Promoting State Solutions to State Problems: The National Center for Interstate Compacts

by John J. Mountjoy

A distinctly American invention, interstate compacts promote multistate problem solving in the face of complex public policy issues and federal intervention.

While interstate compacts are seeing a resurgence in the states, the compact community needs support and assistance to strengthen their role in ensuring interstate cooperation. The Council of State Governments (CSG) conducted a survey of state participation in interstate compacts in 2004. Key findings included:

- 78 percent said they could use additional resources and assistance in their compact work;
- 73 percent of respondents stated that they wanted more networking opportunities with their compact colleagues;
- 71 percent of respondents said they needed legal assistance in interpreting compact requirements;
- 65 percent of respondents stated that they desired common tools for use in the compact process;
- 61 percent of survey respondents said they needed a national information clearinghouse on compacts; and
- 61 percent said they wanted more ways to build coalitions and partnerships to promote compacts.

To that end, The Council of State Governments’ National Center for Interstate Compacts (NCIC) recognizes the unique role interstate compacts have and can play in assisting states as they struggle to respond to current and emerging policy trends. Combining policy research with best practices, the center serves the unique needs of compact administrators, compact commissions and the state agencies in which interstate compacts reside. The center promotes the use of interstate compacts as an ideal tool to meet the demand for cooperative state action, to develop and enforce stringent standards, and to provide an adaptive structure for states that can evolve to meet new and changing demands over time.

CSG is uniquely positioned to offer a full-range of services to states that are in need not only of information and expertise, but also guidance and technical assistance in dealing with interstate compacts and other interstate agreements. Throughout its 72-year history, CSG has been at the forefront of promoting multistate problem solving and advocating the role of the states in determining their respective futures. CSG has played an integral role in the development of numerous interstate compacts, tracking the progress of over 200 active interstate compacts, researching innovative problem solving solutions for the states and bringing the states together to build consensus on national issues.

The NCIC offers a range of services to states, compact administrators and compact commissions. Based on CSG’s extensive interstate compact experience, coupled with the results of the national survey, activities are tailored for information gathering and dissemination, technical support, training, and compact revision and creation. Specific services and activities of the National Center include:

- Information Sharing: comprehensive and consistent source of reference and advisory information on compact issues with an online library containing the language, bylaws, rules and assorted documents for every compact currently in existence as well as a variety of general interstate cooperation materials.
- Federal and State Activity Updates: updates on compact activities from around the country, including the impacts of federal and state activities on current compacts, compact law and administration.
- Education and Outreach: educational outreach on a state, regional and national basis for compact administrators and their staffs, other state officials and stakeholder groups, and other levels of...
In 1989, former Chief Justice Warren Burger, then Chairman of the Commission on the Bicentennial of the U.S. Constitution, observed that:

"America has always been about 'Rights!' We were the first people in history to found a nation on the basis of rights we believed we shared with human beings everywhere. For over 200 years, Americans have been constantly learning about individual rights and the challenges of sustaining them…While many nations are based upon a common religion or ethnic heritage, or upon natural geographic frontiers, Americans have made ‘Rights’ the foundation of our national identity."

The commission went on to further pen these words:

“Even our failures as a nation have been measured by the rights to which we aspire. Throughout our history, we have not always been successful in balancing the interest of the minority with the wishes of the majority…Time and again, however, the wrong has been righted; as Martin Luther King exhorted it to do, the nation has risen up ‘to live out the true meaning of its creed.’ We have always believed, in the words of Henry Steele Commager, ‘that nothing in all history ... ever succeeded like America.’"

The United States is the only nation to organize its public functions around protecting the rights of every man, with no “privileged class” having governmental advantage. Only this country claims a heritage and governing philosophy centered on personal agency. Our founding fathers relied on that concept so much, that today it has become accepted as a kind of “prime-directive.” As a result, most of us take pride in being “equal before the law.” The right to be “fairly-treated” is a lynch-pin, secured through public policies, procedures, standards, guidelines, statutes and rules that have been subjected to political debate and adoption by a legislative body, coupled with executive presentment.

At a recent conference of the American Bar Association, the State Courts Administrator for the State of Missouri, Michael Buenger, made an observation during a discussion of recent developments in interstate compact review. He noted that each time he goes to Washington D.C. and catches a ride on the D.C. Metro transportation system, he yields some of his dearly-held ‘rights’ to a newly formed and separately administered governmental entity. He then becomes subject to rules and regulations that are mostly outside the jurisdiction of a city police force, a county sheriff or highway patrol entity. The policies and procedures of the Metro were not devised by governmental persons or groups elected by the people, their requirements were not reviewed by the people, nor are their rules administered by persons directly responsible to the people.

Rather, when riding the D.C. Metro, he is subject to the authority and jurisdiction of security forces employed by the Washington Metropolitan Area Transit Authority, an interstate compact agency created by the states of Maryland, Virginia and the District of Columbia. And, he further observed, because it is a compact, there are fewer “limits” placed on that agency to define what it can and cannot do.
More than 90 pieces of legislation have been introduced in the states during the 2005 legislative sessions dealing directly with interstate compacts. The majority of bills join existing interstate compacts, such as the Interstate Pest Control Compact, National Crime Prevention & Privacy Compact and the Interstate Compact for Juveniles.

Likewise, some effort is underway to repeal compact membership such as with Tennessee’s effort to sunset its provisions of the Southeast Interstate Low-level Radioactive Waste Compact, a continuing trend in Tennessee as they examine compact membership and needs—a healthy sign that compacts are not only being utilized, but scrutinized in the states for their continuing utility.

Finally, states are also taking the lead role in developing new interstate compacts, including New Mexico’s Interstate Compact on Threatening Communicable Diseases and Michigan’s Midwest Pharmaceutical Compact.

At the federal level, more than 16 bills dealing directly with interstate compacts or impeding upon traditional interstate issues are under consideration, including the REAL ID Act (HR.418) and efforts to create a Homeland Security region (to include DC, MD, VA) around the nation’s capitol (HR.44).

The following are updates on prominent interstate compacts currently under consideration:

**Interstate Compact for Juveniles** adopted by 24 states, under consideration in 11 states; CSG, in cooperation with the Office of Juvenile Justice and Delinquency Prevention, is currently supervising the introduction of The Interstate Compact for Juveniles. The new compact significantly updates the 50-year-old mechanism for tracking and supervising juveniles who move across state borders. Providing enhanced accountability, enforcement, visibility and communication, the new compact seeks to update a crucial, yet outdated tool for ensuring public safety and preserving child welfare. More information at: www.csg.org, keyword: juveniles.

**Interstate Insurance Product Regulation Compact** adopted by 11 states, under consideration in 18 states; traditionally, an insurance company has had to get each of its products licensed in the various jurisdictions in which it desired to do business—50 states, fifty different standards, fifty variations of the same product. The new system would allow insurers to more quickly market certain types of insurance products nationally and to reduce the number of variations of the same product that a company must produce to meet state specific product standards. More information at: www.naic.org/compact.

**Interstate Pest Control Compact** adopted by 35 states and Puerto Rico, under consideration in four states; every year plant pests cause more than $137 billion dollars in damage to the country’s agricultural and forest crops and products. These losses occur despite the expenditure for control measures of nearly $9 billion dollars annually by local, state and federal governments, farmers, private timber interests and other owners of...

**Midwest Interstate Passenger Rail Compact** adopted by six states, under consideration in one state; the Midwest Interstate Passenger Rail Commission (MIPRC) brings together state leaders from across the region to advocate passenger rail improvements. Formed by compact agreement in 2000, the MIPRC’s current members are Indiana, Minnesota, Missouri, Nebraska, North Dakota and Ohio. All states in the region are eligible to join.

The main purposes of the compact are to:

- Promote current improvements and long-range plans for intercity passenger rail service in the Midwest.
- Coordinate interaction among Midwestern state officials, and between the public and private sector at federal, state and local levels.
- Support state efforts currently conducted through state DOTs.

For more information on state and federal interstate compact activity, please visit the National Center for Interstate Compacts web site for weekly legislative updates and tracking—www.csg.org, keyword: interstate compacts.

**Organizational Update**

**American Bar Association: Interstate Compacts Project**

The writers and administrators of interstate compacts are getting help from the American Bar Association (ABA). The ABA’s State Administrative Law Committee has started a project to develop a set of administrative procedure guidelines that can be used by interstate compacts and state agencies. The project will review case law and literature, survey compacts and compact agencies, and compare and contrast the federal Administrative Procedures Act (APA) and the Model State APA. It is expected that the project will result in a new rulemaking procedure for interstate compacts.

Members are encouraged to submit papers on the subject throughout 2005, with drafting of a model interstate compact Administrative Procedure Act to begin in late-2005. The draft will be circulated for comment to interested parties including The Council of State Governments’ National Center for Interstate Compacts, the National Conference of Commissioners on Uniform State Laws and various ABA committees.

For more information, visit the American Bar Association online at: www.abanet.org.

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**State-by-State Interstate Compact Membership**

![Map showing state-by-state compact membership](image)

*State-by-State Interstate Compact Membership*

- > 21 (includes the District of Columbia)
- 21–30
- 31–40

(data not available for AS, GU, MP, PR and VI)  
Source: National Center for Interstate Compacts
The need for a paperless and efficient Interstate Offender Management Tracking System is of paramount importance. The inability to quickly and accurately track offender movement is a nationwide public safety issue.

New technologies and standardization of business rules must be leveraged in order to make offender management more efficient. The goal of the Interstate Compact Commission is to deploy a paperless system capable of real-time tracking of an estimated 250,000 offenders as they move across state lines. Standardization, ease of use, flexibility and cost effectiveness are just a few of the advantages of this new application.

In July 2004, the commission finalized negotiations with Softscape, Inc. to build, implement and support a National Adult Compact Information System (NACIS) that meets the requirements of member states. The development process began with the formation of a user group to work with the vendor to identify the requirements of the compact.

After months of work, NACIS is taking shape and it is time to move toward training, implementation and user support. While the technology committee is confident that users will be pleased with the end solution, each member state should begin the process of determining how the implementation of NACIS will impact the transfer process in their state.

Important principles to understand about NACIS are: it is a web application; there is a workflow component that facilitates the process; the process begins with the parole or probation officer; and it eliminates paper flow.

The transfer process involves:

a) Accessing NACIS via the Internet;
b) Processing an application in the sending state;
c) Notifying the state compact office for review and approval;
d) Notifying the receiving state compact office of approved transfers, allowing that office to approve or reject the transfer;
e) Notifying a receiving state supervisor of approved transfers that are then assigned to an officer;
f) Once the investigation is complete, whether approved or not, the process is reversed and notices will flow back to the officer who initiated the transfer in the sending state.

An automated workflow system offers tremendous opportunity for increasing efficiency.

Is the system secure?

During the development stages of NACIS, the technology committee and Softscape consulted with agencies such as the FBI’s Criminal Justice Information Services Division (CJIS) and the National Law Enforcement Telecommunication System (NLETS). NACIS will adhere to the security guidelines defined by these federal agencies.

Who will be responsible for maintaining user information in each state?

Each compact office will be required to identify a system administrator for their state. The system administrator will be trained by the commission and responsible for setting up and maintaining user information for each state. In other words, the system administrator will collect and maintain user name, permission level, e-mail, phone number, supervisor, etc. for each user. If you don’t already have this information available to you, the technology committee recommends that you start thinking about identifying your users and begin the process of obtaining and maintaining user information.

Who will use NACIS and how will they access the system?

Member states will need to make decisions about who will use NACIS in their state. The system is designed to begin with the probation or parole officer and sequentially move to the supervisor and the state compact office. Therefore, at least in theory, every parole and probation officer and their supervisor will be a user along with the state compact office. If that is the case, then every user will require access to a computer, printer, document...
scanner and the Internet using either Internet Explorer 6.0 or Netscape 7.0. For access to the Internet the vendor recommends either a T1 line or a broadband connection such as a cable modem or DSL. A 56k dial up modem will work but may not deliver satisfactory performance.

How will users be trained?

The initial plan is to “train the trainers.” One trainer from each state will be trained at the commission’s expense. In states where two different state agencies are responsible for parole and probation the commission will train one person from each agency. The program will cover training for the user and system administration. It is the commission’s hope that the individuals who attend the training will return home and train other users in their state.

Who will provide support to the users?

By contract Softscape will provide the support required to host and maintain the system hardware and software which is commonly referred to as level two and three support. Level one support is responsible for handling the initial user call. The commission hopes that state compact offices will assist the compact by providing the first level of support to the users in their states. If states are unable to screen the initial support call, the commission will hire additional staff for that purpose or outsource the work to a private sector vendor.

Is it possible to integrate NACIS with the state’s offender management system?

Agencies planning to exchange case related information with NACIS will receive the technical specifications needed to develop an integration application well before implementation. Once the technical documents are published, agencies with a technical staff can develop the integration application on their own or contract with Softscape at a contract price of $100 per hour. If an agency has not integrated its offender management system prior to the NACIS implementation, users may be required to duplicate a limited amount of entries; however, it does not mean users will be unable to process transfers.

You may also be interested to know that Softscape offers a complete offender management system which is fully compatible with NACIS. Should you have an interest in their suite of products, please contact Softscape—www.softscape.com or (800) 881-2546.

What is the timetable for implementation?

The national office expects to begin training in the spring of 2005 and the system will be in production no later than July 1, 2005. While delays are always a possibility with projects of this scope, the technology committee is satisfied with the progress to date.

Conclusion

Compact members directly involved in the development of this system are excited about the possibilities for the future. Automation is seldom easy and doesn’t resolve all problems; however the implementation of NACIS is certain to make the transfer process easier, faster and more reliable. Fewer offenders will drop through the cracks thus improving accountability and public safety. For a smooth transition begin planning now. There is much to think about and do. Should you have any questions don’t hesitate to contact the technology committee. Their contact information and information about NACIS can be found on the commission’s web site www.adultcompact.org.

—Harry Hageman is the deputy director of the Division of Parole and Community Services within Ohio’s Dept. of Rehabilitation and Correction and serves as vice-chair of the Interstate Commission for Adult Offender Supervision.
Compact Law: Interstate Compacts in Our Federalist System

by Jeffrey B. Litwak

“If interstate compact entities cannot be defined as either state or federal entities, how are they to fit into our reality of dual sovereignty?”

I present this question, from an anonymous note published in the Harvard Law Review, to my law students the first day of class. It concisely captures one of the unique and intellectually stimulating issues concerning interstate compact agencies: Why are compact issues so often framed in a “state or federal” paradigm?

As counsel to a compact agency and an adjunct professor teaching compact law, this issue naturally manifests itself for me in the law of compacts. Consider, for example, the concept that when Congress approves an interstate compact it transforms a state agreement into a federal law. While courts routinely tell us that the construction of a compact presents a federal question, in reality, the rule of decision in most compact cases is not so clear because not all cases involve simply the compact’s construction.

One such case involved the Tahoe Regional Planning Agency (TRPA), a bi-state commission that regulates water use and conservation in the Lake Tahoe region. At issue was whether a land developer could construct a project without first seeking a vested rights determination from TRPA. In shaping the rule of decision, the court concluded that while Congress had approved the compact, the laws of the states still governed the question at hand because the issue was not between the member states of California and Nevada. The court suggested that in the event of a conflict, it would have to decide whether to apply the law of the state where the land is situated or where the permit was granted.

Ten years later, the Washington State Court of Appeals had to make just this difficult choice. It concluded that, notwithstanding significant differences in Washington and Oregon’s state vested rights laws, the Columbia River Gorge Commission must interpret its vested rights provision consistent with Washington’s vested rights law. In making its decision, the court looked to several principles including, that the Gorge Commission was not a federal agency; that the compact gives jurisdiction to state courts, not federal courts; that Congress’s approval of the Compact did not dictate federal law, and that the Compact did not expressly reject Washington’s state laws.

These cases illustrate the need to better define the relationship between compacts, states and the federal government in order to preserve compacts’ unique position in our federalist system. What should be the rule of decision in a case involving a compact entity applying its own rules? State law is one choice—after all, states are the compacting parties, and we necessarily expect that a compact fills a gap or absence of federal law. But, the very reason for compacts is to bring uniformity to the states, where state law is differing or absent. Simply applying one state’s laws does not achieve uniformity when there is an absence of federal law and a difference in states’ laws. In framing the issue in the “federal or state” paradigm, the Washington Court of Appeals necessarily could not address the importance of uniformity in creating and maintaining interstate compacts.

Without a broader sense of what makes up our federalist system, we will continue to struggle just to have compacts recognized for what they are—“independently functioning parts of a regional polity and national union.” Please join me in welcoming the National Center for Interstate Compacts as just the place to begin this policy discussion.

—Jeffrey B. Litwak is counsel for the Columbia River Gorge Commission, adjunct professor at Lewis and Clark Law School in Portland, Oregon and member of the National Center for Interstate Compacts Advisory Board.
“Now, more than ever, states must work cooperatively if we are to address our mutual problems, and avoid federal preemption. CSG’s National Center for Interstate Compacts helps develop state driven solutions to multistate problems, empowering states to determine their future. I’m proud to be a part of this exciting effort.”

—Gov. Ruth Ann Minner, Delaware