

**INTERSTATE COMPACT FOR
JUVENILES**

House Bill 4145
Sponsor: Rep. Charles LaSata
Committee: Criminal Justice

Complete to 3-18-03

A SUMMARY OF HOUSE BILL 4145 AS INTRODUCED 2-4-03

The bill would repeal the existing Interstate Compact on Juveniles (MCL 3.701 to 3.706) and replace it with the Interstate Compact for Juveniles. Significant changes from the current compact include the establishment of an independent compact operating authority to administer ongoing compact activity; creation of a national governing commission with appointed representatives from member states; establishment of rule-making authority; provision for an enforcement mechanism and sanctions for noncompliance by member states; creation of a mandatory funding mechanism to support essential compact operations (e.g., staffing, data collection, training, etc.); and authority to compel collection of standardized information. A brief summary of individual articles in the compact follows.

Article I – Purpose. By adopting the compact, a member state would recognize that federal law authorizes and encourages compacts between states in the prevention of crime; that each state carries the responsibility for proper supervision or return of juveniles, delinquents, and status offenders on probation or parole who have absconded, escaped, or run away; and that each state is responsible for the safe return of juvenile runaways. Other stated purposes would include, among many things, providing adequate supervision and services in a receiving state as ordered by a court or parole authority in the sending state; protecting the safety of citizens in both the sending and receiving state; returning juveniles to the requesting state who have escaped, run away, or are accused of an offense; providing for effective tracking and supervision of juveniles; contracting for cooperative institutionalization in public facilities as needed; equitably allocating costs, benefits, and obligations of the compacting states; establishing procedures to monitor the movement of juvenile offenders between states; establishing a system of uniform data collection on pertinent information accessible by justice and criminal justice officials; coordinating training and education regarding the regulation of interstate movement of juveniles; monitoring compliance with compact rules and correcting non-compliance; and coordinating the implementation and operation of the compact with the Interstate Compact for the Placement of Children, the Interstate Compact for Adult Offender Supervision, and other compacts that affect juveniles.

Article II – Definitions. The bill would redefine some terms and add definitions for other terms. “Juvenile” would be redefined as a person defined as a juvenile in any member state or by rules of the Interstate Commission and would include an accused delinquent (a person charged with an offense that, if committed by an adult, would be a criminal offense), an adjudicated delinquent (a person found to have committed an offense that, if committed by an adult, would be a criminal offense), an accused status offender (a person charged with an offense that would not be a criminal offense if committed by an adult), an adjudicated status offender (a

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person found to have committed an offense that would not be a criminal offense if committed by an adult), and a non-offender (a person in need of supervision who had not been accused or adjudicated as a status offender or delinquent).

“Rule” would be defined as a written statement by the Interstate Commission promulgated under the compact which would have the force and effect of statutory law in a compacting state. “Probation or parole” would mean any kind of supervision or conditional release of juveniles authorized under the laws of the compacting states.

Article III – Interstate Commission for Juveniles. The commission would be a body corporate and joint agency of the compacting states and would consist of commissioners appointed by each state’s appropriate appointing authority. A commissioner, who would be the voting member for his or her state, could be the compact administrator, deputy compact administrator, or a designee from that state. Each member state would have one vote, and votes would have to be cast in person. The Interstate Commission would also have to include, albeit as nonvoting members, a member of the national organizations of governors, legislators, state chief justices, attorneys general, Interstate Compact for Adult Offender Supervision, Interstate Compact for the Placement of Children, juvenile justice and juvenile corrections officials, and crime victims.

The commission would have to meet at least once annually, in meetings that are open to the public, and with public notice being given for all meetings. An executive committee comprised of commission officers, members, and others would have to be established to act on behalf of the Interstate Commission during periods when the commission was not in session (but the committee would not have authority to make rules or amend the compact). The executive committee would also oversee the day-to-day activities of the executive director and Interstate Commission staff in administering the compact, as well as administer enforcement and compliance with the compact and rules promulgated under it.

Procedures and policies for public access to the committee’s information and official records would be established by commission by-laws, and records containing information that could affect personal privacy rights or proprietary interests could be excluded from disclosure. Meetings could be closed to the public under criteria specified in the bill.

The commission would have to collect standardized data concerning the interstate movement of juveniles. The data to be collected, the means of collecting it, and data exchange and reporting requirements would be determined through commission rules.

Article IV – Powers and Duties of the Interstate Commission. Among many listed powers and duties, the commission would have to provide for dispute resolution among compacting states; promulgate rules as specified in the bill which would have the force and effect of statutory law and be binding in the compacting states; oversee, supervise, and coordinate the interstate movement of juveniles subject to the compact’s regulation; enforce compliance with the compact; purchase and maintain insurance and bonds; establish and appoint committees and hire staff necessary to carry out its functions; receive, utilize, and dispose of donations and grants of money, equipment, and supplies, etc.; sell, lease, buy, etc. real, personal, or mixed property; sue

and be sued; establish a budget and make expenditures; report annually to the legislatures, governors, judiciary, and state councils of compacting states concerning its activities in the previous year; establish uniform standards regarding the reporting, collection, and exchange of data; and coordinate education, training, and public awareness regarding the interstate movement of juveniles for those officials involved in such activity.

Article V – Organization and Operation of the Interstate Commission. Within twelve months after the first commission meeting, the commission would have to adopt by-laws, as specified in the bill, to govern its conduct and to carry out the compact’s purposes. Each year, a chairperson and vice chairperson would have to be elected from among the members; these officers would have such authority and duties as specified in the by-laws. Officers would serve without compensation, but subject to the availability of funds, would have to be reimbursed for certain costs incurred in the performance of their duties. The commission would have to appoint or retain an executive director who would serve as secretary to the commission. The executive director would not be a member, nor would he or she have voting rights, but would hire and supervise staff.

The executive director and employees would enjoy immunity from civil suits for actions arising out of employment, duties, or responsibilities, except for damage, loss, injury, or liability caused by intentional or willful and wanton misconduct. The liability for a commissioner or his or her agent or employee, when acting within the scope of his or her employment or duties, could not exceed the limits of liability under that person’s state law that is granted for state officials, employees, and agents. The bill would specify circumstances under which the commission would defend the executive director or employees or representatives of the commission in civil actions. Further, the commission would have to indemnify and hold a commissioner or his or her employees, or the commission’s employees or representatives, harmless in the amount of any settlement or judgment obtained against such person for an action that arose out of the scope of the person’s duties, as long as the action did not result from intentional or willful and wanton misconduct.

Article VI - Rulemaking Functions of the Interstate Commission. The commission would have to promulgate and publish rules in order to effectively and efficiently achieve the purposes of the compact. Rulemaking would have to be done under the criteria set forth in the bill and the by-laws and rules adopted under the bill’s provisions. The rulemaking would have to substantially conform to the principles of the federal “Model State Administrative Procedures Act”. The bill would also establish the minimum criteria that would have to be followed in the rulemaking process.

Article VII – Oversight, Enforcement and Dispute Resolution by the Interstate Commission. The commission would oversee the administration and operations of the interstate movement of juveniles subject to regulation under the compact and monitor the activities in non-compacting states that could significantly affect the compacting states. The courts and executive agencies in each compacting state would have responsibility to enforce the compact; therefore, all courts would have to take judicial notice of the compact and the rules. The commission would be entitled to receive all service of process in proceedings pertaining to the subject matter

of the compact and that would affect the commission's powers or responsibilities. The commission would also have standing to intervene in such a proceeding for all purposes.

Compacting states would have to report to the commission on issues and activities necessary for the administration of the compact as well as compliance issues. Upon the request of a state, the commission would have to attempt to resolve any disputes arising among compacting states and between a compacting and a non-compacting state. A rule providing for mediation and binding dispute resolution for disputes among compacting states would have to be promulgated by the commission.

Article VIII - Finance. The commission would have to levy and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the commission and its staff in an amount sufficient to cover the commission's annual budget. The aggregate annual assessment amount would be allocated based upon a formula to be determined by the commission, but the allocation would have to take into consideration factors such as a state's population and its volume of interstate movement of juveniles. Audit and accounting procedures would be established under commission by-laws; however, an annual audit by a certified or licensed public accountant would have to be done and the report included in the annual report of the commission.

Article IX – The State Council. Each member state would have to create a State Council for Interstate Juvenile Supervision. Membership, which could be determined by each state, would have to include at least one representative from the legislative, judicial, and executive branches of government, victims groups, and the compact administrator, deputy compact administrator, or designee. The state council would have to advise and could exercise oversight and advocacy concerning that state's participation in commission activities and other duties as determined by that state, including, but not limited to, the development of policy concerning operations and procedures of the compact within that state.

Article X – Compacting States, Effective Date and Amendment. Any state, the District of Columbia, Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands would be eligible to become a compacting state. The compact would become effective and binding upon enactment by 35 states. The effective date would be July 1, 2004 or upon enactment by the 35th jurisdiction, whichever was later. After that, it would become effective for a state upon legislative enactment by that state. Prior to adoption by all the states and territories, governors of non-member states would be invited to participate in commission activities on a non-voting basis. The commission could propose amendments to the compact for enactment by the compacting states, but no amendment would become effective and binding until enacted into law by unanimous consent of the compacting states.

Article XI – Withdrawal, Default, Termination and Judicial Enforcement. Once effective, the compact would remain in force and be binding upon a state unless a state repealed the enacting statute. The bill would detail the procedure for a withdrawing state to follow and the state's responsibilities concerning obligations and liabilities. The commission could impose penalties on a state if it defaulted in the performance of duties and responsibilities under the compact. Penalties could include remedial training and technical assistance; alternative dispute

resolution; fines, fees, and costs; or suspension or termination of membership in the compact. Grounds for a default would include the failure by a state to perform the obligations and responsibilities imposed upon it by the compact, the by-laws, or the rules. A state could be reinstated following termination by reenacting the compact and by approval of the commission.

The commission could initiate legal action in the specified federal court to enforce compliance with the compact's provisions, by-laws, and rules against a state in default. The prevailing party would have to be awarded all costs including reasonable attorney fees. If enough states withdrew or dissolved their state compacts until only one compacting state was left, then the compact itself would dissolve and be null and void. At such time, the commission business would have to be concluded and surplus funds be distributed according to the by-laws.

Article XII – Severability and Construction. The provisions of the compact would be severable; therefore, if any phrase, clause, sentence or provision was deemed unenforceable, the remaining provisions would still be enforceable. Further, the provisions would have to be liberally construed to effectuate the compact's purposes.

Article XIII – Binding Effect of Compact and Other Laws. The compact would not prevent the enforcement of any other law of a compacting state that was not inconsistent with it. Conflicting state laws other than state constitutions and other interstate compacts would be superseded by the compact to the extent of the conflict. All lawful actions of the commission would be binding on the compacting states, as would all agreements between the commission and a compacting state. The commission could issue advisory opinions regarding the meaning or interpretation of commission actions if there were a conflict over the meaning or interpretation. If any provision of the compact exceeded the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred upon the commission would be ineffective and such obligations, duties, powers or jurisdiction would have to remain in that state and be exercised by the state agency responsible for such matters according to that state's law in effect at the time the compact became effective.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.