

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 577 W/ CS

Interstate Compact for Juveniles

SPONSOR(S): Needelman

TIED BILLS:

IDEN./SIM. BILLS: SB 274 by Crist

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Juvenile Justice Committee</u>	<u>5 Y, 0 N, w/CS</u>	<u>Whittier</u>	<u>White</u>
2) <u>Justice Appropriations Committee</u>	<u>9 Y, 0 N, w/CS</u>	<u>DeBeaugrine</u>	<u>DeBeaugrine</u>
3) <u>Justice Council</u>	<u>9 Y, 0 N, w/CS</u>	<u>Whittier</u>	<u>De La Paz</u>
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Currently, ss. 985.501– 985.507, F.S., regulate the movement of juveniles across state lines and are collectively referred to as the Interstate Compact on Juveniles. The compact was established in 1955 to manage the interstate movement of adjudicated youth, the return of non-adjudicated runaway youth, and the return of youth to states where they were charged with delinquent acts. Due to changes in technology, transportation, laws, and population, however, the original compact has become outdated and has led to increasing concern about the safety of the public, as well as the welfare of juveniles. The national Council of State Governments, in cooperation with the federal Office of Juvenile Justice and Delinquency Prevention, has developed a new Interstate Compact for Juveniles and is encouraging and supervising the introduction of this legislation throughout the United States and its territories. Currently, 23 states have enacted this new compact.

HB 577 revises the provisions of the current compact. The new compact includes the following major changes to the original compact:

- Establishment of an independent compact operating authority to administer ongoing compact activity, including a provision for staff support.
- Gubernatorial appointments of representatives from member states to a national governing commission, which meets annually to elect the compact operating authority members and to attend to general business and rule-making procedures.
- Rule-making authority and provision for significant sanctions to support essential compact operations.
- A mandatory funding mechanism sufficient to support essential compact operations (staffing, data collection, training/education, etc.).
- Collection of standardized information and information-sharing systems.
- Coordination and cooperation with other interstate compacts including the Interstate Compact on the Placement of Children and the Interstate Compact for Adult Offender Supervision.
- Requirement of each state to create a state council.

In addition, the bill creates the Interstate Commission for Juveniles (commission) to oversee the administration and operations of the interstate movement of juveniles subject to the compact in the compacting states, an executive council to oversee the day-to-day activities of this commission, and the State Council for Interstate Juvenile Offender Supervision to oversee Florida's participation in the commission.

The bill will bind the state to rules that have not yet been written. The act is subject to future legislative review and repeal in two years. See *Constitutional Issues: Other*.

The Department of Juvenile Justice estimates an annual recurring cost of \$40,000 to the state. There may be other costs associated with the bill that are presently indeterminate.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0577f.JC.doc

DATE: 3/31/2005

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill creates a national Interstate Commission, an Executive Council to oversee the day-to-day activities of this commission, and a State Council to oversee Florida's participation in the commission. The act provides for more accountability, oversight, and uniformity in compacting states.

The bill subjects the state to rules that are yet to be developed and significant sanctions for violations of these rules. See *Constitutional Issues: Other*. The bill also requires the state to collect, share, and report data according to standards that have not been developed. The bill, however, includes a provision for future legislative review and repeal two years after its effective date which will allow the Legislature to reevaluate Florida's participation in the compact once new rules are promulgated.

B. EFFECT OF PROPOSED CHANGES:

Currently, ss. 985.501– 985.507, F.S., regulate the movement of juveniles across state lines and collectively are referred to as the Interstate Compact on Juveniles. The compact was established to manage the interstate movement of adjudicated youth, the return of non-adjudicated runaway youth, and the return of youth to states where they were charged with delinquent acts.

According to the Department of Juvenile Justice (department or DJJ), operation under the current compact is resulting in the following:

- Juvenile offenders are arriving in receiving jurisdictions prior to approval of their transfers.
- Gaps in supervision are occurring during the relay of the paperwork.
- Unresponsiveness to reports of violations often is leaving the status of supervision or return of juvenile offenders in question.
- Home states that neglect to address the return of the non-delinquent runaway are leaving holding states to absorb the expenditure of returning these juveniles to their home states or placing them in the holding states' foster care system.
- Newly-legislated juvenile offender registration (specifically regarding sex offenders) is not being addressed.
- There are no consequences for states that violate the compact.

Given changes in technology, transportation, laws, and population since the compact was established in 1955, the original compact has become outdated and has led to increasing concern about the safety of the public, as well as the welfare of juveniles.¹

In 1999, the National Institute of Corrections and the federal Office of Juvenile Justice and Delinquency Prevention (OJJDP) conducted a national detailed survey of the states to collect statistics on interstate activity and discovered that many issues with the current compact were causing growing concerns with the efficacy of the compact. Some of these issues concerned enforcement, administration, finances, communications, data sharing, and training. States were asked for recommendations to alleviate these concerns. The OJJDP and Council of State Governments developed an advisory group composed of policy experts representing many diverse institutions and organizations to review and analyze information from the OJJDP survey and to develop strategies and recommendations for an improved compact. Once these were formed, a drafting team consisting of policy experts from across the states

¹ See <http://www.csg.org/CSG/Policy/public+safety+and+justice/interstate+compact+for+juveniles>, *Background*.

developed the compact language based on the advisory group's recommendations. Finally, the draft of this language was given to state officials and other interested stakeholders for review and comment.²

The Council of State Governments, in cooperation with the OJJDP, is currently supervising the introduction of the Interstate Compact for Juveniles. The new compact includes the following major changes to the original compact:

- Establishment of an independent compact operating authority to administer ongoing compact activity, including a provision for staff support.
- Gubernatorial appointments of representatives from member states to a national governing commission, which meets annually to elect the compact operating authority members and to attend to general business and rule-making procedures.
- Rule-making authority and provision for significant sanctions to support essential compact operations.
- A mandatory funding mechanism sufficient to support essential compact operations (staffing, data collection, training/education, etc.).
- Collection of standardized information and information-sharing systems.
- Coordination and cooperation with other interstate compacts including the Interstate Compact on the Placement of Children and the Interstate Compact for Adult Offender Supervision.
- Requirement of each state to create a state council.³

The bill directs the Governor to execute a compact that represents a legal agreement between Florida and the other compacting states. The bill creates the Interstate Commission for Juveniles (Interstate Commission or commission), which is to oversee the administration and operations of the interstate movement of juveniles subject to the compact in the compacting states and is to monitor such activities being administered in noncompacting states. The commission is comprised of one compact administrator, deputy compact administrator, or designee, from each compacting state (one commissioner per state). In addition to the voting commissioners, the membership is also to include individuals who are not commissioners, but who are members of interested organizations. These ex officio, nonvoting members must include representatives of the national organization of governors, legislatures, 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.

The commission is to establish an executive committee that will oversee the day-to-day activities of the administration of the compact, and is to be managed by an executive director and staff. The executive director is to be appointed by the executive committee and will serve as secretary to the commission, but may not be a member of the commission. The executive committee is to administer enforcement and compliance with the provisions of the compact, its bylaws, and rules, and is to perform other duties as directed by the commission or set forth in the bylaws.

The requirements of the agreement are laid out in a series of articles which provide for the purposes of the compact; creates the commission as the governance body for compact activities; provides for the commission's authority and responsibilities; provides a financing mechanism for the commission; requires each state to create a State Council for Interstate Juvenile Supervision; provides for enforcement of the compact including imposition of fines and fees; and provides for judicial enforcement of the compact in the United States District Court for the District of Columbia or the district court where the commission's headquarters is located.

The bill creates the State Council for Interstate Juvenile Offender Supervision, which is to oversee Florida's participation in the activities of the Interstate Commission. The council is to be comprised of eight members, including the Secretary of the Department of Juvenile Justice or his or her designee,

² Ibid.

³ See <http://www.csg.org/CSG/Policy/public+safety+and+justice/interstate+compact+for+juveniles>.

who is to serve as chair of the Council, the compact administrator or his or her designee, and the Executive Director of the Department of Law Enforcement or his or her designee. The remaining five members are to be appointed by the Governor for four-year terms. Appointees must be individuals with personal or professional experience in the juvenile justice system and may include a victim's advocate, employees of the Department of Children and Family Services, employees of the Department of Law Enforcement who work with missing and exploited children, and a parent who, at the time of appointment, does not have a child involved in the juvenile justice system. Council members are not compensated, but may be reimbursed for per diem and travel expenses, as provided in s. 112.061, F.S. Records and meetings of the council are subject to the provisions of s. 24, Art. I, Florida Constitution, Chapter 119, F.S., and s. 286.011, F.S.

As of March 24, 2005, the following actions have been taken in the U.S. states and territories:⁴ Twenty-three states (Alabama, Arizona, Colorado, Connecticut, Delaware, Idaho, Kansas, Kentucky, Louisiana, Maine, Michigan, Montana, New Jersey, New Mexico, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Utah, Washington, West Virginia, and Wyoming) have enacted the new compact into law; one state and one territory (Arkansas and Puerto Rico) have passed the legislation in one chamber; eight states (Florida, Massachusetts, Mississippi, Missouri, Nebraska, Nevada, Tennessee, and Texas) have introduced the compact legislation; and two states (Oregon and Wisconsin) are holding public hearings on the compact.⁵

Once 35 states and territories have passed this legislation, the new compact will be in effect. According to the department, Florida has the largest caseload of juveniles subject to the compact in the nation and sends more requests for supervision transfer than it receives.

Pursuant to Article XI of the act, any compacting state may withdraw from the compact by repealing the compact statute from law. If a state withdraws from the compact, it will continue to be responsible for all assessments, obligations, and liabilities incurred through the effective date of the withdrawal.

The bill provides for future legislative review and repeal two years after the effective date of the act.

C. SECTION DIRECTORY:

Section 1. Amends s. 985.502, F.S.; revises provisions of the former Interstate Compact on Juveniles.

Section 2. Creates s. 985.5025, F.S.; creates the State Council for Interstate Juvenile Offender Supervision.

Section 3. Repeals the following statutes, which relate to obsolete provisions governing the former compact superseded by this act: ss. 985.503, 985.504, 985.505, 985.506, and 985.507, F.S.

Section 4. Provides for future legislative review and repeal two years after the act's effective date.

Section 5. Provides an effective date of July 1, 2005, or upon enactment of the compact into law by the thirty-fifth compacting state, whichever date occurs later.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

⁴ U.S. territories include the District of Columbia, American Samoa, Guam, North Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.

⁵ See <http://www.csg.org/CSG/Policy/public+safety+and+justice/interstate+compact+for+juveniles/state+status.htm>.

None.

2. Expenditures:

The department estimates recurring costs of \$40,000 per year for dues to the commission and for travel expenses to attend meetings. The department does not identify a funding source but General Revenue would be the most likely source.

In addition to costs identified by the department, there are other provisions of the bill that may have indeterminate fiscal impacts:

1. The bill would subject the state to rules of the commission that have not yet been adopted. Since the content of the rules are not known, it is impossible to determine whether the rules would have an impact on state operations that would result in a fiscal impact. According to Rick Masters with the Council of State Governments and Amanda Beagles with the Department of Juvenile Justice, these rules would be narrowly drawn to the population of youth covered by the compact. They would not seek to alter routine state juvenile justice operations.
2. The bill would subject the state to fines and other enforcement actions at the discretion of the commission. The amount of the fines is not known. Since the rules are not known, it is impossible to determine whether compliance will prove to be difficult and fines will be likely. According to Rick Masters with the Council of State Governments, fines would be a last resort and would most likely be tied to the cost incurred by the state who had to pay the cost of non-compliance (e.g. cost of housing a runaway because a state refused to make arrangements to return a child).
3. One of the purposes of the compact is to establish a system of uniform data collection of information pertaining to juveniles subject to the compact, sharing of data by authorized criminal justice users and regular reporting to executive, judicial and legislative bodies. The department indicates that this would likely result in a new system specific to the state's compact office. There is no estimate of the cost of the new system although the department believes that there is a possibility that federal funds will be available and that costs would be modest.

Since the act is subject to legislative review and repeal two years after its effective date, costs associated with unknown requirements can be identified by the Legislature prior to reenacting the compact.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The total estimated annual budget for the Interstate Commission is \$1,000,000, which is to be divided between the compacting states with each member state contributing a specified amount to cover the cost of the internal operations and activities of the commission and its staff. The amount paid by each

state will be determined by a formula based on the population and the volume of interstate movement of juveniles in that state. Based on the budget estimate and anticipated participation by 35 to 56 jurisdictions, the per state cost for funding the compact is estimated to be in the range of \$12,000 to \$37,000.⁶ The department estimates recurring costs of \$40,000 per year for dues to the commission and for travel expenses to attend meetings.

The department indicates that there are FTE already in place⁷ to manage activities associated with the proposed interstate compact. Since the act is subject to legislative review and repeal two years after its effective date, costs associated with unknown requirements can be identified by the Legislature prior to reenacting the compact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to require counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

As discussed below in the subsection entitled, "RULE-MAKING AUTHORITY," the bill delegates authority to the Interstate Commission to adopt rules that effectively and efficiently achieve the purposes of the Interstate Compact for Juveniles.⁸ 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.⁹

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.^{10 11} Under this

⁶ See *Interstate Compact for Juveniles Resource Kit*, Council of State Governments, *Fiscal Note* section.

⁷ According to the Department of Juvenile Justice, staff for the National Commission on Adult Offender Supervision will also assume the duties of the Interstate Commission for Juveniles.

⁸ See HB 577 at lines 428-430.

⁹ *Interstate Compact for Juveniles Resource Kit*, Council of State Governments, "Frequently Asked Questions" section, page 4.

¹⁰ *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).

¹¹ 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).

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.¹² The court 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.¹³

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."¹⁴ 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.¹⁵

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,¹⁶ 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.¹⁷

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

¹² *Department of Children and Family Services*, 801 So.2d 1047 (Fla. 1st DCA 2001).

¹³ *Department of Children and Family Services*, 801 So.2d at 1052-1053.

¹⁴ *Id.* at 1052.

¹⁵ *Id.*

¹⁶ 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).

¹⁷ 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).

entering into any agreement or compact with one another without the consent of Congress.¹⁸ In the event Congress has authorized the states to enter into a compact, and where 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.¹⁹

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).^{20 21} Conversely, four state courts have stated that the Interstate Compact for Juveniles has not received congressional consent.²² 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.^{23 24} 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.²⁵

In *Old Town Trolley Tours of Washington*,²⁶ the court was faced with determining the appropriate standard for reviewing licensing decisions of the Washington Metropolitan Area 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

¹⁸ 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 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.

¹⁹ *Cuyler*, 101 S.Ct. at 708.; See also *Alabama v. Bozeman*, 533 U.S. 146, 149 (2001).

²⁰ 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).

²¹ *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).

²² 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).

²³ *National Cable Television Ass’n, Inc. v. U.S.*, 94 S.Ct. 1146, 1150 (1974).

²⁴ 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.

²⁵ 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).

²⁶ *Old Town Trolley Tours of Washington, Inc.* 129 F.3d at 203-204.

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.”²⁷ 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.²⁸

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.”^{29 30}

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.³¹ 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 obligations, duties, powers, or jurisdiction are delegated by law in effect at the time this compact becomes effective.”³²

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.

B. RULE-MAKING AUTHORITY:

The Interstate Compact for Juveniles created by the bill authorizes the Interstate Commission to adopt and publish rules in order to effectively and efficiently achieve the purposes of the compact. The compact specifies that these rules have the full force and effect of statutory law upon each compacting state, and further provides that a compacting state’s failure to follow the rules may result in remedial

²⁷ *Id.* at 204 (citations omitted).

²⁸ *Id.*

²⁹ *The Interstate Compact on Adult Offender Supervision: Using Old Tools to Solve New Problems*, 9 Roger Williams U. L. Rev. 71, 106, Fall 2003.

³⁰ 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.*

³¹ 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.

³² House Bill 577 at lines 736-744.

training, alternative dispute resolution, fines fixed by the Interstate Commission, and/or suspension or termination.

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.” All rules and amendments are to become binding as of the date specified.

The compact provides that when adopting a rule, the Interstate Commission shall, at a minimum:

- Publish the proposed rule's entire text stating the reason for that proposed rule;
- Allow and invite any and all persons to submit written data, facts, opinions, and arguments, which information shall be added to the record and made publicly available;
- Provide an opportunity for an informal hearing if petitioned by 10 or more persons; and
- Adopt a final rule and its effective date, if appropriate, based on input from state or local officials or interested parties.

The Interstate Commission is authorized to adopt an emergency rule that will become effective immediately, if the commission determines that a state of emergency exists.

The compact further provides that if a majority of the legislatures of the compacting states rejects a rule, those states may, by enactment of a statute or resolution, cause that rule to have no further force and effect in any compacting state.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill repeals the existing compact and provides for future legislative review and repeal of the compact. If Florida does, in fact, repeal the new compact in two years, Florida will be left with no membership in a juvenile interstate compact.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On February 23, 2005, the Juvenile Justice Committee added to the effective date, the language “or upon enactment of the compact into law by the thirty-fifth compacting state, whichever date occurs later.” The reasoning was that if 35 states have not enacted the legislation by the July 1st, 2005, effective date of this act, this bill as it was drafted may leave Florida with no complete compact in place until the 35th state has adopted the compact. This analysis is written to reflect the bill as amended.

On March 11, 2005, the Justice Appropriations Committee added an amendment to repeal the act two years from its effective date. This analysis is written to reflect the bill as amended.

On March 30, 2005, the Justice Council reworded the two-year repeal language to provide that sections 985.502 and 985.5025 would stand repealed “unless reviewed and saved from repeal through reenactment by the Legislature.” In addition, the council provided that if the Governor delegates authority to the Secretary of DJJ to appoint members to the State Council for Interstate Juvenile Offender Supervision (already present in the bill), that the delegation must be authorized in writing and on an individual basis. This analysis is written to reflect the bill as amended.