

On the Horizon: Interstate Com

Exploring the modern use of an historic legal mechanism

By John J. Mountjoy

Despite their legal and structural differences, states share many common problems in a world in which economic and political issues are often discussed in global terms. These complex problems arise in many contexts, including homeland security, environmental concerns, an aging infrastructure, pioneering technology and an ever-evolving citizenry. As we become more integrated socially, culturally and economically, the volume of these issues will only increase and interstate compacts may well prove to be an apt mechanism for developing state-based solutions to supra-state problems.

A distinctly American invention, interstate compacts promote multistate problem solving in the face of complex public policy and federal intervention. The last two decades have seen a resurgence in the development of new interstate compacts and the revision of existing, though outdated compacts. As a tool reserved exclusively for the states (U.S. Constitution, Article I, Section 10, Clause III), interstate compacts can provide states the means to address state problems with state solutions, avoiding federal intervention and preemption.

As current policy areas evolve and new ones emerge, interstate compacts will likely play a significant role in the future of multistate problem solving. With the federalism dynamic in flux, responsibilities are shifting both to and from the states. Interstate compacts offer a flexible solution to these issues, giving states the ability to solve problems regionally and nationally.

Compacts Ready for Prime Time

Several emerging state policy areas seem ripe for the development of new interstate compacts or other multi-state agreements.

Intelligence/criminal justice information sharing. While several intrastate information sharing systems have been developed or are under development, the fundamental question of true interstate intelligence and criminal justice information sharing has yet to be answered. While efforts such as the Global Justice Information Sharing Initiative, sponsored by the U.S. Dept. of Justice, seeks to establish standards and mutual understanding of the information sharing process, no true interstate mechanism on a regional or national level currently exists to allow multi-jurisdictional access to anti-terrorism intelligence or criminal justice information. An interstate compact could be a useful tool in helping facilitate state standards and establishing the framework for interstate and intergovernmental cooperation in this area.

Emergency medical assistance. Prior to the Sept. 11 terror attacks, states had made great headway in adopting interstate agreements such as the Emergency Management Assistance

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Compact to cope quickly with natural and other disasters. Since both Sept. 11 and the 2001 anthrax attacks, states have realized the need for more than just the sharing of equipment and resources for physical clean-up; they see the dramatic need for interstate cooperation for medical assistance. Currently, states have no mechanism in place to facilitate non-federal interstate emergency medical assistance in the event of an NBC (nuclear/biological/chemical) attack. While several state governors are examining mutual aide agreements, regional compacts and perhaps an overarching national interstate compact would help states be better prepared for this eventuality by sharing personnel, lab capacity and medical expertise.

Elder guardianship. A July 2004 GAO report (*Guardianships: Collaboration Needed to Protect Incapacitated Elderly People; GAO-04-655*) indicated that an emerging area of concern for states is the need to protect incapacitated elderly adults. The report cited specific breakdowns in collaboration between states and federal programs that jeopardized the safety of seniors. The report specifically identified the areas of state court operation, accountability and consistency; state jurisdictional fluctuations; a lack of systematic information sharing between various agencies and levels of government; and a lack of adequate tracking of elder guardianship statistics. These problems, similar to issues already encountered in the juvenile justice and adult corrections fields, may be effectively addressed via an interstate compact.

Bioterrorism preparedness. Regional cooperation for bioterrorism preparedness is on the minds of many state officials. Mass casualty events, multistate training and prearranged payment provisions, chain-of-command issues and identified roles for key players are critical to an effective response. While other agreements may tackle broader cooperation issues, specific agreements might be crafted to promote independent regional responses based on a region's unique needs.

National animal ID. With the growing concern about mad cow disease, state and federal government officials are looking at new challenges to the traditional means of tagging and tracking livestock. While tracking an individual animal is currently feasible, it takes far too long. In the event of an outbreak, the ability of officials to quickly and accurately find an animal's point of origin is limited by these response-time issues. An interstate compact developed by states with input from relevant federal agencies may be a viable solution to the collection and sharing of vital information in a timely fashion.

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Evidence Shows Sorry Works

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- lower defense litigation bills;
- better control over liability exposure;
- no limitation on Constitutional rights of victims (they can still sue if they want to);
- swifter justice for victims; and
- a safer health care system because of an eventual reduction in medical errors—especially repeat medical errors.

If Sorry Works! is enacted in Illinois, it will be at the forefront of a revolution in medical malpractice that will improve U.S. medicine and help solve the medical malpractice crisis.

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Resources for State Officials

Information on Sorry Works!

www.sorryworks.net/index.new.phtml

Original paper describing the Lexington VA's experience

www.annals.org/cgi/reprint/131/12/963

Subsequent report with additional information and data

www.jcrinc.com/subscribers/printview.asp?durki=3627

Description of Copic Insurance Company's program

www.callcopic.com/publications/3rs/march_2004.pdf

Description of Minneapolis Children's Hospitals full-disclosure practices

www.npsf.org/download/Morath.pdf

Paper on effects of disclosure and apology on limiting liability expenses of organizations

Jonathan R. Cohen. "Apology and Organizations:

Exploring an Example from Medical Practice." *Fordham Urban Law Journal*, vol. 27, pp. 1447-1482, 2000.

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State voter registration information. The Help America Vote Act of 2002 specifically details what and how voter registration information is to be collected and stored. However, it makes no reference to sharing and coordinating such data between states to ensure that a citizen votes only once and in the appropriate jurisdiction. This issue is particularly relevant when one considers that between 1995 and 2000, more than 11 million people moved between states. An interstate compact could allow member states to share voter registration information to ensure fairness and accuracy.

CSG's National Center for Interstate Compacts

As a unique and direct service to states, The Council of State Governments has created the National Center for Interstate Compacts (NCIC). The new center serves as an information clearinghouse, training and technical assistance provider as well as primary facilitator in helping states manage the development and administration of interstate compacts. The NCIC promotes the use of interstate compacts as an ideal tool to meet the growing demands for cooperative state action, the development and enforcement of stringent standards, and to provide an adaptive structure for states that can evolve to meet new and changing policy demands over time.

The goals of the NCIC are to:

- educate stakeholder groups, compact staff, and state and local officials on the background, history, legality, structure,

mechanics and use of interstate compacts;

- provide technical assistance to states in determining the need for new interstate compacts and to examine and, where appropriate, revise existing interstate agreements;
- provide legal interpretations of compact law, requirements, interpretation of rules and the effects of other laws or impending state/federal action; and general legal assistance with compact issues; and
- assist states in streamlining administrative structures and procedures, promoting the use of technology in compact activities, gaining federal support for their compact efforts, and creating standards for compact operations and rules and regulation development and publishing.

The creation of new interstate agreements must be a state motivated solution with state officials and stakeholder experts supporting and driving the compact process. As the integral players in the crafting of state solutions, states must ultimately be in a position to support the enactment and implementation of these mechanisms.

Working with state leaders and national policy experts, the National Center for Interstate Compacts helps states react to the trends of public policy via the interstate compact mechanism: a mechanism that has proven itself as an ideal and often the only effective response for addressing the current and emerging cooperative policy needs of our states.

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