

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Governmental Oversight and Productivity Committee

BILL: CS/SB 274

SPONSOR: Governmental Oversight and Productivity and Senator Crist

SUBJECT: Interstate Compact for Juveniles

DATE: April 13, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/1 amendment</u>
2.	<u>Chinn</u>	<u>Maclure</u>	<u>JU</u>	<u>Fav/2 amendments</u>
3.	<u>Rhea</u>	<u>Wilson</u>	<u>GO</u>	<u>Fav/CS</u>
4.	_____	_____	<u>JA</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Senate Bill 274 substantially amends s. 985.502, F.S., to revise and update the provisions of the current Interstate Compact on Juveniles (the “compact”), providing for cooperation among states in supervising and returning juveniles who have run away or escaped from detention across state boundaries. The revised compact creates an independent compact administrative agency, the Interstate Commission for Juveniles, authorized to enforce the compact and make rules necessary for the compact’s enforcement. Additionally, this bill creates s. 985.5025, F.S., which establishes the State Council for Interstate Juvenile Offender Supervision to comply with the requirements of Article IX of the compact. Senate Bill 274 also repeals several sections because the bill incorporates these sections into the new compact language it proposes.

For the compact to take effect, 35 states must pass the new compact language. The bill provides for an effective date of July 1, 2005, or upon the date the 35th state adopts the compact, whichever is later. Additionally, the bill provides for repeal two years after the effective date of the act, unless the Legislature reviews and reenacts the compact.

This bill substantially amends section 985.502 and creates section 985.5025, Florida Statutes. This bill repeals the following sections of the Florida Statutes: 985.503, 985.504, 985.505, 985.506, and 985.507.

II. Present Situation:

Interstate compacts have been called “arcane, sometimes complicated, little understood, and frequently overlooked.”¹ The issues that are regulated by interstate compacts are said to, “operate in a gray area of the Constitution involving issues of regional or national importance that do not fall within the immediate purview of the federal government, yet clearly rest beyond the realm of the states acting individually.”² As noted in a recent law review article,

Throughout the history of the United State, interstate compacts have been used to define and redefine the relationships of states and federal government on a broad range of issues. Compacts, instruments recognized by the Constitution, address matters that are ‘supra-state,’ ‘sub-federal’ in scope. There are some 196 compacts in effect today with still others being drafted or under consideration. . . .

Compacts are “. . . state laws adopted by state legislatures that bind sister states to fully enforceable contracts. Thus, compacts are concurrently statutory (within a member state) and contractual (between the member states).”³ Compacts are also “creatures of state governments” that “. . . function as the law of the United States, enforceable not only as contracts between member states, but also against individual member states under the Supremacy Clause of the Constitution.”⁴ Depending on the terms of a compact, a state may effectively cede a portion of its individual sovereignty over the subject of the agreement. “Once entered, the terms of the compact, as well as any rules and regulations authorized by the compact, supersede substantive state laws that may be in conflict, including state constitutional provisions, unless a specific exemption applies.”⁵ Further,

[t]herefore, once adopted, the only means available to change the substance of a compact (and the obligations it imposes on a member state) are through withdrawal and renegotiation of its terms, or through an amendment adopted by all member states in essentially the same form. The contractual nature of the compact controls over any unilateral actions by a state; no state being allowed to adopt any laws ‘impairing the obligation of contracts,’ including a contract adopted by state legislatures pursuant to the Compact Clause.⁶

Currently, compacts are being used to manage problems relating to water management,⁷ nuclear waste disposal,⁸ the building of interstate transportation links,⁹ regional economic development

¹ Michael L. Buenger and Richard L. Masters, *The Interstate Compact on Adult Offender Supervision: Using Old Tools to Solve New Problems*, 9 Roger Williams U. L. Rev., 1 at 1 (2003).

² *Ibid*, p.2.

³ *Ibid*, p. 22.

⁴ *Ibid*, p. 22.

⁵ *Ibid*, pp. 25-26; see, U.S. Const. Art. I, s. 10, cl. 1 A compact controls over a state’s application of its own law through the Supremacy Clause.

⁶ *Ibid*, pp. 26-27, citing *West Virginia ex rel. Dyer v. Sims*, 341 U.S. 22, 33 (1951).

⁷ Pecos River Compact, N.M. Stat. Ann. S. 72-15-19 (Michie 1978); Tex. Water Code Ann. S. 42.001 (Vernon 2000); Snake River Compact, Idaho Code s. 42-3401 (Michie 2003); Wyo. State. Ann. S. 41-12-501 (Michie 2003); Upper Colo. River Basin Compact, Ariz. Rev. State. S. 45-1321 (2003).

and regional planning,¹⁰ the placement of children and juveniles,¹¹ education,¹² mental health treatment,¹³ crime control,¹⁴ insurance regulation,¹⁵ and pollution control.¹⁶

There are a number of interstate compacts contained in the Florida Statutes to which Florida is a party, a few of which include the: (1) Apalachicola-Chattahoochee-Flint River Basin Compact;¹⁷ Commission on Interstate Cooperation;¹⁸ Compact on Qualifications of Educational Personnel;¹⁹ National Crime Prevention and Privacy Compact;²⁰ and Interstate Compact for Adult Offender Supervision.²¹

Part V of Chapter 985, F.S., (ss. 985.501-985.507, F.S.) contains the Interstate Compact on Juveniles (the “compact”). Specifically, Part V authorizes and directs the Governor to execute a compact on the state’s behalf and codifies the substantial form of the compact. This compact provides for the following procedures with respect to the movement of juveniles across state lines:

- Transfer of supervision of delinquent juveniles on probation or parole from one state to another;
- Extradition of juveniles who have been adjudicated by the court and escaped or absconded to other states while under a court’s jurisdiction;
- Return of non-delinquent runaways to their home state when informal arrangements cannot be made between the holding facility and the runaway’s parent or guardian; and
- Extradition of juveniles who may not have been adjudicated delinquent but who have been “charged” as being delinquent or have been found to be in need of services or supervision.

⁸ Southeast Interstate Low-Level Radioactive Waste Mgmt. Compact, Ala. Code s. 22-32-1 (1997); Midwest Interstate Low-Level Radioactive Waste Compact, Ind. Code Ann. S. 13-29-1 (West 1998); Northwest Interstate Compact on Low-Level Radioactive Waste Management, Alaska Stat. s. 46.45.010 (Michie 2002).

⁹ Woodrow Wilson Bridge Compact, D.C. Code Ann. S. 9-1115.01 (2001); MD. Code Ann., Transp. I s. 10-3-3 (1999); Va. Code Ann. S. 33.1-320.2 (Michie 2002).

¹⁰ Bi-State Development Agency Compact, 45 Ill. Comp. Stat. 100.0.011 (1993); Mo. Rev. Stat. s. 70.370 (1998); Tahoe Regional Planning Compact, Cal. Gov’t. Code s. 66800 (West 1997); Nev. Rev. Stat. Ann. S. 227.200 (Michie 2002); Chickasaw Trail Economic Development Compact, Miss. Code Ann. S. 57-36-1 (1972); Tenn. Code Ann. S. 13-2-301 (1999); New York-New Jersey Port Auth. Compact, N.J. Rev. Stat. s. 32:1-1 (1990); N.Y.UNCOSOL. Law s. 6401 (McKinney 2000).

¹¹ Interstate Compact on the Placement of Children, Cal. Fam. Code s. 7900 (West 2001); N.D. Cent. Code s. 14-13-01 (2002).

¹² Interstate Compact for Western Regional Cooperation in Higher Education, Haw. Rev. Stat. Ann. s. 210-2 (Michie 2000); Nev. Rev. State Ann. S. 397-020 (Michie 1998); Midwestern Higher Education Compact, 45 Ill. Comp. Stat. s. 155/1 (1993); Mich. Comp. Laws s. 390.1531 (1994).

¹³ Interstate Compact on Mental Health, N.H. Rev. Stat. Ann. S. 135-A:1 (2001); Okla. Stat. tit. 43a, s. 6-201 (1998).

¹⁴ Interstate Agreement on Detainees, Ariz. Rev. Stat. s. 31-481 (2003); N.Y. Crim. Proc. Law s. 580.20 (McKinney 1997).

¹⁵ Interstate Insurance Receivership Compact, Neb. Rev. Stat. s. 44-6501 (1998); Wis. Stat. Ann. S. 601.59 (West Supp. 2002).

¹⁶ Arkansas River Basin Compact, Ark. Code Ann. S. 15-23-4-1 (Michie 1987); Okla. Stat. tit. 82, s. 1421 (1990); Delaware River Basin Compact, Del. Code. Ann. Tit. 7, s. 6501 (1974); 32 Pa. Cons. Stat. s. 815.101 (1997); New England Interstate Water Pollution Control Compact, Me. Rev. Stat. Ann. tit. 38, s. 492 (West 1964); Ohio River Valley Water Sanitation Compact, Ind. Code Ann. S. 13-2902-1 (West 1998).

¹⁷ Section 373.71, F.S.

¹⁸ Section 13.01, F.S.

¹⁹ Section 1012.99, F.S.

²⁰ Section 943.0543, F.S.

²¹ Section 949.09, F.S.

A private entity, the Council of State Governments (CSG), and a federal agency, the Office of Juvenile Justice and Delinquency Prevention (OJJDP), are the organizations overseeing the drafting and introduction of the updated compact among all the states. According to these oversight agencies, the current compact was written 48 years ago to serve a juvenile population that looks very different today. The current compact language authorizes state compact administrators to act jointly with other state administrators to adopt rules and regulations that are more effective in implementing the terms of the compact. The association created by the state compact administrators based upon this authority is the Association of Juvenile Compact Administrators (AJCA). However, the AJCA is not specifically authorized to function in an enforcement capacity, which leaves no avenue for disciplining states that do not follow the compact.

There is no central body that can provide uniform interpretation or legal opinion of the current laws, rules, and regulations when conflicts arise among states that are members of the compact. In addition, there are no legal consequences for violating the compact if, for instance, a participating state chooses not to cooperate or claims it has no funding to cooperate with other states in moving juveniles across state lines. There are also jurisdictions that have expanded supervision and program expectations to include victim input and notification requirements, as well as sex offender registration, but none of these activities are covered under the current compact law.

For the revised compact to go into effect, 35 states must pass the new compact language. According to the CSG and the OJJDP, 21 states have passed legislation revising and updating the interstate compact, and many more states, like Florida, are taking up the legislation for consideration. The CSG and the OJJDP estimate that by the spring or fall of 2006, enough states will have ratified the compact for it to take effect.

III. Effect of Proposed Changes:

Senate Bill 274 substantially amends s. 985.502, F.S., to reflect the revised and updated provisions of the Interstate Compact on Juveniles (the “compact”), which provides for cooperation among states in supervising and returning juveniles who have run away or escaped from detention across state boundaries. The revised compact:

- Creates the Interstate Commission for Juveniles (the “Interstate Commission”), which is an independent compact administrative agency with the authority to administer ongoing compact activity;
- Requires the Interstate Commission to establish an executive committee to oversee the day-to-day activities of the administration of the compact and to act on behalf of the Interstate Commission when it is not in session;
- Mandates that the Interstate Commission meet at least annually to attend to general business, rule-making, and enforcement procedures and that each member-state must appoint one voting commissioner to represent that state’s interests on the Interstate Commission;
- Delegates rule-making authority to the Interstate Commission and makes provisions for sanctions to administer and enforce the operation of the compact;

- Provides a mandatory funding mechanism sufficient to support essential compact operations (staffing, data collection, and training/education);
- Provides for collection of standardized information and information sharing systems.
- Provides for the coordination and cooperation with other interstate compacts which have “overlapping” jurisdiction (for example, the Interstate Compact on the Placement of Children and the Interstate Compact for Adult Offender Supervision); and
- Mandates states create a State Council for Interstate Juvenile Offender Supervision comprised of a compact administrator, a representative from each of the three branches of government, a victim’s advocate, and a parent of a youth not in the juvenile justice system, to oversee state participation in the activities of the Interstate Commission.

Additionally, this bill creates s. 985.5025, F.S., which establishes the State Council for Interstate Juvenile Offender Supervision (the “council”) to comply with the requirements of Article IX of the compact as follows:

- Requires that the council consist of seven members comprised of the Secretary of Juvenile Justice, the compact administrator or his or her designee, the Executive Director of the Department of Law Enforcement or his or her designee, and four remaining members to be appointed by the Governor, who may delegate this appointment power to the Secretary of Juvenile Justice in writing on an individual basis;
- Provides that appointees may include one victim’s advocate, employees of the Department of Children and Family Services, employees of the Department of Law Enforcement who work with missing or exploited children, and a parent;
- Applies provisions of public records/open meetings requirements to the council’s proceedings and records;
- Supplies terms of office, record storage, property transfer, and reimbursement for travel and per diem expenses; and
- Creates additional duties and responsibilities for the compact administrator.

According to the Department of Juvenile Justice (DJJ), this bill will provide better enforcement and accountability measures, provide more training to local and state juvenile justice officials, and improve the speed and quality of communication through the use of technology. Florida currently operates under the rules and regulations of the AJCA, but there is no enforcement for other member states that choose not to follow these rules and regulations. If the new compact language is passed and ratified by the requisite 35 states, the rules and regulations promulgated by the Interstate Commission will become binding law on Florida.

Senate Bill 274 repeals the following sections, because comparable provisions are incorporated elsewhere in the body of the revised compact:

- s. 985.503, F.S., authorizing the Governor to designate a juvenile compact administrator;
- s. 985.504, F.S., authorizing the compact administrator to enter into supplementary agreements with officials in others states;
- s. 985.505, F.S., relating to financial arrangements to be made by the compact administrator;
- s. 985.506, F.S., mandating enforcement of the compact by courts, departments, agencies, and subdivisions of the state; and

- s. 985.507, F.S., relating to additional procedures for return of juveniles not precluded by the compact.

This bill provides for an effective date of July 1, 2005, or upon ratification of the 35th state, whichever occurs later.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Senate Bill 274 creates s. 985.5025(5), F.S., which clarifies and makes explicit that the provisions of s. 24, Article I of the State Constitution and Chapter 119 and s. 286.011, F.S., apply to the State Council for Interstate Juvenile Offender Supervision.

Further, it should be noted that pursuant to Article XII of the compact, the provisions of the compact are severable and pursuant to Article XIII of the compact, all compacting states' laws *other than state constitutions* and other interstate compacts conflicting with the compact are superseded to the extent of the conflict, thus preserving open government requirements.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article I, s. 10 of the United States Constitution provides:

. . . No state shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, *enter into any agreement or compact with another state*, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay [*emphasis added*].

The U.S. Constitution permits states to enter into compacts, in most cases subject to congressional consent. Compacts operate as contracts as well as instruments of national law applicable to member states. Any state action in conflict with its terms and conditions is null.²² Once adopted, however, the “. . . only means available to change the substance of a compact (and the obligations it imposes on a member state) are through withdrawal and renegotiation of its terms, or through an amendment adopted by all member states in essentially the same form.²³

²² ²² Michael L. Buenger and Richard L. Masters, *The Interstate Compact on Adult Offender Supervision: Using Old Tools to Solve New Problems*, 9 Roger Williams U. L. Rev., 1 at 26 (2003).

²³ *Ibid.*

The compact proposed in the bill, Article XI, section A., permits withdrawal by a state by specifically repealing the statute that enacted the compact into law. The effective date of withdrawal is the effective date of the repeal. A withdrawing member state must immediately notify the chairperson of the Interstate Commission in writing upon introduction of legislation repealing the compact in the withdrawing state. The withdrawing state is responsible for assessments, obligations, and liabilities incurred through the effective date of withdrawal, including any obligations the performance of which extends beyond the effective date of withdrawal. Reinstatement is authorized by reenactment of the compact or upon later date as determined by the Interstate Commission.

As noted *supra*, pursuant to Article XII of the compact, the provisions of the compact are severable and pursuant to Article XIII of the compact, all compacting states' laws *other than state constitutions* and other interstate compacts conflicting with the compact are superseded to the extent of the conflict. Thus, in the event of a conflict with the provisions of the State Constitution, the State Constitution prevails under the compact.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the Department of Juvenile Justice, there will be a state fiscal impact as a result of this legislation; however, it will not affect the budget until after 35 states have passed the legislation and the Interstate Commission on Juveniles (the "Interstate Commission") has been established. It is anticipated that by the spring or fall of 2006, 35 states will have passed the revised compact language, and dues will begin to be paid to the Interstate Commission. The dues are based upon the population served, and it is estimated that the fiscal impact to Florida will be \$37,000 annually. This amount may be reduced, depending on whether the Interstate Commission decides to use the staff that is used for the Interstate Compact for Adult Offender Supervision.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Rule-Making Authority

The Interstate Compact for Juveniles (the “compact”) authorizes the Interstate Commission for Juveniles (the “Interstate Commission”) to adopt and publish rules in order to effectively and efficiently achieve the purposes of the compact. The compact states that the “rulemaking 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 United States Constitution as now or hereafter interpreted by the United States Supreme Court.”²⁴ The rules and amendments become binding as of the date specified.

The “Interstate Compact for Juveniles Resource Kit,” states that this delegation of rule-making authority is necessary because:

The most effective way to manage the movement of juveniles is through an enforceable compact between states that results from member states’ ongoing participation in administrative and rule-making duties. Therein lies the ‘Catch 22.’ States, through the National Commission, cannot write the rules and regulations until the new compact exists and the initial member states are known. However, this also means that states must pass the legislation and then trust the process in place to develop appropriate rules during the compact’s first twelve months of existence. The alternative of including all the rules in the compact itself would not only sacrifice state input and participation in the development of those rules, but it would also require each compacting state the burdensome task of legislatively approving these rules.²⁵

If the bill is enacted into law, the state will have effectively bound itself to rules not yet promulgated by the Interstate Commission. The Florida Supreme Court has held that while it is within the province of the Legislature to adopt federal statutes enacted by Congress and rules promulgated by federal administrative bodies that are in existence at the time the Legislature acts, it is an unconstitutional delegation of legislative power for the Legislature to prospectively adopt federal statutes not yet enacted by Congress and rules not yet promulgated by federal administrative bodies.^{26 27} Under this holding, the constitutionality of the bill’s adoption of prospective rules may be questioned, and there does not appear to be any binding Florida case law that squarely addresses this issue in the context of interstate compacts.

The most relevant Florida court discussion of this issue appears to have occurred in *Department of Children and Family Services*, wherein the First District Court of Appeals considered an argument that the substance of regulations adopted by the Association of Administrators for the Interstate Compact on Placement of Children (ICPC) required a finding on appeal that a circuit court’s order permitting a mother and child to move was in violation of the ICPC.²⁸ The court

²⁴ Senate Bill 274, page 15, line 25, through page 16, line 1.

²⁵ *Interstate Compact for Juveniles Resource Kit*, Council of State Governments, “Frequently Asked Questions” section, page 4.

²⁶ *Freimuth v. State*, 272 So.2d 473, 476 (Fla.1972); *Fla. Indus. Comm’n v. State ex rel. Orange State Oil Co.*, 155 Fla. 772, 21 So.2d 599, 603 (1945).

²⁷ This prohibition is based upon the Separation of Powers Doctrine, set forth in Article II, section 3 of the Florida Constitution, which has been construed in Florida to require the Legislature, when delegating the administration of legislative programs, to establish minimal standards and guidelines ascertainable by reference to the enactment creating the program. See *Avatar Development Corp. v. State*, 723 So.2d 199 (Fla. 1998).

²⁸ *Department of Children and Family Services*, 801 So.2d 1047 (Fla. 1st DCA 2001).

denied this appeal and held that: (1) the Association's regulations were invalid to the extent that they conflicted with the ICPC itself; and (2) the regulations did not apply to facts of the case.²⁹

The court also noted that the ICPC confers to its compact administrators the power to promulgate rules and regulations to more effectively carry out the compact, and stated that, "The precise legal effect of the ICPC compact administrators' regulations in Florida is unclear, but we need not reach the problematic general question in order to decide the present case."³⁰ Continuing on in a footnote, the court stated:

Any regulations promulgated before Florida adopted the ICPC did not, of course, reflect the vote of a Florida compact administrator, and no such regulations were ever themselves enacted into law in Florida. When the Legislature did adopt the ICPC, it did not (and could not) enact as the law of Florida or adopt prospectively regulations then yet to be promulgated by an entity not even covered by the Florida Administrative Procedure Act. *See Freimuth v. State*, 272 So.2d 473, 476 (Fla.1972); *Fla. Indus. Comm'n v. State ex rel. Orange State Oil Co.*, 155 Fla. 772, 21 So.2d 599, 603 (1945) ("[I]t is within the province of the legislature to approve and adopt the provisions of federal statutes, and all of the administrative rules made by a federal administrative body, that are in existence and in effect at the time the legislature acts, but it would be an unconstitutional delegation of legislative power for the legislature to adopt in advance any federal act or the ruling of any federal administrative body that Congress or such administrative body might see fit to adopt in the future."); *Brazil v. Div. of Admin.*, 347 So.2d 755, 757-58 (Fla. 1st DCA 1977), *disapproved on other grounds by LaPointe Outdoor Adver. v. Fla. Dep't of Transp.*, 398 So.2d 1370, 1370 (Fla.1981). The ICPC compact administrators stand on the same footing as federal government administrators in this regard.³¹

Given the court's footnote discussion, it might be argued that this bill's delegation of rule-making authority to the Interstate Commission is like the delegation to the ICPC compact administrators, and, thus, it constitutes an unlawful delegation. However, this case does not appear to be binding precedent as the court's footnote was dicta,³² e.g., the court itself stated that the, ". . . effect of the ICPC compact administrators' regulations in Florida is unclear" Further, if the Interstate Compact for Juveniles has received Congressional consent it is distinguishable from the ICPC, which has not received such consent.³³

Congressional consent for an interstate compact is significant because Article I, section 10, clause 3 of the Federal Constitution, commonly referred to as the, "Compact Clause," prohibits states from entering into any agreement or compact with one another without the consent of Congress.³⁴ In the event Congress has authorized the states to enter into a compact, and where

²⁹ *Department of Children and Family Services*, 801 So.2d at 1052-1053.

³⁰ *Id.* at 1052.

³¹ *Id.*

³² Statements of a court that are not essential to determination of the case before it are not part of the law of the case, and, therefore, are not precedentially binding in future cases. *See Myers v. Atlantic Coast Line R. Co.*, 112 So.2d 263 (Fla. 1959).

³³ *See Mocomb v. Wambaugh*, 934 F.2d 474 (3rd Cir. 1991) (discussing the lack of congressional consent for the ICPC and holding that such consent was unnecessary).

³⁴ Congressional consent is not required for all interstate compacts. As stated by the United States Supreme Court, "Congressional consent is not required for interstate agreements that fall outside the scope of the Compact Clause. Where an agreement is not 'directed to the formation of any combination tending to the increase of political power in the States, which may encroach upon or interfere with the just supremacy of the United States,' it does not fall within the scope of the Clause

the subject matter of that compact is an appropriate subject for congressional legislation, the consent of Congress transforms the compact into federal law subject to federal construction under the Compact Clause.³⁵

At least one federal court has found that Congress consented in advance to the Interstate Compact for Juveniles through its enactment of the Crime Control Consent Act of 1934, 4 U.S.C. s. 112(a).^{36 37} Conversely, four state courts have stated that the Interstate Compact for Juveniles has not received congressional consent.³⁸ None of these decisions constitute binding case law in Florida.

If the Interstate Compact for Juveniles were held to have congressional consent in case law that is binding on Florida, the compact would be subject to construction under federal law. Federal case law addresses congressional delegations of its policymaking powers, as derived from Article I, section 1 of the United States Constitution, to administrative agencies and provides that such delegation may only be made where Congress has set forth “intelligible standards” for the agency to follow.^{39 40} Whether the federal “intelligible standards” analysis would be applied to a state’s delegation of rulemaking authority, such as that provided in the bill, to an Interstate Compact Commission is unknown, however, as there does not appear to be any federal case law addressing this precise issue. Moreover, it is difficult to project the exact analysis that would be applied as: (1) the instant issue involves state, not congressional, delegations; and (2) some federal courts have recently held that an Interstate Compact Commission is not a federal administrative agency.⁴¹

In *Old Town Trolley Tours of Washington*,⁴² the court was faced with determining the appropriate standard for reviewing licensing decisions of the Washington Metropolitan Area

and will not be invalidated for lack of congressional consent.” *Cuyler v. Adams*, 101 S.Ct. 703, 707-708 (1981). In the absence of Congressional consent, an interstate compact is construed as state law. *Mocomb*, 934 F.2d at 479.

³⁵ *Cuyler*, 101 S.Ct. at 708.; *See also Alabama v. Bozeman*, 533 U.S. 146, 149 (2001).

³⁶ The Crime Control Consent Act of 1934 states that, “The consent of Congress is hereby given to any two or more States to enter into agreements or compacts for cooperative effort and mutual assistance in the prevention of crime and in the enforcement of their respective criminal laws and policies, and to establish such agencies, joint or otherwise, as they may deem desirable for making effective such agreements and compacts.” 4 U.S.C. s. 112(a).

³⁷ *Matter of G.C.S.*, 360 A.2d 498, 499 (D.C. 1976) (stating that Congress had authorized the District of Columbia to enter the Interstate Compact on Juveniles).

³⁸ *See In re D.B.*, 431 A.2d 498 (Vt. 1981)(holding that the Interstate Compact on Juveniles was not invalid for lack of Congressional consent); *In re S.A.*, 60 Pa. D. & C.2d 55 (Pa.Com.Pl. 1972) (same); *State ex rel. Needham v. Ford*, 376 S.W.2d 486, 488 (Tenn. 1964) (recognizing the lack of Congressional consent for the Interstate Compact on Juveniles, but refraining from ruling upon the constitutionality of that issue); and *Application of Chin*, 246 N.Y.S.2d 306 (N.Y.Sup. 1963) (holding that the Interstate Compact on Juveniles was not invalid for lack of Congressional consent).

³⁹ *National Cable Television Ass’n, Inc. v. U.S.*, 94 S.Ct. 1146, 1150 (1974).

⁴⁰ Implementation of the federal unlawful delegation doctrine has rarely resulted in a congressional delegation being held unconstitutional. The United States Supreme Court has not invalidated a federal statute on unlawful delegation grounds since 1935. *See RETHINKING ARTICLE I, SECTION 1: FROM NONDELEGATION TO EXCLUSIVE DELEGATION*, 104 Colum. L. Rev. 2097, 2098, 2103, December 2004.

⁴¹ *See infra, Old Town Trolley Tours of Washington, Inc. v. Washington Metropolitan Area Transit Com’n*, 129 F.3d 201 (C.A.D.C.,1997); *See also, The Organic Cow, LLC v. Northeast Dairy Compact Com’n*, 164 F.Supp.2d 412 (D.Vt. 2001) (stating that although the Northeast Interstate Dairy Compact is the equivalent of a federal law, the Northeast Dairy Compact Commission is not the equivalent of a federal agency governed by the Administrative Procedures Act; rather, the Commission is an authority of the six New England states forming the Compact, not the United States government).

⁴² *Old Town Trolley Tours of Washington, Inc.* 129 F.3d at 203-204.

Transit Commission that was created by the congressionally-consented-to Washington Metropolitan Area Transit Regulation Compact between Maryland, Virginia, and the District of Columbia. In its analysis, the court stated that, “While the Compact may be treated as a federal law, it does not follow that the Commission is a federal agency governed by the Administrative Procedure Act. An ‘agency,’ according to the APA’s definition, ‘means each authority of the Government of the United States.’ The Commission is an authority, not of the federal government, but of Virginia, Maryland, and the District of Columbia. As a result there is a gap in need of filling.”⁴³ The court reviewed the Compact and found that while it provided for judicial review of Commission orders in the federal courts, it did not specify any standards of review. The Court then considered the standards of review set forth in 5 U.S.C. s. 706 of the federal APA, and determined that certain standards in that section could apply, but that the “substantial evidence” test did not fit as the Commission is not required by the compact to hold hearings or make findings on the record.⁴⁴

Old Town Trolley Tours of Washington appears to stand for the proposition that federal law, such as the federal APA, which is applicable to Congress and federal administrative agencies will not be purely applied in the context of a congressionally approved interstate compact and its commission; instead, such compact may be specially treated with the courts looking to the terms of the compact and formulating case law that is applicable only to a particular compact. This proposition is also suggested in a recent law review article stating that, “Although a congressionally approved compact is federalized, it remains a contract between the member states that must be interpreted within the four corners of the agreement. In interpreting and enforcing compacts, the courts are constrained to effectuate the terms compacts (as binding contracts) so long as those terms do not conflict with constitutional principles.”^{45 46}

In summary, the First District Court of Appeal’s dicta in *Department of Children and Family Services* raises the issue of whether the bill’s delegation of broad rule-making authority to the Interstate Commission constitutes an unlawful delegation of the Legislature’s policymaking power.⁴⁷ As discussed above, this issue has not been decided in case law that is binding upon Florida. Thus, if the Interstate Compact for Juveniles is challenged, it remains to be seen whether the courts will subject the Compact to state or federal law construction, and, in either case, whether the bill’s delegation of rulemaking authority will be held constitutional. If the bill’s delegation were held unconstitutional, the bill contains a severability clause stating that 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

⁴³ *Id.* at 204 (citations omitted).

⁴⁴ *Id.*

⁴⁵ *The Interstate Compact on Adult Offender Supervision: Using Old Tools to Solve New Problems*, 9 Roger Williams U. L. Rev. 71, 106, Fall 2003.

⁴⁶ The article also notes that an interstate compact commission can be viewed as, “a supra-state, sub-federal governmental body accountable to the collective member states but not subject to the control of any individual member state or the federal government.” *Id.*

⁴⁷ A virtually identical delegation of rulemaking authority was given by the Florida Legislature to the Interstate Commission for the Interstate Compact on Adult Supervision in 2001. See Ch. 2001-209, L.O.F. There are no reported court decisions construing the constitutionality of this legislation.

obligations, duties, powers, or jurisdiction are delegated by law in effect at the time this compact becomes effective.”⁴⁸

It is not clear whether repeal of the law two years from the effective date would have any impact as it relates to this concern.

Florida’s Role in the Compact

The Department of Juvenile Justice (DJJ) states that Florida has the largest number of juveniles that are subject to the “Interstate Compact on Juveniles,” and therefore the state will be greatly affected by passage of this new law. Currently, Florida sends more requests for supervision transfer than it receives. According to DJJ, if Florida does not adopt this legislation by the time it has been passed by 35 other states, it will negatively affect the state’s juvenile justice system and the juvenile offenders leaving and entering the state. The DJJ states that not passing this legislation will also affect juvenile extradition and the return of non-delinquent runaways to and from Florida, possibly creating a greater liability for Florida with regard to the offenders leaving the state under Florida court jurisdiction.

This Senate staff analysis does not reflect the intent or official position of the bill’s sponsor or the Florida Senate.

⁴⁸ House Bill 577 at lines 736-744.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
