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FISCAL IMPACT REPORT

SPONSOR <u>Ortiz y Pino</u>	LAST UPDATED _____ ORIGINAL DATE <u>2/16/23</u>
SHORT TITLE <u>Interstate Compact on Child Placement</u>	BILL NUMBER <u>Senate Bill 315</u>
	ANALYST <u>Chilton</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	No fiscal impact	No fiscal impact			

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Responses Received From

Children, Youth, and Family Department (CYFD)
 Office of the Attorney General (NMAG)
 Administrative Office of the Courts (AOC)
 Human Services Department (HSD)

SUMMARY

Synopsis of Senate Bill 315

Senate Bill 315, Interstate Compact on Child Placement, deletes the current compact in statute, Section 32A-11-1 NMSA 1978, and replaces it with a new compact. Section 1 of the bill presents the revised compact, as written in 2009, to replace the compact currently in place and in New Mexico statute.

Article 1 – Purpose. Purposes of the Interstate Compact on the Placement of Children (ICPC) include providing safe, suitable homes for children placed across state lines, easing the process of interstate placements, and providing for ongoing supervision of out-of-state placements and promulgation of guidelines for these placements, if indicated, in collaboration with Indians nations, tribes, and pueblos. Assignment of state of residence of military families is discussed.

Article 2 - Definitions used in the act.

Article 3 – Applicability. This compact applies to children in court jurisdiction because of abuse or neglect and to children deemed delinquent or unmanageable under defined

circumstances. However, the compact does not apply to children placed directly with parents, children placed with an out-of-state relative by a parent or other relative, children placed with a noncustodial parent who has a defined relationship with the child, children entering the United States to be adopted, or children crossing state lines solely for a visit.

Article 4 – Jurisdiction. This article provides jurisdiction for ICPC. ICPC states retain jurisdiction of children in their custody but sent to another state, with the receiving state to confer with the sending state in court proceedings. However, circumstances in which the sending state can relinquish jurisdiction are delineated. Receiving states may assume jurisdiction to deal with court issues of delinquency or if needed in emergency situations.

Article 5 – Placement Evaluation. This article creates the requirement for a placement evaluation, including the items needed as parts of that evaluation: a home study, appropriate birth parent consents or relinquishment documents, and the receiving parent acceptance of legal risk. Once the sending state has identified a request, the receiving state will assess the suitability and safety of the placement.

Article 6 – Placement Authority. The child may not be placed without permission from the receiving state’s public child placing agency. In the absence of that, the lack of placement authority can be challenged in court.

Article 7 – Placing Agency Responsibility. The sending state’s responsibilities include payment of expenses and maintenance of supervision until placement is completed, including costs of assessments and supervision. Each state must maintain a central office to deal with matters having to do with the compact, which will be required to deal with matters regarding the Indian Child Welfare Act.

Article 8 – Interstate Commission for the Placement of Children. A commission will be established with one human services department commissioner from each state; provisions are made for selection of commissioners, executive committee members, and ex-officio members.

Article 9 – Powers and Duties of the Interstate Commission. These include making rules and regulations, providing for dispute resolution, enforcing compliance with the compact, collecting data on out-of-state child placement, hiring staff and making contracts, appointing committees and officers, accepting contributions and making a budget, reporting to each legislature or governor, and other duties as needed to achieve the compact’s purposes.

Article 10 – Organization and Operation of the Interstate Commission. Bylaws, meetings (at least yearly) with public notice and public attendance specifics and exceptions, officers and staff, and qualified immunity are discussed in this section.

Article 11 – Rulemaking Functions of the Interstate Commission. This article establishes the commission’s rulemaking authority, with public notice requirements and means of disputing the rules, types of rules required, and provision for emergency rules.

Article 12 – Oversight, Dispute Resolution, Enforcement. The commission oversees the compact, supported by each state’s three branches of government. It is to seek to resolve disputes between member states and to seek action from states defaulting on their obligations

under the compact.

Article 13 – Financing of the commission. Annual assessments from member states are provided for; audits are required.

Article 14 – Member states, effective date and amendment. Effective date is on compact enactment of at least 35 states. Nonmember states can participate but not vote in meetings.

Article 15 – Withdrawal and Dissolution. Withdrawal occurs through legislation repealing compact enactment. Dissolution would occur if fewer than two states remained members.

Article 16 – Severability and Construction. This contains the severability clause.

Article 17 – Binding Effect of Compact and Other Laws. The compact is to be binding on states unless a given provision contradicts a state’s constitution, in which case the constitution takes precedence.

Article 18 – Indian Nations, Tribes and Pueblos. Guidelines will be developed to permit tribes, Indian nations, and pueblos to use provisions of the compact, and the commission will make “reasonable efforts” to accommodate the different circumstances of each Indian unit.

Section 2 of the bill reorients the financial responsibility part of statute (Section 32A-11-2 NMSA 1978) to reflect the new compact. Section 3 changes the reference to the compact in Section 32A-11-5. Section 4 reflects the new compact in Section 32A-11-6 having to do with court jurisdiction in placement of a delinquent child. Section 5 entitles New Mexico’s governor to be the compact’s “executive head.” Section 6 repeals two sections of law:

- 32A-11-3, Notices; health and social services department [human services department]
- 32A-11-4, "Appropriate authority"; health and social services department [human services department]

The bill’s effective date, in Section 7 of the bill, is contingent on ratification of the new compact by 35 states. As of 2021, 13 states had done so. Until ratified by 35 states, current law in Section 32A-11 NMSA remains in effect.

FISCAL IMPLICATIONS

There is no appropriation in Senate Bill 315, and there is no indication that there will be fiscal consequences of adopting this revised compact.

SIGNIFICANT ISSUES

SB315 would represent the first change in the compact, and thus this section of statute, since 1977.

The Interstate Compact on the Placement of Children (ICPC) originated federally in 1960. As noted by CYFD:

As with many laws, ICPC has become impractical due to the changing of times. Originally written over sixty years ago, ICPC was written in a way that left much to be

determined by the states themselves without guidance. Additionally, where gaps in the current language exist, some states have filled in those gaps in ways that do not coordinate with other states. One example of this is the way bio-parent assessments are handled. Some states have held ICPC does not apply to bio-parents' assessments while others, such as New Mexico, apply ICPC to placement with out of state bio-parent when a child is in CYFD custody. States have each developed their own processes that are sometimes conflicting, leading to inconsistency and untimely results for children crossing state lines when in custody.

According to the American Public Human Services Association (aphsa.org):

The Interstate Compact on the Placement of Children (ICPC) is a statutory agreement among all 50 states, the District of Columbia and the US Virgin Islands. The agreement governs the placement of children from one state into another state. It sets forth the requirements that must be met before a child can be placed out of state. The Compact ensures prospective placements are safe and suitable before approval, and it ensures that the individual or entity placing the child remains legally and financially responsible for the child following placement.

A prescribed series of steps, including preparing an information packet about the child to be moved across state lines and a home study is prepared before cross-state placement can occur.

As noted by the National Council for Adoption (adoptioncouncil.org):

In 2004, APHSA passed a policy resolution to address the insufficient and antiquated language of the original ICPC by drafting a new ICPC. State human service administrators, state and local child welfare directors, compact administrators, and representatives from national organizations collaborated to rewrite the ICPC and presented a draft for final approval in November 2005.

This revised ICPC aims to evaluate the suitability of prospective family placements with uniform mechanisms, provide needed support services, narrow the applicability of the Compact, develop time frames for completing the approval process, establish a clear rulemaking authority, clarify state responsibilities, increase protection for familial relationships, and provide a forum for aggrieved individuals to appeal decisions. For the new ICPC to be binding as law, at least 35 states must enact it. As of 2021, 13 states have enacted the new ICPC. No states have enacted it since 2013.

POSSIBLE AMENDMENTS

New Mexico must be careful not to change much in the language of the compact, as copied into this bill. According to HSD:

The language of the bill is consistent with the language drafted by the AAICPC. As the 35 states must enact nearly the same language in order to participate in the interstate compact, the language as drafted by the AAICPC and American Public Human Services Association (APHSA) must be adopted by New Mexico with little or no change to the language. Minor formatting changes would be acceptable, but it must be passed without substantive changes to ensure New Mexico's inclusion.

OTHER SUBSTANTIVE ISSUES

NMAG points out a possible inconsistency with state law in New Mexico: “New Mexico prohibits any contract or agreement from containing provision require the state to indemnify a contractor. See 1.4.1.11 NMAC. It is unclear whether the requirement in SB 315, Article 10(D) providing immunity, defense and indemnification would violate state law and be unenforceable.”

CYFD makes it clear “the Compact covers both children who are in foster care and children who are involved in the juvenile justice system. The Compact does not cover children who are not in the legal care or custody of a public child placement agency.”

ALTERNATIVES

HSD notes, “The state may apply the Preventing Sex Trafficking and Strengthening Families Act, specifically provisions related to the mandate of automated and seamless ICPC. Federal funding may be available.”

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

CYFD is concerned about the implications of not passing the bill during this session:

If 35 states pass the new language before New Mexico, New Mexico will not be able to participate in the stakeholder meetings with APHSA and AAICPC to assist in the development of rules and procedures necessary to aid the sending and receiving of children across state lines. Any states that do not join the new compact will have no way to place children in states who have joined, and no means to prevent those states from sending children to such a nonmember state without permission, rules, or notice.

LAC/rl/hg