

SENATE BILL NO. 139
INTRODUCED BY D. SHEA
BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT REPLACING THE EXISTING INTERSTATE COMPACT ON JUVENILES WITH THE NEW INTERSTATE COMPACT ON JUVENILES; AMENDING SECTION 41-6-101, MCA; AND PROVIDING A CONTINGENT EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 41-6-101, MCA, is amended to read:

"41-6-101. Enactment -- provisions. The Interstate Compact on Juveniles ~~as contained herein~~ is hereby enacted into law and entered into by this state with all other jurisdictions legally joining ~~therein~~ in the compact in the form substantially as follows:

The contracting states solemnly agree that:

~~Article I. Findings and Purposes~~

~~———— (1) Juveniles who are not under proper supervision and control or who have absconded, escaped, or run away are likely to endanger their own health, morals, and welfare and the health, morals, and welfare of others. The cooperation of the states party to this compact is therefore necessary to provide for the welfare and protection of juveniles and of the public with respect to:~~

- ~~———— (a) cooperative supervision of delinquent juveniles on probation or parole;~~
~~———— (b) the return, from one state to another, of delinquent juveniles who have escaped or absconded;~~
~~———— (c) the return, from one state to another, of nondelinquent juveniles who have run away from home; and~~
~~———— (d) additional measures for the protection of juveniles and of the public which any two or more of the party states may find desirable to undertake cooperatively.~~

~~———— (2) In carrying out the provisions of this compact the party states shall be guided by the noncriminal, reformatory, and protective policies which guide their laws concerning delinquent, neglected, or dependent juveniles generally. It shall be the policy of the states party to this compact to cooperate and observe their respective responsibilities for the prompt return and acceptance of juveniles and delinquent juveniles who become subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the foregoing purposes.~~

~~Article II. Existing Rights and Remedies~~

~~All remedies and procedures provided by this compact shall be in addition to and not in substitution for other rights, remedies, and procedures and shall not be in derogation of parental rights and responsibilities.~~

~~Article III. Definitions~~

~~For the purposes of this compact, "delinquent juvenile" means any juvenile who has been adjudged delinquent and who, at the time the provisions of this compact are invoked, is still subject to the jurisdiction of the court that has made such adjudication or to the jurisdiction or supervision of an agency or institution pursuant to an order of such court; "probation or parole" means any kind of conditional release of juveniles authorized under the laws of the states party hereto; "court" means any court having jurisdiction over delinquent, neglected, or dependent children; "state" means any state, territory, or possessions of the United States, the District of Columbia, and the commonwealth of Puerto Rico; and "residence" or any variant thereof means a place at which a home or regular place of abode is maintained.~~

~~Article IV. Return of Runaways~~

~~(1) The parent, guardian, person, or agency entitled to legal custody of a juvenile who has not been adjudged delinquent but who has run away without the consent of such parent, guardian, person, or agency may petition the appropriate court in the demanding state for the issuance of a requisition for his return. The petition shall state the name and age of the juvenile, the name of the petitioner and the basis of entitlement to the juvenile's custody, the circumstances of his running away, his location if known at the time application is made, and such other facts as may tend to show that the juvenile who has run away is endangering his own welfare or the welfare of others and is not an emancipated minor. The petition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the document or documents on which the petitioner's entitlement to the juvenile's custody is based, such as birth certificates, letters of guardianship, or custody decrees. Such further affidavits and other documents as may be deemed proper may be submitted with such petition. The judge of the court to which this application is made may hold a hearing thereon to determine whether for the purposes of this compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not he is an emancipated minor, and whether or not it is in the best interest of the juvenile to compel his return to the state. If the judge determines, either with or without a hearing, that the juvenile should be returned, he shall present to the appropriate court or to the executive authority of the state where the juvenile is alleged to be located a written requisition for the return of such juvenile. Such requisition shall set forth the name and age of the juvenile, the determination of the court that the juvenile has run away without the consent of a parent, guardian, person, or agency entitled to his legal~~

custody, and that it is in the best interest and for the protection of such juvenile that he be returned. In the event that a proceeding for the adjudication of the juvenile as a delinquent, neglected, or dependent juvenile is pending in the court at the time when such juvenile runs away, the court may issue a requisition for the return of such juvenile upon its own motion, regardless of the consent of the parent, guardian, person, or agency entitled to legal custody, reciting therein the nature and circumstances of the pending proceeding. The requisition shall in every case be executed in duplicate and shall be signed by the judge. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of such court. Upon receipt of a requisition demanding the return of a juvenile who has run away, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No juvenile detained upon such order shall be delivered over to the officer whom the court demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge of a court in the state, who shall inform him of the demand made for his return and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such juvenile over to the officer whom the court demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

———(2) Upon reasonable information that a person is a juvenile who has run away from another state party to this compact without the consent of a parent, guardian, person, or agency entitled to his legal custody, such juvenile may be taken into custody without a requisition and brought forthwith before a judge of the appropriate court, who may appoint counsel or guardian ad litem for such juvenile and who shall determine after a hearing whether sufficient cause exists to hold the person, subject to the order of the court, for his own protection and welfare, for such a time not exceeding 90 days as will enable his return to another state party to this compact pursuant to a requisition for his return from a court of that state. If, at the time when a state seeks the return of a juvenile who has run away, there is pending in the state wherein he is found any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention, or supervision for such offense of juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the juvenile being returned, shall be permitted to transport such juvenile through any and all states party to this compact, without interference. Upon

~~his return to the state from which he ran away, the juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.~~

~~———— (3) The state to which a juvenile is returned under this article shall be responsible for payment of the transportation costs of such return.~~

~~———— (4) "Juvenile" as used in this article means any person who is a minor under the law of the state of residence of the parent, guardian, person, or agency entitled to the legal custody of such minor.~~

~~————— Article V. Return of Escapees and Absconders~~

~~———— (1) The appropriate person or authority from whose probation or parole supervision a delinquent juvenile has absconded or from whose institutional custody he has escaped shall present to the appropriate court or to the executive authority of the state where the delinquent juvenile is alleged to be located a written requisition for the return of such delinquent juvenile. Such requisition shall state the name and age of the delinquent juvenile; the particulars of his adjudication as a delinquent juvenile; the circumstances of the breach of the terms of his probation or parole or of his escape from an institution or agency vested with his legal custody or supervision; and the location of such delinquent juvenile if known at the time the requisition is made. The requisition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the judgment, formal adjudication, or order of commitment which subjects such delinquent juvenile to probation or parole or to the legal custody of the institution or agency concerned. Such further affidavits and other documents as may be deemed proper may be submitted with such requisition. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of the appropriate court. Upon the receipt of a requisition demanding the return of a delinquent juvenile who has absconded or escaped, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such delinquent juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No delinquent juvenile detained upon such order shall be delivered over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge of an appropriate court in the state, who shall inform him of the demand made for his return and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such delinquent juvenile over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.~~

~~———— (2) Upon reasonable information that a person is a delinquent juvenile who has absconded while on~~

~~probation or parole or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact, such person may be taken into custody in any other state party to this compact without a requisition. But in such event, he must be taken forthwith before a judge of the appropriate court, who may appoint counsel or guardian ad litem for such person and who shall determine, after a hearing, whether sufficient cause exists to hold the person subject to the order of the court for such a time not exceeding 90 days as will enable his detention under a detention order issued on a requisition pursuant to this article. If, at the time when a state seeks the return of a delinquent juvenile who has either absconded while on probation or parole or escaped from an institution or agency vested with his legal custody or supervision, there is pending in the state wherein he is detained any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention, or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the delinquent juvenile being returned, shall be permitted to transport such delinquent juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he escaped or absconded, the delinquent juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.~~

~~—————(3) The state to which a delinquent juvenile is returned under this article shall be responsible for payment of the transportation cost of such return.~~

~~—————Article VI. Voluntary Return Procedure~~

~~—————Any delinquent juvenile who has absconded while on probation or parole or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact and any juvenile who has run away from any state party to this compact, who is taken into custody without a requisition in another state party to this compact under the provisions of Article IV(1) and (2) or of Article V(1) and (2), may consent to his immediate return to the state from which he absconded, escaped, or ran away. Such consent shall be given by the juvenile or delinquent juvenile and his counsel or guardian ad litem, if any, by executing or subscribing a writing, in the presence of a judge of the appropriate court, which states that the juvenile or delinquent juvenile and his counsel or guardian ad litem, if any, consent to his return to the demanding state. Before such consent shall be executed or subscribed, however, the judge, in the presence of counsel or guardian ad litem, if any, shall inform the juvenile or delinquent juvenile of his rights under this compact. When the consent has been duly executed, it shall be forwarded to and filed with the compact administrator of the state in which the court is~~

located, and the judge shall direct the officer having the juvenile or delinquent juvenile in custody to deliver him to the duly accredited officer or officers of the state demanding his return and shall cause to be delivered to such officer or officers a copy of the consent. The court may, however, upon the request of the state to which the juvenile or delinquent juvenile is being returned, order him to return unaccompanied to such state and shall provide him with a copy of such court order; in such event a copy of the consent shall be forwarded to the compact administrator of the state to which said juvenile or delinquent juvenile is ordered to return.

~~Article VII. Cooperative Supervision of Probationers and Parolees~~

~~(1) The duly constituted judicial and administrative authorities of a state party to this compact (herein called "sending state") may permit any delinquent juvenile within such state, placed on probation or parole, to reside in any other state party to this compact (herein called "receiving state") while on probation or parole, and the receiving state shall accept such delinquent juvenile, if the parent, guardian, or person entitled to the legal custody of such delinquent juvenile is residing or undertakes to reside within the receiving state. Before granting such permission, opportunity shall be given to the receiving state to make such investigations as it deems necessary. The authorities of the sending state shall send to the authorities of the receiving state copies of pertinent court orders, social case studies, and all other available information which may be of value to and assist the receiving state in supervising a probationer or parolee under this compact. A receiving state, in its discretion, may agree to accept supervision of a probationer or parolee in cases where the parent, guardian, or person entitled to the legal custody of the delinquent juvenile is not a resident of the receiving state, and if so accepted, the sending state may transfer supervision accordingly.~~

~~(2) Each receiving state will assume the duties of visitation and of supervision over any such delinquent juvenile and in the exercise of those duties will be governed by the same standards of visitation and supervision that prevail for its own delinquent juveniles released on probation or parole.~~

~~(3) After consultation between the appropriate authorities of the sending state and of the receiving state as to the desirability and necessity of returning such a delinquent juvenile, the duly accredited officers of a sending state may enter a receiving state and there apprehend and retake any such delinquent juvenile on probation or parole. For that purpose, no formalities will be required, other than establishing the authority of the officer and the identity of the delinquent juvenile to be retaken and returned. The decision of the sending state to retake a delinquent juvenile on probation or parole shall be conclusive upon and not reviewable within the receiving state, but if, at the time the sending state seeks to retake a delinquent juvenile on probation or parole, there is pending against him within the receiving state any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for any act committed in such state or if he is suspected of having committed~~

~~within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, detention, or supervision for such offense or juvenile delinquency. The duly accredited officers of the sending state shall be permitted to transport delinquent juveniles being so returned through any and all states party to this compact, without interference.~~

~~———— (4) The sending state shall be responsible under this article for paying the costs of transporting any delinquent juvenile to the receiving state or of returning any delinquent juvenile to the sending state.~~

~~————— Article VIII. Responsibility for Costs~~

~~———— (1) The provisions of Articles IV(3), V(3), and VII(4) of this compact shall not be construed to alter or affect any internal relationship among the departments, agencies, and officers of and in the government of a party state or between a party state and its subdivisions as to the payment of cost or responsibilities therefor.~~

~~———— (2) Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency, or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to Articles IV(3), V(3), or VII(4) of this compact.~~

~~————— Article IX. Detention Practices~~

~~———— To every extent possible, it shall be the policy of states party to this compact that no juvenile or delinquent juvenile shall be placed or detained in any prison, jail, or lockup or be detained or transported in association with criminal, vicious, or dissolute persons.~~

~~————— Article X. Supplementary Agreements~~

~~———— The duly constituted administrative authorities of a state party to this compact may enter into supplementary agreements with any other state or states party hereto for the cooperative care, treatment, and rehabilitation of delinquent juveniles whenever they shall find that such agreements will improve the facilities or programs available for such care, treatment, and rehabilitation. Such care, treatment, and rehabilitation may be provided in an institution located within any state entering into such supplementary agreement. Such supplementary agreements shall:~~

~~———— (1) provide the rates to be paid for the care, treatment, and custody of such delinquent juveniles, taking into consideration the character of facilities, services, and subsistence furnished;~~

~~———— (2) provide that the delinquent juvenile shall be given a court hearing prior to his being sent to another state for care, treatment, and custody;~~

~~———— (3) provide that the state receiving such a delinquent juvenile in one of its institutions shall act solely as agent for the state sending such delinquent juvenile;~~

~~———— (4) provide that the sending state shall at all times retain jurisdiction over delinquent juveniles sent to an institution in another state;~~

~~———— (5) provide for reasonable inspection of such institutions by the sending state;~~

~~———— (6) provide that the consent of the parent, guardian, person, or agency entitled to the legal custody of said delinquent juvenile shall be secured prior to his being sent to another state; and~~

~~———— (7) make provision for such other matters and details as shall be necessary to protect the rights and equities of such delinquent juveniles and of the cooperating states.~~

~~————— Article XI. Acceptance of Federal and Other Aid~~

~~———— Any state party to this compact may accept any and all donations, gifts, and grants of money, equipment, and services from the federal or any local government or any agency thereof and from any person, firm, or corporation for any of the purposes and functions of this compact and may receive and utilize the same subject to the terms, conditions, and regulations governing such donations, gifts, and grants.~~

~~————— Article XII. Compact Administrators~~

~~———— The governor of each state party to this compact shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules to carry out more effectively the terms and provisions of this compact.~~

~~————— Article XIII. Execution of Compact~~

~~———— This compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state.~~

~~————— Article XIV. Renunciation~~

~~———— This compact shall continue in force and remain binding upon each executing state until renounced by it. Renunciation of this compact shall be by the same authority which executed it, by sending 6 months' notice in writing of its intention to withdraw from the compact to the other states party hereto. The duties and obligations of a renouncing state under Article VII hereof shall continue as to parolees and probationers residing therein at the time of withdrawal until retaken or finally discharged. Supplementary agreements entered into under Article X hereof shall be subject to renunciation as provided by such supplementary agreements and shall not be subject to the 6 months' renunciation notice of the present article.~~

~~————— Article XV. Severability~~

~~———— The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the~~

~~applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters:~~

~~Article XVI. Rendition~~

~~(1) This amendment shall provide additional remedies and shall be binding only as among and between those party states which specifically execute the same:~~

~~(2) All provisions and procedures of Articles V and VI of this compact shall be construed to apply to any juvenile charged with being a delinquent by reason of a violation of any criminal law. Any juvenile charged with being a delinquent by reason of violating any criminal law shall be returned to the requesting state upon a requisition to the state where the juvenile may be found. A petition in such case shall be filed in a court of competent jurisdiction in the requesting state where the violation of criminal law is alleged to have been committed. The petition may be filed regardless of whether the juvenile has left the state before or after the filing of the petition. The requisition described in Article V of this compact shall be forwarded by the judge of the court in which the petition has been filed:~~

Article I. Purpose

(1) The compacting states to this interstate compact recognize that each state is responsible for the proper supervision or return of juveniles, delinquents, and status offenders who are on probation or parole and who have absconded, escaped, or run away from supervision and control and in doing so have endangered their own safety and the safety of others. The compacting states also recognize that each state is responsible for the safe return of juveniles who have run away from home and in doing so have left their state of residence. The compacting states also recognize that congress, by enacting 4 U.S.C. 112, has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

(2) It is the purpose of this compact, through means of joint and cooperative action among the compacting states, to:

(a) ensure that the adjudicated juveniles and status offenders subject to this compact are provided adequate supervision and services in the receiving state as ordered by the adjudicating judge or parole authority in the sending state;

(b) ensure that the public safety interests of the citizens, including the victims of juvenile offenders, in both the sending and receiving states are adequately protected;

(c) return juveniles who have run away, absconded, or escaped from supervision or control or who have been accused of an offense to the state requesting their return;

(d) make contracts for the cooperative institutionalization in public facilities in member states for delinquent youth needing special services;

(e) provide for the effective tracking and supervision of juveniles;

(f) equitably allocate the costs, benefits, and obligations of the compacting states;

(g) establish procedures to manage the movement between states of juvenile offenders released to the community under the jurisdiction of courts, juvenile departments, or other criminal or juvenile justice agencies that have jurisdiction over juvenile offenders;

(h) ensure immediate notice to jurisdictions where defined offenders are authorized to travel or to relocate across state lines;

(i) establish procedures to resolve pending charges (detainers) against juvenile offenders prior to transfer or release to the community under the terms of this compact;

(j) 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 establish regular reporting of compact activities to heads of state executive, judicial, and legislative branches and juvenile and criminal justice administrators;

(k) monitor compliance with rules governing interstate movement of juveniles and initiate interventions to address and correct noncompliance;

(l) coordinate training and education regarding the regulation of interstate movement of juveniles for officials involved in that activity; and

(m) coordinate the implementation and operation of the compact with the interstate compact for the placement of children, the interstate compact for adult offender supervision, and other compacts affecting juveniles, particularly in those cases in which concurrent or overlapping supervision issues arise.

(3) It is the policy of the compacting states that the activities conducted by the interstate commission created in this section are the formation of public policies and therefore are public business. Furthermore, 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 must be reasonably and liberally construed to accomplish the purposes and policies of the compact.

Article II. Definitions

As used in this compact, unless the context clearly requires a different construction, the following

definitions apply:

(1) "Bylaws" means those bylaws established by the interstate commission for its governance or for directing or controlling the interstate commission's actions or conduct.

(2) "Commissioner" means the voting representative of each compacting state appointed pursuant to Article III of this compact.

(3) "Compact administrator" means the individual in each compacting state appointed pursuant to the terms of this compact and 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.

(4) "Compacting state" means any state that has enacted the enabling legislation for this compact.

(5) "Court" means any court having jurisdiction over delinquent, neglected, or dependent children.

(6) "Department" means the department of corrections provided for in 2-15-2301.

(7) "Deputy compact administrator" means the individual, if any, in each compacting state appointed to act on behalf of a compact administrator, pursuant to the terms of this compact, and 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.

(8) "Interstate commission" means the interstate commission for juveniles created by Article III of this compact.

(9) "Juvenile" means any person defined as a juvenile in any member state or by the rules of the interstate commission, including:

(a) an accused delinquent, who is a person charged with an offense that, if committed by an adult, would be a criminal offense;

(b) an accused status offender, who is a person charged with an offense that, if committed by an adult, would not be a criminal offense;

(c) an adjudicated delinquent, who is a person found to have committed an offense that, if committed by an adult, would be a criminal offense;

(d) an adjudicated status offender, who is a person found to have committed an offense that, if committed by an adult, would not be a criminal offense; and

(e) a nonoffender, who is a person in need of supervision who has not been accused or adjudicated a delinquent or status offender.

(10) "Noncompacting state" means any state that has not enacted the enabling legislation for this compact.

(11) "Probation" or "parole" means any kind of supervision or conditional release of juveniles authorized under the laws of the compacting states.

(12) "Rule" means a written statement by the interstate commission promulgated pursuant to Article VI of this compact that:

(a) is of general applicability;

(b) implements, interprets, or prescribes a policy or provision of the compact or an organizational, procedural, or practice requirement of the interstate commission;

(c) has the force and effect of statutory law in a compacting state, if adopted in the state; and

(d) includes the amendment, repeal, or suspension of an existing rule.

(13) "State" means a state of the United States, the District of Columbia (or its designee), the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands.

Article III. Interstate Commission for Juveniles

(1) The compacting states hereby create the "Interstate Commission for Juveniles". The interstate commission is a body corporate and joint agency of the compacting states. The interstate commission has all the responsibilities, powers, and duties set forth in this section and additional powers that may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

(2) The interstate commission consists 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 juvenile supervision created under this section. The commissioner is the compact administrator, deputy compact administrator, or designee from that state who shall serve on the interstate commission in that capacity under or pursuant to the applicable law of the compacting state.

(3) 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. The noncommissioner members must include a member of the national organizations of governors, legislators, state chief justices, attorneys general, interstate compact for the placement of children, interstate compact for adult offender supervision, juvenile justice and juvenile corrections officials, and crime victims. All noncommissioner members of the interstate commission must be ex officio, nonvoting members. The interstate

commission may provide in its bylaws for additional ex officio, nonvoting members, including members of other national organizations, in numbers determined by the interstate commission.

(4) Each compacting state represented at any meeting of the interstate commission is entitled to one vote. A majority of the compacting states constitutes a quorum for the transaction of business unless a larger quorum is required by the bylaws of the interstate commission.

(5) The interstate commission shall meet at least once each calendar year. The presiding officer may call additional meetings and, upon the request of a simple majority of the compacting states, shall call additional meetings. Public notice must be given of all meetings, and meetings must be open to the public.

(6) The interstate commission shall establish an executive committee, which must include interstate commission officers, members, and others as determined by the bylaws. The executive committee has 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 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, administer enforcement and compliance with the provisions of the compact, its bylaws, and its rules, and perform other duties as directed by the interstate commission or set forth in the bylaws.

(7) Each member of the interstate commission has 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 may 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 bylaws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication.

(8) The interstate commission's bylaws must 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 that they would adversely affect personal privacy rights or proprietary interests.

(9) Public notice must be given of all meetings, and all meetings must be open to the public except as set forth in the rules or as otherwise provided in the compact. The interstate commission and any of its committees may close a meeting to the public when it determines by two-thirds vote that an open meeting would be likely to:

(a) relate solely to the interstate commission's internal personnel practices and procedures;

- (b) disclose matters specifically exempted from disclosure by statute;
- (c) disclose trade secrets or commercial or financial information that is privileged or confidential;
- (d) involve accusing any person of a crime or formally censuring any person;
- (e) disclose information of a personal nature when disclosure would constitute a clearly unwarranted invasion of personal privacy;
- (f) disclose investigative records compiled for law enforcement purposes;
- (g) disclose information contained in or related to examination, operating, or condition reports prepared by, or on behalf of or for the use of, the interstate commission with respect to a regulated person or entity for the purpose of regulation or supervision of the person or entity;
- (h) disclose information, the premature disclosure of which would significantly endanger the stability of a regulated person or entity; and
- (i) specifically relate to the interstate commission's issuance of a subpoena or its participation in a civil action or other legal proceeding.

(10) For every meeting closed pursuant to this provision, the interstate commission's legal counsel shall publicly certify that, in the legal counsel's opinion, the meeting may be closed to the public and shall reference each relevant exemptive provision. The interstate commission shall keep minutes that must fully and clearly describe all matters discussed in any meeting and must provide a full and accurate summary of any actions taken and the reasons for the actions, including a description of each of the views expressed on any item and the record of any roll call vote, reflected in the vote of each member on the question. All documents considered in connection with any action must be identified in the minutes.

(11) The interstate commission shall collect standardized data concerning the interstate movement of juveniles as directed through its rules, which must specify the data to be collected, the means of collection and data exchange, and reporting requirements. The methods of data collection, exchange, and reporting must in so far as is reasonably possible conform to up-to-date technology and coordinate the interstate commission's information functions with the appropriate repository of records.

Article IV. Powers and Duties of the Interstate Commission

- (1) The interstate commission has the powers and duties to:
 - (a) provide for dispute resolution among compacting states;
 - (b) promulgate rules to effect the purposes and obligations as enumerated in this compact. A rule proposed or adopted by the interstate commission is not binding on this state unless adopted by the department.
 - (c) oversee, supervise, and coordinate the interstate movement of juveniles subject to the terms of this

compact and any bylaws adopted and rules promulgated by the interstate commission;

(d) enforce compliance with the compact provisions and bylaws adopted and the rules promulgated by the interstate commission, using all necessary and proper means, including but not limited to the use of the judicial process;

(e) establish and maintain offices that must be located within one or more of the compacting states;

(f) purchase and maintain insurance and bonds;

(g) borrow, accept, hire, or contract for services of personnel;

(h) establish and appoint committees and hire staff that it considers necessary for the carrying out of its functions, including but not limited to an executive committee, as required by Article III, which has the power to act on behalf of the interstate commission in carrying out its powers and duties under this section;

(i) elect or appoint officers, attorneys, employees, agents, or consultants; to fix their compensation, define their duties, and determine their qualifications; and to establish the interstate commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation, and qualifications of personnel;

(j) accept, receive, use, and dispose of donations and grants of money, equipment, supplies, materials, and services;

(k) lease, purchase, accept contributions or donations of, or otherwise own, hold, improve, or use any property, real, personal, or mixed;

(l) sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed;

(m) establish a budget and make expenditures and levy dues as provided in Article VIII of this compact;

(n) sue and be sued;

(o) adopt a seal and bylaws governing the management and operation of the interstate commission;

(p) perform functions that may be necessary or appropriate to achieve the purposes of this compact;

(q) 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. The reports must include any recommendations that may have been adopted by the interstate commission.

(r) coordinate education, training, and public awareness regarding the interstate movement of juveniles for officials involved in that activity; and

(s) establish uniform standards of the reporting, collecting, and exchanging of data.

(2) The interstate commission shall maintain its corporate books and records in accordance with the

bylaws.

Article V. Organization and Operation of the Interstate Commission

(1) The interstate commission shall, by a majority of the members present and voting, within 12 months after the first interstate commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including but not limited to:

(a) establishing the fiscal year of the interstate commission;

(b) establishing an executive committee and other committees that may be necessary;

(c) providing for the establishment of committees and governing any general or specific delegation of any authority or function of the interstate commission;

(d) providing reasonable procedures for calling and conducting meetings of the interstate commission and ensuring reasonable notice of each meeting;

(e) establishing the titles and responsibilities of the officers of the interstate commission;

(f) 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 or reserving of all of its debts and obligations;

(g) providing startup rules for initial administration of the compact; and

(h) establishing standards and procedures for compliance and technical assistance in carrying out the compact.

(2) (a) The interstate commission shall, by a majority of the members, elect annually from among its members a presiding officer and a vice presiding officer, each of whom has the authority and duties that may be specified in the bylaws. The presiding officer or, in the presiding officer's absence or disability, the vice presiding officer shall preside at all meetings of the interstate commission. The elected officers shall serve without compensation or remuneration from the interstate commission. However, subject to the availability of budgeted funds, the officers must be reimbursed for any ordinary and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the interstate commission.

(b) The interstate commission shall, through its executive committee, appoint or retain an executive director for the period, upon the terms and conditions and for the compensation that the interstate commission may consider appropriate. The executive director shall serve as secretary to the interstate commission, but may not be a member, and shall hire and supervise other staff as may be authorized by the interstate commission.

(3) (a) Except for a claim arising from intentional conduct or gross negligence, the interstate commission's members, officers, executive director, and employees are immune from suit and liability, either

personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to any actual or alleged act, error, or omission that occurred within the course and scope of interstate commission employment, duties, or responsibilities.

(b) The liability of any commissioner, or the employee or agent of a commissioner, acting within the scope of the person's employment or duties for acts, errors, or omissions occurring within the person's state may not exceed the limits of liability set forth under the constitution and laws of that state for state officials, employees, and agents.

(c) The interstate commission shall defend an individual referred to in subsection (3)(a) in any civil action for which the individual is granted immunity under subsection (3)(a).

(d) The interstate commission shall indemnify an individual referred to in subsection (3)(a) in the amount of any settlement obtained against the individual arising out of a civil action for which the individual is granted immunity under subsection (3)(a).

Article VI. Rulemaking Functions of the Interstate Commission

(1) The interstate commission shall promulgate and publish rules in order to effectively and efficiently achieve the purposes of the compact.

(2) Rulemaking must occur pursuant to the criteria set forth in this article and the bylaws and rules adopted pursuant to this article. The rulemaking must substantially conform to the principles of the "Model State Administrative Procedures Act", 1981, Uniform Laws Annotated, Vol. 15, p. 1 (2000), or other administrative procedures act that the interstate commission considers appropriate, consistent with due process requirements under the United States constitution as now or later interpreted by the United States supreme court. All rules and amendments become binding as of the date specified, as published with the final version of the rule as approved by the interstate commission.

(3) When promulgating a rule, the interstate commission shall, at a minimum:

(a) publish the proposed rule's entire text stating the reasons for that proposed rule;

(b) allow and invite all persons to submit written data, facts, opinions, and arguments, which information must be added to the record and be made publicly available;

(c) provide an opportunity for an informal hearing if petitioned by 10 or more persons; and

(d) promulgate a final rule and its effective date, if appropriate, based on input from state or local officials or interested persons.

(4) The interstate commission shall allow, not later than 60 days after a rule is promulgated, any interested person to file a petition in the United States district court for the District of Columbia or in the federal

district court where the interstate commission's principal office is located for judicial review of a rule. If the court finds that the interstate commission's action is not supported by substantial evidence in the rulemaking record, the court shall hold the rule unlawful and set it aside. For purposes of this subsection, evidence is substantial if it would be considered substantial evidence under the Model State Administrative Procedures Act.

(5) If a majority of the legislatures of the compacting states rejects a rule, those states may, by enactment of a statute or resolution in the same manner used to adopt the compact, cause that rule to have no further effect in any compacting state.

(6) The existing rules governing the operation of the interstate compact on juveniles superseded by this act are void 12 months after the first meeting of the interstate commission created in Article III of this compact.

(7) Upon determination by the interstate commission that a state of emergency exists, it may promulgate an emergency rule that must become effective immediately upon adoption. However, the usual rulemaking procedures provided under this section must be retroactively applied to the rule as soon as reasonably possible, but no later than 90 days after the effective date of the emergency rule.

Article VII. Oversight, Enforcement, and Dispute Resolution by the Interstate Commission

(1) (a) The interstate commission shall oversee the administration and operations of the interstate movement of juveniles subject to this compact in the compacting states and shall monitor the activities being administered in noncompacting states that may significantly affect compacting states.

(b) 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 under this compact must 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 that may affect the powers, responsibilities, or actions of the interstate commission, the interstate commission is entitled to receive all service of process in that proceeding and must have standing to intervene in the proceeding for all purposes.

(2) (a) 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 rules and bylaws.

(b) The interstate commission shall attempt, upon the request of a compacting state, to resolve any disputes or other issues that are subject to the compact and that may arise among compacting states and between compacting and noncompacting states. The interstate commission shall promulgate a rule providing for

both mediation and binding dispute resolution for disputes among the compacting states.

(c) The interstate commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact using any means set forth in Article XI of this compact.

Article VIII. Finance

(1) The interstate commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.

(2) 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 must 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. The interstate commission shall promulgate a rule binding upon all compacting states that governs the assessment.

(3) The interstate commission may not incur any obligations of any kind prior to securing the funds adequate to meet the obligations. The interstate commission may not pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

(4) The interstate commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the interstate commission must be subject to the audit and accounting procedures established under its bylaws and as provided under 5-13-304. However, all receipts and disbursements of funds handled by the interstate commission must be audited yearly by a certified or licensed public accountant, and the report of the audit must be included in and become part of the annual report of the interstate commission.

Article IX. The State Council

Each member state shall create a state council for interstate juvenile supervision. Although each state may determine the membership of its own state council, its membership must include at least one representative from the executive, judicial, and legislative branches of government and victims groups and the compact administrator, deputy compact administrator, or a designee. Each compacting state retains the right to determine the qualifications of the compact administrator or deputy compact administrator. Each state council shall 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.

Article X. Compacting States, Effective Date, and Amendment

(1) Any state is eligible to become a compacting state.

(2) The compact becomes effective and binding upon legislative enactment of the compact into law by no less than 35 of the states. The initial effective date is the later of July 1, 2004, or upon enactment into law by the 35th jurisdiction. Thereafter, it becomes effective and binding as to any other compacting state upon enactment of the compact into law by that state. The governors of nonmember states or their designees must be invited to participate in the activities of the interstate commission on a nonvoting basis prior to adoption of the compact by all states and territories of the United States.

(3) The interstate commission may propose amendments to the compact for enactment by the compacting states. An amendment may not become effective and binding upon the interstate commission and the compacting states until it is enacted into law by unanimous consent of the compacting states.

Article XI. Withdrawal, Default, Termination, and Judicial Enforcement

(1) (a) Once effective, the compact must continue in force and remain binding upon each compacting state. However, a compacting state may withdraw from the compact by specifically repealing the statute that enacted the compact into law.

(b) The effective date of withdrawal is the effective date of the repeal.

(c) The withdrawing state shall immediately notify the presiding officer 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 60 days of its receipt of the notice.

(d) 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 extends beyond the effective date of withdrawal.

(e) Reinstatement following withdrawal of any compacting state must occur upon the withdrawing state reenacting the compact or upon a later date as determined by the interstate commission.

(2) (a) 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 bylaws or promulgated rules, the interstate commission may impose any of the following penalties:

(i) remedial training and technical assistance as directed by the interstate commission;

(ii) alternative dispute resolution;

(iii) fines, fees, and costs in amounts that are considered to be reasonable as fixed by the interstate commission; and

(iv) suspension or termination of membership in the compact, which may be imposed only after all other reasonable means of securing compliance under the bylaws and rules have been exhausted and the interstate commission has determined that the offending state is in default. Immediate notice of suspension must 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 the obligations or responsibilities imposed upon it by this compact, the bylaws, or promulgated rules and any other grounds designated in interstate commission bylaws 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 interstate commission shall stipulate the conditions and the time period within which the defaulting state shall cure its default. If the defaulting state fails to cure the default within the time period specified by the interstate commission, the defaulting state must 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 must be terminated from the effective date of termination.

(b) Within 60 days of the effective date of termination of a defaulting state, the interstate 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 the termination.

(c) 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.

(d) The interstate commission may not bear any costs relating to the defaulting state unless otherwise mutually agreed upon in writing between the interstate commission and the defaulting state.

(e) 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.

(3) 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 and its bylaws and promulgated rules against any compacting state in default. In the event that judicial enforcement is necessary, the prevailing party must be awarded all costs of the litigation, including reasonable attorney fees.

(4) (a) 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.

(b) Upon the dissolution of this compact, the compact is void and is of no further effect, the business and affairs of the interstate commission are concluded, and any surplus funds must be distributed in accordance with the bylaws.

Article XII. Severability and Construction

(1) The provisions of this compact are severable, and if any phrase, clause, sentence, or provision is unenforceable, the remaining provisions of the compact remain enforceable.

(2) The provisions of this compact must be liberally constructed to effectuate its purposes.

Article XIII. Binding Effect of Compact and Other Laws

(1) Nothing in this compact prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact.

(2) (a) All lawful actions of the interstate commission, including all bylaws and rules promulgated by the interstate commission, are binding upon the compacting states if adopted by the department.

(b) All agreements between the interstate commission and the compacting states are binding in accordance with their terms.

(c) 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 the meaning or interpretation.

(d) In the event that 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 the provision upon the interstate commission is ineffective and the obligations, duties, powers, or jurisdiction remains in the compacting state and must be exercised by the agency to which the obligations, duties, powers, or jurisdiction is delegated by law in effect at the time that this compact becomes effective."

NEW SECTION. Section 2. Two-thirds vote required. Because [section 1] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

NEW SECTION. Section 3. Contingent effective date. [This act] is effective upon receipt of written notification by the secretary of state from the director of the department of corrections that the compact has been legislatively enacted into law by the 35th compacting state.

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