



House Office Building, 9 South
Lansing, Michigan 48909
Phone: 517/373-6466

INTERSTATE COMPACT FOR JUVENILES

House Bill 4145 as enrolled
Public Act 56 of 2003
Sponsor: Rep. Charles LaSata

House Committee: Criminal Justice
Senate Committee: Judiciary

Second Analysis (7-15-03)

THE APPARENT PROBLEM:

Since the mid-1950s, the statutory authority for the movement of juvenile offenders under state supervision and runaways across state lines has been provided by the Interstate Compact on Juveniles and the rules promulgated under it. In the forty-plus years since the compact took effect, it has remained virtually unchanged, even though significant changes have taken place in the mobility of families and easy access to transportation by juveniles (whether by car or public transportation). Further, at the time of adoption of the compact, there were only several hundred juveniles a year apprehended in a state other than the one they resided in or where their cases had been adjudicated. Now, it is estimated that over 20,000 juveniles who fall under the compact's jurisdiction cross state lines each year.

The reason this figure is approximate is because there is no central data base that tracks juvenile offenders who move across state lines as their families relocate for work or for family reasons, let alone track the number of absconders and runaways whose whereabouts are unknown. Many of these juveniles disappear simply by not reporting to a new probation officer in the receiving state, or are lost because the sending state or receiving state did not follow the procedures required by the current compact.

In one example, a case study tells the story of a 17-year-old juvenile parolee who was serving a sentence for burglary and armed with a dangerous weapon. The juvenile absconded from state supervision and the home state responded by issuing a warrant for his arrest. A month later the juvenile was picked up in another state for a minor traffic violation and detained while a notice was sent to the home state. According to information supplied by the Council of State Governments, a disagreement ensued over transportation payments, even though the current compact requires the sending or home state to pay for

transportation costs. Before the issue was settled, the local law enforcement agency ignored the interstate compact's requirement that the juvenile be supervised and released him under its local laws. The juvenile walked away unsupervised from the detention center; a year later he shot and killed a convenience store clerk during the commission of a robbery.

Similar incidents involving the supervision of adult parolees and probationers across state lines spurred the recent national enactment of the Interstate Compact for Adult Offender Supervision. (For more information, see the House Legislative Analysis Section's analysis of House Bill 4690 dated 10-16-01, which became Public Act 40 of 2002.) In 1999, after the federal Office of Juvenile Justice and Delinquency Prevention (OJJDP) conducted a detailed survey of the states, it became apparent that the compact governing the interstate transfer of juvenile offenders and runaways was just as woefully inadequate to serve present needs as was the compact for adult offender supervision. For the past few years, an advisory group developed by the OJJDP and Council of State Governments has studied the problems and issues of juvenile supervision and have recently released the model Interstate Compact for Juveniles for state legislators to consider. Already, the compact has been enacted by 8 states and is being considered in 14 other states. In order to replace the existing compact, the new compact must be adopted by at least 35 states. Enabling legislation for the adoption of the new compact has been offered.

THE CONTENT OF THE BILL:

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. The compact would take effect July 1, 2004 or when the

House Bill 4145 (7-15-03)

35th state or jurisdiction enacted it, whichever was later. Michigan's current compact would be repealed on the date that the secretary of state received certification that the 35th state had enacted the compact.

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 person found to have committed an offense that would not be a criminal offense if committed by an adult, e.g., breaking curfew, running away, truancy, etc.), 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 composed 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 that could 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. Once the compact went into effect, 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.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the legislation will increase state costs. However, the amount of the increase is indeterminate at this time. The Council of State Governments has put together a good faith estimate of \$27,000 for Michigan's potential annual assessment (dues). However, the costs to the state related to potential adjustments in service provision, juvenile monitoring, data collection, coordination, and sanctions have not yet been determined. It appears that the federal Juvenile Accountability Incentive Block Grant (JAIBG) could be a potential source of revenue to cover at least some of the costs if the federal allocation is at least maintained. The earliest the legislation would affect the state financially would be fiscal year 2005. (3-19-03)

ARGUMENTS:

For:

There are many compelling reasons for adoption of the Interstate Compact for Juveniles, such as the following:

- Being one of the first 35 states to adopt the compact would mean that Michigan would be one of the states shaping and formulating policy for the administration and scope of the compact and the rules.
- The current compact is seriously outdated. Designed at a time when the interstate highway didn't exist and when only several hundred juveniles were crossing state lines, the old compact can no longer properly address the concerns and issues arising from supervision of tens of thousands of juvenile offenders and runaways. With the increased

mobility of American families and easy access to transportation, it is imperative that the compact be rewritten and new rules promulgated that will encompass the intricacies involved in providing accurate tracking and supervision.

- According to information supplied by the Council of State Governments, there is no ability to enforce compliance under the existing compact and no authority to create new rules that would be binding on all compacting states. In addition, the exchange of information between states can be slow, unreliable, and inconsistent from state to state. Unlike the current compact, compliance and enforcement of the new compact could be accomplished by technical assistance, mediation, arbitration, suspension or termination of membership in the compact, and legal action in federal court. This should diminish the failure of states to properly notify a receiving state before sending a juvenile, and provide timely resolution for incidents like the one involving the juvenile arrested for a traffic violation but who had an outstanding warrant from a different state for armed burglary. Had the new compact been in force, the local law enforcement agency in the receiving state could have had easy access to the national commission for resolution of the dispute over transportation payment. Under the new compact, it would have been unlikely that the juvenile absconder would have been released without supervision and free to commit another crime with deadly results.

- The new compact would require coordination and cooperation with other interstate compacts which overlap jurisdictionally, such as the Interstate Compact for the Placement of Children and the Interstate Compact for Adult Offender Supervision.

- In recent years, many states have enacted legislation pertaining to victim notification and other issues, such as juvenile sex offender registration, that are not addressed in the current compact. Enactment of a new compact and the rules that would be promulgated under it by the interstate commission could encompass the various state requirements to ensure the smooth transfer of offenders across state lines.

- Funding costs would be manageable. A state's fee for participation in the compact would be based on a formula that included the state's population and volume of interstate movement of juvenile offenders. Therefore, smaller states with a lower volume of offender movement could expect to pay less than a larger state with a high volume of offenders relocating across state lines.

- The revised compact would mandate the establishment of a national database that would provide efficient communications between states. Utilizing current communications technology, critical juvenile offender and runaway information could be collected uniformly and shared in a timely, efficient manner.

- The new compact could be amended by unanimous consent of the compacting states, and a rule passed by the Interstate Commission could be rejected by a majority vote of the compacting states. This means that the new compact would not be static, but could be adjusted to meet the changing needs of supervising probationers and parolees.

For:

The compact would apply also to juveniles who have not committed any crimes or who are not status offenders, but who have run away from home. This is important because many of these children need protection from themselves as well as protection from others. Some run away from abusive homes, but some run away due to depression or mental illness. A case study related by the Council of State Governments tells of a 16-year old runaway who was found in another state and placed in temporary housing with minimal supervision. She was determined to be severely depressed, but could not be treated under the holding state's laws. Further, the mother could not afford to fly the girl home, but the holding state was prevented from using state funds to transport the girl home; it also had a lengthy legal custody process for out-of-state runaways. The result was that one week after the girl had been found and placed in the temporary facility, she escaped. Three months later her remains were found. An autopsy revealed death by an overdose of medication.

Had the new interstate compact been in effect, the home state and holding state could have had a clearly defined process to follow that would have ensured that the girl had proper supervision at all times and guidelines to follow that could have worked out the transportation issue. Adoption of the compact is imperative in order to prevent other children from falling through the cracks and suffering harm.

Against:

Adoption of the new compact could significantly increase costs beyond the estimated annual state assessment of \$27,000, especially if more juvenile offenders are added to already overburdened case loads of probation officers and parole officials. More employees may be needed to handle the increased caseloads. Also, though the cost to fund the interstate

commission would be low, apparently several other mandated programs have seen reduced funding or loss of funding due to budget shortages. At a time when early retirements have decimated the number of employees at many agencies and budget shortfalls are expected to continue for another couple of years, every increase in the state budget should be avoided.

Response:

Adoption of the new compact would not in and of itself increase from other states the number of juveniles needing supervision. What could happen, though, is that juvenile offenders from other states who have failed to report for supervision could now be identified and properly integrated into the system. This scenario could increase the number of juvenile probation agents needed to provide adequate supervision. However, it could be expected that better supervision would lower overall costs by increasing the success of probation programs (thereby decreasing crimes committed by persons reoffending and the costs of adjudication and incarceration for the new crimes). No one can predict with any certainty the cost to each state, or the potential savings from lower crime rates. But, by providing tighter supervision, public safety should increase and recidivism should decrease.

Regarding the annual assessment, compared to the costs associated with unsupervised offenders committing new crimes, the anticipated fee of compact membership for Michigan of \$27,000 is minimal. Considering the potential savings in overall juvenile corrections-related costs that the compact could deliver, the updated compact should prove to be a real bargain. Also, it might be possible to use funding from the federal Juvenile Accountability Incentive Block Grant to defray some of the costs. Besides, the compact could not go into effect until 35 states ratify it, and then the earliest date it could take effect would be July 1, 2004. Therefore, no immediate cost would be associated with adoption of the bill.

With the model legislation being so close to language contained in the recently enacted Interstate Compact for Adult Supervision, it is likely that the Interstate Compact for Juveniles will receive the same wide acceptance. It would be better for Michigan to continue to be a leader in juvenile justice issues and to be a part of the initial 35 states crafting the rules and by-laws of the interstate commission.

Against:

Some concerns have been raised about the compact's authority to supercede state laws that conflict with

the compact's provisions or rules promulgated under it. Further, implementation of the compact could result in some bureaucratic agencies having overlapping functions.

Response:

Some of these concerns could be resolved by the state council that each state must establish. The state council would be working with the national interstate commission to fit the compact's requirements to the way that the state manages juveniles. This flexibility was built in as a way to recognize that supervision of juveniles, unlike adult offenders, typically falls under the jurisdiction of more than one state agency or is shared by state agencies and the judicial system. Regarding the authority of the compact over state laws, the recently enacted compact for adult offenders contained a similar provision and little to no concern was raised during the discussion of that legislation. As the adult compact is currently being implemented, it would appear that no problem has been identified with that provision so far.

Analyst: S. Stutzky

■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.