
WEST VIRGINIA CODE CHAPTER 49
ARTICLE 7

WV Legislature

**PART I. INTERSTATE COMPACT
ON THE PLACEMENT OF CHILDREN.**

§49-7-101. Adoption of compact.

The interstate compact on the placement of children is hereby enacted into law and entered into with all other jurisdictions legally joining therein in form substantially as follows:

INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

ARTICLE I.

PURPOSE AND POLICY.

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

- (a) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.
- (b) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.
- (c) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made.
- (d) Appropriate jurisdictional arrangements for the care of children will be promoted.

ARTICLE II.

DEFINITIONS.

As used in this compact:

- (a) "Child" means a person who, by reason of minority is legally subject to parental, guardianship or similar control.
- (b) "Sending agency" means a party state, officer or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency or other entity which sends, brings, or causes to be sent or brought any child to another party state.

(c) "Receiving state" means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.

(d) "Placement" means the arrangement for the care of a child in a family free home or boarding home or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective or epileptic or any institution primarily educational in character, and any hospital or other medical facility.

ARTICLE III.

CONDITIONS FOR REPLACEMENT.

(a) No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.

(b) Prior to sending, bringing or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

(1) The name, date and place of birth of the child.

(2) The identity and address or addresses of the parents or legal guardian.

(3) The name and address of the person, agency or institution to or with which the sending agency proposes to send, bring, or place the child.

(4) A full statement of the reasons for the proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

(c) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to paragraph (b) of this article may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive therefrom, the supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

(d) The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

ARTICLE IV.

PENALTY FOR ILLEGAL PLACEMENT.

The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. A violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any punishment or penalty, a violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place, or care for children.

ARTICLE V.

RETENTION OF JURISDICTION.

(a) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. The jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein.

(b) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of the case by the latter as agent for the sending agency.

(c) Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state; nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in paragraph (a) hereof.

ARTICLE VI.

INSTITUTIONAL CARE OF DELINQUENT CHILDREN.

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact but no placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard, prior to his or her

being sent to the other party jurisdiction for institutional care and the court finds that:

1. Equivalent facilities for the child are not available in the sending agency's jurisdiction; and
2. Institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

ARTICLE VII.

COMPACT ADMINISTRATOR.

The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in his or her jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE VIII.

LIMITATIONS.

This compact shall not apply to:

- (a) The sending or bringing of a child into a receiving state by his or her parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or his or her guardian and leaving the child with a relative or nonagency guardian in the receiving state.
- (b) Any placement, sending or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between the states which has the force of law.

ARTICLE IX.

ENACTMENT AND WITHDRAWAL.

This compact shall be open to joinder by any state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and, with the consent of Congress, the government of Canada or any province thereof. It shall become effective with respect to those jurisdictions when that other jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until two years after the effective date of the statute and until written notice of the withdrawal has been given by the withdrawing state to the Governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties and obligations under this compact of any sending agency therein with respect to a placement

made prior to the effective date of withdrawal.

ARTICLE X.

CONSTRUCTION.

The provisions of this compact shall be liberally construed to effectuate the purposes thereof. 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 party 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 party thereto, 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.

§49-7-102. Definitions; implementation.

(a) Financial responsibility for any child placed pursuant to the provisions of the Interstate Compact on the Placement of Children shall be determined in accordance with the provisions of Article V thereof in the first instance. However, in the event of partial or complete default of performance thereunder, section one hundred one, article two of this chapter may be invoked.

(b) The "appropriate public authorities" as used in Article III of the Interstate Compact on the Placement of Children shall, with reference to this state, mean the Department of Human Services and the agency shall receive and act with reference to notices required by Article III.

(c) As used in paragraph (a) of Article V of the Interstate Compact on the Placement of Children, the phrase "appropriate authority in the receiving state" with reference to this state shall mean the Department of Human Services.

(d) The officers and agencies of this state and its subdivisions having authority to place children are hereby empowered to enter into agreements with appropriate officers or agencies of or in other party states pursuant to paragraph (b) of Article V of the Interstate Compact on the Placement of Children. An agreement which contains a financial commitment or imposes a financial obligation on this state or subdivision or agency thereof is not binding unless it has the approval in writing of the Auditor in the case of the state and of the chief local fiscal officer in the case of a subdivision of the state.

(e) Any requirements for visitation, inspection or supervision of children, homes, institutions or other agencies in another party state which may apply under sections one hundred eight and one hundred eleven, article two of this chapter shall be deemed to be met if performed pursuant to an agreement entered into by appropriate officers or agencies of this state or a subdivision thereof as contemplated by paragraph (b) of Article V of the Interstate Compact on the Placement of Children.

(f) Section one hundred nine, article two of this chapter does not apply to placements made pursuant to the Interstate Compact on the Placement of Children.

(g) Any court having jurisdiction to place delinquent children may place a child in an institution of or in another state pursuant to Article VI of the Interstate Compact on the Placement of Children and shall retain jurisdiction as provided in Article V thereof.

(h) As used in Article VII of the interstate compact on the placement of children, the term "executive head" means the Governor. The Governor is hereby authorized to appoint a compact administrator in accordance with the terms of that Article VII.

§49-7-201. Interstate adoption assistance compact; findings and purpose.

(a) The Legislature finds that:

(1) Finding adoptive families for children, for whom state assistance is desirable pursuant to section one hundred twelve, article four, of this chapter and assuring the protection of the interests of the children affected during the entire assistance period, require special measures when the adoptive parents move to other states or are residents of another state; and

(2) Provision of medical and other necessary services for children, with state assistance, encounters special difficulties when the provision of services takes place in other states.

(b) The purposes of sections two hundred one through two hundred four of this article are to:

(1) Authorize the Department of Human Services to enter into interstate agreements with agencies of other states for the protection of children on behalf of whom adoption assistance is being provided by the Department of Human Services; and

(2) Provide procedures for interstate children's adoption assistance payments, including medical payments.

§49-7-202. Interstate adoption assistance compacts authorized; definitions.

(a) The Department of Human Services is authorized to develop, participate in the development of, negotiate and enter into one or more interstate compacts on behalf of this state with other states to implement one or more of the purposes set forth in sections two hundred one through two hundred four of this article. When so entered into, and for so long as it shall remain in force, the compact shall have the force and effect of law.

(b) For the purposes of sections two hundred one through two hundred four of this article, the term "state" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or a Territory or Possession of or administered by the United States.

(c) For the purposes of sections two hundred one through two hundred four of this article, the term "adoption assistance state" means the state that is signatory to an adoption assistance agreement in a particular case.

(d) For the purposes of sections two hundred one through two hundred four of this article, the term "residence state" means the state of which the child is a resident by virtue of the residence of the adoptive parents.

§49-7-203. Interstate adoption assistance compact; contents of compact.

A compact entered into pursuant to the authority conferred by sections two hundred one through two hundred four of this article shall have the following content:

- (1) A provision making it available to joinder by all states.
- (2) A provision or provisions for withdrawal from the compact upon written notice to the parties, but with a period of one year between the date of the notice and the effective date of the withdrawal.
- (3) A requirement that the protections afforded by or pursuant to the compact continue in force for the duration of the adoption assistance and be applicable to all children and their adoptive parents who on the effective date of the withdrawal are receiving adoption assistance from a party state other than the one in which they are resident and have their principal place of abode.
- (4) A requirement that each instance of adoption assistance to which the compact applies be covered by an adoption assistance agreement in writing between the adoptive parents and the state department which undertakes to provide the adoption assistance, and further, that the agreement be expressly for the benefit of the adopted child and enforceable by the adoptive parents, and the state agency providing the adoption assistance.
- (5) Other provisions as may be appropriate to implement the proper administration of the compact.

§49-7-204. Medical assistance for children with special needs; rule-making; penalties.

(a) A child with special needs resident in this state who is the subject of an adoption assistance agreement with another state shall be entitled to receive a medical assistance identification from this state upon the filing in the Department of Human Services of a certified copy of the adoption assistance agreement obtained from the adoption assistance state. In accordance with regulations of the Department of Human Services the adoptive parents shall be required at least annually to show that the agreement is still in force or has been renewed.

(b) The Department of Human Services shall consider the holder of a medical assistance identification pursuant to this section as any other holder of a medical assistance identification under the laws of this state and shall process and make payment on claims on account of the holder in the same manner and pursuant to the same conditions and procedures as for other recipients of medical assistance.

(c) The Department of Human Services shall provide coverage and benefits for a child who is in another state and who is covered by an adoption assistance agreement made by the Department of Human Services for the coverage or benefits, if any, not provided by the residence state. To this end, the adoptive parents acting for the child may submit evidence of payment for services or benefit amounts not payable in the residence state and shall be reimbursed therefor. However, there may be no reimbursement for services or benefit amounts covered under any insurance or other third party medical contract or arrangement held by the child or the adoptive parents. The Department of Human Services shall propose rules in accordance with article three, chapter twenty-nine-a of this code that are necessary to effectuate the requirements and purposes of this section. The additional coverages and benefit amounts provided pursuant to this section shall be for services to the cost of which there is no federal contribution, or which, if federally aided, are not provided by the residence state. Among other things, the regulations shall include procedures to be followed in obtaining prior approvals for services in those instances where required for the assistance.

(d) Any person who submits a claim for payment or reimbursement for services or benefits pursuant to this section or the making of any statement in connection therewith, which claim of statement the maker knows or should know to be false, misleading or fraudulent is guilty of a felony and, upon conviction, shall be fined not more than \$10,000, or incarcerated in a correctional facility not more than two years, or both fined and incarcerated.

(e) This section applies only to medical assistance for children under adoption assistance agreements from states that have entered into a compact with this state under which the other state provides medical assistance to children with special needs under adoption assistance agreements made by this state. All other children entitled to medical assistance pursuant to adoption assistance agreements entered into by this state shall be eligible to receive it in accordance with the laws and procedures applicable thereto.

PART III. INTERSTATE COMPACT FOR JUVENILES.

§49-7-301. Execution of interstate compact for juveniles.

The Governor of this state is authorized and directed to execute a compact on behalf of the State of West Virginia with any state or states of the United States legally joining therein, and substantially as follows:

INTERSTATE COMPACT FOR JUVENILES

ARTICLE I.

PURPOSE.

(a) 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 so doing 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 the Crime Control Act, 4 U.S.C. Section 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

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

(1) To 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;

(2) To 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;

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

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

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

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

(7) To establish procedures to manage the movement between states of juvenile offenders released to the community under the jurisdiction of courts, juvenile departments, or any

other criminal or juvenile justice agency which has jurisdiction over juvenile offenders;

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

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

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

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

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

(13) To 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 where concurrent or overlapping supervision issues arise.

(c) It is the policy of the compacting states that the activities conducted by the interstate commission created herein 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 shall 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:

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

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

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

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

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

(f) "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 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.

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

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

(1) Accused delinquent - a person charged with an offense that, if committed by an adult, would be a criminal offense;

(2) Adjudicated delinquent - a person found to have committed an offense that, if committed by an adult, would be a criminal offense;

(3) Accused status offender - a person charged with an offense that would not be a criminal offense if committed by an adult;

(4) Adjudicated status offender - a person found to have committed an offense that would not be a criminal offense if committed by an adult; and

(i) Nonoffender - a person in need of supervision who has not been accused or adjudicated a status offender or delinquent.

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

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

(l) "Rule" means a written statement by the interstate commission promulgated pursuant to Article VI of this compact that is of general applicability, implements, interprets or prescribes a policy or provision of the compact, or an organizational, procedural, or practice requirement of the commission, and has the force and effect of statutory law in a compacting

state, and includes the amendment, repeal, or suspension of an existing rule.

(m) "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.

(a) The compacting states hereby create the "Interstate Commission for Juveniles." The commission shall be a body corporate and joint agency of the compacting states. The commission shall have all the responsibilities, powers and duties set forth herein, and the additional powers as may be conferred upon it by subsequent action of the respective Legislatures of the compacting states in accordance with the terms of this compact.

(b) The interstate commission shall consist 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 hereunder. The commissioner shall be the compact administrator, deputy compact administrator or designee from that state who shall serve on the interstate commission in the capacity under or pursuant to the applicable law of the compacting state.

(c) 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 adult offender supervision, interstate compact for the placement of children, juvenile justice and juvenile corrections officials, and crime victims. All noncommissioner members of the interstate commission shall be ex officio (nonvoting) members. The interstate commission may provide in its bylaws for the additional ex officio (nonvoting) members, including members of other national organizations, in such numbers as shall be determined by the commission.

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

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

(f) The interstate commission shall establish an executive committee, which shall include commission officers, members, and others as determined by the bylaws. The executive

committee shall have the power to act on behalf of the interstate commission during periods when the interstate commission is not in session, with the exception of rule making and/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; administers enforcement and compliance with the provisions of the compact, its bylaws and rules, and performs other duties as directed by the interstate commission or set forth in the bylaws.

(g) Each member of the interstate commission shall have 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 shall 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.

(h) The interstate commission's bylaws shall 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 they would adversely affect personal privacy rights or proprietary interests.

(i) Public notice shall be given of all meetings and all meetings shall 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 where it determines by two-thirds vote that an open meeting would be likely to:

- (1) Relate solely to the interstate commission's internal personnel practices and procedures;
- (2) Disclose matters specifically exempted from disclosure by statute;
- (3) Disclose trade secrets or commercial or financial information which is privileged or confidential;
- (4) Involve accusing any person of a crime, or formally censuring any person;
- (5) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
- (6) Disclose investigative records compiled for law-enforcement purposes;
- (7) 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;

(8) Disclose information, the premature disclosure of which would significantly endanger the stability of a regulated person or entity; or

(9) Specifically relate to the interstate commission's issuance of a subpoena, or its participation in a civil action or other legal proceeding.

(j) For every meeting closed pursuant to subsection (i) of this section, 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 which shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons therefore, 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 shall be identified in the minutes.

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

ARTICLE IV.

POWERS AND DUTIES OF THE INTERSTATE COMMISSION.

The interstate commission shall have the following powers and duties:

(a) To provide for dispute resolution among compacting states.

(b) To promulgate rules to effect the purposes and obligations as enumerated in this compact, which shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact.

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

(e) To establish and maintain offices which shall be located within one or more of the compacting states.

- (f) To purchase and maintain insurance and bonds.
- (g) To borrow, accept, hire or contract for services of personnel.
- (h) To establish and appoint committees and hire staff which it deems necessary for the carrying out of its functions including, but not limited to, an executive committee as required by Article III which shall have the power to act on behalf of the interstate commission in carrying out its powers and duties hereunder.
- (i) To elect or appoint officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties and determine their qualifications.
- (j) To establish the interstate commission's personnel policies and programs relating to, inter alia, conflicts of interest, rates of compensation, and qualifications of personnel.
- (k) To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of it.
- (l) To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use any property, real, personal, or mixed.
- (m) To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal or mixed.
- (n) To establish a budget and make expenditures and levy dues as provided in Article VIII of this compact.
- (o) To sue and be sued.
- (p) To adopt a seal and bylaws governing the management and operation of the interstate commission.
- (q) To perform functions as may be necessary or appropriate to achieve the purposes of this compact.
- (r) To 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. Reports shall also include any recommendations that may have been adopted by the interstate commission.
- (s) To coordinate education, training and public awareness regarding the interstate movement of juveniles for officials involved in the activity.
- (t) To establish uniform standards of the reporting, collecting and exchanging of data.
- (u) The interstate commission shall maintain its corporate books and records in accordance

with the bylaws.

ARTICLE V.

ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION.

Section A. Bylaws.

(a) The interstate commission shall, by a majority of the members present and voting, within twelve 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:

- (1) Establishing the fiscal year of the interstate commission;
- (2) Establish an executive committee and the other committees as may be necessary to;
- (3) Provide for the establishment of committees governing any general or specific delegation of any authority or function of the interstate commission;
- (4) Provide reasonable procedures for calling and conducting meetings of the interstate commission, and ensure reasonable notice of each meeting;
- (5) Establish the titles and responsibilities of the officers of the interstate commission;
- (6) Provide 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 and/or reserving of all of its debts and obligations.
- (7) Providing "start-up" rules for initial administration of the compact; and
- (8) Establish standards and procedures for compliance and technical assistance in carrying out the compact.

Section B. Officers and Staff.

(b) (1) The interstate commission shall, by a majority of the members, elect annually from among its members a chairperson and a vice chairperson, each of whom shall have the authority and duties as may be specified in the bylaws. The chairperson or, in the chairperson's absence or disability, the vice-chairperson shall preside at all meetings of the interstate commission. The officers so elected shall serve without compensation or remuneration from the interstate commission; provided that, subject to the availability of budgeted funds, the officers shall 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.

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

Section C. Qualified Immunity, Defense and Indemnification.

(c)(1) The commission's executive director and employees shall be 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, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities; provided, that any such person shall not be protected from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

(2) The liability of any commissioner, or the employee or agent of a commissioner, acting within the scope of a person's employment or duties for acts, errors, or omissions occurring within such 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. Nothing in this subsection shall be construed to protect a person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of a person.

(3) The interstate commission shall defend the executive director or the employees or representatives of the interstate commission and, subject to the approval of the Attorney General of the state represented by any commissioner of a compacting state, shall defend the commissioner or the commissioner's representatives or employees in any civil action seeking to impose liability arising out of any actual or alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.

(4) The interstate commission shall indemnify and hold the commissioner of a compacting state, or the commissioner's representatives or employees, or the interstate commission's representatives or employees, harmless in the amount of any settlement or judgment obtained against such persons arising out of any actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such persons.

ARTICLE VI.

RULE-MAKING FUNCTIONS OF THE INTERSTATE COMMISSION.

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

(b) Rule making shall occur pursuant to the criteria set forth in this article and the bylaws and rules adopted pursuant thereto. Such rule making shall substantially conform to the principles of the "Model State Administrative Procedures Act," 1981 Act, Uniform Laws Annotated, Vol. 15, p.1 (2000), or such other administrative procedures act, as the interstate commission deems appropriate consistent with due process requirements under the U.S. Constitution as now or hereafter interpreted by the U.S. Supreme Court. All rules and amendments shall become binding as of the date specified, as published with the final version of the rule as approved by the commission.

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

(1) Publish the proposed rule's entire text stating the reason(s) for that proposed rule;

(2) Allow and invite any and all persons to submit written data, facts, opinions and arguments, which information shall be added to the record, and be made publicly available;

(3) Provide an opportunity for an informal hearing if petitioned by ten (10) or more persons; and

(4) Promulgate a final rule and its effective date, if appropriate, based on input from state or local officials, or interested parties.

(d) Allow, not later than sixty 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 such rule. If the court finds that the interstate commission's action is not supported by substantial evidence in the rule-making 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.

(e) 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 such rule shall have no further force and effect in any compacting state.

(f) The existing rules governing the operation of the "Interstate Compact on Juveniles" superceded by this article shall be null and void twelve months after the first meeting of the interstate commission created hereunder.

(g) Upon determination by the interstate commission that a state-of-emergency exists, it may

promulgate an emergency rule which shall become effective immediately upon adoption, provided that the usual rule-making procedures provided hereunder shall be retroactively applied to the rule as soon as reasonably possible, but no later than ninety days after the effective date of the emergency rule.

ARTICLE VII.

OVERSIGHT, ENFORCEMENT AND DISPUTE

SOLUTION BY THE INTERSTATE COMMISSION.

Section A. Oversight.

(a)(1) 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 such activities being administered in noncompacting states which may significantly affect compacting states.

(2) 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.

(3) The provisions of this compact and the rules promulgated hereunder shall 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.

(4) In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact which may affect the powers, responsibilities or actions of the interstate commission, it shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes.

Section B. Dispute Resolution.

(b)(1) 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 bylaws and rules.

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

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

compact.

ARTICLE VIII.

FINANCE.

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

(b) 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 shall 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 and shall promulgate a rule binding upon all compacting states which governs the assessment.

(c) The interstate commission shall not incur any obligations of any kind prior to securing the funds adequate to meet the same; nor shall the interstate commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

(d) The interstate commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the interstate commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the interstate commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall 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. While each state may determine the membership of its own state council, its membership must include at least one representative from the legislative, judicial, and executive branches of government, victims groups, and the compact administrator, deputy compact administrator or designee. Each compacting state retains the right to determine the qualifications of the compact administrator or deputy compact administrator. Each state council will 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.

(a) Any state, 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 as defined in Article II of this compact is eligible to become a compacting state.

(b) The compact shall become effective and binding upon legislative enactment of the compact into law by no less than thirty-five of the states. The initial effective date shall be the later of July 1, 2004, or upon enactment into law by the thirty-fifth jurisdiction. Thereafter it shall become 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 shall 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.

(c) The interstate commission may propose amendments to the compact for enactment by the compacting states. No amendment shall become effective and binding upon the interstate commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

ARTICLE XI.

WITHDRAWAL, DEFAULT, TERMINATION AND JUDICIAL ENFORCEMENT.

Section A. Withdrawal.

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

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

(3) The withdrawing state shall immediately notify the chairperson 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 sixty days of its receipt thereof.

(4) 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 extend beyond the effective date of withdrawal.

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

Section B. Technical Assistance, Fines, Suspension, Termination and Default.

(b)(1) 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 duly promulgated rules, the interstate commission may impose any or all of the following penalties:

(A) Remedial training and technical assistance as directed by the interstate commission;

(B) Alternative dispute resolution;

(C) Fines, fees, and costs in such amounts as are deemed to be reasonable as fixed by the interstate commission; and

(D) Suspension or termination of membership in the compact shall be imposed only after all other reasonable means of securing compliance under the bylaws and rules have been exhausted and the interstate commission has therefore determined that the offending state is in default. Immediate notice of suspension shall 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.

(2) The grounds for default include, but are not limited to, failure of a compacting state to perform such obligations or responsibilities imposed upon it by this compact, the bylaws, or duly promulgated rules and any other grounds designated in commission bylaws and rules.

(3) 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.

(4) The commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the commission, the defaulting state shall 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 shall be terminated from the effective date of termination.

(5) Within sixty days of the effective date of termination of a defaulting state, the 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 such termination.

(6) 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.

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

(8) 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.

Section C. Judicial Enforcement.

(c) The interstate commission may, by majority vote of the members, initiate legal action in the United States 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, its duly promulgated rules and bylaws, against any compacting state in default. In the event judicial enforcement is necessary the prevailing party shall be awarded all costs of such litigation including reasonable attorneys fees.

Section D. Dissolution of Compact.

(d)(1) 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.

(2) Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the interstate commission shall be concluded and any surplus funds shall be distributed in accordance with the bylaws.

ARTICLE XII.

SEVERABILITY AND CONSTRUCTION.

(a) The provisions of this compact shall be severable, and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

(b) The provisions of this compact shall be liberally construed to effectuate its purposes.

ARTICLE XIII.

BINDING EFFECT OF COMPACT AND OTHER LAWS.

Section A. Other Laws.

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

(2) All compacting states' laws other than state Constitutions and other interstate compacts conflicting with this compact are superseded to the extent of the conflict.

Section B. Binding Effect of the Compact.

(b)(1) All lawful actions of the interstate commission, including all rules and bylaws promulgated by the interstate commission, are binding upon the compacting states.

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

(3) 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 such meaning or interpretation.

(4) In the event 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 such provision upon the interstate commission shall be ineffective and such obligations, duties, powers or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers or jurisdiction are delegated by law in effect at the time this compact becomes effective.

§49-7-302. State council for interstate juvenile supervision; members; authority.

(a) Upon the effective date of the interstate compact for juveniles, there shall be created a state council for interstate juvenile supervision. The state council shall be comprised of a total of nine members, to be selected and designated as follows:

(1) Two members designated by the Legislature, one of whom shall be named and appointed by the Speaker of the House, and the other of whom shall be designated by the President of the Senate;

(2) Two members designated by the judiciary, both of whom shall be named and appointed by the Chief Justice of the Supreme Court of Appeals of West Virginia;

(3) The compact administrator or a designee of the compact administrator; and

(4) Four members to be designated and appointed by the Governor, two of whom must be representatives of state agencies dealing with juvenile corrections, juvenile placement or juvenile services, and one of whom must be a representative of a victims' group.

(b) Within ninety days of the effective date of this compact, the state council shall meet and designate a commissioner who shall represent the state as the compacting state's voting representative under Article III of this compact.

(c) The state council will exercise oversight and advocacy concerning West Virginia's participation in interstate commission activities and rule makings, and engage in other duties and activities as determined by its members, including, but not limited to, the development of policy concerning the operations and procedures for implementing the compact and interstate commission rules within West Virginia.

§49-7-303. Appointment of compact administrator.

(a) Upon and after the effective date of the interstate compact for juveniles, the Governor is hereby authorized and empowered to designate an officer who shall be the compact administrator and who, acting jointly with like offices of the other party states, shall be responsible for the administration and management of this state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the interstate commission and the policies adopted by the state council under this compact. The compact administrator shall serve subject to the will and pleasure of the Governor, and must meet the minimum qualifications for the position of compact administrator, as established by the state council. The compact administrator is hereby authorized, empowered and directed to cooperate with all departments, agencies and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact or of any supplementary agreement or agreements entered into by this state hereunder.

(b) Until the state council has met and established minimum qualifications for the position of compact administrator the individual or administrator who has been designated to act as the juvenile compact administrator for the interstate compact for juveniles may perform the duties and responsibilities of compact administrator under this article.

(c) Until the state council has met and designated a commissioner to vote on behalf of the State of West Virginia at the interstate commission, the individual or administrator who has been designated to act as the juvenile compact administrator for the interstate compact for juveniles shall function as the acting commissioner for the State of West Virginia before the interstate commission formed under the new compact.

§49-7-304. Notification of the effective date of the interstate compact for juveniles.

Within ten days of the date that the thirty-fifth state adopts legislation approving this compact, the appointed or designated juvenile compact administrator under section three hundred three, article seven of this chapter shall advise the Governor, the Chief Justice of the Supreme Court of Appeals of West Virginia, the Speaker of the House of Delegates and the President of the Senate of the effective date of this compact.

WV Legislature