found anywhere in the ICPC. Indeed, “sending state” is not a defined term in the ICPC. Nevertheless, Article III, like Article II, has been interpreted to grant regulating authority to sending states despite the fact that the plain language of the ICPC is

\(^{18}\)Id.

\(^{19}\)Id.
similar to the general rule of law that the law of the state where the adoption will be finalized is
the law that applies to the rights of the parties involved.20

Broad interpretations of Article II and Article III have resulted in an ICPC that acts in
practice very differently than its plain language suggests. For example, the American Public
Human Services Association (APHSA) developed Form 100A, which requires both the “sending
state” and the “receiving state” to indicate approval for the placement, and in practice placements
usually are not made without both states indicating such approval. Similarly, the Association of
Administrators for the ICPC (AAICPC) has developed regulations and practices that essentially
require both sending and receiving states to approve placement before travel can occur. This
would not be a huge problem if every state did not place its own further interpretation on the

20 Restatement (Second) of Conflict of Laws § 289 (1971) (“A court applies its own local
law in determining whether to grant an adoption.”). See also In re Adoption of C.L.W., 467 So.
2d 1106 (Fla. Dist. Ct. App. 1985) (Florida law determined revocation rights of Pennsylvania
1987) (Florida birth father required to follow Indiana procedures to protect his rights); In re
Adoption of Baby Boy S, 32 Kan. App. 2d 119, 912 P.2d 761 (1996) (Kansas law applied to
determine rights of Ohio birth father where adoption was finalized in Kansas); In re Petition to
Adopt C.M.A., 557 N.W.2d 353, 356-57 (Minn. Ct. App. 1997) (despite paternity proceeding in
New Hampshire, notice and consent rights of New Hampshire birth father determined by
Minnesota law); In re Baby Boy Dixon, 112 N.C. App. 248, 435 S.E.2d 352 (1993); In re
Adoption of J.L.H., 737 P.2d 915 (Okla. 1987) (Oklahoma law applied to non-resident birth
mother); Stubbs v. Weathersby, 126 Or. App. 596, 869 P.2d 893, 898-99 (1994) (Oregon law
determined revocation rights of Washington birth mother who signed consent in Washington);
requirements for Washington birth father); Osborne v. Adoption Center of Choice, 2003 UT 15,
70 P.3d 58 (Utah law applied to North Carolina birth father rights); In re Adoption of B.B.D.,
1999 UT 70, 984 P.2d 967 (Utah law applied to Washington birth father); In re Adoption of W,
904 P.2d 1113 (Utah Ct. App. 1994) (Utah law applied to Indiana father’s rights); In re Adoption
revocation rights for consent was taken in New York).
ICPC.

III. State Interpretation of the ICPC

Broad interpretations of the ICPC have resulted in states developing their own standards and rules, some written and most unwritten, some known, but many devised for a particular adoption, creating and causing unnecessary frustration and delay for prospective adoptive parents who are simply trying to get home after the placement of their child. In the meantime, they may spend weeks in an unfamiliar place, caring for their newborn child and bathing him or her in a hotel sink.

Just since the beginning of 2005, the authors have experienced a number of personal ICPC “horror stories” where state or county ICPC administrators have imposed arbitrary requirements not found in the ICPC and have thereby made the lives of adoptive families miserable for really no purpose at all. Four of these are recounted below.

A. Is this a Maryland baby?

In January 2005, Betty Lou notified God’s Gift agency that she had delivered a healthy baby boy in Baltimore, Maryland, and that she wanted to place her baby for adoption.21 God’s Gift had a family who was interested in the baby, but God’s Gift is located in Utah, and the Maryland ICPC will not recognize a relinquishment of a child to an agency not licensed in Maryland.

Thus, the placement had to be structured as a direct placement to the family. An attorney

---

21 For purposes of these stories, the names of the individuals and agencies have been changed.
who was retained in Maryland went to Betty Lou’s home in Baltimore and took a relinquishment from her and her boyfriend. The child was taken and placed in transition foster care. The family flew out from Utah to await ICPC processing.

After taking the relinquishments, the Maryland attorney tried to secure hospital records for the child because medical records showing a healthy child are normally part of the ICPC package. The hospital, however, had no record of the child or the birth mother. When confronted with this information, the birth mother confessed that the child had actually been born at home, rather than at the hospital, but that she had been too scared to admit that to anyone.

It was necessary to prove that she was the mother of the child, so the family paid for DNA testing to show that the birth mother was, in fact, the mother of the child. Because of the time required for DNA testing, the family returned to Utah, and the baby remained in costly transitional foster care in Maryland. The DNA testing showed that Betty Lou was the mother of the child, so the test results, along with a pediatrician report and all other paperwork normally submitted with an ICPC request, were submitted to the Maryland ICPC office to request approval for the placement.

Maryland ICPC, however, had never seen a situation quite like Betty Lou’s. They responded that they would like to see a birth certificate for the child, even though a birth certificate is not required by the ICPC and a birth certificate can usually take a significant amount even if a child is born in a hospital, let alone at home. Efforts were made to expedite the birth certificate process, but the Baltimore health department refused to expedite the request and, indeed, required an investigation because the birth had occurred at home. In the meantime, the
child got older, the family remained in Utah, and the costs mounted daily.

When Maryland ICPC was asked about the birth certificate requirement, they responded that it should not be a big deal to obtain a birth certificate, and they refused to believe that it was as difficult as counsel was representing. The author asked why Maryland ICPC was requiring a birth certificate, and they responded that they needed to establish that the child was a Maryland baby. The author explained that there were other ways of doing that, such as showing that the birth mother was a Maryland resident and presenting her sworn statement that the child was born in Maryland. Also, the general rule of law is that an illegitimate child takes on the residency and domicile of its mother. Finally, the author asked Maryland ICPC why it was important to establish that the child was a Maryland child if the adoption would be finalized in Utah according to Utah law. The response: “I don’t know.”

Despite this, Maryland still refused to approve the placement without a birth certificate for another two weeks, and the child was nearly two months old before he was finally allowed to travel. Maryland ICPC finally granted “provisional” approval to travel, but only on the condition that the child return if a birth certificate was not issued, as if that makes any sense. These unnecessary delays, costs and inconveniences all occurred because Maryland ICPC wanted to impose a requirement not found anywhere in the ICPC. It is estimated that this ICPC complication resulted in an additional $6,000 in legal expenses (a substantial portion of which was written off), approximately $1500 in transitional care expenditures, and an additional 30 hours of agency time spent on the case. Unfortunately, not only did the adoptive family (and attorneys) have to bear these added financial burdens, they had to sacrifice precious weeks early in their
child’s life when they could have been bonding as a family, and they endured tremendous anxiety and frustration for a procedure that had absolutely no benefit for the child.

B. Does birth mom know what drugs he’s taking?

Jorge and Jill are from California. They found a birth mother in Utah who wanted to place her baby with them. Everything went very smoothly. They had their thorough California home studies and background checks, and they had been approved for adoptive placement. In February 2005, the baby was born in Utah, the birth mother relinquished in court, and an order of temporary custody was signed, granting Jorge and Jill legal custody of their little boy.

Everything appeared to be as clean as it could be, until the ICPC package was submitted. Utah didn’t have a problem with it, so it was forwarded on to California. In California, independent adoptions are handled on a county basis by the county where the adoptive family is from. After receiving the ICPC package from Utah, the author received a call from the ICPC administrator in Jorge and Jill’s county saying that the package looked good except for one item. She asked if the birth mother was aware that the adoptive father was taking a prescription drug called Paxil. When asked what relevance that had to the adoption, the administrator said it had to do with whether the birth mother gave an informed consent to the adoption. It was explained that the birth mother’s consent had been taken in court before a judge, that the judge had found that the birth mother knew what she was doing, and that the judge had also entered an order granting Jorge and Jill temporary custody of the child. Undeterred, the administrator said that did not matter if the birth mother did not know that the adoptive father was taking Paxil.

The administrator was asked if there was some law in California that required adoptive
parents to disclose to birth mothers the kinds of prescription medications they are taking, and the administrator responded that there was not. But, she said that she would not approve the placement until the birth mother was informed that the adoptive father was taking Paxil and that she was okay with that. The birth mother had decided to take a short vacation to visit extended family, and, as a result, she had to be tracked down in O’Hare International Airport to inform her that Jorge was taking Paxil. Of course, the birth mother just laughed.

The placement was approved the next day once the California administrator was informed that the birth mother had no problems with the adoptive father’s Paxil prescription. Although this situation was resolved relatively quickly, it cost the adoptive parents an additional $600 in legal fees and caused the adoptive father considerable embarrassment and stress. Moreover, as in the last example, the child did not benefit in any way from this unnecessary procedure.

C. Sorry, you just can’t go home—for a month or more.

In March 2005, Dan and Darla went to North Dakota from Utah to get a baby who had been born there. They were told that they may need to stay in North Dakota for a couple of weeks. When they arrived, however, they learned that the whereabouts of the birth father of the child were not known and that North Dakota law would not allow any “legal risk” adoptive placements. Before they could return home, the parental rights of the birth father had to be terminated. To terminate parental rights, North Dakota law required publication of a notice in a newspaper of general circulation in the area where the parent was last known to live for at least four weeks.

Needless to say, Dan and Darla were not thrilled with the prospect of staying on the great
The adoptive family spent an estimated $1600 in legal fees. Although they were able to stay at the home of some friends and avoided the cost of hotel
accommodations, the adoptive father missed almost a month of work. The adoptive parents, an extremely easy-going and understanding couple, were near hysteria by the end of their ordeal. Once again, the financial and emotional costs of this procedure provided absolutely no benefit to the child.

D. That birth mother’s not from here . . . .

In May 2005, Cassie Sue called Utah’s Best Agency from Las Vegas saying that she had delivered a beautiful baby and wanted to place the baby for adoption. No problem. Utah’s Best jumped at the request and began the process to prepare to accept Cassie Sue’s baby.

Cassie Sue selected a Utah family. The relinquishments were taken, along with the required social histories on Cassie Sue. One thing that came up during counseling with Cassie Sue was that she normally lived in Los Angeles, California, and had traveled to Las Vegas to visit family. While in Las Vegas, she experienced some pre-term labor and decided to remain until the baby was born. This information, whether rightly or wrongly, was included in the social history and the other required paperwork that was submitted to Nevada ICPC.

When Nevada ICPC read the social history, they concluded that Cassie Sue was not a resident of Nevada. Consequently, they decided that they did not have anything to do with the case, despite the fact nothing in the ICPC speaks of the birth mother’s residency as being a requirement for applicability. Utah’s Best was told to send the case to California ICPC, but bureaucrats at the county level in California refused the case as well. Because no one at the county level wanted to deal with the case, Utah’s Best had to work its way to Sacramento. Unfortunately the underlings in Sacramento only wanted the boss to deal with the case and the
boss was out “until next week.”

The Utah family was from Salt Lake City and, as a result, they decided to get as close to Salt Lake City as they could without crossing the border. To do so, they were forced to drive back roads to Wendover, and their car broke down in a backwoods desert of Nevada before they reached Wendover. In Wendover, the baby developed an infection; unfortunately, Wendover did not have a hospital and only minimal medical facilities. Needless to say, the Utah family was understandably frustrated as Nevada and California both tossed the hot potato case around, neither wanting to take responsibility for it.

Finally, Utah’s Best contacted the Utah administrator and, with the help of the Utah Attorney General’s Office, which agrees that only the receiving state needs to grant ICPC approval, Utah gave approval for the placement without Nevada or California’s input since both states appeared equally unwilling to get involved. Although the legal costs were minimal in this case, the agency spent approximately ten additional hours in resolving the situation. Moreover, rather than protecting the best interests of the child, complying with ICPC in this instance placed the child at greater risk because the adoptive parents could not travel home to get the medical care they wanted the child to have.

These four examples of ICPC “horror” stories are just the tip of the iceberg. They have all occurred in 2005 and with the same lawyers. Every adoption lawyer who does interstate work has many similar stories. The bottom line is that navigating the ICPC has become a nightmare for practitioners and families alike because of the additional requirements ICPC administrators impose that are nowhere to be found in the ICPC. VI. Reform
efforts

A growing number of adoption agencies, attorneys, judges, legislators, and child advocates in the United States have expressed frustration at the harm children suffer because of unnecessary delays in obtaining ICPC approval.\textsuperscript{22} This mounting frustration has led to action on

\textsuperscript{22}For example, the National Council of Juvenile and Family Court Judges have advocated for reform of ICPC for a number of years, most recently adopting a resolution supporting federal legislation to revise ICPC. \textit{See} Resolution in Support of Passage of ICPC Congressional Legislation, available at http://www.ncjfcj.org/images/stories/dept/resolutions/resolutionno.5congressionallegislation.pdf. The American Bar Association has also been active in pushing for reform and adopted a resolution of their own wherein they “encourage[] states, local, and territorial officials to recognize the need for the timely disposition of requests for approval of interstate placements . . . and the harm suffered by children when unnecessary delays occur in the approval of interstate
two fronts: a federal bill and an internal process to revamp the ICPC.

A. Congressional action

Responding to the call for reform, Congressman Tom Delay introduced a bill in the U.S. House of Representatives entitled the “Safe and Timely Placement of Foster Children Act of 2004.” The bill included the following language suggesting that private agency and independent adoption be excluded from ICPC coverage:

It is the sense of Congress that the States should expeditiously revise the ICPC to better serve the interests of children and reduce unnecessary work, and that the revision should include limiting its applicability to children in foster care under the responsibility of a State, except those seeking placement in a licensed residential facility primarily to access clinical mental health services . . .

H.R. 4504, 108th Cong. 2d Sess. (2004). The bill passed the House of Representatives, but never reached a vote in the Senate. Nevertheless, consideration of the bill sparked further debate on excluding private agency and independent adoptions from ICPC coverage and reintroduction of the bill in Congress remains a distinct possibility.

B. Task force to rewrite

In July, 2003 a task force was formed to determine if changes should be made to the ICPC. The task force determined that changes were necessary, so in May 2004, an ICPC development and drafting team was formed. Chief among the issues that the drafting team was
charged with assessing was whether private agency and independent adoptions should be included in the new compact and, if they were included, what would be the appropriate level of oversight for those types of adoptions. The development and drafting team met three times between July 2004 and November 2004.

On December 27, 2005, the team released its first draft for comment. Although this first draft covered private agency and independent adoptions, the task force thought it was doing so in a more limited way. Nevertheless, the first draft’s coverage of private agency and independent adoptions did little to curb the ability of sending states to impose arbitrary and inconsistent requirements on private agency and independent adoptions. Indeed, the first draft simply provided for coverage and left how the ICPC would apply to private agency and independent adoptions up to regulations to be later adopted by an all-powerful “Interstate Authority,” providing no comfort to practitioners who deal with unreasonable ICPC administrators on a regular basis.

On February 16, 2005, the team released its second draft for comment. In this second draft, private agency and independent adoptions were excluded. However, the AAICPC apparently received many negative comments with regard to their decision to exclude private agency and independent adoptions.

Given the comments both for and against covering private agency and independent adoptions in the ICPC, the drafting team has once again gone back to the drawing board to come up with a solution that addresses the concerns on both sides of the issue. On one hand, the drafting team must address the concern that completely eliminating application of the ICPC to
private agency and independent adoptions is potentially problematic because of the unique issues that occur in interstate adoptions and because of perceived abuses that can occur. On the other hand, the drafting team must address the concern that the application of the ICPC to private agency and independent adoptions has significantly interrupted and delayed proper adoptions.

One potential compromise that has been suggested is eliminating private agency adoptions from the ICPC since private agencies are already regulated by state laws and there is a presumption that the best interests of the children will be protected, while retaining coverage for independent adoptions to curb perceived abuses by facilitators and unscrupulous attorneys. This proposal has not had much air time yet, but has been received by many with mixed reviews because of the perception that some private agencies, while regulated, are just as unscrupulous as facilitators and attorneys.

IV. The hidden costs of ICPC

Unfortunately, many discussions regarding the issue of whether or how private adoptions should be addressed in the ICPC fail to include any cost-benefit analysis. There are some who assume that any measures intended to protect children need to be retained without a thorough examination of the costs involved or how effectively the measures prevent the abuses they desire to curb. The authors believe that more reflection is needed to determine whether current measures as interpreted by the individual administrators are worth the costs imposed on the many parties involved in the adoption process.

Perhaps the most apparent costs of the ICPC measures as implemented in private agency adoptions are the financial costs imposed on the adoptive families. Families are often literally
stuck in a state awaiting ICPC clearance while legal fees, agency fees, and travel expenses mount with every passing day. As seen in the examples cited in section III, these expenses can add thousands of dollars onto the price of an adoption. Moreover, the extended stay in the sending state also causes many adoptive parents to miss work. If the adoptive parents decide to place the child in interim care and return home until ICPC approval is obtained, they may spend between $30 and $75 per day for such care.

Additionally, ICPC compliance in private adoptions often takes an emotional toll on the adoptive family. Although considerably more difficult to measure, the frustration and anxiety an adoptive family experiences while “trapped” in a foreign state awaiting approval is no less real.

There is also good reason to believe that the extended wait for approval has negative consequences for the child. First, the added stress and anxiety may negatively affect the bonding processes between the adoptive parents and the child. Second, the pool of prospective adoptive parents for the child may be limited because of the increased financial and emotional costs resulting from required ICPC approval. The high cost of adoption already deters many prospective adoptive parents from adopting a child. When adoption costs are increased because

23 Although the authors are not aware of any sociological study directly on point, many studies have shown that a child needs to develop a secure attachment to a sensitive, responsive, and reliable caregiver. See, e.g., Douglas F. Goldsmith, et al., Separation and Reunification: Using Attachment Theory and Research to Inform Decisions Affecting the Placement of Children in Foster Care, *Juvenile and Family Court Journal*, Spring 2004. It is reasonable to believe that an adoptive parent who is anxious, frustrated, and spending time making arrangements on the telephone is placed at a disadvantage compared to an adoptive parent who is able to concentrate solely on bonding with their child in their home environment. Moreover, the child who may already be highly stressed due to separation from its prior caregiver may be able to sense the anxiety and frustration of the adoptive parent and react negatively.
of the need to comply with ICPC, even fewer adoptive parents will apply. When parents decide not to adopt because of these reasons children may ultimately suffer by being temporarily or permanently denied adoptive homes. Third, as the costs of adoption increase, so does the incentive for black market adoptions. Therefore, at least to some degree, unnecessary impediments imposed by ICPC administrators actually help create the environment that breeds the adoption abuses they were designed to prevent.

Finally, society also pays a price for ICPC’s coverage of private adoptions. Tax payers unwittingly shoulder the financial burden of increased administrative costs to fund ICPC administrator’s unnecessary investigations as describe in section III. Moreover, many of the children who are not adopted through private agencies due to the increased financial burden of unnecessary regulatory hurdles will become wards of the state and processed through the public foster care system.

Unfortunately, each public dollar unwisely spent on haphazard and pointless administrative enforcement of ICPC drains scarce public resources from programs that truly demonstrate tangible benefit in children’s lives.

V. The minimal gains of ICPC

Some respond to the high costs mentioned above by concluding that, although regrettable, those costs are necessary to protect the child from adoption abuses. Typically advocates of maintaining the status quo or of stiffening the regulatory requirements on interstate private adoptions will point to a newspaper article reporting an adoption scandal that involved more than one state and conclude that the ICPC must be necessary to protect such children. Unfortunately,
their analysis ends before addressing exactly how ICPC compliance would actually make a difference in these cases.

A prime example of this is the Baby Tamia case which captured headlines in several newspapers around the country in the spring of 2005.\textsuperscript{24} This case has been cited by commentators as a reason why ICPC needs to regulate private agency adoptive placements across state lines.\textsuperscript{25} However, upon closer examination of the case, it is difficult to see how compliance with the ICPC would have changed anything in the case.

The case involved allegations by Baby Tamia’s grandmother that her daughter had been coerced into placing her child for adoption while she was suffering from postpartum depression and distraught over a recent death in the family. To bolster their case, attorneys for the grandmother and the birth mother noted that the agency had failed to obtain ICPC approval prior to the mother traveling to Utah to place her child. Eventually, after the adoptive parents were arrested for unlawful possession of illegal drugs, the agency withdrew its consent to the adoption and returned the child to Illinois authorities.

As scandalous as the Tamia story appears from the allegations, if the adoption agency


\textsuperscript{25}Evan B. Donaldson Institute, Safeguarding Interstate Adoptions: The Interstate Compact on the Placement of Children, at 3, available at http://www.adoptioninstitute.org/publications/2005_Brief_Safeguarding_Interstate_Adoptions%20_April.pdf, \url{http://www.adoption}
complied with the ICPC procedures very little in the story would have changed. Because nothing in the ICPC paperwork would have alerted ICPC administrators about concerns with the adoptive parents’ suitability or the with the validity of the birth mothers relinquishment, the ICPC process would not have revealed these issues. Eventually the courts in either state would have determined custody based on resolution of these issues had the agency not backed down after learning of the adoptive couples current drug use. Where adoption abuses are revealed in a given case, it is rarely the ICPC administrator that has revealed the abuse.\textsuperscript{26} ICPC administrators ultimately approve the vast majority of private adoptions across state lines and those that are delayed or denied are rarely done so based on legitimate concerns with the relinquishment and the adoptive parents suitability.

V. Proposal for a New ICPC.

We believe that a new ICPC can be crafted in a manner that solves these problems, yet satisfies concerns for abuses. The new ICPC should be drafted so that it covers private agency and independent adoptions, but only in a very limited way as follows:

For each private agency and independent adoption, notice to the receiving state would be required. This notice would contain the same basic information that is currently required under Article III(b), “[t]he name, date, and place of birth of the child; [t]he identity and address or

\textsuperscript{26}Of the many hundreds of ICPC clearances requested through the authors’ law firm, they are aware of only one situation where an ICPC administrator denied approval based on a legitimate concern that the child would be at risk if the placement took place. In that situation the ICPC administrator knew information about the prospective adoptive family based on a prior placement that the family had failed to share with the child placing agencies involved.
addresses of the parents or legal guardian; [t]he name and address of the person, agency or institution to or with which the sending agency proposes to send, bring, or place the child; [a] full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made,” plus a statement of where the adoption will be finalized.\(^{27}\)

The notice would also include copies of consents and home studies, as well as a statement concerning fees and expenses incurred and expected to be incurred in the adoption.

Notice, however, would not need to be given to the state from which placement is being made, unless that is the state where the adoption will be finalized. The same information would be sent to the state where the adoption will be finalized.

Once the required notices have been sent, the adoptive parents would be free to travel home. They would not be required to wait for approval from the state from which the child is placed, where the finalization will occur, or from the receiving state, because the focus of this new ICPC is to provide notice and an opportunity to object, rather than an approval focus.

If the receiving state or the state where the adoption will be finalized has concerns or objections, it would have five working days from the receipt of the notice of the placement to raise the concerns or objections or they would be deemed waived. The adoptive family would then have five working days to clear up any objections or issues raised by any state.

In any event, no state would be allowed to disrupt or overturn a private agency or independent placement unless it could demonstrate, by clear and convincing evidence, that the placement would be contrary to the interests of the child, that the placement was illegal, or that

\(^{27}\) _Utah Code. Ann. § 62A-4a-701 (2005)._
the adoption could not be finalized by the laws of any state that could have jurisdiction over such a proceeding. Such a showing would have to be made by the objecting state within 30 days of placement in a court of competent jurisdiction in the state where the adoptive family intends to finalize the adoption or it would be deemed waived. That way, all proceeding related to the placement would be handled in courts that would be applying the same law, and the law that would be applicable to the adoption. Furthermore, any frivolous proceedings brought by a state to disrupt or overturn a private agency or independent adoption would subject the state to attorney fees and costs.

VI. Conclusion

Despite the good intentions policymakers have had in regulating private agency and independent adoptions through the ICPC, history has shown that these good intentions do not translate into measures that truly serve the best interests of these children. Some believe that the way to fix the problem is to impose more regulations, increase the ICPC administrators power and resources, or even charge adoptive families directly for the additional red tape that they will have to wade through. The authors hope, however, that policymakers will listen and relate to the frustrations of adoptive parents “trapped” in another state for reasons that have nothing to do with the well-being of the child, that they will remember the hidden costs of the current ICPC procedures, and that they will acknowledge that the current procedures do virtually nothing to protect against interstate adoption abuses despite the headaches they cause adoptive families. Finally, the authors hope that policymakers will agree that children are better served by limiting the scope of the ICPC in cases involving private agency and independent adoptions so that ICPC
administrators will be able to focus their time and attention on matters that will actually have a
positive impact on children placed across state lines.

* The authors would like to thank Rachel Wood for her contributions in researching and writing parts of this article.