

SB 109



The Judiciary, State of Hawaii

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

Senate Committee on Ways and Means
The Honorable Donna Mercado Kim, Chair
The Honorable Shane S. Tsutsui, Vice Chair
Monday, March 2, 2009, 9:30 a.m.
State Capitol, Conference Room 211

By

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Deputy Chief Court Administrator
First Circuit

WRITTEN TESTIMONY ONLY

Bill No. and Title: Senate Bill No. 109, S. 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. 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 at 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



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themselves. The new compact has already been adopted by 35 states. On December 15, 2009, the existing compact will become null and void in the majority of states that have adopted the new compact. The remaining states still belong to the existing Interstate Compact on Juveniles. If Hawaii does not enact the new compact during this legislative session, then as of December 15, 2009, Hawaii will no longer have the procedural means to regulate the movement across state lines or the return of juveniles, who are under court supervision, or the return of runaways, absconders or escapees with the 35 states that have already adopted the new compact.

The Interstate Compact on Juveniles provides the procedural means to regulate the movement across state lines of juveniles who are under court supervision and provides for the monitoring and/or return of these juveniles and return of juvenile runaways, absconders, or escapees who are located in another state. The Compact also provides for the monitoring and return of juveniles who require institutional care and specialized services in another state, and provides for the return of juveniles who have a pending delinquency hearing and have run away to another state.

The existing Interstate Compact on Juveniles was established in 1955. In the last 5 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 which is a prerequisite for effective and binding interstate agreements. There have also been three amendments added to the existing compact which have not been adopted by all of the states, 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) a 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) the coordination and cooperation with other interstate compacts including the Interstate Compact for Adult Offender Supervision and 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.

35 states have enacted the new compact. 18 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



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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 to 12 years of continued supervision. Hawaii currently has 5 youths being monitored in states that have enacted the new compact and 2 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 8 youths from states that have not yet enacted the new compact. In fiscal year 2007- 2008, Hawaii had 3 runaways returned from states that have not enacted the new compact and 1 runaway returned from a state that has enacted the new compact. Hawaii also returned 2 runaways to states that have not 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. It is unknown how long it will take until all states enact the new compact.

The cost of operating under the New Compact will be approximately \$12,000.00 per year plus a 4% increase projected per year. The cost of operating under the current compact is \$400.00 per year. Hawaii has had transactions with 45 of the 52 compacting states since 1999. Of the 7 states that Hawaii has not had any transactions with, 2 have enacted the new compact.

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.

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

RE: SB 109, SD1 - Interstate Compact for Juveniles

Before the Hawaii Senate Committee on Ways and Means

March 3, 2009 @ 9:30 a.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-five (35) states. Since January of this year at least three (3) additional states have introduced the bill including Hawaii, Nebraska, Michigan, Massachusetts, Mississippi and Oregon. California, Ohio and Alaska 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 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.