

# INTERSTATE COMPACT FOR JUVENILES

STATE OFFICIALS GUIDE  
*NOVEMBER 2005*



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## **ADDITIONAL INFORMATION**

For additional information on the compacts history, detail and further documentation, please visit our website at:

[www.csg.org](http://www.csg.org), keyword *juvenile compact*

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# INTERSTATE COMPACT FOR JUVENILES

## STATE OFFICIALS GUIDE

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### *EXECUTIVE “TIP” SUMMARY*

Your state is a member of the Interstate Compact for Juveniles. Developed between 2000 and 2002 and enacted by at least 35 states from 2003 through 2006, this interstate compact regulates the movement and supervision between states of juveniles currently under community supervision. It is designed to better ensure public safety and to create a more effective and efficient means of transferring and tracking juveniles between states. This new compact revises an existing compact originally developed in 1955. As a member of this new compact, your state has several new responsibilities of which you, as a state policymaker, need to be aware, including: development of a State Council, appointment and role of a compact administrator and participation as a member state in the Interstate Commission and its development of rules, regulations and financial dues formulas.

This Executive “Tip” Summary is designed to aide state executive policy makers in better understanding the Interstate Compact for Juveniles and their considerations and actions regarding its use and implementation.

This Summary should be used as a checklist, with the State Officials Guide serving as the resource document for specific tips. These tips follow the larger State Officials Guide; it should be used as an appendix to these steps.

- **Tip #1:** Become familiar with the compact language as adopted by your state.
- **Tip #2:** Consult with your state’s compact administrator and deputy compact administrator.
- **Tip #3:** Review the existing rules and regulations of the Interstate Compact on Juveniles with your compact administrator or deputy compact administrator in preparation for the first Interstate Commission meeting and to become versed in the regulations that direct compact activities.
- **Tip #4:** If your state has not yet established its State Council, please contact your state’s Governor’s office, state compact administrator and sponsor of the compact legislation in your state for information on next steps. State Councils should be established and have met prior to the first Interstate Commission meeting.
- **Tip #5:** Determine who has the authority to appoint members to the State Council.
- **Tip #6:** Determine how your state will handle State Council authority issues and how the State Council will function.

- **Tip #7:** Determine what will be the required or desired qualities and qualifications for membership on your State Council and the number of council members.
- **Tip #8:** Become educated in how your state currently handles compact administration, how it handles the day-to-day administrative duties of the compact and whether your state provides for a deputy compact administrator and compact staff.
- **Tip #9:** Determine how your state will appoint the compact administrator under the new compact.
- **Tip #10:** Determine who will represent your state at the Commission meetings if the compact administrator is unable to attend; and understand and appreciate the Commissioner's responsibilities.
- **Tip #11:** State Council members should discuss and understand the authority vested in the Interstate Commission in preparation for the first meeting of the Commission.
- **Tip #12:** The State Council should discuss and understand the composition of the Interstate Commission and who has the authority to vote on Commission business prior to the first Commission meeting.
- **Tip #13:** The State Council may prepare for the first Commission meeting by discussing specific and general responsibilities of the Commission and its members. This should include having specific discussions on such things as, but not limited to, member dues formulas, rule making considerations, Commission staffing needs, training needs, etc. The Commissioner should come to the first Commission meeting prepared to address these and other issues.
- **Tip #14:** The State Council may prepare for the first Commission meeting by discussing by-laws for the Commission. The Commissioner should come to the first Commission meeting prepared to address these and other issues.
- **Tip #15:** The State Council may discuss what, if any, committees its Commissioner should serve on as well as how the members of the State Council may be able to support Commission committee work. They should also discuss any additional committees they would recommend and how they will ensure input into committee functions.
- **Tip #16:** The State Council may discuss whether its Commissioner should seek executive office on the Commission and what qualities Commission leaders should possess.
- **Tip #17:** The State Council may discuss whether they are going to send members of the Council to the Commission meetings in addition to the Commissioner and, if so,

how the costs of additional attendees will be funded. CSG/OJJDP will cover the costs of the Interstate Commissioner from your state. Additional costs for other attendees will be borne by the state.

- **Tip #18:** The State Council may discuss what they anticipate being the necessary staff positions for the operation of the compact. Additionally, they should discuss the qualifications of an executive director. Further, the Interstate Commission can decide where it will be housed; State Councils and Commissioners may be prepared to discuss the location and housing of the Interstate Commission.
- **Tip #19:** The State Council should review the existing rules and regulations with your compact administrator or deputy compact administrator, become familiar with these rules and regulations and discuss any desired additions, deletions or enhancements to the rules and regulations prior to the first Interstate Commission meeting.
- **Tip #20:** The State Council may discuss those expenditures they feel will be necessary to operate the Interstate Commission prior to the first Commission meeting.
- **Tip #21:** The State Council may meet with the current compact administrator, deputy compact administrator and other compact staff to discuss specific training and education needs that will ensure compliance and smooth operation of the compact by offender supervision staff, the judiciary and other allied justice system personnel.
- **Tip #22:** State Councils may work with compact administrators, deputy compact administrators, other compact staff and allied justice system agencies to determine what types of information should be collected and shared in a national data sharing system. This information, presented by your state Commissioner to the Interstate Commission, will be valuable in defining the specific parameters of the system.
- **Tip #23:** State Councils and compact administrators should familiarize themselves with the specific processes and procedures within their state for requesting a budget appropriation. Also, the State Council could see that an annual budget plan is developed for annual dues expenditures from agency or general fund budgets and should begin planning for annual dues assessments.
- **Tip #24:** The State Council should seek information on offender movement totals from the current compact administrator and other appropriate state agencies to prepare for the Interstate Commission. The State Council, in consultation with state leaders could discuss possible configurations for a dues formula.
- **Tip #25:** Read and become familiar with the specific articles and sections of the compact that pose or may pose legal implications and obligations. Consult your state's compact administrator and, if necessary attorney general's staff for assistance.

# INTERSTATE COMPACT FOR JUVENILES

## STATE OFFICIALS GUIDE

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### **Introduction**

Your state is a member of the Interstate Compact for Juveniles. Developed between 2000 and 2002 and enacted by at least 35 states from 2003 through 2006, this interstate compact regulates the movement and supervision between states of juveniles currently under community supervision. It is designed to better ensure public safety and to create a more effective and efficient means of transferring and tracking juveniles between states. This new compact revises an existing compact originally developed in 1955. As a member of this new compact, your state has several new responsibilities of which you, as a state policymaker, need to be aware, including: development of a State Council, appointment and role of a compact administrator and participation as a member state in the Interstate Commission and its development of rules, regulations and financial dues formulas.

As you progress through this guide and make preparations in your state for transitioning to the new compact, is it critical to ask this question: **Who in my state should be performing these action items?** For many states, the answer may be the existing Compact Administrator or, if your state has already established a State Council, the members of that body. It may further benefit your state to appoint a Coordinator for Juvenile Compact transition activities. This Coordinator could oversee all aspects of compact transition and keep the relevant parties in your state informed of activities and requirements and coordinate your state participation in the first Interstate Commission meeting.

### **Purpose of Guide**

The purpose of this guide is to aide state policy makers and members of the State Council in better understanding the Interstate Compact for Juveniles (hereafter referred to as the compact). This guide highlights the new responsibilities assumed by your state under this interstate agreement while providing you with activities with which you and your State Council may choose to utilize in preparation for a smooth and effective start-up for the compact. While the compact language and some of its processes are new, the spirit of this compact and the partnership among the states is the same as it was some 50 years ago when the first Interstate Compact on Juveniles was developed. Your state has participated in the original compact and lessons can be learned from the operation of that compact.

### **How to use this Guide**

This guide is structured to provide you with information on key issues and activities that your state will need to consider as the new compact goes into effect. The guide highlights critical areas for action and consideration and moves step-by-step through the major sections of the compact providing an explanation of the compact's intent and the rationale behind each principle and function of the compact. Suggested tips are provided throughout this document to help your state proceed in a structured and comprehensive

manner toward the activation of the new compact in your state. Each tip may require the assignment of responsibilities to an individual or group to ensure the action is completed. Each state will be able to determine how best to proceed.

**Tip #1:** Become familiar with the compact language as adopted by your state.

It is important that you and the State Council become familiar with the legislatively mandated language that legally creates and guides the compact's structure and activities. The remainder of this document will help you understand the model language of the compact, but it is important that an understanding of the specific language of your state's legislation be understood and followed.

**Tip #2:** Consult with your state's compact administrator and deputy compact administrator.

Current compact administrators and/or deputy compact administrators can provide valuable information as well as the day-to-day nuances related to the operation of the new or previous compact and how your state maintains relations with other states under these agreements.

## TRANSITION

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As the new compact is ratified and enacted by the states, the Interstate Compact for Juveniles process moves from a legislative process to an administrative process. This series of events in the states and at the national level is referred to as “Transition.” Several critical steps must be completed during the development of the Interstate Commission to ensure that states are following the compact and completing the necessary tasks to make the agreement a success. During this transition period, slated to be 18 months in length, the Juvenile Compact will go from being a concept on paper to being an administrative reality: a body of participating members coming together to determine the future and course of the agreement.

### **Transition Timeline**

The transition period for the Juvenile Compact is likely to encompass a period of 18 months. During this time, the Interstate Commission will meet and establish various committees to address issues such as rules and regulations, dues and dues formulas and training, outreach and education.

A sample timeline is provided below:

- Spring 2006 – Juvenile Compact reaches 35 state threshold; notice to states, development of state councils, and appointment of compact administrator/commissioner
- July/August 2006 - Meeting logistics, planning for first Commission meeting
- October/November 2006 - Convene first Interstate Commission meeting
- February 2007 - Convene first series of committee meetings
- May, 2007 - Convene second series of committee meetings
- August, 2007 - Convene third series of committee meetings
- October/November 2007 - Convene second Interstate Commission meeting

### **Transition Rules & Regulations**

**Tip #3:** You should review the existing rules and regulations of the Interstate Compact on Juveniles with your compact administrator or deputy compact administrator in preparation for the first Interstate Commission meeting and to become versed in the regulations that direct compact activities.

As the Interstate Commission meets, one of the first items for its consideration will be the development of new rules and regulations to govern the activities of the compact. During the first 12 months of the Interstate Commission’s existence, the pre-existing rules of the old Interstate Compact on Juveniles will continue to govern the relationships between states. While it is expected that the majority of existing rules and regulations will be incorporated in some related form into the new rules and regulations, several key areas for rulemaking are outlined in the new compact. At the end of this 12-month period, the transition from the old to the new compact will be complete. The relationships among compacting and non-compacting states, unless preserved by another interstate agreement,

will cease to exist. Any state that adopts the new compact during this 12-month period will be a full partner and compacting state. Any state that adopts the new compact after this 12-month transition period will be a full partner and compacting state, but will have missed the opportunity to participate in the full rulemaking process.

## STATE COUNCIL

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**Tip #4:** If your state has not yet established its State Council, please contact your state's Governor's office, state compact administrator and sponsor of the compact legislation in your state for information on next steps. State Councils should be established and have met prior to the first Interstate Commission meeting.

Model language of the State Council article of the Juvenile Compact:

*“Each member state shall create a State Council for Juvenile Offender and Runaway Supervision. While each state may determine the membership of its own state council, its membership must include at least one representative from the legislative, judicial, and executive branches of government, victims groups, and the compact administrator. Each compacting state retains the right to determine the qualifications of the compact administrator or deputy compact administrator. Each state council will advise and may exercise oversight and advocacy concerning that state's participation in Interstate Commission activities and other duties as may be determined by that state, including but not limited to, development of policy concerning operations and procedures of the compact within that state.”*

### **Purpose**

The Juvenile Compact specifically calls for the development of State Councils in each member state. Designed to serve as an advisory and advocacy body of state policy makers and experts, each State Council may be tasked with development of policy concerning operations and procedures of the compact within that state. Your state language may be different, particularly as related to members of the State Council, appointment procedures, who makes appointments, etc. Please refer to the specific language of the compact as adopted in your state for clarification.

### **Authority**

**Tip #5:** Determine who has the authority to appoint members to the State Council.

Each state must determine who will appoint members to the State Council. The appointment authority may differ depending on the area represented by the council members, (e.g., judicial branch, executive branch) or by state statute. Whoever is responsible for the appointment of State Council members, this process (if not already completed) should occur as soon as possible. Please refer to the specific language of the compact as adopted in your state for clarification.

**Tip #6:** Determine how your state will handle State Council authority issues and how the State Council will function.

Each state retains the right to determine the authority of its State Council as developed and enacted by the language of that state. Some states may choose to limit the authority of the State Council to simply act as an advocacy body for the compact, raising its visibility to decision makers. Other states may choose a more direct role for the State

Council, allowing for more day-to-day oversight of compact activities. Please refer to the specific language of the compact as adopted in your state for clarification. In addition, it is important to determine how the State Council will function (e.g., who presides over the meetings, who will schedule meetings, who will record meeting activities, where will meetings be held and how often, how will activities/concerns of the State Council and Interstate Commission be reported to key constituents).

### **Composition**

**Tip #7:** Determine what will be the required or desired qualities and qualifications for membership on your State Council and the number of council members.

The model language of the compact outlines the composition and appointment of State Council members. However, your state language may be different, specifically outlining qualities and qualifications for Council members. Your state may also decide to meld the State Council responsibilities with a pre-existing council or group. Please refer to the specific language of the compact as adopted in your state for clarification and discuss with key policy representatives.

Each state retains the right to determine the composition of its State Council as developed and enacted by the language of that state. Some states may choose to have specific qualities (e.g., recognized leader of constituency group – director of victims’ services, parole board chair) and qualifications (e.g., experience with juvenile justice issues) reflected in their State Council members. Other states may choose to have a broader base of experience represented on the body. The compact is purposefully silent on the topic of State Council member qualifications, instead leaving this decision entirely to the member state.

### **Compact Administrator**

**Tip #8:** Become educated in how your state currently handles compact administration, how it handles the day-to-day administrative duties of the compact and whether your state provides for a deputy compact administrator and compact staff.

The model language of the compact defines the compact administrator as *“the individual in each compacting state appointed pursuant to the terms of this compact responsible for the administration and management of the state’s supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the Interstate Commission and policies adopted by the State Council under this compact.”*

In many states the compact administrator delegates the day-to-day operation of the compact to a deputy compact administrator. In those states it is the deputy compact administrator that has intimate knowledge of how the compact functions on paper and in practice. He/she is the person responsible for the day-to-day operations and often best understands the strengths and weaknesses of policies from a practical standpoint.

**Tip #9:** Determine how your state will appoint the compact administrator under the new compact.

Each state must ensure that procedures are in place with the proper appointing authority for the appointment of a compact administrator. The compact administrator not only serves as the day-to-day authority over compact activity in a state, but also serves as the states primary representative to the Interstate Commission, serving as Commissioner (see discussion above regarding the role of deputy compact administrators). Please refer to the specific language of the compact as adopted in your state for clarification and consult with your state’s current compact administrator for additional information and current activities.

### **National Commissioner**

**Tip #10:** Determine who will represent your state at the Commission meetings if the compact administrator is unable to attend; and understand and appreciate the Commissioner’s responsibilities.

The national Interstate Commission is composed of one Commissioner from each member state. These Commissioners represent the states and, as a whole, make the determinations for the Commission on issues such as rules and regulations, dues, staff, etc. It is assumed that State Council members will have the opportunity to provide consultation and direction to the Commissioner prior to Commission meetings.

Please keep in mind that, as previously identified and outlined, the state retains the rights to determine the qualifications of the compact administrator. Also, should the Commissioner be unable to participate in Interstate Commission meetings, for whatever reason, an “Authorized Representative” may be designated for individual Interstate Commission meetings.

The model language of the compact defines this process. *“Each member of the Interstate Commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the Interstate Commission. A member shall vote in person and shall not delegate a vote to another compacting state. However, a commissioner, in consultation with the state council shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the compacting state at a specified meeting. The by-laws may provide for members’ participation in meetings by telephone or other means of telecommunication or electronic communication.”*

Please refer to the specific language of the compact as adopted in your state for clarification and consult with your state’s current compact administrator for additional information and current activities.

## INTERSTATE COMMISSION

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This information on the Interstate Commission is provided to assist State Council members and state compact administration staff to prepare for and understand the purpose and intent behind the Interstate Commission. It is not the intent of this section or its analysis to dictate or circumvent the prerogative of the Interstate Commission, the State Councils or the membership of each.

Model language of the Interstate Commission article of the Juvenile Compact:

*“The compacting states hereby create the “Interstate Commission for Juveniles”. The commission shall be a body corporate and joint agency of the compacting states. The commission shall have all the responsibilities, powers and duties set forth herein, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.*

*The Interstate Commission shall consist of commissioners appointed by the appropriate appointing authority in each state pursuant to the rules, and requirements of each compacting state and in consultation with the State Council for Interstate Supervision of Juvenile Offenders and Runaways created hereunder. The commissioner shall be the compact administrator or the deputy compact administrator from that state who shall serve on the Interstate Commission in such capacity under or pursuant to the applicable law of the compacting state.*

*In addition to the commissioners who are the voting representatives of each state, the Interstate Commission shall include individuals who are not commissioners but who are members of interested organizations. Such non-commissioner members must include a member of the national organizations of governors, legislators, state chief justices, attorneys general, Interstate Compact for Adult Offender Supervision, Interstate Compact on the Placement of Children, juvenile justice and juvenile corrections officials, and crime victims. All non-commissioner members of the Interstate Commission shall be ex-officio (nonvoting) members. The Interstate Commission may provide in its by-laws for such additional ex-officio, (non-voting) members, including members of other national organizations, in such numbers as shall be determined by the commission.*

*Each compacting state represented at any meeting of the commission is entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the by-laws of the Interstate Commission.*

*The commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the compacting states shall call additional meetings. Public notice shall be given of all meetings and meetings shall be open to the public.*

Cont'd - *The Interstate Commission shall establish an executive committee, which shall include commission officers, members, and others as determined by the by-laws. The executive committee shall have the power to act on behalf of the Interstate Commission during periods when the Interstate Commission is not in session, with the exception of rulemaking and/or amendment to the compact. The executive committee shall oversee the day -to-day activities of the administration of the compact managed by an executive director and Interstate Commission staff; administers enforcement and compliance with the provisions of the compact, its by-laws and rules, and performs such other duties as directed by the Interstate Commission or set forth in the by-laws.*”

### **Purpose**

The Juvenile Compact specifically calls for the development of an Interstate Commission to establish uniform procedures to manage the movement between states of juveniles placed under community supervision and released to the community under the jurisdiction of courts, paroling authorities, corrections or other criminal justice agencies. The Interstate Commission will promulgate rules to achieve the purpose of this compact; ensure an opportunity for input and timely notice to victims and to jurisdictions where defined juveniles are authorized to travel or to relocate across state lines. The Commission will also establish a system of uniform data collection, provide access to information on active cases by authorized criminal justice officials, and coordinate regular reporting of Compact activities to heads of state councils, state executive, judicial, and legislative branches and criminal justice administrators. Further, the Commission will monitor compliance with rules governing interstate movement of juveniles and initiate interventions to address and correct noncompliance; and coordinate training and education regarding regulations of interstate movement of offenders for officials involved in such activity.

### **Authority**

**Tip #11:** State Council members should discuss and understand the authority vested in the Interstate Commission in preparation for the first meeting of the Commission.

The Interstate Commission is a multi-state administrative agency composed of Commissioners from its member states. The authority held by the Interstate Commission is granted by the member states and is carried out by those Commissioners designated by the states.

The Interstate Commission shall have the authority, per the language of the compact, to do the following:

- *“To provide for dispute resolution among compacting states.*
- *To promulgate rules to effect the purposes and obligations as enumerated in this compact, which shall have the force and effect of statutory law.*
- *To oversee, supervise and coordinate the interstate movement of juveniles subject to the terms of this compact and any by-laws adopted and rules promulgated by the Interstate Commission.*

- *To enforce compliance with the compact provisions, the rules promulgated by the Interstate Commission, and the by-laws, using all necessary and proper means, including but not limited to the use of judicial process.*
- *To establish and maintain offices which shall be located within one or more of the compacting states.*
- *To establish and appoint committees and hire staff which it deems necessary for the carrying out of its functions including, but not limited to, an executive committee as required by Article III which shall have the power to act on behalf of the Interstate Commission in carrying out its powers and duties hereunder.*
- *To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties and determine their qualifications; and to establish the Interstate Commission's personnel policies and programs relating to, inter alia, conflicts of interest, rates of compensation, and qualifications of personnel.*
- *To establish a budget and make expenditures and levy dues.*
- *To adopt a seal and by-laws governing the management and operation of the Interstate Commission.*
- *To perform such functions as may be necessary or appropriate to achieve the purposes of this compact.*
- *To report annually to the legislatures, governors, judiciary, and state councils of the compacting states concerning the activities of the Interstate Commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the Interstate Commission.*
- *To coordinate education, training and public awareness regarding the interstate movement of offenders for officials involved in such activity.*
- *To establish uniform standards of the reporting, collecting and exchanging of data.”*

Your states compact language should not differ contextually from this language.

### **Composition**

**Tip #12:** The State Council should discuss and understand the composition of the Interstate Commission and who has the authority to vote on Commission business prior to the first Commission meeting.

### **Responsibilities**

**Tip #13:** The State Council may prepare for the first Commission meeting by discussing specific and general responsibilities of the Commission and its members. This should include having specific discussions on such things as, but not limited to, member dues formulas, rule making considerations, Commission staffing needs, training needs, etc. The Commissioner should come to the first Commission meeting prepared to address these and other issues.

The compact language outlines specific duties and responsibilities for the Interstate Commission. It should be noted that while the compact language itself speaks to initial responsibilities of the Commission, it is assumed that other responsibilities and duties could evolve over time.

### *Establishment of the Interstate Commission*

- Planning and coordination for the meetings of the commission, both full Interstate Commission meetings and committee meetings
- Development of the rules and regulations for the Compact
- Hiring of the Commission staff and interim staff support from CSG
- Notification to states of the Compact’s ratification by 35 states
- Development of the State Councils
- Development of a Commission budget
- Invoicing to the states for dues approved within the Compact

### *Membership Services*

- Technical assistance to states as they transition to the State Council
- Convene meetings of states to share State Council development strategies
- Continued outreach to both Compact and non-Compact states
- Development of an information clearinghouse regarding the Compact

### *Interstate Commission Tasks*

- Development of training materials for judges, prosecutors, probation/parole staff and victims; including development of training curricula, as well as tools like courtroom “bench books” and agency policies and procedures
- Conducting on-site training for state personnel regarding the Compact, its workings and processes
- Development of materials for victims that promote a greater understanding of their rights and the information processes available to them when a juvenile wishes to go to another state

### **By-Laws**

**Tip #14:** The State Council may prepare for the first Commission meeting by discussing by-laws for the Commission. The Commissioner should come to the first Commission meeting prepared to address these and other issues.

The compact language calls for the development of By-Laws for the Interstate Commission. By-Laws are to be developed by the Commission and its members during the first 12 months of operation.

The model compact language defines By-Laws as: *“those by-laws established by the commission for its governance, or for directing or controlling the Interstate Commission’s actions or conduct.”*

The model compact language further describes the Interstate Commission’s By-Laws activity as such:

*“The Interstate Commission’s by-laws shall establish conditions and procedures under which the Interstate Commission shall make its information and official records available to the public for inspection or copying. The Interstate Commission may exempt from*

*disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.”*

*“The Interstate Commission shall, by a majority of the members present and voting, within twelve months after the first Interstate Commission meeting, adopt by-laws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:*

- *Establishing the fiscal year of the Interstate Commission;*
- *Establishing an executive committee and such other committees as may be necessary;*
- *Provide: (i) for the establishment of committees, and (ii) governing any general or specific delegation of any authority or function of the Interstate Commission;*
- *Providing reasonable procedures for calling and conducting meetings of the Interstate Commission, and ensuring reasonable notice of each such meeting;*
- *Establishing the titles and responsibilities of the officers of the Interstate Commission;*
- *Providing a mechanism for concluding the operations of the Interstate Commission and the return of any surplus funds that may exist upon the termination of the Compact after the payment and/or reserving of all of its debts and obligations.*
- *Providing "start up" rules for initial administration of the compact;*
- *Establishing standards and procedures for compliance and technical assistance in carrying out the compact.”*

### **Committees**

**Tip #15:** The State Council may discuss what, if any, committees its Commissioner should serve on as well as how the members of the State Council may be able to support Commission committee work. They should also discuss any additional committees they would recommend and how they will ensure input into committee functions.

The compact language calls for the development of various committees upon which members may serve within the Interstate Commission. Further, the compact states that other committees may be established, as needed, to address such issues as rules and regulations, dues and dues formula, education, outreach and training.

The model language states: *“To establish and appoint committees and hire staff which it deems necessary for the carrying out of its functions including, but not limited to, an executive committee as required by Article III which shall have the power to act on behalf of the Interstate Commission in carrying out its powers and duties hereunder.”*

### **Election of Officers**

**Tip #16:** The State Council may discuss whether its Commissioner should seek executive office on the Commission and what qualities Commission leaders should possess.

The Interstate Commission will elect officers from among its body of members. The compact language specifically outlines the positions of “chairperson” and “vice chairperson.”

The model compact language states: *“The Interstate Commission shall, by a majority of the members, elect annually from among its members a chairperson and a vice chairperson, each of whom shall have such authority and duties as may be specified in the by-laws. The chairperson or, in the chairperson’s absence or disability, the vice-chairperson shall preside at all meetings of the Interstate Commission. The officers so elected shall serve without compensation or remuneration from the Interstate Commission; provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for any ordinary and necessary costs and expenses incurred by them in the performance of their and responsibilities as officers of the Interstate Commission.”*

### **Meetings**

**Tip #17:** The State Council may discuss whether they are going to send members of the Council to the Commission meetings in addition to the Commissioner and, if so, how the costs of additional attendees will be funded. CSG/OJJDP will cover the costs of the Interstate Commissioner from your state. Additional costs for other attendees will be borne by the state.

The Interstate Commission is required to hold at least one meeting during each 12-month cycle. It is likely that the Commission will meet several times during the first 12 months of its existence, with specific committees meeting more often until such issues as rules and regulations, dues and dues formula and education, outreach and training efforts can be completed. The State Council may choose to send additional people to consult with the Commissioner on interstate issues that may arise and to be more actively involved in Interstate Commission start-up.

Further, the model language states: *“Each member of the Interstate Commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the Interstate Commission. A member shall vote in person and shall not delegate a vote to another compacting state. However, a commissioner, in consultation with the state council shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the compacting state at a specified meeting. The by-laws may provide for members’ participation in meetings by telephone or other means of telecommunication or electronic communication.”*

### **Staffing of the Interstate Commission**

**Tip #18:** The State Council may discuss what they anticipate being the necessary staff positions for the operation of the compact. Additionally, they should discuss the qualifications of an executive director. Further, the Interstate Commission can decide where it will be housed; State Councils and Commissioners may be prepared to discuss the location and housing of the Interstate Commission.

The Interstate Commission will have a full-time staff. Although the only position outlined in the compact language is that of executive Director, it can be expected that other positions, such as Assistant Director, Legal Counsel, Program Specialist, etc., will be developed to assist in the administration of the compact and the compact Commission.

Specifically, the model compact language speaks to: *“The Interstate Commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the Interstate Commission may deem appropriate. The executive director shall serve as secretary to the Interstate Commission, but shall not be a Member and shall hire and supervise such other staff as may be authorized by the Interstate Commission.”*

It will be critical that the Interstate Commission have full-time staff to manage the new duties placed upon the Interstate Commission and the states. The staff will provide legal expertise and technical assistance to the states, will provide mediation and arbitration services for conflicts among the states and provide continuous training and improvement activities among the members states to enhance the activities of the compact and its members. Short-term, if requested by the Interstate Commission at its initial meeting, The Council of State Governments is prepared to provide secretariat services to the Interstate Commission until such time as it becomes a viable entity that can maintain its own offices, staff, etc. Long-term, the Interstate Commission will have to decide its location and agreements with other entities for services and staffing.

### **Rules & Rulemaking**

**Tip #19:** The State Council should review the existing rules and regulations with your compact administrator or deputy compact administrator, become familiar with these rules and regulations and discuss any desired additions, deletions or enhancements to the rules and regulations prior to the first Interstate Commission meeting.

As the Interstate Commission meets, it is expected that many of the rules for the new compact will be similar, if not identical, to the current rules. But, the new compact will create a governing structure with the capacity and authority to effectively manage rulemaking and compliance by member states. Rulemaking authority is left to representatives of those states that choose to enact the compact. The compact creates a process for rules to be made by member states and enforced and, when necessary, empowers them to modify rules without returning to each state legislature.

While specific rules to be addressed by the Interstate Commission have not been detailed in the compact, certain areas most certainly will need to be considered, including:

- Notice to victims and opportunity to be heard
- Offender registration and compliance
- Violations/return
- Transfer procedures and form
- Eligibility for transfer
- Collection of restitution and fees from offenders
- Data collection and reporting
- The level of supervision to be provided by the receiving state

- Transition rules governing the operation of the compact and the Interstate Commission during all or part of the period between the effective date of the compact and the date on which the last eligible state adopts the compact
- Mediation, arbitration and dispute resolution

### **Establishing a Budget**

**Tip #20:** The State Council may discuss those expenditures they feel will be necessary to operate the Interstate Commission prior to the first Commission meeting.

In order to function properly, the Interstate Commission will have certain financial needs and obligations. The Interstate Commission will establish a budget for the operation of the Commission and its duties. It is the intent of the compact that financial support be contributed by the member states.

The model compact language states:

*“...equitably allocate the costs, benefits and obligations of the compact states.”*

*“To establish a budget and make expenditures and levy dues as provided in Article VIII of this compact.”*

*“The Interstate Commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the Interstate Commission and its staff which must be in a total amount sufficient to cover the Interstate Commission’s annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Interstate Commission, taking into consideration the population of each compacting state and the volume of interstate movement of juveniles in each compacting state and shall promulgate a rule binding upon all compacting states which governs said assessment.”*

Your state’s compact language should not differ contextually from this language.

### **Training, Education, Outreach**

**Tip #21:** The State Council may meet with the current compact administrator, deputy compact administrator and other compact staff to discuss specific training and education needs that will ensure compliance and smooth operation of the compact by offender supervision staff, the judiciary and other allied justice system personnel.

The Interstate Commission will conduct training, education and outreach to the member and non-member states on a wide variety of issues surrounding the compact. The current compact does not provide for adequate training of compact staff in the states, nor promote education and outreach to member states, compact administrators or other stakeholder groups (e.g., judiciary, prosecutors, defense bar, victim advocacy groups).

The Interstate Commission will provide training and education to compact administrators, deputy compact administrators and other compact staff as well as to other

state officials who may need information and who come in contact with the compact. The Interstate Commission will also provide outreach to non-member states to facilitate their full membership and participation in the Juvenile Compact.

The model compact language states:

*“...coordinate training and education regarding the regulation of interstate movement of juveniles for officials involved in such activity.”*

*“To coordinate education, training and public awareness regarding the interstate movement of offenders for officials involved in such activity.”*

*“Establishing standards and procedures for compliance and technical assistance in carrying out the compact...Remedial training and technical assistance as directed by the Interstate Commission.”*

### **National Information Sharing System & Data Collection**

**Tip #22:** State Councils may work with compact administrators, deputy compact administrators, other compact staff and allied justice system agencies to determine what types of information should be collected and shared in a national data sharing system. This information, presented by your state Commissioner to the Interstate Commission, will be valuable in defining the specific parameters of the system.

The compact calls for the creation of a national data sharing system that facilitates the collection of uniform data on offender populations and transactions, allowing for more effective tracking of offenders as they move between states and among jurisdictions. The system will also foster a higher level of communication between the states, creating a much more expedient and efficient system for sharing/transferring cases. The Interstate Commission, through partnerships and cooperative agreements, will fund this national data sharing system with private sector firms, public/private foundations and federal agencies.

The model compact language states:

*“Establish a system of uniform data collection on information pertaining to juveniles subject to this compact that allows 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.”*

*“The Interstate Commission shall collect standardized data concerning the interstate movement of juveniles as directed through its rules which shall specify the data to be collected, the means of collection and data exchange and reporting requirements. Such methods of data collection, exchange and reporting shall in so far as is reasonably possible conform to up-to-date technology and coordinate its information functions with the appropriate repository of records.”*

Cont'd -

*“To establish uniform standards of the reporting, collecting and exchanging of data.”*

## **Finance Issues**

**Tip #23:** State Councils and compact administrators should familiarize themselves with the specific processes and procedures within their state for requesting a budget appropriation. Also, the State Council could see that an annual budget plan is developed for annual dues expenditures from agency or general fund budgets and should begin planning for annual dues assessments.

Each state will need to consider what, if any, budget appropriations will be necessary to support compact activities within their state in order to comply with current and future compact activity demands. Also, in order to function properly, the Interstate Commission will have certain financial needs and obligations. The Interstate Commission will establish a budget for the operation of the Commission and its duties.

It is the intent of the compact that financial support be contributed by the member states. These state appropriations will be based on an equitable dues formula developed by the Interstate Commission and its members that at minimum will use, as its components, the offender transaction volume of the state and the relative population of the state. It could be expected that states will be invoiced for their dues on an annual basis and it is the responsibility of each member state to budget accordingly in preparation for this annual assessment.

The model compact language speaks specifically to the issue of finance:

*“The Interstate Commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization and ongoing activities.*

*The Interstate Commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the Interstate Commission and its staff which must be in a total amount sufficient to cover the Interstate Commission’s annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Interstate Commission, taking into consideration the population of each compacting state and the volume of interstate movement of juveniles in each compacting state and shall promulgate a rule binding upon all compacting states which governs said assessment.*

*The Interstate Commission shall not incur any obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Interstate Commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.*

*Cont'd - The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission shall be subject to the audit and accounting procedures established under its by-laws. However, all receipts and disbursements of funds handled by the Interstate Commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the Interstate Commission."*

### **Dues Timeline**

It can be expected that invoices to states for dues will be processed within 6-8 weeks following the first Interstate Commission meeting. Thereafter, invoicing will occur on an annual basis following the dues formula developed by the members.

### **Dues Formula**

**Tip #24:** The State Council should seek information on offender movement totals from the current compact administrator and other appropriate state agencies to prepare for the Interstate Commission. The State Council, in consultation with state leaders could discuss possible configurations for a dues formula.

In order to accurately develop a dues structure and formula, information on current state transfer and transaction statistics and state financial and demographic information will be needed.

## LEGAL ISSUES

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**Tip #25:** Read and become familiar with the specific articles and sections of the compact that pose or may pose legal implications and obligations. Consult your state’s compact administrator and, if necessary attorney general’s staff for assistance.

The following section is provided to assist in your discussions.

### **Enforcement & Compliance**

The compact language compels the Interstate Commission to enforce compliance of all compact provisions and rules and regulations. The compact contains several enforcement tools to ensure compliance with compact provisions, rules and regulations developed by and for the states and Interstate Commission. These include:

- Remedial training and technical assistance as directed by the Interstate Commission;
- Alternative Dispute Resolution;
- Fines, fees, and costs in such amounts as are deemed to be reasonable as fixed by the Interstate Commission; and
- Suspension or termination of membership in the compact.

The specific model compact language states:

*“...monitor compliance with rules governing interstate movement of juveniles and initiate interventions to address and correct non-compliance.”*

*“...the compacting states shall cooperate and observe their individual and collective duties and responsibilities for the prompt return and acceptance of juveniles subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the purposes and policies of the compact.”*

*“To enforce compliance with the compact provisions, the rules promulgated by the Interstate Commission, and the by-laws, using all necessary and proper means, including but not limited to the use of judicial process.”*

*“The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact’s purposes and intent.”*

*“If the Interstate Commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under this compact, or the by-laws or duly promulgated rules, the Interstate Commission may impose any or all of the following penalties: a) Remedial training and technical assistance as directed by the Interstate Commission; b) Alternative Dispute Resolution; c) Fines, fees, and costs in such amounts as are deemed to be reasonable as fixed by the Interstate Commission; or d) Suspension or termination of membership in the compact,*

*which shall be imposed only after all other reasonable means of securing compliance under the by-laws and rules have been exhausted and the Interstate Commission has therefore determined that the offending state is in default. Immediate notice of suspension shall be given by the Interstate Commission to the Governor, the Chief Justice or the Chief Judicial Officer of the state; the majority and minority leaders of the defaulting state's legislature, and the state council. The grounds for default include, but are not limited to, failure of a compacting state to perform such obligations or responsibilities imposed upon it by this compact, the by-laws, or duly promulgated rules and any other grounds designated in commission by-laws and rules. The Interstate Commission shall immediately notify the defaulting state in writing of the penalty imposed by the Interstate Commission and of the default pending a cure of the default. The commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the commission, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the compacting states and all rights, privileges and benefits conferred by this compact shall be terminated from the effective date of termination.”*

*“The Interstate Commission, may by majority vote of the members, initiate legal action in the United State District Court for the District of Columbia or, at the discretion of the Interstate Commission, in the federal district where the Interstate Commission has its offices, to enforce compliance with the provisions of the compact, its duly promulgated rules and by-laws, against any compacting state in default. In the event judicial enforcement is necessary the prevailing party shall be awarded all costs of such litigation including reasonable attorneys’ fees.”*

### **Oversight**

A primary goal of the Interstate Commission is oversight of national Juvenile Compact activities.

The model compact language specifically provides for: *“The Interstate Commission shall oversee the administrative and operations of the interstate movement of juveniles subject to this compact in the compacting states and shall monitor such activities being administered in non-compacting states which may significantly affect compacting states. The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact’s purposes and intent. The provisions of this compact and the rules promulgated hereunder shall be received by all the judges, public officers, commissions, and departments of the state government as evidence of the authorized statute and administrative rules. All courts shall take judicial notice of the compact and the rules. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact which may affect the powers, responsibilities or actions of the Interstate Commission, it shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes.”*

## **Dispute Resolution**

As a means to avoid lengthy and expensive judicial proceedings on conflicts among the member states, the compact provides for dispute resolution tools such as mediation and arbitration.

Specifically the compact authorizes these tools:

*“To provide for dispute resolution among compacting states.”*

And the compact also outlines their use:

*“The compacting states shall report to the Interstate Commission on all issues and activities necessary for the administration of the compact as well as issues and activities pertaining to compliance with the provisions of the compact and its bylaws and rules.*

*The Interstate Commission shall attempt, upon the request of a compacting state, to resolve any disputes or other issues, which are subject to the compact and which may arise among compacting states and between compacting and non-compacting states. The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.*

*The Interstate Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact using any or all means set forth in Article XI of this compact.”*

## **Amendment Procedures**

The compact does authorize and provide amendments to the language and outlines specific steps for amendment:

*“The Interstate Commission may propose amendments to the compact for enactment by the compacting states. No amendment shall become effective and binding upon the Interstate Commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.”*

## **Withdrawal, Default & Termination**

### *Withdrawal*

A state may withdrawal from the compact upon enacting a state statute that authorizes such action. The compact recognizes this possibility and provides specific steps and requirements for such an action:

*“Once effective, the compact shall continue in force and remain binding upon each and every compacting state; provided that a compacting state may withdraw from the compact specifically repealing the statute, which enacted the compact into law.*

*The effective date of withdrawal is the effective date of the repeal.*

*The withdrawing state shall immediately notify the chairperson of the Interstate Commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The Interstate Commission shall notify the other compacting states of the withdrawing state's intent to withdraw within sixty days of its receipt thereof.*

*The withdrawing state is responsible for all assessments, obligations and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.*

*Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the Interstate Commission.”*

#### *Default*

A state is in default of the compact and its provisions should a state not adhere to the language of the compact or the subsequent rules and regulations developed and adopted by the Interstate Commission. Specifically:

*“If the Interstate Commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under this compact, or the by-laws or duly promulgated rules, the Interstate Commission may impose any or all of the following penalties: a) Remedial training and technical assistance as directed by the Interstate Commission; b) Alternative Dispute Resolution; c) Fines, fees, and costs in such amounts as are deemed to be reasonable as fixed by the Interstate Commission; or d) Suspension or termination of membership in the compact, which shall be imposed only after all other reasonable means of securing compliance under the by-laws and rules have been exhausted and the Interstate Commission has therefore determined that the offending state is in default. Immediate notice of suspension shall be given by the Interstate Commission to the Governor, the Chief Justice or the Chief Judicial Officer of the state; the majority and minority leaders of the defaulting state's legislature, and the state council. The grounds for default include, but are not limited to, failure of a compacting state to perform such obligations or responsibilities imposed upon it by this compact, the by-laws, or duly promulgated rules and any other grounds designated in commission by-laws and rules. The Interstate Commission shall immediately notify the defaulting state in writing of the penalty imposed by the Interstate Commission and of the default pending a cure of the default. The commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the commission, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the compacting states and all rights, privileges and benefits conferred by this compact shall be terminated from the effective date of termination.*

*Within sixty days of the effective date of termination of a defaulting state, the Commission shall notify the Governor, the Chief Justice or Chief Judicial Officer, the Majority and*

*Minority Leaders of the defaulting state’s legislature, and the state council of such termination.*

*The defaulting state is responsible for all assessments, obligations and liabilities incurred through the effective date of termination including any obligations, the performance of which extends beyond the effective date of termination.*

*The Interstate Commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon in writing between the Interstate Commission and the defaulting state.*

*Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the Interstate Commission pursuant to the rules.”*

#### *Dissolution*

The compact dissolves at such time as only one state is a member. The compact provides:

*“The compact dissolves effective upon the date of the withdrawal or default of the compacting state, which reduces membership in the compact to one compacting state. Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Interstate Commission shall be concluded and any surplus funds shall be distributed in accordance with the by-laws.”*

#### **Binding Effect of Compact & Other Laws**

The compact provides:

*“Nothing herein prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact. All compacting states’ laws other than state Constitutions and other interstate compacts conflicting with this compact are superseded to the extent of the conflict.”*

*“All lawful actions of the Interstate Commission, including all rules and by-laws promulgated by the Interstate Commission, are binding upon the compacting states.*

*All agreements between the Interstate Commission and the compacting states are binding in accordance with their terms.*

*Upon the request of a party to a conflict over meaning or interpretation of Interstate Commission actions, and upon a majority vote of the compacting states, the Interstate Commission may issue advisory opinions regarding such meaning of interpretation.*

*In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers or jurisdiction sought to be conferred by such provision upon the Interstate Commission shall be*

*ineffective and such obligations, duties, powers or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers or jurisdiction are delegated by law in effect at the time this compact becomes effective.”*

## **Interstate Compacts – Background and History**

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As state governments increasingly face similar policy problems that rarely end at a state's borders, the search for effective policy responses often does.

One weapon in the states' arsenal is the interstate compact – an historic cooperative tool allowing states to work together to solve their mutual policy dilemmas while reinforcing the role of the states in tackling regional and national issues.

As states struggle with emerging policy issues such as prescription drug pricing, increased energy production and distribution, refined and updated tax systems and the refurbishment of an aging infrastructure, the interstate compact may well prove to be the answer to these and other policy questions.

### **The Nature of Interstate Compacts**

Compacts are simply formal agreements between two or more states that bind them to the compacts' provisions, just as a contract binds two or more parties in a business deal. As such, compacts are subject to the principles of contract law and are protected by the constitution's prohibition against laws that impair the obligations of contracts.

That means that compacting states are bound to observe the terms of their agreements, even if those terms are inconsistent with other state laws. In short, compacts between states are somewhat like treaties between nations. Compacts have the force and effect of statutory law and take precedence over conflicting state laws, regardless of when those laws are enacted.

Unlike treaties, however, compacts are not dependent solely upon the good will of the parties. Once enacted, compacts may not be unilaterally renounced by a member state, except as provided by the compacts themselves. Moreover, Congress and the courts can compel compliance with the terms of interstate compacts. That's why compacts are considered one of the most effective means of ensuring interstate cooperation.

### **History of Interstate Compacts**

Compacts were seldom used until the 20th century. Between 1783 and 1920, states approved just 36 compacts, most of which were used to settle boundary disputes. But in the last 75 years, more than 150 compacts have been created, most since the end of World War II.

The purpose of compacts ranges from implementing common laws to exchanging information about similar problems. They apply to everything from conservation and resource management to civil defense, emergency management, law enforcement, transportation, and taxes. Other compact subjects include education, energy, mental health, workers compensation and low-level radioactive waste.

Some compacts authorize the establishment of multistate regulatory bodies. The first and most famous of these is the New York-New Jersey Port Authority, which arose from a

1921 compact between the two states. But other agreements are simply intended to establish uniform regulations without creating new agencies.

In recent years, compacts have grown in scope and number. Today, many are designed for regional or national participation, whereas the compacts of old were usually bi-state agreements.

Recent efforts include the *Emergency Management Assistance Compact*, the *Interstate Compact on Industrialized/Modular Buildings*, *Interstate Insurance Receivership Compact*, and several low-level radioactive waste compacts, which were mandated by Congress.

Other examples of compact activity include the revision of existing interstate agreements; updating agreements that maintain relevance, but which require a modernization of their structures. Recent examples include the *Interstate Compact for Adult Offender Supervision*, the *Interstate Compact for Juveniles*, and the *Interstate Compact for the Placement of Children*.

### **Creating Interstate Compacts**

Compacts are essentially contracts between states. To be enforceable, they must satisfy the customary requirements for valid contracts, including the notions of offer and acceptance.

An offer is made when one state, usually by statute, adopts the terms of a compact requiring approval by one or more other states to become effective. Other states accept the offer by adopting identical compact language. Once the required number of states has adopted the pact, the “contract” among them is valid and becomes effective as provided. The only other potential requirement is congressional consent.

### **Congressional Consent**

Article I, Section 10 of the U.S. Constitution provides in part that “no state shall, without the consent of Congress, enter into any agreement or compact with another state.” Historically, this clause generally meant all compacts must receive congressional consent. However, the purpose of this provision was not to inhibit the states’ ability to act in concert with each other. In fact, by the time the Constitution was drafted, the states were already accustomed to resolving disputes and addressing problems through interstate compacts and agreements. The purpose of the compact clause was to protect the pre-eminence of the new national government by preventing the states from infringing upon federal authority or altering the federal balance of power by compact.

Accordingly, the Supreme Court in 1893 in *Virginia v. Tennessee*, indicated that not all compacts require Congressional approval. Today, it is well established that only those compacts that affect a power delegated to the federal government or alter the political balance within the federal system, require the consent of Congress.

For example, a river basin agreement between two or more states that might affect the water rights of non-party states would surely require congressional approval. Determining whether a compact affects federal powers is more difficult. Generally, any compact that touches on an area of mutual state-federal concern, or threatens to interfere with the doctrine of federal preemption, may be said to require congressional consent, such as the *Driver License Compact*.

By example, it is almost easier to identify agreements that do not require congressional consent. Included among these are compacts concerning matters in which state authority is clearly pre-eminent. Education is one such area.

Compacts designed to facilitate interstate communication or promote cooperative studies do not usually require congressional consent, but those that impose more substantive obligations often do.

Fortunately, the consent requirement is not particularly burdensome. Though usually satisfied by means of a congressional resolution granting the states the authority to create a compact, the Constitution specifies neither the means nor the timing of the required consent. Over the years, the Supreme Court has held that congressional consent may be expressed or implied and may be obtained either before or after a compact is enacted.

Congressional consent may also be conditional, limited, or temporary, and is always subject to modification or repeal, even if this right is not expressly reserved when the consent is initially given. Thus, whether a compact requires consent or not, and regardless of the form that consent may take, no compact is immune from future invalidation by an Act of Congress. Therefore, express congressional consent is sometimes considered desirable; even if it isn't strictly required at the time the compact is created.

### **Delegation of State Authority to a Joint Administrative Agency**

One of the axioms of modern government is the ability of a state legislature to delegate to an administrative body the power to make rules and decide particular cases. Upheld in 1951 by the U.S. Supreme Court in *West Virginia vs. Dyer*, this delegation of authority extends to the creation of interstate commissions through the vehicle of an interstate compact.

Examples include the *Interstate Compact for Adult Offender Supervision*, the *New York/New Jersey Port Authority* and the *Interstate Pest Control Compact* – each creates and maintains an interstate commission capable of providing administrative oversight to its member states on compact related issues.

Modern compacts are a reinvigoration of our federalist system in which states may only be able to preserve their sovereign authority over interstate problems to the extent that they share their sovereignty and work together cooperatively through interstate compacts.

### **Amending and Enforcing Compacts**

Once established, compacts can only be amended or terminated in accordance with the instruments themselves or by mutual consent of the members by adopting identical substantive language. In other words, amending compacts requires the same process that is used to create them unless the compacts themselves specify other mechanisms.

A violation of compact terms, like a breach of contract, is subject to judicial remedy. Since compacts are agreements between states, the U.S. Supreme Court is the usual forum for the resolution of disputes between member states. However, compacts can, and frequently do, include provisions to resolve disputes through arbitration or other means.

### **Timeframe Enacting Compacts**

Compacts are not always complicated, but they may take time, especially if their subject matter is controversial. A study of 65 interstate compacts, conducted in the early 1960s, indicated that the average amount of time required to launch a new compact was almost 5 years. But that study was admittedly skewed by the unusually long time required for the approval of several compacts that dealt with controversial natural resource issues. In fact, the average time required to enact 19 compacts covering river management and water rights was almost 9 years.

More recently, however, interstate compacts have enjoyed great rapidity in their adoption. The *Interstate Compact for Adult Offender Supervision* was adopted by 35 states in just 30 months. Other recent compacts, including the new *Interstate Insurance Product Regulation Compact* are enjoying faster success, gaining quick adoptions over a period of 2-3 years.

In recent years, there have been some remarkable success stories. For example, in December 1989, a committee of the Midwestern Legislative Conference approved draft language for the *Midwestern Higher Education Compact* and began circulating it to lawmakers in the 12 Midwestern states that were eligible to participate. Just 13 months later, the compact became effective.

### **Avoiding Federal Interference**

Finally, interstate compacts provide states the opportunity to cooperatively address policy issues in the face of an increasingly active federal government. With the federal dynamic constantly shifting between all levels of government, interstate compacts are an attractive alternative to ensure state agreement on complex policy issues, establish state authority over areas reserved for states and allow states to speak strongly with one unified voice. Without the compact, federal activism in traditional state policy areas is an increasing possibility.

## **Interstate Compacts: 10 Frequently Asked Questions**

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### **1) What is an interstate compact?**

Interstate compacts are contracts between two or more states creating an agreement on a particular policy issue, adopting a certain standard or cooperating on regional or national matters.

Interstate compacts are the most powerful, durable, and adaptive tools for ensuring cooperative action among the states. Unlike federally imposed mandates that often dictate unfunded and rigid requirements, interstate compacts provide a state-developed structure for collaborative and dynamic action, while building consensus among the states.

The very nature of an interstate compact makes it an ideal tool to meet the demand for cooperative state action: developing and enforcing stringent standards, while providing an adaptive structure that, under a modern compact framework, can evolve to meet new and increased demands over time.

General purposes for creating an interstate compact include:

- Establish a formal, legal relationship among states to address common problems or promote a common agenda.
- Create independent, multistate governmental authorities (e.g., commissions) that can address issues more effectively than a state agency acting independently, or when no state has the authority to act unilaterally.
- Establish uniform guidelines, standards, or procedures for agencies in the compact's member states.
- Create economies of scale to reduce administrative and other costs.
- Respond to national priorities in consultation or in partnership with the federal government.
- Retain state sovereignty in matters traditionally reserved for the states.
- Settle interstate disputes.

### **2) How prevalent are interstate compacts?**

More than 200 interstate compacts exist today. On average, a state belongs to 25 interstate compacts.

There are 22 compacts that are national in scope, several with 35 or more member states and independent administrative commissions. More than 30 compacts are regional in scope, with 8 or more member states.

### **3) What types of interstate compacts exist?**

Although there are many types of interstate compacts, they can generally be divided into three camps:

- a) **Border Compacts:** agreements between two or more states that establish or alter the boundaries of a state. Once adopted by the states and approved by Congress, such compacts permanently alter the boundaries of the state and can only be undone by a subsequent compact approved by Congress or the repeal of the compact with Congress's approval. *Examples include the Virginia-Tennessee Boundary Agreement of 1803, Arizona-California Boundary Compact of 1963, the Missouri-Nebraska Compact of 1990, and the Virginia-West Virginia Boundary Compact of 1998.*
- b) **Advisory Compacts:** agreements between two or more states that create study commissions. The purpose of the commission is to examine a problem and report to the respective states on their findings. Such compacts do not result in any change in the state's boundaries nor do they create ongoing administrative agencies with regulatory authority.
- c) **Regulatory Compacts:** broadest and largest category of interstate compacts may be called "regulatory" or "administrative" compacts. Such compacts are a development of the 20<sup>th</sup> century and embrace wide-ranging topics including regional planning and development, crime control, agriculture, flood control, water resource management, education, mental health, juvenile delinquency, child support, and so forth. Regulatory compacts create ongoing administrative agencies whose rules and regulations may be binding on the states to the extent authorized by the compact. Many regulatory compacts require congressional consent to be effective because they regulate areas that impact one of congress's enumerated powers, such as interstate commerce, navigable streams, and extradition.
- 4) **What are the advantages of an interstate compact?**

The emergence of broad public policy issues that ignore state boundaries and the principles of federalism have presented new governing challenges to both state and federal authorities. Complex regional and national problems have shown little respect for the dual lines of federalism or the geographical boundaries of states. Thus, interstate compacts have reemerged not only as devices for adjusting interstate relations but also for governing the nation.

Interstate compacts provide an effective solution in addressing suprastate problems. Compacts enable the states – in their sovereign capacity – to act jointly and collectively, generally outside the confines of the federal legislative or regulatory process while respecting the view of Congress on the appropriateness of joint action. Interstate compacts can effectively preempt federal interference into matters that are traditionally within the purview of the states and yet which have regional or national implications.

Unlike federal actions that impose unilateral, rigid mandates, compacts afford states the opportunity to develop dynamic, self regulatory systems over which the party states can maintain control through a coordinated legislative and administrative process. Compacts enable the states to develop adaptive structures that can evolve to meet new and increased challenges that naturally arise over time.

**5) What are the disadvantages of an interstate compact?**

Interstate compacts may often require a great deal of time to both develop and implement. While recent interstate compact efforts have met with success in a matter of a few years, some interstate compacts have required decades to reach critical mass.

Further, the ceding of traditional state sovereignty, particularly as required by several modern administrative compacts may be perceived as a disadvantage. The very purpose of an interstate compact is to provide for the collective allocation of governing authority between and among party states, which does not allow much room for individualism. The requirement of substantive “sameness” prevents party states from passing dissimilar enactments.

As the balance of power continues to realign in our federalist system, states may only be able to preserve their sovereign authority over interstate problems to the extent that they share their sovereignty and work together cooperatively through interstate compacts.

**6) How is an interstate compact created?**

Compacts are essentially contracts between or among states. To be enforceable, they must satisfy the customary requirements for valid contracts, including the notions of offer and acceptance. An offer is made when one state, usually by statute, adopts the terms of a compact requiring approval by one or more other states to become effective. Other states accept the offer by adopting identical compact language. Once the required number of states has adopted the pact, the “contract” among them is valid and becomes effective as provided. The only other potential requirement is congressional consent.

**7) What might the compact development process look like?**

The development of any interstate compact should be a state driven and state championed solution to a policy issue. Outlined below are key steps to the development process of a regulatory compact, as experienced by CSG. *These should be viewed as examples and can be, based on the issue area, customized as needed.*

- a) **Advisory Group** – Composed of state officials and other critical stakeholders, an Advisory Group examines the realm of the problem, suggests possible solutions and makes recommendations as to the structure of the interstate compact. Typically, an Advisory Group is composed of approximately 20 individuals, each representative of various groups and states. An Advisory Group would likely meet one or two times over a period of two to three months, with their work culminating in a set of recommendations as to what the final compact product should look like.
- b) **Drafting Team** - While an Advisory Group enjoyed thinking about the issue from a macro-level, a Drafting Team pulls the thoughts, ideas and suggestions of the Advisory Group into a draft compact. The Drafting Team, composed of 5 to 8 compact and issue experts, will craft the recommendations, as well as their own thoughts and expertise, into a draft compact that will be circulated to state officials for comment. The document will also be open for comments from a wide swath of stakeholders and the public. Following these comment periods, the compact will be revised as needed and released finally back to an Advisory Group for final review to ensure it meets the original spirit of the group's recommendations. A Drafting Team would meet three to four times over a period of 10-14 months, with significant staff work and support between sessions.
- c) **Education** – Once completed, the interstate compact would be available to states for legislative approval. During this phase of the initiative, state-by-state technical assistance and on-site education are keys to rapid success. A majority of state legislators have limited knowledge about interstate compacts and with such a major issue being addressed, leg work on the ground in each state is crucial. Previous interstate compact efforts have convened end-of-the-year legislative briefings for state officials to educate them on the solutions provided by the interstate compact. Education occurs before and during state legislative sessions.
- d) **Enactment** - A majority of interstate compacts did not become active right away. Rather, interstate compacts typically activate when triggered by a pre-set number of states joining the compact. For instance, the Interstate Compact for Adult Offender Supervision (Adult Compact) required 35 state enactments before it could become active. This number was chosen for two reasons. A membership of 35 ensures that a majority of states are in favor of the agreement and that a new compact would not create two conflicting systems. Moreover, a sense of urgency for states was created because the first 35 jurisdictions to join would meet soon thereafter and fashion the operating rules of the compact. Most interstate compacts take up to 7 years to reach critical mass. However the most recent effort managed by CSG, the Adult Compact, reached critical mass in just 30 months from its first date of introduction in 2000.

- e) **Transition** - Following enactment by the required minimum number of states, the new compact becomes operational and, dependent upon the administrative structure placed in the compact, goes through standard start-up activities such as state notification, planning for the first commission or state-to-state meetings and, if authorized by the compact, hiring of staff to oversee the agreement and its requirements. A critical component of the transition will be the development of rules, regulations, forms, standards, etc. by which the compact will need to operate. Typically, transition activities run for between 12 and 18 months before the compact body is independently running.

**8) What does a modern interstate compact look like, structurally?**

When developing the interstate compact mechanism, one needs to look at it as a human body - the compact itself is the skeleton, the rules, regulations and forms are the muscles and the bylaws are the skin. The compact should contain the minimum basics upon which it needs to operate, in terms of the agreement between states and the operation of a governing body. By using the compact as the broad framework, the rules can be adapted and adjusted as needed throughout the life the compact without the need to go back each time for legislative approval from the member states, subject to the legislatively delegated authority.

**9) Will my states constitution permit the creation and/or joining of a compact?**

Compact language is usually drafted with state constitutional requirements common to most state constitutions such as separation of powers, delegation of power, and debt limitations in mind. The validity of the state authority to enter into compacts and potentially delegate authority to an interstate agency has been specifically recognized and unanimously upheld by the U.S. Supreme Court in *West Virginia vs. Sims, 341 U.S. 22 (1951)*.

**10) Where can I get more information and assistance with the Juvenile Compact?**

Contact:

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## **Interstate Compact for Juveniles - Background & Development**

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Following the initial success of revision to the Interstate Compact for the Supervision of Parolees and Probationers (revised into the Interstate Compact for Adult Offender Supervision or Adult Compact), the Office of Juvenile Justice and Delinquency Prevention (OJJDP) pursued a similar rewrite of the Interstate Compact on Juveniles.

In 1999, OJJDP conducted a detailed survey of the states, uncovering many contentious issues within the current compact structure, and asked for recommendations to address these growing concerns. The Council of State Governments (CSG) and OJJDP then developed advisory and drafting groups that created the new Interstate Compact for Juveniles.

In 2000, a Compact Advisory Group was formed to assist staff in assessing interstate supervision options and alternatives, and to assist in identifying groups having an interest in effective interstate supervision. They identified a revision of the existing compact as the only option for long-term change.

In 2001, CSG worked with OJJDP and the Association of Juvenile Compact Administrators (AJCA) to develop and facilitate a drafting team of state officials to begin the design of a revised juvenile compact. Considering the suggestions of the Advisory Group as well as those comments generated from the field via the OJJDP survey, the drafting team developed, over a period of 12-months, the compact language.

In 2002, the compact language was finalized and an educational campaign was developed for the states to help policymakers better appreciate and understand the need for a new compact. In October, a “National Legislative Briefing” was held for some 150 state legislators and other officials on the compact.

In 2003, the Juvenile Compact was first available for introduction in the states. Throughout the year, CSG, OJJDP and members of AJCA provided on-site technical assistance to states considering the compact and maintained an extensive information clearinghouse on the project. During the year 11 states adopted the revised compact. In November, CSG hosted a 2nd “National Legislative Briefing” held with some 125 state officials.

In 2004, CSG continued its efforts on the initiative, securing at year-end 21 enactments in the states.

In 2005, the new Juvenile Compact picked up an additional 7 states, for a total of 28.

In 2006, CSG expects that an additional 7 states will enact the new Interstate Compact for Juveniles, reaching the mandated 35-state threshold, at which point the compact will be come active and transition and other operational activities will commence.