



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

House Bill 4145 (as passed by the House)
Sponsor: Representative Charles LaSata
House Committee: Criminal Justice
Senate Committee: Judiciary

Date Completed: 6-11-03

CONTENT

The bill would enact the "Interstate Compact for Juveniles" to provide for Michigan's participation in the Interstate Commission for Juveniles, and enter Michigan into the Compact with all jurisdictions that legally joined in it. The bill would enact the Compact "for the supervision or return of juveniles, delinquents, and status offenders".

Specified purposes would include ensuring that adjudicated juveniles and status offenders were provided adequate supervision and services, tracking juveniles, establishing procedures to manage the movement of juveniles released to the community, and establishing a system of data collection. The bill also would repeal Public Act 203 of 1958, which provides for Michigan's participation in the current Interstate Compact on Juveniles.

The proposed Compact would do all of the following:

- Create the Interstate Commission for Juveniles as a joint agency of the compacting states, to oversee and administer the operation of the Compact.
- Provide for the appointment of commissioners and other members of the Commission from each compacting state.
- Require the Commission to establish an executive committee.
- Authorize the Commission to create bylaws and promulgate rules, and specify its other powers and duties.
- Specify that Commission activity would

- be the formation of public policies.
- Provide for the Commission's organizational structure and operation.
- Provide limited immunity and indemnity to Commission members and staff, as well as Commissioners' agents or employees.
- Provide for the Commission's oversight and enforcement of the Compact, including dispute resolution.
- Require the Commission to provide for the payment of its reasonable expenses, through the levy and collection of an assessment on compacting states.
- Require each compacting state to create a State Council for Interstate Juvenile Supervision to advise and exercise oversight and advocacy concerning the state's participation in Commission activities.
- Specify procedures for amending the Compact, a state's withdrawal or termination from the Compact, judicial enforcement of the Compact, and the Compact's dissolution.
- Specify that the Compact would be binding on all members and would supercede any conflicting laws or interstate compacts.

The Compact would take effect on July 1, 2004, or when the 35th state adopted the Compact, whichever was later.

Article I--Purpose

The bill specifies, "The compacting states...recognize that each state is responsible for the proper supervision or return of juveniles, delinquents and status

offenders who are on probation or parole and who have absconded, escaped or run away from supervision and control and in so doing have endangered their own safety and the safety of others." The compacting states also would recognize that each state was responsible for the safe return of juveniles who had run away from home and left their state of residence, and that Congress, by enacting the Federal Crime Control Act (4 USC 112), authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

The bill states that it would be the purpose of the Compact, through means of joint and cooperative action among the compacting states, to do all of the following:

- Ensure that the adjudicated juveniles and status offenders subject to the Compact were provided adequate supervision and services in the receiving state, as ordered by the adjudicating judge or parole authority in the sending state.
- Ensure that the public safety interest of the citizens, including the victims of juvenile offenders, in both the sending and receiving states, were adequately protected.
- Return juveniles who had run away, absconded or escaped from supervision or control, or were accused of an offense, to the state requesting their return.
- Make contracts for the cooperative institutionalization in public facilities in member states for delinquent youth needing special services.
- Provide for the effective tracking and supervision of juveniles.
- Equitably allocate the costs, benefits, and obligations of the compacting states.
- Establish procedures to manage the movement between states of juvenile offenders released to the community under the jurisdiction of courts, juvenile departments, or any other criminal or juvenile justice agency that had jurisdiction over juvenile offenders.
- Insure immediate notice to jurisdictions where defined offenders were authorized to travel or to relocate across state lines.
- Establish procedures to resolve pending charges against juvenile offenders before transfer or release to the community under the terms of the Compact.
- Establish a system of uniform data collection on information pertaining to the juveniles subject to the Compact that would

allow access by authorized juvenile justice and criminal justice officials, and regular reporting of Compact activities to heads of state executive, judicial, and legislative branches and juvenile and criminal justice administrators.

- Monitor compliance with rules governing interstate movement of juveniles and initiate interventions to address and correct noncompliance.
- Coordinate training and education regarding the regulation of interstate movement of juveniles for officials involved in that activity.
- Coordinate 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 affecting juveniles, particularly in cases in which concurrent or overlapping supervision issues arose.

It would be the policy of the compacting states that the activities conducted by the Interstate Commission would be the formation of public policies and, therefore, would be public business. In addition, the compacting states would have to cooperate and observe their individual and collective duties and responsibilities for the prompt return and acceptance of juveniles, subject to the Compact. The Compact would have to be reasonably and liberally construed to accomplish its purposes and policies.

Article II--Definitions

"Compact administrator" would mean the individual in each compacting state appointed under the Compact and responsible for the administration and management of the state's supervision and transfer of juveniles under the Compact and policies adopted by the State Council. "Deputy compact administrator" would mean the individual, if any, in each compacting state appointed to act on behalf of a Compact administrator under the terms of the Compact.

"Commissioner" would mean each compacting state's voting representative on the Interstate Commission for Juveniles.

"Juvenile" would mean any person defined as a juvenile in any member state or by the rules of the Interstate Commission, including all of the following:

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

“Probation or parole” would mean any kind of supervision or conditional release of a juvenile authorized under the laws of a compacting state.

Article III--Interstate Commission for Juveniles

The Interstate Commission for Juveniles would be a body corporate and joint agency of the compacting states. It would have all the responsibilities, powers, and duties specified in the Compact, and additional powers conferred upon it by subsequent action of the compacting states’ respective legislatures according to the terms of the Compact.

The Commission would consist of commissioners appointed by the appropriate appointing authority in each state and in consultation with the State Council for Interstate Juvenile Supervision. The Commissioner would be the Compact administrator, deputy Compact administrator, or designee from each state who would serve on the Commission pursuant to the state’s applicable law. In addition to the Commissioners, who would be the voting representatives of each state, the Commission would include individuals who were not commissioners but who were members of interested organizations. Noncommissioner members would have to include a member of the national organizations of each of the following: 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. Noncommissioner members would not have a vote. The Commission could provide in its bylaws for additional nonvoting members.

Each compacting state represented at a Commission meeting would be entitled to one vote. A majority of the compacting states would constitute a quorum, unless a larger quorum was required by the Commission’s bylaws. The Commission would have to meet at least once each calendar year.

The Commission would have to establish an executive committee, including Commission officers, members, and others determined by the bylaws. The executive committee could act on behalf of the Commission when it was not in session, but could not make rules or amend the Compact. The executive committee would have to do all of the following:

- Oversee the day-to-day activities of the administration of the Compact, managed by an executive director and Commission staff.
- Administer enforcement and compliance with the Compact, its bylaws, and rules.
- Perform other duties as directed by the Commission or specified in the bylaws.

Each Commission member would have the right and power to cast a vote to which his or her compacting state was entitled, and to participate in the Commission’s business and affairs. A member would have to vote in person and could not delegate a vote to another compacting state. In consultation with the State Council, however, a Commissioner would have to appoint another authorized representative, in the absence of the Commissioner, to cast a vote on behalf of the compacting state at a specified meeting. The Commission’s bylaws could provide for members’ participation in meeting by telephone or other means of telecommunication or electronic communication.

The Commission’s bylaws would have to establish conditions and procedures under which the Commission would have to make its information and official records available to the public for inspection or copying. The Commission could exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests. Public notice would have to be given of all meetings, and all

meeting would have to open to the public, except as specified in the Commission's rules or as otherwise provided in the Compact. The Commission and any of its committees could close a meeting to the public if it determined by two-thirds vote that an open meeting would be likely to do any of the following:

- Relate solely to the Commission's internal personnel practices and procedures.
- Disclose matters specifically exempted from disclosure by statute.
- Disclose trade secrets or commercial or financial information that was privileged or confidential.
- Involve accusing any person of a crime, or formally censuring any person.
- Disclose information of a personal nature, if disclosure would constitute a clearly unwarranted invasion of personal privacy.
- Disclose investigative records compiled for law enforcement purposes.
- Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of the Commission, for the purpose of regulation or supervision of a regulated person or entity.
- Disclose information whose premature disclosure would significantly endanger the stability of a regulated person or entity.
- Specifically relate to the Commission's issuance of a subpoena, or its participation in a civil action or other legal proceeding.

The Commission would have to keep minutes that described fully and clearly all matters discussed in any meeting, and provide a full and accurate summary of any action taken and the reasons for doing so.

The Commission would have to collect standardized data concerning the interstate movement of juveniles, as directed through its rules, which would have to specify the data to be collected, and the means of collecting, exchanging, and reporting the data. To the extent reasonably possible, the methods of data collection, exchange, and reporting would have to conform to up-to-date technology.

Article IV--Powers & Duties of the Interstate Commission

The Interstate Commission would have the power to do all of the following:

- Provide for dispute resolution among compacting states.

- Promulgate rules to effect the purposes and obligations specified in the Compact, which would have the force and effect of statutory law and would be binding in the compacting states as provided in the Compact.
- Oversee, supervise, and coordinate the interstate movement of juveniles subject to the terms of the Compact and any bylaws adopted and rules promulgated by the Commission.
- Enforce compliance with the Compact, rules, and bylaws, using all necessary and proper means, including judicial process.
- Establish and maintain offices.
- Purchase and maintain insurance and bonds.
- Borrow, accept, hire, or contract for services and personnel.
- Establish and appoint committees and hire staff that the Commission considered necessary for carrying out its functions, including an executive committee as required by Article III.
- Elect or appoint officers, attorneys, employees, agents, or consultants, and establish their compensation, define their duties, and determine their qualifications.
- Accept, receive, use, and dispose of donations and grants of money, equipment, supplies, materials, and services.
- Lease, purchase, accept, own, improve, or use any property.
- Sell, convey, mortgage, pledge, exchange, abandon, or otherwise dispose of any property.
- Establish a budget, make expenditures, and levy dues as provided under Article VIII of the Compact.
- Perform functions necessary or appropriate to achieve the Compact's purposes.
- Report annually to the compacting states' legislatures, governors, judiciary, and State Councils concerning the Commission's activities during the preceding year and recommendations that the Commission adopted.
- Coordinate education, training, and public awareness regarding the interstate movement of juveniles for officials involved in that activity.
- Establish uniform standards for the reporting, collection, and exchange of data.

Article V--Organization & Operation of the Commission

Bylaws. Within 12 months after its first meeting, the Commission, by a majority of the members present and voting, would have to

adopt bylaws to govern its conduct as necessary or appropriate to carry out the purposes of the Compact, including items listed in the Compact.

Officers and Staff. The Commission, by a majority of its members, annually would have to elect from among its members a chairperson and vice chairperson, who would have the authority and duties specified in the bylaws. The elected officers would serve without compensation or remuneration from the Commission. Subject to the availability of budgeted funds, the officers would have to be reimbursed for any ordinary and necessary costs and expenses incurred in the performance of their duties and responsibilities.

The Commission, through its executive committee, would have to appoint or retain an executive director for a period, on terms and conditions, and for compensation that the Commission considered appropriate. The executive director would have to serve as Secretary to the Commission, but could not be a Commission member.

Qualified Immunity, Defense, & Indemnification. The Commission's executive director and employees would be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to any actual or alleged act, error, or omission that occurred, or that a person had a reasonable basis for believing occurred, within the scope of Commission employment, duties, or responsibilities. Immunity would not apply, however, for any damage, loss, injury, or liability caused by intentional or willful and wanton misconduct.

The liability of any Commissioner, or his or her employee or agent, acting within the scope of that person's employment or duties, for acts, errors, or omissions occurring within his or her state could not exceed the limits of liability established under that state's constitution and laws for officials, employees, and agents. The Compact could not be construed to protect those people from suit or liability for any damage, loss, injury, or liability caused by their intentional or willful and wanton misconduct.

The Commission would have to defend the executive director or the Commission's

employees or representatives and, subject to the approval of the attorney general of the state represented by any Commissioner, would have to defend the Commissioner or his or her representatives or employees in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities or that the defendant had a reasonable basis for believing occurred within that scope, unless the act, error, or omission resulted from the person's intentional or willful and wanton misconduct.

The Commission would have to indemnify and hold harmless the Commissioner of a compacting state, the Commissioner's representatives or employees, or the Commission's representatives or employees in the amount of any settlement or judgment obtained against those people arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that the person had a reasonable basis for believing occurred within that scope, unless the act, error, or omission resulted from the person's intentional or willful and wanton misconduct.

Article VI--Rule-Making Functions of the Commission

The Interstate Commission would have to promulgate and publish rules in order to achieve the Compact's purposes effectively and efficiently. Rule-making would have to conform substantially to the principles of the "model State Administrative Procedures Act" or another administrative procedures act as the Commission considered appropriate, consistent with due process requirements under the U.S. Constitution. All rules and amendments would be binding as of the date specified, as published with the final version of the rule approved by the Commission.

When promulgating a rule, the Commission would have to do at least all of the following:

- Publish the proposed rule's entire text, stating the reason or reasons for the rule.
- Allow and invite people to submit written data, facts, opinions and arguments, which would be added to the record and made publicly available.
- Provide an opportunity for an informal hearing, if petitioned by 10 or more people.

-- Promulgate a final rule and its effective date, if appropriate, based on input from state or local officials, or interested parties.

Within 60 days after a rule was promulgated, any interested person could file a petition in the U.S. District Court for the District of Columbia or in the Federal District Court where the Commission's principal office was located, for judicial review of the rule. If the court found that the Commission's action was not supported by substantial evidence in the rule-making record, the court would have to hold the rule unlawful and set it aside.

If a majority of the compacting states' legislatures rejected a rule, those states could, by enactment of a statute or resolution in the same manner used to adopt the Compact, cause the rule to have no further force and effect in any compacting state.

If the Commission determined that a state of emergency existed, it could promulgate an emergency rule, which would take effect immediately upon adoption, provided that the usual rule making procedures would be applied retroactively as soon as reasonably possible, but not later than 90 days after the emergency rule's effective date.

The existing rules governing the operation of the Interstate Compact on Juveniles, which the proposed Compact would supercede, would be null and void 12 months after the Commission's first meeting.

Article VII--Oversight, Enforcement, & Dispute Resolution

The Interstate Commission would have to oversee the administration and operation of the interstate movement of juveniles subject to the Compact in the compacting states, and would have to monitor the activities being administered in noncompacting states that could significantly affect compacting states.

The courts and executive agencies in each compacting state would have to enforce the Compact and take all actions necessary and appropriate to effectuate the Compact's purposes and intent. The provisions of the Compact and rules promulgated under it would have to be received by the judges, public officers, commissions, and departments of state government as evidence of the

authorized statute and administrative rules. All courts would have to take judicial notice of the Compact and the rules. In any judicial or administrative proceeding in a compacting state pertaining to the Compact that could affect the Commission's powers, responsibilities, or actions, the Commission would be entitled to receive all service of process and would have standing to intervene in the proceeding.

The compacting states would have to report to the Commission on all issues and activities necessary for the administration of the Compact, as well as issues and activities pertaining to compliance with the Compact and its bylaws and rules.

The Commission would have to attempt, upon the request of a compacting state, to resolve any disputes or other issues that were subject to the Compact and that arose among compacting states and between compacting and noncompacting states. The Commission would have to promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

The Commission, in the reasonable exercise of its discretion, would have to enforce the provisions and rules of the Compact, using means specified in Article XI.

Article VIII--Finance

The Interstate Commission would have to pay or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities. The Commission would have to levy on and collect from each compacting state an annual assessment to cover the cost of the Commission's internal operations, activities, and staff. The assessments would have to be a total amount sufficient to cover the Commission's annual budget as approved each year. The aggregate annual assessment amount would have to be allocated based on a formula to be determined by the Commission, taking into consideration the population of each compacting state and the volume of interstate movement of juveniles in each compacting state. The Commission would have to promulgate a rule, binding upon compacting states, that would govern the assessment.

The Commission could not incur any obligations of any kind before securing the funds to meet the obligation. The Commission could not pledge the credit of any of the compacting states, except by and with the authority of that state.

The Commission would have to keep accurate accounts of all receipts and disbursements, which would have to be audited yearly by a certified or licensed public accountant. The audit report would have to be included in the Commission's annual report.

Article IX--The State Council

Each member state would have to create a State Council for Interstate Juvenile Supervision. Although each state could determine the membership of its own council, membership would have to include at least one representative from the legislative, judicial, and executive branches of government, victims groups, and the Compact administrator, deputy administrator, or designee. Each compacting state would retain the right to determine the qualifications of the Compact administrator or deputy administrator. Each State Council would have to advise and could exercise oversight and advocacy concerning the state's participation in Interstate Commission activities and other duties as determined by the state, including development of policy concerning operations and procedures of the Compact within that state.

Article X--Compacting States, Effective Date, & Amendment

Any state, the District of Columbia, the 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 legislative enactment of the Compact by at least 35 states. The initial effective date would be July 1, 2004, or upon enactment by the 35th jurisdiction, whichever was later. After the initial effective date, the Compact would become effective and binding as to any other compacting state upon enactment by that state. The governors of nonmember states or their designees would have to be invited to participate in the

activities of the Interstate Commission on a nonvoting basis before all U.S. states and territories adopted the Compact.

The Commission could propose amendments to the Compact for enactment by the compacting states. No amendment would become effective and binding upon the Commission and the compacting states unless it was enacted by unanimous consent of the compacting states.

Article XI--Withdrawal, Default, Termination, & Judicial Enforcement

Withdrawal. Once effective, the Compact would continue in force and remain binding upon each compacting state. A state could withdraw from the Compact, however, by specifically repealing the statute that enacted the Compact.

A withdrawing state immediately would have to notify the chairperson of the Interstate Commission, in writing, upon the introduction of legislation repealing the compact in that state. Within 60 days of receiving the notice, the Commission would have to notify the other compacting states of the withdrawing state's intent to withdraw.

A withdrawing state would be responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal.

Reinstatement following withdrawal of any compacting state could occur only upon the withdrawing state's re-enacting the Compact or upon a later date as determined by the Commission.

Default. If the Commission determined that any compacting state had at any time defaulted in the performance of any of its obligations or responsibilities under the Compact, the bylaws, or duly promulgated rules, the Commission could impose any of the following penalties:

- Remedial training and technical assistance as directed by the Commission.
- Alternative dispute resolution.
- Fines, fees, and costs in amounts considered reasonable and established by the Commission.
- Suspension or termination of membership

in the Compact, which could be imposed only after all other reasonable means of securing compliance under the bylaws and rules had been exhausted and the Commission had determined that the offending state was in default.

The Commission would have to give immediate notice of suspension to the governor, chief justice or chief judicial officer, the majority and minority leaders of the legislature, and the State Council. The grounds for default would include a state's failure to perform obligations or responsibilities imposed upon it by the Compact, the bylaws, or rules, and any other grounds designated in the bylaws and rules. The Commission immediately would have to notify the defaulting state, in writing, of the penalty imposed by the Commission and of the default pending a cure of the default. If the defaulting state failed to cure the default within the time period specified by the Commission, the state would have to be terminated from the Compact upon an affirmative vote of a majority of the compacting states. All rights, privileges, and benefits conferred by the Compact would be terminated from the effective date of termination.

Within 60 days of the effective date of termination, the Commission would have to notify the governor, the chief justice or chief judicial officer, the majority and minority leaders of the legislature, and the state council of the termination.

The defaulting state would be responsible for all assessments, obligations, and liabilities incurred through the effective date of termination. The Commission would not bear any costs relating to the defaulting state unless otherwise mutually agreed upon in writing between the Commission and the state.

Reinstatement following termination of any compacting state would require both a re-enactment of the Compact and the Commission's approval.

Judicial Enforcement. By majority vote of its members, the Commission could initiate legal action in the U.S. District Court for the District of Columbia or, at the Commission's discretion, in the Federal District Court where

the Commission had its offices, to enforce compliance with the Compact, its rules, and bylaws, against any compacting state in default. If judicial enforcement were necessary, the prevailing party would have to be awarded all costs of litigation, including reasonable attorneys fees.

Dissolution. The Compact would dissolve upon the date of withdrawal or default of the compacting state that reduced membership to one compacting state. Upon dissolution, the Compact would become null and void. The business and affairs of the Commission would be concluded and any surplus funds would have to be distributed according to the bylaws.

Article XII--Severability & Construction

The provisions of the Compact would be severable, and if any phrase, clause, sentence, or provision were deemed unenforceable, the remaining provisions would continue to be enforceable. The Compact would have to be liberally construed to effectuate its purposes.

Article XIII--Binding Effect of Compact and Other Laws

Nothing in the Compact would prevent the enforcement of any other law of a compacting state that was not inconsistent with the Compact. All compacting states' laws, other than state constitutions, and other interstate compacts conflicting with the Compact would be superseded to the extent of the conflict.

All lawful actions of the Interstate Commission, including all rules and bylaws promulgated by the Commission, would be binding upon compacting states. All agreements between the Commission and the compacting states would be binding according to their terms.

Upon the request of a party to a conflict over meaning or interpretation of Commission actions, and upon a majority vote of the compacting states, the Commission could issue advisory opinions regarding 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 by that provision upon the Commission would be ineffective and those obligations, duties, powers, or jurisdictions would remain in the compacting state and be exercised by the state agency to which they were delegated by law in effect when the Compact became effective.

Fiscal Analyst: Bethany Wicksall
Constance Cole

Repealer

The bill would repeal Public Act 203 of 1958 (the Interstate Compact on Juveniles, which would be superceded by the proposed Compact) on the date that the Contract administrator certified to the Secretary of State that the 35th state had enacted the proposed Compact. Unlike the proposed Interstate Compact for Juveniles, the existing Compact does not provide for the independent operating authority to administer ongoing Compact activity; a national governing commission with appointed representatives from member states; rule-making authority; an enforcement mechanism and sanctions for noncompliance by member states; a mandatory funding mechanism to support Compact operations; or authority to compel collection of standardized information.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on State government.

The Council of State Governments (CSG) speculates that Michigan's annual assessment for participation in the Interstate Commission could be \$27,000. This figure is based on a draft budget and a draft dues formula created by CSG, as well as on the assumption that all of the states join the compact. The formula is weighted using the State's population and offender caseload. Once the Commission is established, it will determine its own budget and dues formula, which may vary from those used by the CSG.

The costs for administration, the State Council, and data collection would have an impact on the Family Independence Agency budget.

Any costs associated with detention and transportation of juveniles across State lines would have an impact on local units of government.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.