



The Judiciary, State of Hawaii

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

House Committee on Finance
The Honorable Marcus R. Oshiro, Chair
The Honorable Marilyn B. Lee, Vice Chair

Friday, April 3, 2009, 2:00 p.m.
State Capitol, Conference Room 308

by

Wendell Kikuchi
Deputy Chief Court Administrator
First Circuit

Bill No. and Title: Senate Bill No. 109, S.D. 2, H.D. 2, 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. 2, which is part of the Judiciary's 2009 legislative package. The bill seeks to replace the existing Interstate Compact on Juveniles and enable Hawaii to participate in the new Interstate Compact for Juveniles (New Compact). Hawaii must enact statutory language this session to maintain its authority and procedural means to regulate the movement of juveniles under court supervision across state lines; as well as return runaways, absconders, or escapees to their originating Compact state. Without proper supervision, many minors would have difficulty obtaining appropriate treatment, and without appropriate monitoring and treatment, minors utilizing drugs, serious juvenile offenders, and sex offenders may pose a danger to themselves and their communities.



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

House Committee on Finance

Friday, April 3, 2009

Page 2

New Compact improves upon old model

The existing Interstate Compact on Juveniles was established in 1955. Over the years, the existing Compact has faced many challenges. The population managed by the Compact has grown and become increasingly more difficult to manage as juveniles and their families have become more mobile. The language and methods of the existing Compact have become antiquated, and the rules and procedures have not been widely agreed to or followed. Not all states have maintained identical contextual language that is a prerequisite for effective and binding interstate agreements and 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 member states. The existing Compact also contains no enforcement mechanism for the rules and there is no method for guaranteeing compliance among the Compacting states. All of these issues have contributed to the movement towards a New Compact.

The New Compact addresses many of the above-mentioned deficiencies and inconsistencies within the existing Compact system. The New Compact provides for the establishment of an independent, national commission to administer on-going Compact activity. The commission will have rule-making authority and a provision for significant sanctions to support essential Compact operations. The commission will also be able to collect standardized information and develop information-sharing systems and coordinate and cooperate with other interstate Compacts such as the Interstate Compact for Adult Offender Supervision and the Interstate Compact for the Placement of Children. Lastly, the New Compact will have a mandatory funding mechanism sufficient to support essential Compact operations such as staffing, data collection, and training/education.

New Compact gaining momentum

To date, the New Compact has been adopted by 36 states, and legislation to adopt the New Compact has been introduced in six other states, with two other states currently contemplating introduction of similar legislation. If this measure is not enacted in Hawaii this session, then, as of December 15, 2009, the existing Compact will become null and void and the Judiciary will not have the necessary mechanisms to manage juveniles covered by the Compact's jurisdiction.

Hawaii has an average of 32 new juvenile-offender cases each fiscal year which require between 1-12 years of continued supervision. Currently there are five youths from Hawaii 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. In addition, Hawaii is currently monitoring 11



Senate Bill No. 109, S.D. 2, H.D. 2, Relating to the Interstate Compact
for Juveniles
House Committee on Finance
Friday, April 3, 2009
Page 3

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.

Operating budget of the New Compact to be allocated among participating states

The allocation of the annual assessment amount for each state is determined by several factors, including population and the volume of interstate movement of offenders. The per-state cost for funding the New Compact in the 2009-2010 fiscal year will range between \$12,000 and \$37,000. Hawaii's cost will be the lowest allocation of \$12,000, plus a 4% increase projected per year.

Proposed amendments to Senate Bill No. 109, S.D. 2, H.D. 2:

Even with the adoption of the New Compact, Hawaii will need to keep in place the existing Compact, codified in HRS Chapter 582, in order to facilitate the transfer of juvenile offenders between Hawaii and those states that have not adopted the New Compact (the cost of operating under the current Compact is \$400 per year). Accordingly, the Judiciary requests amendments to sections 2 and 3 of the bill to reflect that Hawaii will operate under both the existing interstate Compact and the New Compact. The amendments consist of retaining, rather than repealing, statutory cross-references to Chapter 582 in the law that establishes the exclusive original jurisdiction of the Family Court (HRS § 571-11) and in the law that authorizes the secured detention of juvenile offenders for over 24 hours (HRS § 571-32). As amended, the text would appear, as follows:

SECTION 2, page 39, lines 4-5:

"(8) Under the Interstate Compact on Juveniles under chapter 582[-] or the Interstate Compact for Juveniles under chapter _____ ;"

SECTION 3, page 40, lines 3-4:

"...the provisions of chapter 582, Interstate Compact on Juveniles, or chapter _____ , Interstate Compact for Juveniles, ..."



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

House Committee on Finance

Friday, April 3, 2009

Page 4

Without the above amendments, the Family Court's exclusive original jurisdiction over proceedings under the existing interstate Compact may be in question, and the Court will lack the authority to detain for more than 24 hours juvenile offenders who transfer into the state under the existing Compact.

In addition to insuring 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 New Compact is the only mechanism to ensure continued supervision and that each juvenile receives the best possible services to avoid future lawbreaking as juveniles and as adults.

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



STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
OFFICE OF YOUTH SERVICES
820 Millilani Street, Suite 817
Honolulu, Hawaii 96813

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

April 3, 2009

TO: The Honorable Marcus R. Oshiro, Chair
House Committee on Finance

FROM: Martha T. Torney, Executive Director

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

Hearing: Friday, April 3, 2009, 2:00 p.m.
State Capitol, Conference Room 308

The Office of Youth Services (OYS) strongly supports Senate Bill 109, House Draft 2, relating to Interstate Compact for Juveniles, which will enable Hawaii's participation in the revised juvenile interstate compact to replace the existing compact. An interstate compact ensures the supervision of juveniles from state to state and allows 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) youth parolees from other states and does not have any youths from Hawaii being monitored by other states as of this date. 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.

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

RE: SB 109, SD2, HD2 - Interstate Compact for Juveniles

Before the Hawaii House Committee on Finance

April 3, 2009 @ 2:00 p.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 seven (7) additional states have introduced the bill including Alaska, Hawaii, Nebraska, Michigan, Massachusetts, Mississippi and Oregon. California, and Ohio are actively considering the legislation.

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 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 addition since thirty-six other states have now adopted the new compact and the new governing commission is revising the administrative rules regarding transfer, Hawaii will not be able to transfer youth to these 36 states, plus any additional states which join the compact this year. Even more importantly, without adopting the new compact Hawaii will lose jurisdiction over the juveniles who would otherwise be required to seek permission before transferring into Hawaii and who may relocate in Hawaii without notice or supervision. Thus public safety could be seriously undermined with regard to a potentially dangerous juvenile offender of whom Hawaii may not be aware is in the State if the new compact is not adopted.***

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.