



STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES

OFFICE OF YOUTH SERVICES
820 Milliani Street, Suite 817
Honolulu, Hawaii 96813

Phone: (808) 587-5700
Fax: (808) 587-5734

March 24, 2009

TO: The Honorable Jon Riki Karamatsu, Chair
House Committee on Judiciary

FROM: Martha T. Torney, Executive Director

**SUBJECT: SB 109, SD 2--RELATING TO THE INTERSTATE COMPACT
FOR JUVENILES**

Hearing: Tuesday, March 24, 2009, 2:00 p.m.
State Capitol, Conference Room 325

The Office of Youth Services (OYS) strongly supports Senate Bill 109, Senate Draft 2--Relating to Interstate Compact for Juveniles, which will enable Hawaii's participation in a new juvenile interstate compact to replace the existing compact. An interstate compact ensures the supervision of juveniles from state to state and ensures the return of juvenile runaways, escapees, and absconders to the supervising state, preventing juveniles from committing other crimes or becoming victims themselves. The Hawaii Youth Correctional Facility is currently monitoring four (4) youths from other states and does not have any youths from Hawaii being monitored by other states at this time. The State of Hawaii will need to become a participant in the new compact by December 19, 2009 for our youth to continue to be monitored by other participating states. The Office of Youth Services respectfully requests that this measure be amended to include the \$12,000 annual fee necessary to carry out the terms of the Compact.

Thank you for the opportunity to present this testimony.



The Judiciary, State of Hawaii

Testimony to the Twenty-Fifth State Legislature, Regular Session of 2009

House Committee on Judiciary

The Honorable Jon Riki Karamatsu, Chair

The Honorable Ken Ito, Vice Chair

Tuesday, March 24, 2009, 2:00 p.m.
State Capitol, Conference Room 325

by

Wendell Kikuchi

Deputy Chief Court Administrator

First Circuit

Bill No. and Title: Senate Bill No. 109, S.D. 2, H.D. 1, Relating to the Interstate Compact for Juveniles

Purpose: To adopt the new Interstate Compact for Juveniles ("New Compact") and to establish Family Court's jurisdiction under the New Compact.

Judiciary's Position:

The Judiciary strongly supports Senate Bill No. 109, S.D. 2, H.D. 1, which is part of the Judiciary's 2009 legislative package.

The bill's primary purpose is to enable Hawaii's participation in a new juvenile interstate compact, which will replace the existing Interstate Compact on Juveniles, codified as Chapter 352 of the Hawaii Revised Statutes. An interstate compact ensures the supervision of juveniles from state to state and ensures the return of juvenile runaways, escapees and absconders to the supervising state, preventing juveniles from committing other crimes or becoming victims themselves. The new compact has already been adopted by 35 states. The remaining states still belong to the existing Interstate Compact on Juveniles. On December 15, 2009, the existing compact will become null and void in the majority of states that have adopted the new compact. If Hawaii does not enact the new compact this legislative session, then as of December 15, Hawaii will no longer have the procedural means to regulate the movement across state lines of juveniles who are under the new compact's jurisdiction.



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The existing Interstate Compact on Juveniles was established in 1955. In the last five decades, the population managed by the compact has grown and changed. The increased mobility of juveniles and their families have contributed to a more difficult to manage population. Through the years, some of the language and methods of the existing compact have become antiquated and its rules and procedures are not widely agreed to or followed. Not all states have maintained identical contextual language that is a prerequisite for effective and binding interstate agreements. There have also been three amendments added to the existing compact that have not been adopted by all of the states, thereby creating even more inconsistency among the states. The existing compact also contains no enforcement mechanism for the Compact rules and there is no method for guaranteeing compliance among the compacting states.

The New Compact will address many deficiencies and inconsistencies within the current juvenile compact system. The New Compact provides for: (1) the establishment of an independent, national commission authority to administer on-going compact activity; (2) rule-making authority and a provision for significant sanctions to support essential compact operations; (3) the collection of standardized information and information sharing systems; (4) coordination and cooperation with other interstate compacts including the Interstate Compact for Adult Offender Supervision and the Interstate Compact for the Placement of Children; and (5) a mandatory funding mechanism sufficient to support essential compact operations such as staffing, data collection, and training/education.

To date, 35 states have enacted the new compact; 18 states have not. Most of the states that have enacted the new compact have language in the new compact that states that the old compact will become null and void on December 15, 2009. As previously mentioned, if Hawaii does not enact the new compact in this legislative session, after December 15, 2009, Hawaii will no longer have the procedural means to regulate the movement of juveniles across state lines or to return runaways, absconders or escapees with the 35 states that have enacted the new compact.

Hawaii has an average of 32 new cases per fiscal year. These cases require anywhere from 1-12 years of continued supervision. Hawaii currently has five youths being monitored in states that have enacted the new compact and two youths being monitored in states that have not yet enacted the new compact. Hawaii is currently monitoring 11 youths from states that have enacted the new compact and eight youths from states that have not yet enacted the new compact. In fiscal year 2007-2008, Hawaii had three runaways returned from states that have not enacted the new compact and one runaway returned from a state that has enacted the new compact. Hawaii also returned two runaways to states that have not enacted the new compact.



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The cost of operating under the New Compact will be approximately \$12,000 per year plus a 4% increase projected per year. The cost of operating under the current compact is \$400 per year. Hawaii has had transactions with 45 of the 52 compacting states since 1999. Of the seven states that Hawaii has not had any transactions with, two have enacted the new compact.

In order to continue to monitor these youths and return runaways, escapees, and absconders to their home states, Hawaii will have to operate under both compacts until all of the states have enacted the new compact. Until this happens, it is necessary to have in effect statutory language that includes references to the existing Interstate Compact on Juveniles in HRS Sections 571-11 (8) and 571-32 (e) (see Section 2, page 39, lines 7-8 and Section 3, page 40, lines 6-7 of this bill) as well as references to the new compact. We have attached proposed language in the form of House Draft 2 to address this matter.

In addition to public safety, an important reason for supervision is to ensure that each juvenile receives the best possible services to avoid future lawbreaking as juveniles and as adults. The compact is the only mechanism to ensure continued supervision. Should Hawaii not adopt the New Compact, the existing compact will become null and void in the majority of states that have adopted the new compact, on December 15, 2009. At that time, Hawaii will have no vehicle to ensure the continued supervision and return of juveniles in these states. For the reasons of public safety, the welfare of juveniles, and the protection of victims, it is in the best interest of our state to join this New Compact.

Thank you for the opportunity to present testimony on this measure.

Judiciary's Proposed Amendments to SB109 HD1

SECTION 2. Section 571-11, Hawaii Revised Statutes, is amended to read as follows:

"§571-11 Jurisdiction; children. Except as otherwise provided in this chapter, the court shall have exclusive original jurisdiction in proceedings:

- (1) Concerning any person who is alleged to have committed an act prior to achieving eighteen years of age which would constitute a violation or attempted violation of any federal, state, or local law or municipal ordinance. Regardless of where the violation occurred, jurisdiction may be taken by the court of the circuit where the person resides, is living, or is found, or in which the offense is alleged to have occurred~~[=]~~;
- (2) Concerning any child living or found within the circuit:
 - (A) Who is neglected as to or deprived of educational services because of the failure of any person or agency to exercise that degree of care for which it is legally responsible;

- (B) Who is beyond the control of the child's parent or other custodian or whose behavior is injurious to the child's own or others' welfare;
 - (C) Who is neither attending school nor receiving educational services required by law whether through the child's own misbehavior or nonattendance or otherwise; or
 - (D) Who is in violation of curfew[-];
- (3) To determine the custody of any child or appoint a guardian of any child[-];
 - (4) For the adoption of a person under chapter 578[-];
 - (5) For the termination of parental rights under sections 571-61 to 571-63[-];
 - (6) For judicial consent to the marriage, employment, or enlistment of a child, when such consent is required by law[-];
 - (7) For the treatment or commitment of a mentally defective, mentally retarded, or mentally ill child[-];
 - (8) Under the Interstate Compact on Juveniles under chapter 582[-] or the Interstate Compact for Juveniles under chapter ;

- (9) For the protection of any child under chapter 587~~[-]~~; and
- (10) For a change of name as provided in section 574-5(a)(2)(C)."

SECTION 3. Section 571-32, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) No child may be held after the filing of a petition or motion, as specified in subsection (d) [~~of this section~~], unless an order for continued detention or shelter has been made by a judge after a court hearing. If there is probable cause to believe that the child comes within section 571-11(1), the child may be securely detained, following a court hearing, in a detention facility for juveniles or may be held in a shelter. If there is probable cause to believe that the child comes within section [~~571-11(2), or section 281-101.5,~~] 281-101.5 or 571-11(2), the child may be held, following a court hearing, in a shelter but may not be securely detained in a detention facility for juveniles for longer than twenty-four hours, excluding weekends and holidays, unless the child is subject to the provisions of chapter 582, Interstate Compact on Juveniles, or chapter , Interstate Compact for Juveniles, or is allegedly in or has already been adjudicated for a violation of

a valid court order, as provided under the federal Juvenile
Justice and Delinquency Prevention Act of 1974, as amended."

**Testimony of Rick Masters, Special Counsel for Interstate Compacts
The Council of State Governments**

RE: SB 109, SD1 - Interstate Compact for Juveniles

Before the House Judiciary Committee

March 24, 2009 @ 2:00p.m.

Honorable Chair and Members of the Committee, I am Rick Masters, Special Counsel for Interstate Compacts for the Council of State Governments and I am also Interim Counsel to the newly created Interstate Commission for Juveniles. I hold a J.D. from the Brandeis School of Law of the University of Louisville and I am licensed to practice law in the Commonwealth of Kentucky as well as both of its U.S. District Courts, I am also admitted to practice before the U.S. Courts of Appeals for the 4th and 6th Circuits as well as the District of Columbia Circuit and the United States Supreme Court.

I was formerly an Assistant Attorney General for the Commonwealth of Kentucky and I am a former General Counsel for the Council of State Governments and have continued to serve as Special Counsel for Interstate Compacts for the last ten (10) years.

I have acted as the primary drafter of a number of national compacts including the Interstate Compact for Adult Offender Supervision, which has been adopted by all 50 states, D.C., Puerto Rico, and the U.S. Virgin Islands and the Interstate Compact for the Placement of Children, Interstate Compact on Educational Opportunity for Military Children, and the Interstate Compact for Juveniles which is the subject of SB 109

I have also provided legal advice to a number of existing compact commissions and have litigated court cases concerning disputes in which interstate compact provisions have been at issue in a number of U.S. District Courts and U.S. Courts of Appeals. In addition I was a co-author of a book on the subject of interstate compacts published by the American Bar Association in 2007 containing the largest compilation of legal authorities and case citations ever printed on the subject.

This project is a **joint effort by the Council of State Governments and the U.S. Department of Justice/Office of Juvenile Justice and Delinquency Prevention** to address deficiencies documented in the current Interstate Compact for Juveniles of which Hawaii is a member to provide greater accountability for juvenile criminal offenders and other juveniles who are under supervision, treatment, or who have runaway from their state of residence.

To give input into the drafting process **stakeholders involved in juvenile justice in this country served as an advisory group which directed the work of the drafting team. These groups included The National Council of Juvenile and Family Court Judges, The National Center for Juvenile Justice, The Council of Juvenile Corrections, The National Juvenile Detention Association, The National Center for Victims of Crime, and The National District Attorneys Association.**

The new compact became effective upon the enactment of at least thirty-six (36) states. Since January of this year at least seven (7) additional states have introduced the bill including Alaska, Hawaii, Nebraska, Michigan, Massachusetts, Mississippi and Oregon. California and Ohio are also actively considering the legislation. Mississippi enacted the compact just last week.

Interstate compacts are a time tested and court tested means of resolving interstate problems which are authorized under Article I, Section 10, Clause 3 of the U.S. Constitution. In our country's 220 year history some 200 compacts have been adopted of which Hawaii is a member of at least 15 of these interstate compacts.

Interstate compacts have been used for three primary purposes: 1) Boundary disputes between states' 2) Management of environmental resources 3) regulatory compacts which apply to a wide variety of multi-state problems including transportation, insurance regulation, taxation, interstate placement of foster and adopted children, criminal justice and corrections matters such as the transfer of adult offenders across state lines and education.

Compacts allow the states to exercise collective control over matters which are traditionally regulated by the states without surrendering state control to the federal government. Interstate compacts allow the states to avoid the problem of 'fifty (50) different sets of rules' with which to solve interstate problems through a uniform approach while still subject to joint state authority.

This Compact seeks to remedy the problems with the current compact by adding provisions for meaningful enforcement, administration, finances, communications, data collection and exchange, and training.

Hawaii's participation in the new compact is important for the proper accountability and care of the juveniles transferred across state lines in order to promote both public safety and proper supervision and treatment of these youth.

In summary, the new Interstate Compact for Juveniles will provide a better framework for the protection of public safety, the welfare of juveniles, and the protection of victims within the states through the improved control and regulation of the interstate movement of juveniles.

Thank you for the opportunity to address the Committee about this important public policy matter and I will be happy to respond to any questions.