

INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN AND FEDERAL ADOPTION LAWS

INTRODUCTION

Although adoption is typically a creature of state law, all 50 states have adopted the Interstate Compact on the Placement of Children and there are several federal laws that directly address the issue of adoption.

INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

The Interstate Compact on the Placement of Children was drafted in 1960 and has been adopted by all 50 states and the District of Columbia. The North Dakota Legislative Assembly enacted the Interstate Compact on the Placement of Children in 1963, as North Dakota Century Code (NDCC) Chapter 14-13. The purpose of the compact is to provide safeguards to ensure that children placed with foster and adoptive families across state lines are protected and that they receive appropriate care and supervision.

Generally, the compact mandates that a "sending agency" follow certain procedural requirements to obtain the permission of a "receiving state" before the interstate placement of a child for purposes of foster care or adoption. North Dakota Century Code Section 14-13-01 provides the four key objectives of the compact:

1. Determining the suitability of the interstate placement;
2. Determining any circumstances bearing on the protection of the child;
3. Obtaining complete information on which to evaluate a projected placement before the placement is made; and
4. Promoting appropriate jurisdictional arrangements.

FEDERAL ADOPTION LAWS

Intercountry Adoption Act of 2000

The federal Intercountry Adoption Act of 2000 was signed into law on October 6, 2000; however, the Act does not become effective until the Immigration and Naturalization Service and the Department of State publish implementing regulations. The Act provides implementing legislation for the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption. Actual implementation is expected to take 24 to 36 months.

The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption is an

agreement reached by 66 countries, including the United States, Mexico, and Canada, which establishes a cooperative framework between the countries of origin of children in need of adoption and the receiving countries to ensure that the children's best interests are safeguarded. Additionally, the Act makes two major changes to the Immigration and Nationality Act. In the case of an adoption of a child who resides in a Hague country:

1. The Act provides that an adoption certificate issued by the central authority is conclusive evidence of the relationship between the adopted child and the adoptive parent.
2. The Act expands the definition of "child" beyond its previous definition, thereby permitting the adoption of some children who do not qualify as "orphans" under existing immigration law.

Child Citizenship Act of 2000

The federal Child Citizenship Act of 2000 was signed into law on October 30, 2000, and took effect on February 27, 2001. Under this Act, for purposes of citizenship, children adopted from abroad by United States citizens receive the same treatment as children born abroad to United States citizens.

Specifically, the Act makes two major changes to the Immigration and Nationality Act.

1. The Act provides that a child whose adoption is completed abroad becomes a citizen immediately upon entering this country as a lawful permanent resident.
2. The Act provides that a child who comes to this country for purposes of adoption, but who has not yet been adopted, becomes a citizen the moment the adoption becomes final.

Additionally, the Act applies retroactively to confer automatic citizenship on any child under the age of 18 who meets the requirements as of February 27, 2001, regardless of the date of the child's adoption or entry into this country.

Under the old Immigration and Nationality Act, the adoption process included Federal Bureau of Investigation and state and local background checks; birth and marriage certificates; photo identifications; alien registration cards; and certified English translations of documents written in other languages and foreign-born children adopted by United States citizens were subject to deportation from the United States.

Adoption and Safe Families Act of 1997

The federal Adoption and Safe Families Act of 1997 was signed into law on November 19, 1997. States were required to make substantial changes in state law to comply with the Act. The North Dakota Legislative Assembly enacted 1999 Senate Bill No. 2171 to implement the requirements of the Act. The primary focus of the Act is addressing the permanency of foster children, which results in increasing the adoption of foster children. The Act:

1. Clarifies that a child's health and safety is the primary consideration and specifies situations under which efforts to reunite a family are not required. The Act provides that a child's safety must be addressed in case plans and six-month reviews of foster care plans.
2. Provides that termination of parental rights proceedings must be initiated for children who have been in foster care for 15 of the most recent 22 months and must be commenced upon a child's placement in cases in which reunification efforts are not required.
3. Provides that at all foster care reviews and hearings, foster parents, preadoptive parents, and relative caregivers must be notified and given an opportunity to be heard.
4. Provides that generally permanency hearings must be held within 12 months of the child's original placement.

Multiethnic Placement Act of 1994

The federal Multiethnic Placement Act of 1994, among other things, addresses interracial or cross-cultural adoption. The Act prohibits a federally assisted agency from categorically denying the opportunity for any individual to become an adoptive or foster parent solely on the basis of the race, color, or national origin of the adoptive parent or the child. However, this Act was amended in 1996 by the Interethnic Provision, under which the capacity of the adoptive parent to meet the child's needs based on the child's background can still be considered in the framework of the best interests of the child analysis.

Indian Child Welfare Act of 1978

The Indian Child Welfare Act of 1978 applies to child custody proceedings in which the child involved is an Indian child. A child custody proceeding may include foster placement proceedings, pre-adoptive placement proceedings, adoptive placement proceedings, or termination of parental rights proceedings. The Act applies to private placements and adoptions as well as to those initiated by state and county agencies.

The Act protects parental rights and the child's rights to tribal affiliation through specific procedural, evidentiary, and substantive requirements. Procedural provisions of the Act address jurisdiction; the requirements regarding notice to the child's parents, Indian custodian, and Indian tribe; the requirement that Indian parents and custodians be entitled to counsel, regardless of need, and the right of the Indian tribe to intervene at any stage of a proceeding; evidentiary provisions address the weight of the evidence and the type of evidence required; substantive requirements include placement preference provisions that are designed to assure that Indian children who are removed from their homes are placed in homes that reflect the children's unique Indian cultures.

SUMMARY

Although generally adoption is a creature of state law and each state's adoption laws are unique, all 50 states have adopted the Interstate Compact on the Placement of Children to provide safeguards for children placed in adoptive families or foster care across state lines. Additionally, Congress has enacted several laws that directly or indirectly address adoption, including the Intercountry Adoption Act of 2000, the Child Citizenship Act of 2000, the Multiethnic Placement Act of 1994, the Adoption and Safe Families Act of 1997, and the Indian Child Welfare Act of 1978.