

1 S.161

2 Introduced by Senator Sears

3 Referred to Committee on Judiciary

4 Date: January 5, 2010

5 Subject: Internal security and public safety; Vermont criminal information  
6 center

7 Statement of purpose: This bill proposes to ratify the National Crime  
8 Prevention and Privacy Compact which permits the interstate exchange of  
9 criminal history records for noncriminal justice purposes.

10 An act relating to National Crime Prevention and Privacy Compact

11 It is hereby enacted by the General Assembly of the State of Vermont:

12 Sec. 1. 20 V.S.A. § 2065 is added to read:

13 § 2065. RATIFICATION OF THE NATIONAL CRIME PREVENTION

14 AND PRIVACY COMPACT

15 (a) The Vermont general assembly hereby approves and ratifies the  
16 National Crime Prevention and Privacy Compact, 42 U.S.C. sections  
17 14611–14616. The compact shall remain in effect until legislation is enacted  
18 renouncing or rescinding the compact.

19 (b) The commissioner of the department of public safety shall execute,  
20 administer, and implement the compact on behalf of the state, and may adopt

1 rules as necessary for the national exchange of criminal history records for  
2 noncriminal justice purposes.

3 (c) Criminal history records as defined in subdivision 2056a(a)(1) of this  
4 title shall be made available to lawfully entitled requestors in other states  
5 according to the provisions of the National Crime Prevention and Privacy  
6 Compact.

7 (d) Nothing in this section shall alter the duties and responsibilities of the  
8 commissioner of the department of public safety regarding the dissemination  
9 of criminal history records within the state of Vermont pursuant to statute.

***\*\*\* Providing Complete Out-of-State Conviction Records for  
School Employees \*\*\****

*Sec. 2. 16 V.S.A. § 252(1) is amended to read:*

*(1) "Criminal record" means the record of:*

*(A) convictions in Vermont, including whether any of the convictions  
is an offense listed in 13 V.S.A. § 5401(10) (sex offender definition for  
registration purposes); and*

*(B) convictions in other jurisdictions recorded in other state  
repositories or by the Federal Bureau of Investigation (FBI) ~~for the following  
crimes or for crimes of an equivalent nature:~~*

*~~(i) Crimes listed in subdivision 5301(7) of Title 13.~~*

*~~(ii) Contributing to juvenile delinquency under section 1301 of  
Title 13.~~*

*~~(iii) Cruelty to children under section 1304 of Title 13.~~*

*~~(iv) Cruelty by person having custody under section 1305 of  
Title 13.~~*

*~~(v) Prohibited acts under sections 2632 and 2635 of Title 13.~~*

*~~(vi) Displaying obscene materials to minors under section 2804b  
of Title 13.~~*

~~(vii) Sexual exploitation of children under chapter 64 of Title 13.~~

~~(viii) Drug sales, including selling or dispensing under sections 4230(b), 4231(b), 4232(b), 4233(b), 4234(b), 4235(c), 4235a(b), and 4237 of Title 18.~~

~~(ix) Sexual activity by a caregiver, under subsection 6913(d) of Title 33.~~

Sec. 3. 16 V.S.A. § 255 is amended to read:

§ 255. PUBLIC AND INDEPENDENT SCHOOL EMPLOYEES;  
CONTRACTORS

\* \* \*

~~(d)(1) Upon completion of a criminal record check, the Vermont criminal information center shall send to the superintendent ~~or headmaster~~ a notice that no record exists or, if a record exists,~~

~~(1) a copy of any criminal record for Vermont convictions; and~~

~~(2) if the requester is a superintendent, a notice of any criminal record which is located in either another state repository or FBI records, but not a record of the specific convictions except those relating to crimes of a sexual nature involving children.~~

~~(3) if the requester is a headmaster, a~~

Upon completion of a criminal record check, the Vermont criminal information center shall send to the headmaster a notice that no record exists or, if a record exists:

(A) A copy of Vermont criminal convictions.

(B) A notice of any criminal record which is located in either another state repository or FBI records, but not a record of the specific convictions. However, if there is a record relating to any crimes of a sexual nature involving children, the Vermont criminal information center shall send this record to the commissioner who shall notify the headmaster in writing, with a copy to the person about whom the request was made, that the record includes one or more convictions for a crime of a sexual nature involving children.

~~(f) Information sent to a person by the commissioner, a headmaster, a superintendent or a contractor under subsections (d)(3) and subsection (e) of this section shall be accompanied by a written notice of the person's rights under subsection (g) of this section, a description of the policy regarding maintenance and destruction of records, and the person's right to request that the notice of no record or record be maintained for purposes of using it to~~

*comply with future criminal record check requests pursuant to section 256 of this title.*

*(g)(1) Following notice that a headmaster was notified that a criminal record which is located in either another state repository or FBI records exists, a person may:*

*(1)(A) Sign a form authorizing the Vermont criminal information center to release a detailed copy of the criminal record ~~to a superintendent or~~ to the person.*

*(B) Decline or resign employment.*

*(2) ~~Challenge~~ Any person subject to a criminal record check pursuant to this section may challenge the accuracy of the record by appealing to the Vermont criminal information center pursuant to rules adopted by the commissioner of public safety.*

*(3) ~~Decline or resign employment.~~*

*Sec. 4. Sec. 5 of No. 1 of the Acts of 2009 is amended to read:*

*Sec. 5. 16 V.S.A. § 255 is amended to read:*

*§ 255. PUBLIC AND INDEPENDENT SCHOOL EMPLOYEES;  
CONTRACTORS*

*\* \* \**

*(d)(1) Upon completion of a criminal record check, the Vermont criminal information center shall send to the superintendent a notice that no record exists or, if a record exists, a copy of any criminal record*

*(2) Upon completion of a criminal record check, the Vermont criminal information center shall send to the headmaster a notice that no record exists or, if a record exists:*

*(A) A copy of Vermont criminal convictions.*

*(B) A notice of any criminal record which is located in either another state repository or FBI records, but not a record of the specific convictions. However, if there is a record relating to any crimes of a sexual nature involving children, the Vermont criminal information center shall send this record to the commissioner who shall notify the headmaster in writing, with a copy to the person about whom the request was made, that the record includes one or more convictions for a crime of a sexual nature involving children.*

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*\* \* \* Commercial Driver License Disqualifiers \* \* \**

*Sec. 5. 23 V.S.A. § 4108 is amended to read:*

*§ 4108. COMMERCIAL DRIVER LICENSE QUALIFICATION STANDARDS*

*(a) Before issuing a commercial driver license, the commissioner shall request the applicant's complete operating record from any state in which the applicant was previously licensed to operate any type of motor vehicle in the past 10 years and conduct a check of the applicant's operating record by querying the national driver register established under 49 U.S.C. § 30302 and the commercial driver's license information system established under 49 U.S.C. § 31309 to determine if:*

*(1) the applicant has already been issued a commercial driver license;*

*(2) the applicant's commercial driver license has been suspended, revoked, or canceled; or*

*(3) the applicant has been convicted of any offense listed in Section 205(a)(3) of the National Driver Register Act of 1982 (49 U.S.C. § 30304(a)(3)).*

*(b) ~~Except as otherwise provided, the~~ The commissioner shall not issue a commercial driver license ~~and~~ or commercial driver instruction permit to any person:*

*(1) under the age of 21 years except as otherwise provided.*

*~~(b)(2)~~ who, within three years of the license application and for initial applicants only, has been convicted of an offense listed in subsection 4116(a) of this title (or a comparable offense in any jurisdiction), or convicted of an offense listed in 49 U.S.C. § 30304(a)(3) in any jurisdiction.*

*~~(3) No person may be issued a commercial driver license unless that person is a resident of this state and has passed a knowledge and skills test for driving a commercial motor vehicle which complies with minimum federal standards established by federal regulation enumerated in 49 C.F.R. part 383, subparts G and H and has satisfied all other requirements of Title XII of Public Law 99-570 the Commercial Motor Vehicle Safety Act of 1986, as amended, in addition to other requirements imposed by state law or federal regulation. The tests shall be prescribed and conducted by the commissioner.~~*

\* \* \*

*Sec. 6. 23 V.S.A. § 4110(a) is amended to read:*

*(a) The application for a commercial driver license or commercial driver instruction permit shall include the following:*

\* \* \*

*(6) Certifications that:*

\* \* \*

~~(C) the applicant is not subject to any disqualification under 49 C.F.R. ~~part 385.51~~ section 383.51, or any license suspension, revocation, or cancellation under ~~state law~~ the law of any jurisdiction; and~~

~~(D) the applicant does not have a driver's license from more than one state or jurisdiction; and~~

~~(E) for initial applicants only, the applicant has not been convicted of an offense listed in subsection 4116(a) of this title (or a comparable offense in any jurisdiction) or an offense listed in 49 U.S.C. § 30304(a)(3) in any jurisdiction within three years of the license application.~~

Sec. 7. 23 V.S.A. § 4111(c) is amended to read:

~~(c) Before issuing a commercial driver license, the commissioner shall request the applicant's complete operating record from any state in which the applicant was previously licensed to operate any type of motor vehicle in the past 10 years, conduct a check of the applicant's operating record by querying the national driver register, established under 49 U.S.C. § 30302 and the commercial driver's license information system, established under 49 U.S.C. § 31309, to determine if:~~

~~(1) the applicant has already been issued a commercial driver license; and the applicant's commercial driver license has been suspended, revoked, or canceled;~~

~~(2) the applicant had been convicted of any offenses contained in Section 205(a)(3) of the National Driver Register Act of 1982 (23 U.S.C. § 401 note). [Repealed.]~~

**\* \* \* Conditioning Motor Vehicle Registration on Proof of**

**Financial Responsibility \* \* \***

Sec.8. PROOF OF FINANCIAL RESPONSIBILITY AS A CONDITION OF MOTOR VEHICLE REGISTRATION; IMPLEMENTATION; REPORTING

The commissioner of motor vehicles shall examine the administrative tasks that would be needed to implement legislation requiring issuance of an initial or renewal motor vehicle registration to be conditional on the commissioner's receipt of proof of liability insurance or financial responsibility required under 23 V.S.A. § 800(a). The commissioner also shall examine the costs associated with and earliest feasible time frame for implementing such legislation so that the general assembly may advance the goal of bringing more operators of motor vehicles into compliance with their legal obligation to maintain financial responsibility. The commissioner shall report his or her findings to

the senate and house committees on judiciary and on transportation by January 15, 2011.

**\*\*\* Municipality Exemption to Records Law \*\*\***

Sec. 9. 20 V.S.A. § 2056c is amended to read:

§ 2056c. **DISSEMINATION OF CRIMINAL CONVICTION RECORDS TO THE PUBLIC**

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(c) *Criminal conviction records shall be disseminated to the public by the center under the following conditions:*

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*(10) No person entitled to receive a criminal conviction record pursuant to this section shall require an applicant to obtain, submit personally, or pay for a copy of his or her criminal conviction record, except that this subdivision shall not apply to a local governmental entity with respect to criminal conviction record checks for licenses or vendor permits required by the local governmental entity.*

**\*\*\* Consider Expanding Out-of-state Criminal Record Checks \*\*\***

Sec. 10. **VERMONT CRIMINAL INFORMATION CENTER**

No later than December 1, 2010, the Vermont criminal information center and the defender general shall report to the house and senate committees on judiciary on the legal, policy, and procedural issues involved with broadening access to fingerprint-supported national record checks.

**\*\*\* Constable Training \*\*\***

Sec. 11. Sec. 13 of No. 195 of the 2007 Adj. Sess. (2008) is amended to read:

Sec. 13. **EFFECTIVE DATE**

Secs. 8 and 9 of this act shall take effect ~~July 1, 2010~~ July 1, 2012.

**\*\*\* Interstate Compact for Juveniles \*\*\***

Sec. 12. 33 V.S.A. chapter 57 is amended by repealing sections 5701–5715 and adding sections 5721–5733 to read:

§ 5721. PURPOSE

(a) The compacting states to this Interstate Compact recognize that each state is responsible for the proper supervision or return of juveniles, delinquents, and status offenders who are on probation or parole and who have absconded, escaped, or run away from supervision and control and in so doing have endangered their own safety and the safety of others. The

compacting states also recognize that each state is responsible for the safe return of juveniles who have run away from home and in so doing have left their state of residence. The compacting states also recognize that Congress, by enacting the Crime Control Act, 4 U.S.C. Section 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

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

(1) ensure that the adjudicated juveniles and status offenders subject to this compact are provided adequate supervision and services in the receiving state as ordered by the adjudicating judge or parole authority in the sending state;

(2) ensure that the public safety interests of the citizens, including the victims of juvenile offenders, in both the sending and receiving states are adequately protected;

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

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

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

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

(7) establish procedures to manage the movement between states of juvenile offenders released to the community under the jurisdiction of courts, juvenile departments, or any other criminal or juvenile justice agency which has jurisdiction over juvenile offenders;

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

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

(10) establish a system of uniform data collection on information pertaining to juveniles subject to this compact that allows access by authorized juvenile justice and criminal justice officials, and regular reporting of compact activities to heads of state, executive, judicial, and legislative branches, and juvenile and criminal justice administrators;



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

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

(13) coordinate the implementation and operation of the compact with the Interstate Compact for the Placement of Children, the Interstate Compact for Adult Offender Supervision, and other compacts affecting juveniles, particularly in those cases where concurrent or overlapping supervision issues arise.

(c) It is the policy of the compacting states that the activities conducted by the Interstate Commission created in this chapter are the formation of public policies and therefore are public business. Furthermore, the compacting states shall cooperate and observe their individual and collective duties and responsibilities for the prompt return and acceptance of juveniles subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the purposes and policies of the compact.

#### § 5722. DEFINITIONS

As used in this chapter, unless the context clearly requires a different construction:

(1) "Bylaws" means those bylaws established by the Interstate Commission for its governance, or for directing or controlling its actions or conduct.

(2) "Commissioner" means the voting representative of each compacting state appointed pursuant to section 5723 of this title.

(3) "Compact administrator" means the individual in each compacting state appointed pursuant to the terms of this compact responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the Interstate Commission, and policies adopted by the state council under this compact.

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

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

(6) "Deputy compact administrator" means the individual, if any, in each compacting state appointed to act on behalf of a compact administrator pursuant to the terms of this compact responsible for the administration and

management of the state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the interstate commission, and policies adopted by the state council under this compact.

(7) "Interstate commission" means the Interstate Commission for juveniles created by section 5723 of this title.

(8) "Juvenile" means any person defined as a juvenile in any member state or by the rules of the Interstate Commission, including:

(A) an accused delinquent (a person charged with an offense that, if committed by an adult, would be a criminal offense);

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

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

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

(E) a nonoffender (a person in need of supervision who has not been accused or adjudicated a status offender or delinquent).

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

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

(11) "Rule" means a written statement by the Interstate Commission promulgated pursuant to section 5726 of this title that is of general applicability; implements, interprets, or prescribes a policy or provision of the compact, or an organizational, procedural, or practice requirement of the commission; and has the force and effect of statutory law in a compacting state, and includes the amendment, repeal, or suspension of an existing rule.

(12) "State" means a state of the United States, the District of Columbia (or its designee), the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands.

#### § 5723. INTERSTATE COMMISSION FOR JUVENILES

(a) The compacting states hereby create the Interstate Commission for Juveniles. The commission shall be a body corporate and joint agency of the compacting states. The commission shall have all the responsibilities, powers, and duties set forth in this chapter, and such additional powers as may be

conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

(b) The Interstate Commission shall consist of commissioners appointed by the appropriate appointing authority in each state pursuant to the rules and requirements of each compacting state and in consultation with the state council for interstate juvenile supervision created in this chapter. The commissioner shall be the compact administrator, deputy compact administrator, or designee from that state who shall serve on the Interstate Commission in such capacity under or pursuant to the applicable law of the compacting state.

(c) In addition to the commissioners who are the voting representatives of each state, the Interstate Commission shall include individuals who are not commissioners, but who are members of interested organizations. The noncommissioner members shall include a member of the National Organizations of Governors, legislators, state chief justices, attorneys general, Interstate Compact for Adult Offender Supervision, Interstate Compact for the Placement of Children, juvenile justice and juvenile corrections officials, and crime victims. All noncommissioner members of the Interstate Commission shall be ex-officio (nonvoting) members. The Interstate Commission may provide in its bylaws for such additional ex-officio members, including members of other national organizations, in such numbers as shall be determined by the commission.

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

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

(f) The Interstate Commission shall establish an executive committee, which shall include commission officers, members, and others as determined by the bylaws. The executive committee shall have the power to act on behalf of the Interstate Commission during periods when the Interstate Commission is not in session, with the exception of rulemaking or amending the compact. The executive committee shall: oversee the day-to-day activities of the administration of the compact, managed by an executive director and Interstate Commission staff; administer enforcement and compliance with the provisions of the compact, its bylaws, and rules; and perform such other duties as directed by the Interstate Commission or set forth in the bylaws.

(g) Each member of the Interstate Commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the Interstate Commission. A member shall vote in person and shall not delegate a vote to another compacting state. However, a commissioner, in consultation with the state council, shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the compacting state at a specified meeting. The bylaws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication.

(h) The Interstate Commission's bylaws shall establish conditions and procedures under which the Interstate Commission shall make its information and official records available to the public for inspection or copying. The Interstate Commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.

(i) Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The Interstate Commission and any of its committees may close a meeting to the public where it determines by two-thirds vote that an open meeting would be likely to:

(1) relate solely to the Interstate Commission's internal personnel practices and procedures;

(2) disclose matters specifically exempted from disclosure by statute;

(3) disclose trade secrets or commercial or financial information which is privileged or confidential;

(4) involve accusing any person of a crime, or formally censuring any person;

(5) disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(6) disclose investigative records compiled for law enforcement purposes;

(7) disclose information contained in or related to examination, operating, or condition reports prepared by or on behalf of or for the use of the Interstate Commission with respect to a regulated person or entity for the purpose of regulation or supervision of such person or entity;

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

(9) specifically relate to the Interstate Commission's issuance of a subpoena, or its participation in a civil action or other legal proceeding.

(j) For every meeting closed pursuant to this provision, the Interstate Commission's legal counsel shall publicly certify that, in the legal counsel's opinion, the meeting may be closed to the public, and shall reference each relevant exemptive provision. The Interstate Commission shall keep minutes which shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons therefore, including a description of each of the views expressed on any item and the record of any roll call vote (reflected in the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

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

#### § 5724. POWERS AND DUTIES

(a) The commission shall have the following powers and duties:

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

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

(3) To oversee, supervise, and coordinate the interstate movement of juveniles subject to the terms of this compact and any bylaws adopted and rules promulgated by the Interstate Commission.

(4) To enforce compliance with the compact provisions, the rules promulgated by the Interstate Commission, and the bylaws, using all necessary and proper means, including the use of judicial process.

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

(6) To purchase and maintain insurance and bonds.

(7) To borrow, accept, hire, or contract for services of personnel.

(8) To establish and appoint committees and hire staff which it deems necessary for the carrying out of its functions, including an executive committee as required by section 5723 of this title which shall have the power to act on behalf of the Interstate Commission in carrying out its powers and duties hereunder.

(9) To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties, and determine their qualifications; and to establish the Interstate Commission's personnel policies and programs relating to, inter alia, conflicts of interest, rates of compensation, and qualifications of personnel.

(10) To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of it.

(11) To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve, or use any property, real, personal, or mixed.

(12) To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed.

(13) To establish a budget and make expenditures and levy dues as provided in section 5728 of this title.

(14) To sue and be sued.

(15) To adopt a seal and bylaws governing the management and operation of the Interstate Commission.

(16) To perform such functions as may be necessary or appropriate to achieve the purposes of this compact.

(17) To report annually to the legislatures, governors, judiciary, and state councils of the compacting states concerning the activities of the Interstate Commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the Interstate Commission.

(18) To coordinate education, training, and public awareness regarding the interstate movement of juveniles for officials involved in such activity.

(19) To establish uniform standards of the reporting, collecting, and exchanging of data.

(b) The Interstate Commission shall maintain its corporate books and records in accordance with the bylaws.

§ 5725. ORGANIZATION AND OPERATION

(a) Bylaws. The Interstate Commission shall, by a majority of the members present and voting, within 12 months after the first Interstate Commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including:

(1) establishing the fiscal year of the Interstate Commission;

(2) establishing an executive committee and such other committees as may be necessary;

(3) providing for the establishment of committees governing any general or specific delegation of any authority or function of the Interstate Commission;

(4) providing reasonable procedures for calling and conducting meetings of the Interstate Commission, and ensuring reasonable notice of each such meeting;

(5) establishing the titles and responsibilities of the officers of the Interstate Commission;

(6) providing a mechanism for concluding the operations of the Interstate Commission and the return of any surplus funds that may exist upon the termination of the compact after the payment or reserving of all of its debts and obligations.

(7) providing start-up rules for initial administration of the compact; and

(8) establishing standards and procedures for compliance and technical assistance in carrying out the compact.

(b) Officers and staff.

(1) The Interstate Commission shall, by a majority of its members, elect annually from among its members a chairperson and a vice chairperson, each of whom shall have such authority and duties as may be specified in the bylaws. The chairperson or, in the chairperson's absence or disability, the vice chairperson, shall preside at all meetings of the Interstate Commission. The officers so elected shall serve without compensation or remuneration from the Interstate Commission, provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for any ordinary and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the Interstate Commission.

(2) The Interstate Commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions, and for such compensation as the Interstate Commission may deem appropriate. The executive director shall serve as secretary to the Interstate

Commission, but shall not be a member and shall hire and supervise such other staff as may be authorized by the Interstate Commission.

(c) Qualified immunity, defense, and indemnification.

(1) The commission's executive director and employees shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to any actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided, that any such person shall not be protected from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

(2) The liability of any commissioner, or the employee or agent of a commissioner, acting within the scope of such person's employment or duties for acts, errors, or omissions occurring within such person's state may not exceed the limits of liability set forth under the Constitution and laws of that state for state officials, employees, and agents. Nothing in this subsection shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

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

(4) The Interstate Commission shall indemnify and hold the commissioner of a compacting state, or the commissioner's representatives or employees, or the Interstate Commission's representatives or employees, harmless in the amount of any settlement or judgment obtained against such persons arising out of any actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or



responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such persons.

§ 5726. RULEMAKING

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

(b) Rulemaking shall occur pursuant to the criteria set forth in this section and the bylaws and rules adopted under it. Such 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 and Vermont Constitutions. All rules and amendments shall become binding as of the date specified, as published with the final version of the rule as approved by the Commission.

(c) When promulgating a rule, the Interstate Commission shall, at a minimum:

(1) publish the proposed rule's entire text, stating the reason for the proposed rule;

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

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

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

(d) The Interstate Commission shall allow any interested person to file a petition for judicial review of a rule not later than 60 days after the rule is promulgated. The petition shall be filed in the United States District Court for the District of Columbia or in the Federal District Court where the Interstate Commission's principal office is located. If the court finds that the Interstate Commission's action is not supported by substantial evidence in the rulemaking record, the court shall hold the rule unlawful and set it aside. For purposes of this subsection, evidence is substantial if it would be considered substantial evidence under the Model State Administrative Procedures Act.

(e) If a majority of the legislatures of the compacting states rejects a rule, those states may, by enactment of a statute or resolution in the same manner

used to adopt the compact, cause that such rule shall have no further force and effect in any compacting state.

(f) The existing rules governing the operation of the Interstate Compact on Juveniles superseded by this chapter shall be null and void 12 months after the second meeting of the Interstate Commission created by section 5723 of this title.

(g) Upon determination by the Interstate Commission that a state-of-emergency exists, it may promulgate an emergency rule which shall become effective immediately upon adoption, provided that the usual rulemaking procedures of this section shall be retroactively applied to said rule as soon as reasonably possible, but no later than 90 days after the effective date of the emergency rule.

§ 5727. OVERSIGHT; ENFORCEMENT; DISPUTE RESOLUTION

(a) Oversight.

(1) The Interstate Commission shall oversee the administration and operations of the interstate movement of juveniles subject to this compact in the compacting states and shall monitor such activities being administered in noncompacting states which may significantly affect compacting states.

(2) The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated hereunder shall be received by all the judges, public officers, commissions, and departments of the state government as evidence of the authorized statute and administrative rules. All courts shall take judicial notice of the compact and the rules. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact which may affect the powers, responsibilities or actions of the Interstate Commission, it shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes.

(b) Dispute resolution.

(1) The compacting states shall report to the Interstate Commission on all issues and activities necessary for the administration of the compact as well as issues and activities pertaining to compliance with the provisions of the compact and its bylaws and rules.

(2) The Interstate Commission shall attempt, upon the request of a compacting state, to resolve any disputes or other issues which are subject to the compact and which may arise among compacting states and between compacting and noncompacting states. The commission shall promulgate a

rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

(3) The Interstate Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact using any or all means set forth in section 5731 of this title.

§ 5728. FINANCE

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

(b) The Interstate Commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the Interstate Commission and its staff which must be in a total amount sufficient to cover the Interstate Commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Interstate Commission, taking into consideration the population of each compacting state and the volume of interstate movement of juveniles in each compacting state, and the Interstate Commission shall promulgate a rule binding upon all compacting states which governs said assessment.

(c) The Interstate Commission shall not incur any obligations of any kind prior to securing the funds adequate to meet them. The Interstate Commission shall not pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

(d) The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission shall be subject to the audit and accounting procedures established under its bylaws, provided that all receipts and disbursements of funds handled by the Interstate Commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the Interstate Commission.

§ 5729. STATE COUNCIL

Each member state shall create a state council for Interstate Juvenile Supervision. Each state may determine the membership of its own state council, provided that its membership must include at least one representative from the legislative, judicial, and executive branches of government, victims groups, and the compact administrator, deputy compact administrator, or designee. Each compacting state retains the right to determine the qualifications of the compact administrator or deputy compact administrator. Each state council shall advise and may exercise oversight and advocacy concerning that state's participation in Interstate Commission activities and

other duties as may be determined by that state, including development of policy concerning operations and procedures of the compact within that state.

§ 5730. COMPACTING STATES; EFFECTIVE DATE; AMENDMENT

(a) Any state as defined in subdivision 5722(12) of this title is eligible to become a compacting state.

(b) The compact shall become effective and binding upon legislative enactment of the compact into law by no less than 35 of the states. The initial effective date shall be the later of July 1, 2004, or upon enactment into law by the 35th jurisdiction. Thereafter it shall become effective and binding as to any other compacting state upon enactment of the compact into law by that state. The governors of nonmember states or their designees shall be invited to participate in the activities of the Interstate Commission on a nonvoting basis prior to adoption of the compact by all states and territories of the United States.

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

§ 5731. WITHDRAWAL; DEFAULT; TERMINATION; JUDICIAL ENFORCEMENT

(a) Withdrawal.

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

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

(3) The withdrawing state shall immediately notify the chairperson of the Interstate Commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The Interstate Commission shall notify the other compacting states of the withdrawing state's intent to withdraw within 60 days of its receipt thereof.

(4) The withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.

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

(b) Technical assistance, fines, suspension, termination, and default.

(1) If the Interstate Commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under this compact, or the bylaws or duly promulgated rules, the Interstate Commission may impose any or all of the following penalties:

(A) remedial training and technical assistance as directed by the Interstate Commission;

(B) alternative dispute resolution;

(C) fines, fees, and costs in such amounts as are deemed to be reasonable as fixed by the Interstate Commission; or

(D) suspension or termination of membership in the compact, which shall be imposed only after all other reasonable means of securing compliance under the bylaws and rules have been exhausted and the Interstate Commission has determined that the offending state is in default. Immediate notice of suspension shall be given by the Interstate Commission to the governor, the chief justice or the chief judicial officer of the state, the majority and minority leaders of the defaulting state's legislature, and the state council. The grounds for default include failure of a compacting state to perform such obligations or responsibilities imposed upon it by this compact, the bylaws, or duly promulgated rules, and any other grounds designated in commission bylaws and rules. The Interstate Commission shall immediately notify the defaulting state in writing of the penalty imposed by the Interstate Commission and of the default pending a cure of the default. The commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the commission, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the compacting states, and all rights, privileges, and benefits conferred by this compact shall be terminated from the effective date of termination.

(2) Within 60 days of the effective date of termination of a defaulting state, the commission shall notify the governor, the chief justice or chief judicial officer, the majority and minority leaders of the defaulting state's legislature, and the state council of such termination.

(3) The defaulting state is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including any obligations the performance of which extends beyond the effective date of termination.

(4) The Interstate Commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon in writing between the Interstate Commission and the defaulting state.

(5) Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the Interstate Commission pursuant to the rules.

(c) Judicial enforcement. The Interstate Commission may, by majority vote of the members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the Interstate Commission, in the federal district where the Interstate Commission has its offices, to enforce compliance with the provisions of the compact its duly promulgated rules and bylaws against any compacting state in default. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation, including reasonable attorney's fees.

(d) Dissolution of compact.

(1) The compact dissolves effective upon the date of the withdrawal or default of the compacting state which reduces membership in the compact to one compacting state.

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

§ 5732. SEVERABILITY; CONSTRUCTION

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

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

§ 5733. BINDING EFFECT; OTHER LAWS

(a) Other laws.

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

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

(b) Binding effect of compact.

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

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

(3) Upon the request of a party to a conflict over meaning or interpretation of Interstate Commission actions, and upon a majority vote of the compacting states, the Interstate Commission may issue advisory opinions regarding such meaning or interpretation.

(4) In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by such provision upon the Interstate Commission shall be ineffective, and such obligations, duties, powers, or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers, or jurisdiction are delegated by law in effect at the time this compact becomes effective.

*Sec. 13. EFFECTIVE DATE*

Secs. 5 – 7 shall take effect July 1, 2011, and the remainder of the act shall take effect July 1, 2010.