



# REGIONAL RESOURCE

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## The Proposed Interstate Compact for Adult Offender Supervision

Over the past two years, The National Institute of Corrections, The Council of State Governments, state and local officials, corrections administrators, victim's rights advocates and other criminal justice groups nationwide have worked together in drafting a new compact to replace the Interstate Compact for the Supervision of Parolees and Probationers. This *Regional Resource* summarizes the existing compact and its proposed revision, the Interstate Compact for Adult Offender Supervision. Much of this information is directly quoted and condensed from the work of those groups, as well as reports from the National Institute of Corrections (NIC), United States Department of Justice.

### Background

Currently, there are over a quarter of a million adult probationers and parolees residing in states other than where they were sentenced. Offenders who travel from state to state are currently overseen by approximately 3,285 different local parole and probation offices, which operate within 860 different agencies. With such mobility and fragmented supervision, it becomes increasingly difficult to adequately account for all offenders at all times. To address this, various efforts have been made to improve the public's safety and meet the concerns of victims by enhancing the ability of state and local probation and parole agencies to manage the movement of offenders who cross state lines.

Toward this end, states have implemented interstate compacts, which are agreements between two or more states binding them to the document's provisions. These compacts are subject to the substantive principles of contract law and are protected by the constitutional prohibition against laws that impair the obligations of contracts. Currently, there are 17 such interstate agreements addressing corrections and crime control issues.

### Current Parole and Probation Compact

Since 1937, the Interstate Compact for the Supervision of Parolees and Probationers (ISC) has provided the sole statutory authority for regulating the transfer of adult parole and probation supervision across state boundaries. It is the earliest corrections compact established among the states and has not been amended since its adoption.

Though authorized by federal statute, this compact is an instrument of the states, with its activities managed by the Parole and Probation Compact Administrators' Association (PPCAA--an organization composed of the compact's administrators and their deputies in each state). There is no federal involvement in its operation. Compact membership includes 47 states, the District of Columbia, Puerto Rico and the Virgin Islands, all of which passed identical laws between the late 1930s and early 1950s.

In addition to listing the prerequisites which must be met so that an adult probationer or parolee may move from one state to another, the current compact, in summary, enumerates the following conditions:

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- ▶ that a receiving state shall assume a sending state's policies regarding visitation and supervision;
- ▶ that officers of a sending state may apprehend and retake any person on probation or parole if there are no pending charges against or suspected of that person in the receiving state;
- ▶ that an officer, designated by the governor, of each state shall promulgate rules and regulations deemed necessary to more effectively carry out the rules of the compact;
- ▶ the terms by which the compact becomes effective and its full force of law, the execution of which is to be in accordance with the laws of an executing state; and
- ▶ the consequences of withdrawal from the compact.

### **The Working Groups**

Many have argued, however, that the current ISC is outdated and is ineffective in adequately monitoring the increased number of adult offenders moving from state to state. Additionally, many other shortcomings of the current compact have been identified.

Addressing these deficiencies and proposing a revised ISC was the result of nearly a year of public hearings, research and dialogue among legislators, attorneys general, district attorneys, parole and probation officials and victim's rights groups across the nation. This effort has been organized and staffed by both The Council of State Governments and the National Institute of Corrections (NIC). In August 1997, a presentation was made to the full NIC Advisory Board concerning the status of interstate supervision. That presentation led to all subsequent activity, including the creation of an ad hoc committee to consider a proper response to compact issues that had been identified. On behalf of that committee, in 1997 the NIC Information Center conducted an extensive study which, when completed, included responses from 65 probation and/or parole state compact administrators; 118 probation and/or parole agency administrators; and 95 probation

and/or parole field staff from 32 states and the District of Columbia.

Additionally, the NIC has sponsored a number of conferences and committee presentations to organizations including the American Correctional Association, American Probation and Parole Association, Parole and Probation Compact Administrators' Association, and the Association of Paroling Authorities, International. Each presentation has included an opportunity for critique and comment. Feedback from the NIC survey and public hearings formed the basis upon which the revised ISC was drafted.

### **Deficiencies of the Current System**

Resulting from these discussions was an overwhelming recommendation to amend the current ISC to bring about an effective management capacity, while at the same time addressing public safety concerns as well as correctional systems' and offender accountability.

The ISC was created in 1937, when only a few thousand offenders were being supervised in states other than where they were sentenced. With over a quarter of a million supervised today, many feel the ISC is now overwhelmed and seriously outdated, leading to a lack of:

- ▶ structure that can effectively monitor the movement of parolees and probationers across state lines;
- ▶ agreement among states regarding the definition of supervision;
- ▶ ability for its rule-making group to legally carry out certain key activities;
- ▶ staff provisions and the absence of a national system or agency to monitor the flow of offenders and capability to notify victims, communities and law enforcement officials of the movement of offenders from state to state; and
- ▶ any organization to identify failures to comply with the compact and resolve reasons for noncompliance if necessary.

Other symptoms of problems which have been identified include frequent violations

of compact rules; difficulty in creating new rules; the unavailability of routine data; and the slow and unreliable exchange of case information. Additionally, many believe the current ISC lacks a reasonable provision for funding.

In short, according to NIC's findings, this is a system "badly in need of empowerment through clear authority, increased resources and a workable management structure." As evidence of the need for revision, some states have recently-- through legislation or executive order--created their own criteria that are not consistent with requirements of the compact. Many fear that with more states acting independently, the existing compact will become so dysfunctional that a nationwide system for tracking and monitoring this population may one day cease to exist.

The work of the aforementioned groups has culminated in the proposal of a new ISC which, according to proponents, will "provide the framework for the promotion of public safety and protect the rights of victims through the control of the interstate movement of offenders in the community; provide for effective tracking and supervision of these offenders by the sending and receiving states; and equitably distribute the costs, benefits and obligations of the compact among member states."

### **The Proposed Compact**

Though the existing and proposed ISC both have a national body and established rules to govern the interstate movement of parolees and probationers, there are some substantial differences. The proposed ISC would legally empower compact authorities to effectively conduct business on behalf of the compact states, and sets forth a structure which keeps compact activity visible within state government. The existing compact does not.

In short, it is argued, the proposed ISC will allow states to create a more effective system for enforcing their mutually-agreed upon rules. Among its provisions is the explicit establishment of an independent compact operating authority with legal power to manage ongoing compact activity, including a provision for staff support. Other significant provisions proposed for the ISC include:

- ▶ having governor-appointed and legislature-approved representatives of all member states on the national Interstate Compact Commission which meets annually. This Commission will promulgate rules for states as well as resolve disputes between and among them;
- ▶ enhancing rule-making authority, with a provision for implementing sanctions to support essential compact operations;
- ▶ creating a mandatory funding mechanism sufficient to support essential compact operations; and
- ▶ compelling the collection of standardized information. This effort will be enhanced through the creation of a national database, utilizing current communications technology that will allow states to share offender information.

### **Rules**

Though it is impossible to determine what rules state representatives on the Interstate Compact Commission (ICC), established by the proposed ISC as its governing body, will promulgate, the Commission may adopt, revise, delete or amend rules which are currently being proposed.<sup>1</sup>

One of the major objectives cited by those proposing the revised ISC is to allow states to create an effective system for enforcing their mutually-agreed upon rules. According to the NIC, the proposed ISC will facilitate this by requiring that the

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<sup>1</sup>A major portion of the final recommendations of the national Commission to restructure the ISC consisted of the rules of practice for the operation of the current ISC. Minor amendments to the rules were adopted by the Parole and Probation Compact Administrators' Association (PPCAA) and have been incorporated in the rules set forth. These rules have been promulgated under the compact provision allowing the administrators of the various states to jointly adopt rules of procedure for operations under the ISC.

Commission shall “promulgate rules in order to effectively and efficiently achieve the purposes of the compact.” Other rule-making provisions contained in the proposed ISC are:

- ▶ publishing proposed rules in advance, allowing for persons to respond in writing and providing an opportunity for an informal hearing before any rule can be adopted;
- ▶ a majority of the legislatures of member states may reject a rule, and it would then have no further force or effect in any compacting state;
- ▶ the Interstate Compact Commission must address certain specified topics within the first 12 months of its formulation; and
- ▶ in aiding the transition process, the existing rules governing the previous compact will not be null and void until 12 months following the first meeting of the Interstate Compact Commission.

The proposed ISC also includes a number of other rules sections encompassing the following: legal notes to the compact; eligibility for supervision; arrangements for supervision; standards and procedures; standards of reciprocal supervision; retaking cases from another jurisdiction; and suggested rules of practice under the interstate revocations hearings amendment.

In addition to the Commission, the proposed ISC will create a new State Council for each state whose membership--appointed by the governor after obtaining the advice and consent of the legislature--must include at least one member from the legislative, judicial and executive branches of government; victims' groups; and compact administrators. These councils exercise oversight and advocacy concerning state participation in ICC activities, and other duties as may be determined by the member state. One member of the State Council will be designated the state's compact administrator. Each state's compact administrator (or their designee) will serve as that state's member of the Interstate Compact Commission.

It is envisioned that the State Council's make-up will afford policymakers at all levels of state government, not just the compact administrator, better awareness of interstate issues of significant public concern. Because parole and probation supervision takes place in separate government jurisdictions, branches and agencies, an ongoing comprehension of interstate supervision issues is necessary at several points within state government.

### **Requirements for Adoption**

Uniform legislation has been developed and is available for introduction in all state legislatures during their 2000/2001 sessions. The revised compact would take effect either on July 1, 2001, if legislation is passed by 35 states by then, or upon passage of the 35<sup>th</sup> state after that date.

Upon passage by the 35<sup>th</sup> state, the ISC will go into effect. Rules under the existing compact will continue during the first year of the new ISC, until such time as the Interstate Compact Commission promulgates new rules (It is anticipated that most of the existing rules will be adopted by the ICC.) States which pass the revised ISC will need to repeal the existing compact once it goes into effect. It also is possible for a state to repeal the current ISC and not pass the proposed compact, thereby revoking all agreements with other states.

After passage, a state may withdraw from the revised compact by enacting a statute specifically repealing the compact's enabling legislation. The compact would legally dissolve if a withdrawal reduced the number of compacting states to one. Because the ISC is a contract between and among states, states wishing to participate must adopt identical compact provisions. However, implementation of the proposed ISC may vary across states. If and when a state enacts this proposed legislation, at least three key state-specific areas will have to be addressed:

*finance-* determine the process and funding source necessary to pay a state's annual assessment (see *Fiscal Considerations*) for the ICC's operations;

*compact administrator-* determine the qualifications of the compact administrator and its appointing authority (i.e., if the responsibility requires a full-time position, where the position will be located within a state's organizational structure, and what additional authority, if any, will be attached to this position); and

*State Councils-* determine their resources, terms, orders of business, and organizational location (i.e., a state may have an existing function that, with minimal modification, can also fulfill the State Council responsibility; some states may want a State Council which meets frequently, requires staff support and a clear organizational designation; and other states may fashion a State Council which requires few meetings with staff supported by the compact administrator's office or other pre-existing resources).

### **Fiscal Considerations**

Operational costs for the proposed compact will be allocated among compacting states, which will provide an annual assessment to cover the Interstate Compact Commission's annual budget as approved each year. The allocation of the annual assessment amount for each state will be determined by the ICC, most likely factoring in the population of each state and the volume of interstate movement of offenders in each participating member state. Thus, states with a lower volume of offender movement could expect to pay less than a state with a higher volume.

It is proposed that the ICC, consisting of commissioners from all member states, meet on three occasions during the ISC's first year to permit sufficient time to adopt its by-laws and rules. It also is anticipated that various subcommittees including, but not limited to, an executive, steering and nominating

committee will meet several times during the first year. Subsequent to the ICC's inaugural year, it is anticipated that the Commission meet only once annually in full.

A special committee examining costs has been established and has estimated a total annual budget for the operation of the ICC at \$1,427,100. Based on the state allocation formula and the ICC's proposed budget, it is estimated that the per state cost for funding the ISC will range between \$18,000 to \$46,000 annually. The ICC will have the authority, subject to the agreement of the member states, to structure the budget in a manner and at a funding level which it deems adequate to carry out the duties and responsibilities of the interstate agency.

### **Addressing State Concerns and the Interstate Compact Commission**

The proposed compact, it is anticipated, will have in place a staff and structure that will permit early identification of potential problems and a manageable process for addressing concerns of member states in a timely manner. This will be facilitated through the presence on the ICC of one voting representative from each member state.

Additionally, it is expected that a representative of each state's legislative branch will be required to serve on the State Council, and all proposed rules of the ICC will be required to be published in advance. It is hoped that this will allow states the opportunity for input before a vote is taken, and any member state will have the chance to have its position heard on routine business and to vote for passage or rejection of rules and by-laws.

In regard to authority, the proposed ISC clarifies that member states have a contractual obligation to comply with the terms of the compact as well as the by-laws and rules promulgated by the ICC. However, the revised compact has certain provisions to check the power of the Commission. These include:

- ▶ if a majority of the legislatures of the member states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the compact, that rule shall have no further force and effect in any compacting state;
  - ▶ that amendments to the compact may be proposed by the Interstate Compact Commission for enactment by the participating states. No amendment shall become effective and binding upon the ICC and the member states unless and until it is enacted into law by unanimous consent of those states; and
  - ▶ a member state may withdraw from the ISC by enacting a statute specifically repealing the enabling statute.
- Additionally, the ICC must enact a by-law or rule providing for both mediation and binding dispute resolution among compacting states.

### Summary

With the increased offender population traveling across state lines, coupled with the current complex and fragmented system for monitoring that movement, many believe a more effective interstate compact is necessary to better ensure offender accountability and public safety. Additionally, notes Representative Mike Lawlor, Connecticut, “states’ adoption of Meagan’s laws, new victim’s rights initiatives, and increased juvenile sentences continue to require even more stringent monitoring of offenders following their conviction.” Lawlor believes that “the only way we can restore confidence in the criminal justice system is to make sure that these offenders don’t fall through the cracks,” adding that the proposed ISC “will solve this problem.”

Ellen Halbert of Victims of Violent Crime notes that the proposed compact is important because it better notifies crime victims of offenders moving from state to state and allows communities to enhance their supervision of offenders, thus preventing future crime. “All the provisions of the proposed compact are not only beneficial to the public’s safety, but also to victims as well,” added Halbert. “This is a sound investment in public safety.” 

***For additional information on the proposed ISC, please visit NIC’s Website at [www.nicic.org/inst/compact2000.htm](http://www.nicic.org/inst/compact2000.htm) or contact:***

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This Regional Resource was prepared by Todd Edwards, Regional Representative, for the Southern Legislative Conference’s (SLC) Human Services and Public Safety and Intergovernmental Affairs Committees, chaired by Senator Yvonne B. Miller, Virginia, and Delegate Dana Lee Dembrow, Maryland, respectively.

The SLC is a non-partisan, non-profit organization serving Southern state legislators and their staffs. First organized in 1947, the SLC is a regional component of The Council of State Governments, a national organization which has represented state governments for more than 65 years. The SLC is headquartered in Atlanta, Georgia.