Interstate Compacts: An Alternative for Solving Common Problems Among States

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Introduction

Despite their legal and structural differences, states share many common problems in a world in which economic and political issues are often discussed in global terms. These often complex problems arise in many contexts, including public safety and justice. One option when facing multi-state, regional, and national policy problems is to turn to the federal government for assistance, but federal solutions sometimes impose conditions or reduce flexibility in a manner that states find disagreeable. An old but increasingly popular alternative for solving problems is the interstate compact. Two new compacts have been developed and introduced in recent years for regulating the transfer of parole and probation supervision across state boundaries and assisting in the return of runaway juveniles.

The last two decades have seen a resurgence in the development of new interstate compacts and the revision of existing, though outdated compacts. As a tool reserved exclusively for the states, interstate compacts can provide states the means to address state problems with state solutions, avoiding federal intervention and preemption. Interstate compacts are one of the most powerful, durable, and adaptive tools for promoting and ensuring cooperative action among the states. As one of the oldest mechanisms available for states to work together, their use predates the founding of the nation. Unlike federally imposed mandates, which often dictate unfunded and rigid requirements, interstate compacts allow states to develop their own collaborative and dynamic structures and solutions for common problems.

The very nature of an interstate compact makes it the ideal tool to meet the demand for cooperative state action, to develop and enforce stringent standards, and to provide an adaptive structure for states that can evolve to meet new and changing demands over time. A distinctly American invention, interstate compacts promote multistate problem solving in the face of complex public policy and federal intervention.

General Purposes

Interstate compacts are contracts between states that carry the force and effect of statutory law. They are a tool for state governments to address regional or national policy concerns. Compacts are not a solution per se, but they allow a state to enter into a contract with other states to perform a certain action, observe a certain standard, or cooperate in a critical policy area. The law and use of interstate compacts is not particularly complex. Like any contract, the language of a compact needs to be identical in intent and context, if not in exact verbiage, between the states. Generally speaking, interstate compacts:

- Establish a formal, legal relationship among states to address common problems or promote a common agenda
- Create independent, multistate governmental authorities (e.g., commissions) that can address issues more effectively than a state agency acting independently, or when no state has the authority to act unilaterally
- Establish uniform guidelines, standards, or procedures for agencies in the compact’s member states
- Create economies of scale to reduce administrative and other costs
- Respond to national priorities in consultation or in partnership with the federal government
- Retain state sovereignty in matters traditionally reserved for the states
- Settle interstate disputes

History

Compacts have been enacted for a variety of reasons, though they were seldom used until the twentieth century. Between 1783 and 1920, states approved 36 compacts, most of which were used to settle boundary disputes. But in the last 75 years, more than 150 compacts have been created, most since the end of World War II. Their purposes range from implementing common laws to exchanging information about common problems. They apply to a range of subject areas from conservation and resource management to civil defense, education, emergency management, energy law enforcement, probation and parole, transportation, and taxes.\(^2\)

Article I, Section 10, Clause 3 of the U.S. Constitution laid the legal foundation for interstate compacts: “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.”\(^3\) Compacts actually preceded the Constitution, having been used in colonial times to resolve boundary disputes between colonies.

Most interstate compacts cover rudimentary functions, such as regulating boundaries and water rights, and have less than 15 signatories. For example, the Waterfront Commission Compact between New Jersey and New York regulates the practices in handling waterfront cargo in the Port of New York. Illinois and Missouri cooperatively planned the development of St. Louis through the Bi-State Development Agency Compact. Some compacts authorize the establishment of multistate regulatory bodies. The first and most famous of these is the New York Port Authority, which arose from a 1921 compact between New Jersey and New York. Other agreements are simply intended to establish uniform regulations without creating new agencies.\(^4\)

Before the 1920s, interstate compacts were typically bi-state agreements, addressing boundary disputes and territorial claims. It is only in this century that interstate compacts have risen to such prominence and power among the states. States regularly developed and entered into interstate compacts until the late 1970s. Then, in the early 1980s, the use and formation of interstate compacts came to an utter standstill.

In recent years, compacts have grown again in scope and number. Today, most are designed for regional or national participation. Examples include the Emergency Management Assistance Compact (adopted in 46 states and two territories; designed to enable cooperative emergency response efforts, such as 9/11), the Interstate Compact for Adult Offender Supervision (adopted in 48 jurisdictions since January 2000; designed to update and replace a similar 1937 compact), and the Interstate Compact for Education (adopted in 46 states; designed to serve as an information center, forum, and advocate for the states on education issues). Other recent compact developments include the Interstate Compact on Industrialized/Modular Buildings and the Interstate Insurance Receivership Compact.

Case Law

In our federalist society, certain powers are delegated to each level of government. As such, interstate compacts are a tool reserved to the states and approved by Congress. The U.S. Supreme Court—the most widely used enforcement forum for interstate compacts—has affirmed this fact on the rare occasions that compacts have been legally challenged. Of the cases dealing with interstate compacts and compact law, four cases stand out: Virginia v. Tennessee, 148 U.S. 503 (1893); Virginia v. West Virginia, 246 U.S. 565 (1918); State ex rel. Dyer v. Sims, 341 U.S. 22 (1951); and Petty v. Tennessee-Missouri Bridge Commission, 359 U.S. 275 (1959).

Virginia v. Tennessee is important for its holding that congressional consent to a compact may be validly given by implication as well as express action. Congress, by the action of forming judicial districts and taking other actions that recognized the Virginia-Tennessee border, had, in fact, recognized the boundary compact. Of major significance is that this case established that only certain types of compacts needed congressional consent, i.e., those that affected the power delegated to the national government or which might affect the “political balance” of the federal system.\(^4\)

Virginia v. West Virginia is the lengthiest litigation directly involving compacts and compact law. Following

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West Virginia’s split from the Commonwealth of Virginia, West Virginia failed to pay its portion of Virginia’s debt as assumed by the compact. The relevance of this case stems from the U.S. Supreme Court’s statement that it would enforce the compact although specific enforcement measures were not described in the compact.\(^5\)

**State ex rel. Dyer v. Sims** recognized that a compact was a contract. Although this concept had been established by previous cases, this more modern interpretation has strengthened the principle and contributed to its wider understanding.\(^6\)

**Petty v. Tennessee-Missouri Bridge Commission** held that the interpretation of compact language should be in accordance with the rules of federal substantive law.\(^7\)

Of further note are **Cuyler vs. Adams**, 449 U.S. 433 (1981), and **U.S. Steel Corporation vs. Multistate Tax Commission**, 434 U.S. 452 (1978). In these cases, the Court reinforced the role of interstate compacts in the relationships between states as a tool to be used by the states and approved by Congress.

### The New Frontier

The devolution of the federal system of government over the last two decades has created opportunities for state cooperation that did not exist before. While states are still challenged by the federal government on a wide range of issues, notably transportation, education, and health/human services, states have begun a fresh examination of problem solving: one that is driven by the states and, ultimately, one that results in solutions developed by the states and among the states.

Not only are new compacts and revised compacts under development, but the way in which states are working to structure these new multistate agreements has changed. Before World War II, interstate compacts primarily dealt with state boundaries or the sharing of common waterways. Modern compacts differ greatly, tackling broader public policy issues and forging state partnerships for problem solving and cooperation. Interstate compacts provide states the perfect vehicle to address regional and national issues.

While the theory and purpose behind interstate compacts has changed little over the last 226 years, modern compacts tackle broader public policy issues to forge state partnerships for problem solving and cooperation. What also differs is the way in which compacts are structured. Modern compacts seek out new and innovative ways to enforce compact requirements, develop administrative oversight mechanisms, establish a compact framework that can evolve over time in a changing world, develop self-funding mechanisms for the states and work of the compact, and increase information sharing among the states on a given issue.

1. Enforcement provisions can be specified in the compact language ranging from alternative dispute resolution mechanisms to fines and costs assessment; suspension and termination of membership in the compact; and judicial enforcement, including claims for injunctive relief, damages, and declaratory judgment actions with the prevailing party to recover court costs and attorney fees.

2. A centralized national commission comprising one voting member/commissioner from each state can oversee the day-to-day activities of the compact, adopt uniform compliance standards and requirements, and promulgate rules that all states must follow as determined by the member states. The commission can also enforce compliance and resolve disputes among the member states, as well as coordinate training, education, and public awareness of the compact and its mechanisms.

3. Rulemaking authority and appropriate rulemaking procedures can be laid down by the compact and implemented by the national commission. Modern interstate compacts are being developed not as stopgap measures, but rather as long-term solutions that can evolve over time, maintaining the ability to change with the needs of the states. If a compact is designed with an appropriate and strong framework, the rules and regulations can be adopted and changed as needed without significantly affecting the relationship among the member states.

4. Development and use of national integrated information-sharing systems can allow states to rapidly gather critical information. Technology and the Internet now make the sharing of information seamless and immediate. The growth of transportation and the shrinking of travel time globally have made several information mechanisms within existing compacts unable to cope with increased loads.

5. A mandatory funding mechanism for the compact to support essential compact operations (full-time staff, data collection, training/education, public awareness, compliance, and enforcement) can be developed to take advantage of the economies of scale present when several states cooperate to solve similar problems and issues.

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\(^5\) *id.*

\(^6\) *id.*

\(^7\) *id.*
Interstate Compact for Adult Offender Supervision

Developed in 1937, the Interstate Compact for the Supervision of Parolees and Probationers provided the sole statutory authority for regulating the transfer of adult parole and probation supervision across state boundaries. All fifty states were members of this interstate agreement, as were the District of Columbia, Puerto Rico, and the U.S. Virgin Islands.

With more than 4.5 million offenders on probation and parole, overseen by 3,285 different local probation and parole offices working for more than 860 separate agencies, this 65-year-old compact suffered from many flaws that weakened its authority and effectiveness. The absence of an effective interstate compact left states with limited controls on the movement of state and local probationers and parolees, yet states were held liable for the movements and actions of these offenders. In fact, between 1997 and 1999, several states, through legislation or executive order, created their own interstate supervision criteria that were inconsistent with the legal requirements of the compact and its rules.

In 1998 the National Institute of Corrections (NIC) facilitated a discussion among state officials and corrections policy experts, arriving at a list of recommendations for improving and overhauling the existing interstate compact. Through a partnership with the Council of State Governments (CSG), NIC and CSG developed and facilitated the drafting of a revised interstate compact: one that would include a modern administrative structure, that provided for rulemaking and rule changing over time, that required the development of a modern data collection and information-sharing system among the states, and that was adequately funded to carry out its tasks.

Two divergent roads can be taken in creating compacts. One leads to putting the important details in the text and terms of the compact, which cannot be amended without amending the agreement. This approach works well for an issue such as the establishment of geographic boundaries. The other road leads to creating a system in which the compact can respond to changes over time without having to go through the amendment process. This was the course chosen for the Adult Compact.

First introduced in January 2000, the Adult Compact was quickly enacted in several states, the first being Colorado on April 10, 2000. A little more than 26 months later, the compact became effective and binding when it was enacted by its thirty-fifth state, Pennsylvania, on June 19, 2002. The compact is currently enacted in 47 states and the...
District of Columbia (see Figure 1). Legislative activity continues in Massachusetts.

**Interstate Compact for Juveniles**

The current Interstate Compact on Juveniles, a law adopted by all 50 states, is nearly 50 years old and has never been revised. A revision to this outdated compact has been drafted to resolve many of the problems currently being experienced across the country. Working with state legislators, juvenile justice practitioners, corrections officials, victims of crime, court administrators, and offices of state attorneys general, CSG is proud to be part of reshaping this important contract among the states.

Established in 1955, the current Interstate Compact on Juveniles is not an effective instrument for use by today’s juvenile justice system. Some of its language and methods are antiquated; its rules and procedures are not widely agreed to, followed, or understood; and its structure and overall management are powerless to meet the real needs of juveniles within the modern justice system.

Since 2000, CSG and the Office of Juvenile Justice and Delinquency Prevention have led the effort to draft the new Interstate Compact for Juveniles. This updated compact addresses many deficiencies within the current juvenile compact system, including enforcement, administration, finances, communications, data sharing, and training. At this writing, 11 states have adopted the new compact (see Figure 2).

**Conclusion**

As public policy issues become more complex and affect more states in our shrinking world, new interstate compacts could prove to be the answer to common problems involving public safety and the justice system, particularly those relating to the need for uniform standards and the sharing of information. States should further use interstate compacts to address new problems and create new methods of interstate cooperation. If not, federal preemption in certain policy areas is a distinct possibility.