

**Maryland General Assembly
Joint Committee on Federal Relations**

**October 14, 2020 Interim Briefing
9:30 a.m. Zoom Meeting**

Agenda

I. Opening Remarks

- Senator Jill P. Carter (Chair) and Delegate Alfred C. Carr, Jr. (Chair)

II. Out-of-state, Domestic Deployment of the Maryland National Guard for Law Enforcement Purposes

- Maryland Military Department
 - Brigadier General Adam R. Flasch, Director of Joint Forces Headquarters Staff
 - Ms. Catherine A. Kelly, Director, Legislative and Government Affairs

III. Interstate Compact for the Placement of Children (as a Replacement for the Existing Interstate Compact on the Placement of Children)

- American Public Human Services Association (APHSA)
 - Ms. Carla Fults, Director, Interstate Affairs and Compact Operations (APHSA)
 - Mr. Rick Masters, Compact Expert/Consultant (Special Counsel, The Council of State Governments)
- Maryland Department of Human Services
 - Ms. Lauren C. Graziano, Director of Government Affairs
 - Ms. Michelle L. Farr, Executive Director, Social Services Administration
 - Mr. Charles Gentemann, Interstate Compacts Supervisor, Deputy Compact Administrator, Interstate Compact on the Placement of Children and Interstate Compact on Adoption and Medical Assistance
 - Ms. Janet Hartge, Assistant Attorney General
 - Ms. Kathy Crosby, Assistant Attorney General

IV. Closing Remarks



MDNG Testimony to the Maryland General Assembly Joint Committee on Federal Relations

Question 1: What federal and/or State legal authority (please include specific citations, such as code sections or subsections) did the early June deployment of the Maryland National Guard to D.C. occur under?

Answer 1: The MDNG, under the legal authority of United States Code (USC) Title 32, Sub-Paragraph 502f, conducted the mission in support of the District of Columbia National Guard (DCNG) providing over watch of federal monuments in conjunction with Federal Park Police.



MDNG Testimony to the Maryland General Assembly Joint Committee on Federal Relations

Question 2: Are there different legal frameworks under which an out-of-state, domestic deployment of the Maryland National Guard for law enforcement purposes can occur (*e.g.*, under the Emergency Management Assistance Compact, a separate agreement with a state or the federal government, etc.), and, if so, what are they?

Answer 2: There are three legal frameworks for the use of National Guard Forces for employment outside their respective states.

a. Framework 1 (Emergency Management Assistance Compact (EMAC)), is the request from a state, territory, or district to request National Guard forces in support of a specific emergency. National Guard forces will deploy in State Active Duty (SAD) funded by their respective states, reimbursed by the requesting state. This status requires Governor's approval/consent.

b. Framework 2 (Federal Funded under State Control – Title 32 § 502(F)), is the authority to deploy National Guard Forces in support of National Security Special Events (NSSE) or other SECDEF approved missions. This is federally funded under National Guard Title 32 funding, and if approved by POTUS can be reimbursed via FEMA reimbursement guidance in accordance with establish FEMA Mission Assignment. This framework requires the Governor's approval/consent.



MDNG Testimony to the Maryland General Assembly Joint Committee on Federal Relations

Answer 2 (Continued)

c. Framework 3 (Presidential Federalization of the National Guard – US Code Title 10 within the authority of the Insurrection Act), puts the National Guard under the authority of the President, SECDEF and aligned under Active Army/Air Force chain of command as specified by Commander USNORTHCOM. The structure is funded by DoD under Title 10 United States Code authorities. Soldiers and Airmen activated in this status are involuntarily mobilized. This status also does not require the consent of the Governor.

Question 3: Are there sufficient policies or procedures in place under those legal frameworks that ensure that Maryland National Guard forces would not potentially receive orders from federal, or another state's, officials that they would not otherwise receive if they were under Maryland officials' operational control (*e.g.*, orders that involve, or risk, the use of force against protesters)?

Answer 3: Yes, the three frameworks provide sufficient policies and procedures to properly manage the myriad of missions that come to the National Guard. Each framework sets different coordination and authority levels based on mission specific guidance. The first two frameworks provide the Governor of Maryland (as The Commander-in-Chief of the State's National Guard) with absolute authority on the use of Maryland National Guard forces prior to any employment. The third framework (Title 10 federalization) are governed by the Insurrection Act.



MDNG Testimony to the Maryland General Assembly Joint Committee on Federal Relations

Question 4: Are there policies or procedures in place under those legal frameworks that allow Maryland to recall its National Guard members from an out-of-state, domestic deployment, even if the formal mission is not accomplished?

Answer 4: The Governor in his role as Commander-in-Chief of the National Guard has sufficient authority under state and federal law to withdraw Maryland National Guard forces from any mission executed inside or outside the state of Maryland while under framework 1 or 2. In the event POTUS federalizes the National Guard under framework 3 – the authority of the Governor is curtailed for those forces activated under Title 10 US Code.

Question 5: What was the total cost to deploy the Maryland National Guard to D.C. in June?

Answer 5: The total cost consisting of pay, allowance, and equipment use for Maryland National Guard Forces employed in support in the DC federal enclave was \$546,360.

Question 6: How much of that cost was funded by the federal government and how much was funded by the State?

Answer 6: This cost was 100% federally funded, with zero cost to the State of Maryland.



MDNG Testimony to the Maryland General Assembly Joint Committee on Federal Relations

Question 7: Under the legal frameworks identified in response to question 2 above, do guard members receive the same (or additional?) pay and benefits for those out-of-state, domestic deployments – whether at the request of another state or the federal government – as they would for similar duty within the State?

Answer 7: Federal pay (Title 32 USC and Title 10 USC) do not change based on location. Maryland National Guard members on State Active Duty receive payment based on the annual military basic pay tables and also receive the additional benefit of Basic Allowance for Subsistence as outlined in DoD pay tables. The only exception are those ranks E1 to E4 who make less than minimum wage are automatically adjusted to meet Maryland's minimum wage standard. State Active Duty pay levels are the same regardless of where MDNG is employed within the United States, its territories, or the District of Columbia. MDNG Members on State Active Duty do not receive the full allowances nor accrue retirement points or medical coverage similar to what they incur when in Frameworks 2 or 3.



MDNG Testimony to the Maryland General Assembly Joint Committee on Federal Relations

Question 8: How many guardsmen and women were deployed?

Answer 8: The Maryland National Guard deployed 116 Soldiers in support of the DC Federal Enclave mission.

Question 9: Who was in the chain of command for those troops?

Answer 9: The MDNG Commander in charge was Lieutenant Colonel Preston Postl (MDNG). Lieutenant Colonel Postl was assigned under the DC Monument Security Task Force which was commanded by Lieutenant Colonel Clifford Taylor (DCNG). The DC Monument Task Force was assigned under the Joint Task Force – District of Columbia commanded by Brigadier General Robert Ryan (DNCG). The Joint Task Force – District of Columbia came under the command of the DCNG Commanding General – Major General William Walker. Major General Walker reports to the Secretary of Defense.



MDNG Testimony to the Maryland General Assembly Joint Committee on Federal Relations

Question 10: Where exactly they were positioned?

Answer 10: The MDNG Soldiers were posted at the following locations:

- a. Lincoln Memorial Reflecting Pool
- b. World War II Memorial
- c. Washington Memorial

Question 11: What interactions they had with civilians in their professional capacity?

Question 11: The MDNG sustained positive interactions with the citizens in and around their area of responsibilities. There were no unlawful acts and the mission to keep monuments from being damaged was successful.



MDNG Testimony to the Maryland General Assembly Joint Committee on Federal Relations

Question 12: And what if any, injuries or damages were alleged either by or against our Maryland forces?

Answer 12: There were no injuries alleged by or against MDNG Soldiers. Our Soldiers conducted their mission in a professional manner at all times and the local population did not act unlawfully. Interactions were positive resulting in no requirement for any physical interaction.

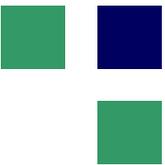
Question 13: Also, in the letter that Major General Gowen sent to the Joint Committee, he referred to the powers of the Governor to command our forces activated under Title 10 of US Code as “curtailed”. Would you please clarify exactly how curtailed the Governor’s powers would be?”

Answer 13: The National Guard is a Reserve Component of the United States Army and Air Force. As such, when ordered (voluntarily or involuntarily) to Title 10 Active Duty, the Governor’s authority over Soldiers and Airmen ceases and the President of the United States has sole authority over those members for the duration of the orders. Upon completion of the orders the Soldiers/Airmen revert back to Title 32 status and once again come under the authority of the Governor.

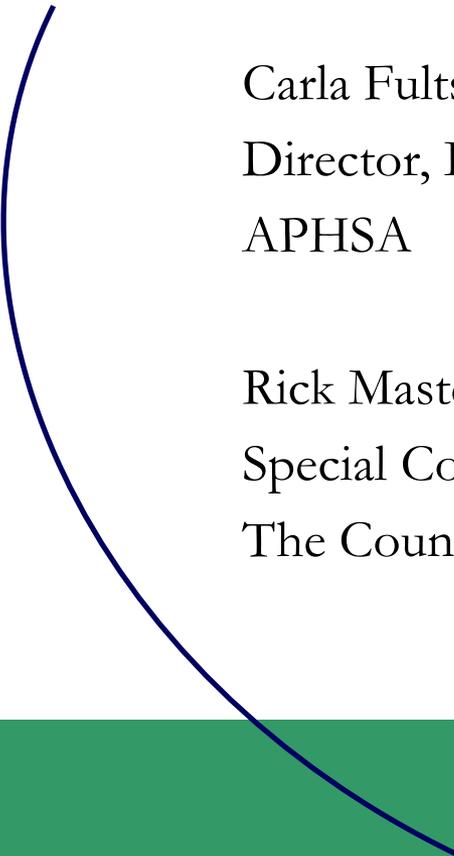
INTERSTATE COMPACT *for* the PLACEMENT OF CHILDREN

ICPC *IT'S* for THE CHILDREN





Interstate Compact *for* the Placement of Children



Carla Fults, JD, MSW

Director, Interstate Affairs and Compact Operations

APHSA

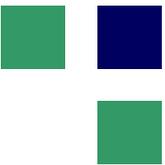
Rick Masters, Esq.

Special Counsel

The Council of State Governments

Why the need for a new Compact?

- The existing Compact was drafted in 1950's.
- Established during a different time and under a child welfare system with a different structure.
- Fundamental problems in the legal framework of existing Compact's.
- Mechanisms and processes are antiquated and outdated.
- Increasing dissatisfaction with the ICPC process and unreasonable delays.
- Growing need/support from other national players (e.g. Conference of Chief Justices, opioid crisis, etc.)

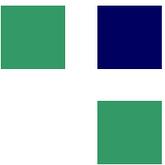


What are the Challenges?

- Implementing a revised compact when there is an existing compact
- Resistance to change
- State executive and administrator turnover
- Limited resources (State and National Level)
- Coordinated support from the executive, legislative and judicial branches

Highlights of the New ICPC

- Overall, the new ICPC provides a solid legal framework for
 - Ensuring timely placement of children across state lines
 - Establishing the suitability of prospective families
 - Providing needed support services.
 - Narrowing the applicability to foster care and adoptive placements
 - Establishing jurisdictional authority



Jurisdiction

- Clarifies that retention of jurisdiction means the authority of the courts and judicial officers to take and decide cases
- Clarifies circumstances in which the courts in the sending state shall have the authority to terminate jurisdiction

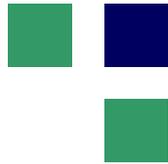
Administrative Procedures

- Requires the establishment of rules regarding timeframes, legal and administrative processes.
- Creates opportunities to establish uniform home study standards, education and training, licensing and background checks.

Rulemaking

- Requires that the rules be
 - developed through a process that substantially conforms to the principles of notice
 - structured in compliance with the Model State Administrative Procedures Act or other appropriate administrative procedures acts.

Enforcement Tools



- Remedial training
- Specific technical assistance
- Mediation
- Binding dispute resolution
- Judicial action

Tribes

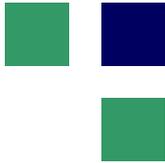
- Provides for the development of guidelines regarding the use of the compact by Indian tribes.

Data – NEICE

- Improve data collection for accountability and performance management within the states
- Cost Savings - Incorporate New ICPC Articles and Regulations, and administrative procedures during the early stages of NEICE development.

Compact Governance

State Councils



Under the compact, each state is required to:

“Provide for coordination among its branches of government concerning the state’s participation in, and compliance with, the compact and Interstate Commission activities, through the creation of a State Council or use of an existing body or board.”

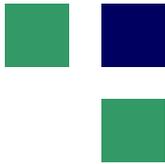
Article VII (G)

Compact Governance

State Councils

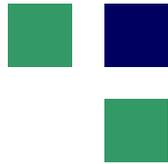
State Councils will play a significant role in compact activities:

- Increase the visibility of compact issues to state policymakers;
- Provide diverse policy support and oversight to the compact; and
- Promote ongoing inter-branch awareness of compact issues.



Compact Governance

National Commissioner



Each member state has one *National Commissioner*

- National Commissioners serve as designated representatives of their member state at all Interstate Commission meetings and for all commission activities
- National Commissioners will be appointed by “*the executive head of the state human services administration with ultimate responsibility for the child welfare program.*” (Art. VIII(B))
- Each state retains the right to determine the qualifications of the representative to the Interstate Commission.

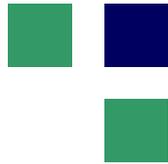
Frequently Asked Questions

What happens during transition ?

- As the legislation makes it way through the states?
- When the 35th state enacts the new compact?

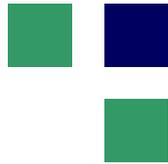
What is the benefit of being one of the first 35 states to enact the new compact?

Questions



Next Steps

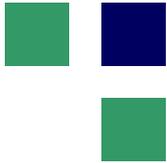
Introduction and Enactment



We need You !!!



Thank you!



Gracias

ขอบคุณ

Obrigado!

תודה

Vielen
Dank

Köszönettel

Grazie

Hvala

Merci

THANK YOU

Obrigado!

شكراً



Interstate Compact for the Placement of Children (ICPC)

Overview

Michelle L. Farr, LCSW-C, LICSW-C
SSA Executive Director
October 14, 2020

What is ICPC?

- Each U.S. State, as well as Wash., D.C. and the U.S. Virgin Islands, is a member of the ICPC Compact and is required to comply identically in reciprocal fashion.
- The ICPC Compact is the sole legal means available to ensure, regulate and safeguard the protections and services to a Maryland child placed outside of Maryland into another State and those of children from other states placed in Maryland.
- The current ICPC Compact is codified in the Family Law Article § § 5-601-5-611.

When does ICPC Apply?

ICPC Compact referral is mandatory whenever a case involves:

- a Maryland child that is under the Maryland juvenile court's jurisdiction and the natural parent's or non-agency guardian's rights regarding the child have been limited or restricted by a court's order to ensure the child's protection
- a child is proposed to be placed or adopted across State lines by a state agency, private agency, private person, or attorney.

When does ICPC not apply?

- Placement of a child across state lines by a parent or specified relative where LDSS does not have care and custody of child and the parent or relative is placing with a specified relative
- Placements in a medical facility for acute short-term illness treatment
- Placements in an educational institution or boarding school
- Placements with non-custodial parents (*In re R.S.*, __ Md. __ (Md. Ct. of App., Aug. 17, 2020))

New ICPC Framework

The proposed New ICPC presents a legal framework, which provides for the following:

1. Timely placements across state lines.
2. Suitability of prospective family placements/resources.
3. Provision of needed support services
4. Narrows the applicability of the Compact to interstate placement of children in the foster care system and for interstate adoptions.
5. Requires the development of time frames for completion of the approval process.
6. Establishes clear rulemaking authority
7. Provides enforcement mechanisms
8. Clarifies state responsibility
9. Ensures states' ability to purchase home studies from licensed agencies to expedite process.

Comparison of New ICPC to Current ICPC

NEW ICPC (Rewrites)

Provides exemption to non-custodial parents who have a substantial relationship with the child

Distinguishes between an assessment and a home study

Allows provisional travel prior to final approval of adoption

Provides definition for provisional placement and allows sending state to ask if placement qualifies as a provisional placement

Allows for appeal of receiving state's denial of placement to be conducted in receiving state pursuant to applicable Administrative Procedure Act

Provides a clear definition of "placement"

CURRENT ICPC

- Only acknowledges the home study
- Does not allow provisional travel
- Does not allow provisional placement with relatives
- Does not require or provide for an appeal process
- Has an outdated definition of "placement"

Actions Needed

- Enact new legislation allowing MD to implement new compact **once 35 states** have passed the new compact
- Currently **12 states** have passed statutes to allow the future implementation. **Two additional states** have introduced legislation to adopt the new compact once 35 state have adopted.

