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INTERSTATE COMPACT FOR ADULT OFFENDER SUPERVISION

House Bill 4690
Sponsor: Rep. Charles LaSata
Committee: Criminal Justice

Complete to 10-1-01

A SUMMARY OF HOUSE BILL 4690 AS INTRODUCED 5-1-01

Currently, probationers, parolees, and others placed under community supervision while under the jurisdiction of the legal system are allowed, under certain circumstances, to travel between states or relocate to a state other than the one in which they were sentenced. The statutory authority for the movement and management of these probationers and parolees has, since 1937, been provided by the Interstate Compact for the Supervision of Parolees and Probationers (ISC). To replace the ISC, at least 35 states must adopt identical legislation enacting a new compact.

House Bill 4690 would replace the ISC by adopting the Interstate Compact for Adult Offender Supervision, which, among other things, would establish uniform procedures to manage the transfer of supervision across state boundaries of persons who have been released to the community while on probation, parole, or otherwise under the jurisdiction of courts, paroling authorities, or corrections or other criminal justice agencies. The interstate compact would include provisions for the establishment of an independent compact authority to administer ongoing compact activity (including a provision for staff support); rule making authority; required collection of standardized information; and a mandatory funding mechanism to support essential compact operations such as staffing, data collection, and training and education. The compact would take effect upon ratification by at least 35 states. The bill would specify that the compact would be enacted into law and entered into with all jurisdictions legally joining in the compact, in a form substantially as follows.

Article I: Purpose. The bill would specify that states which enter into this compact recognize that each state is responsible for the supervision of adult offenders in the community who, according to the bylaws and rules of the compact, are authorized to travel across state lines. Supervision would be provided in a manner as to track the location of offenders, transfer supervision authority in an orderly and efficient manner, and when necessary, return offenders to the originating jurisdictions. [The Crime Control Act, 4 U.S.C. Section 112 (1965), authorizes and encourages compacts for cooperative efforts and mutual assistance in the prevention of crime.]

The stated purpose of the compact is to provide a framework for the promotion of public safety and to protect the rights of victims through the control and regulation of the interstate movement of offenders in the community; to provide for the effective tracking, supervision, and rehabilitation of these offenders by the sending and receiving states; and to equitably distribute the costs, benefits, and obligations of the compact among the participating states. The states would also have to recognize that offenders do not have the "right" to live in another state, and

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therefore duly accredited officers of a sending state could at all times enter a receiving state and apprehend and retake any offender under supervision subject to the provisions of the compact, bylaws, or rules promulgated under the compact.

Article II: Definitions. The bill would define many terms, including the following:

- “Adult” would mean both individuals legally classified as adults and those juveniles treated as adults by court order, statute, or operation of law.
- “Offender” would be defined as an adult placed under, or subject to, supervision as the result of the commission of a criminal offense and released to the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies.
- “Rules” would refer to acts of the interstate commission which were promulgated under Article VIII of the compact. Rules would have the force and effect of law in the participating states.
- “State” would mean any of the 50 states, the District of Columbia, and any other territorial possession of the United States. A “compacting state” would be a state which had enacted the enabling legislation for this compact and a “noncompacting state” would be any state which had not enacted the enabling legislation.

Article III: The Compact Commission. The compacting states would be required to create the “Interstate Commission for Adult Offender Supervision”, which would be a body corporate and joint agency of the compacting states. The compact would imbue the commission with responsibilities, powers, and duties, including the power to sue and be sued. The interstate commission would consist of commissioners selected and appointed by resident members of a state council for interstate adult offender supervision for each state. In addition to these commissioners (each of whom would be the voting representative of his or her state), the interstate commission would have to include members of interested organizations (including a member of the national organizations of governors, legislators, state chief justices, attorneys general, and crime victims) who would act as ex officio (nonvoting) members.

Each compacting state represented at a meeting of the interstate commission would be entitled to one vote, and at least one meeting a calendar year would have to be held. Meetings would be open to the public and would have to be noticed. An executive committee would have to be established by the interstate commission. The executive committee would have the power to act on behalf of the interstate commission during periods when the commission was not in session, and would be empowered to oversee the day-to-day activities managed by the executive director and interstate commission staff; administer enforcement and compliance with the compact’s provisions and bylaws; and perform other duties as directed by the interstate commission or set forth in the bylaws.

Article IV: The State Council. Each compacting state would have to create a state council for interstate adult offender supervision. The state council would be responsible for the appointment of the commissioner who would serve on the interstate commission for that state; however, according to the compact, a state council would have to appoint its compact administrator as its commissioner. The compact administrator would be responsible for the

administration and management of a state's supervision and transfer of offenders under the provisions of the compact, rules adopted by the interstate commission, and policies adopted by the state council. Each compacting state would retain the right to determine the qualifications of the compact administrator. The compact administrator could be appointed by the state council or by the governor with input from the legislature or judiciary.

Each state could determine the membership of its own state council, but its membership would have to include at least one representative from the legislative, judicial, and executive branches of government, victims groups, and its compact administrator. In addition to appointing a commissioner to the national interstate commission, each state council would have to exercise oversight and advocacy concerning its participation in interstate commission activities as well as other duties such as the development of policy concerning operations and procedures of the compact within that state.

Article V: Powers and Duties of the Interstate Commission. Among many specified powers and duties, the interstate commission would have to do the following:

- Adopt suitable bylaws governing the management and operation of the interstate commission.

- Promulgate rules which would have the force and effect of statutory law and would be binding in the compacting states.

- Oversee, supervise, and coordinate the terms of the compact, bylaws, and rules.

- Enforce compliance with compact provisions, interstate commission rules, and bylaws.

- Establish and appoint committees and hire staff necessary for the carrying out of its functions, including an executive committee as specified in Article III.

- Accept donations and grants of money, equipment, and services; and lease, sell, or purchase property.

- Establish a budget, make expenditures, and levy duties as provided in Article X.

- Provide for dispute resolution among compacting states.

- Report annually to the legislatures, governors, judiciary, and state councils of the compacting states with regard to the activities of the interstate commission; the reports would have to include any recommendations adopted by the interstate commission.

- Establish uniform standards for the reporting, collecting, and exchanging of data.

Article VI: Organization and Operation of the Interstate Commission. Within 12 months of the first interstate commission meeting, the commission would have to adopt bylaws to govern its conduct, including, but not limited to, establishing the commission's fiscal year and establishing standards and procedures for compliance and technical assistance in carrying out the compact. (See the bill for a complete list of required bylaws.)

In addition, the bill would provide for the election of a chairperson and vice chairperson by the interstate commission who would serve according to the bylaws. These positions would be uncompensated except for reimbursement, subject to the availability of budgeted funds, for actual costs incurred in the performance of their duties. An executive director, who would serve as secretary to the interstate commission and be in charge of staff hiring and supervision, would have to be appointed or retained.

Members, officers, the executive director, and employees of the interstate commission would be granted immunity from civil liability – either personally or in their official capacity – for damages or other civil liability arising from acts, errors, or omissions occurring within the scope of their employment, duties, or responsibilities. However, persons could be liable for damages, losses, injuries, or liability caused by intentional or willful and wanton misconduct. Providing that the act did not result from intentional wrongdoing on the part of such a person, the interstate commission would have to defend the person in any civil action arising from acts that occurred within the person’s scope of employment, duties, or responsibilities. Further, unless the act arose from gross negligence or intentional wrongdoing, the interstate commission would have to indemnify and hold any member, officer, executive director, or employee harmless in the amount of any settlement or judgment obtained against such them.

Article VII: Activities of the Interstate Commission. The interstate commission would have to meet at least once each calendar year (but could meet more often at the call of the chair or if requested by a majority of the members). Actions taken by the interstate commission would have to be consistent with provisions of the compact. Each member state (a state that has ratified the compact) would have one vote. Members could participate in commission meetings and vote via telecommunication or electronic communication.

Meetings of the interstate commission would have to be open to the public and public notice would have to be given, but the compact would allow, under certain specified conditions, meetings to be closed. If a meeting were closed to the public, certain procedures would have to be followed, and minutes of the closed meeting would have to be kept. In like manner, the bylaws would have to establish conditions and procedures to make information and records available to the public, but could exempt certain information from disclosure. Any information exempted from public disclosure could be released to law enforcement agencies.

Article VIII: Rule-Making Functions of the Interstate Commission. Rules would have to be adopted according to criteria set forth in the compact and the bylaws, and would have to substantially conform to the principles of the federal Administrative Procedure Act (5 U.S.C.S. Section 551 et seq.) and the federal Advisory Committee Act (5 U.S.C.S. App. 2, Section 1 et seq.). Rules and amendments would become binding as of the date specified in each rule or amendment. The bill contains procedures to be followed when promulgating rules, such as publishing the proposed rule; allowing persons to have input on a proposed rule via written data, facts, and opinions; and providing an informal hearing. The bill also contains a procedure by which a person could petition for judicial review of a rule within 60 days of the rule’s promulgation. A rule could be set aside if the court found the interstate commission’s actions were not supported by substantial evidence as defined in the federal Advisory Committee Act.

Further, within 12 months after the first meeting of the interstate commission, the commission would have to address, at a minimum, offender registration and compliance;

violations and returns; transfer procedures and forms; eligibility for transfer; the level of supervision to be provided by the receiving state; mediation, arbitration, and dispute resolution; and the level of supervision to be provided by the receiving state, among other listed subjects. The compact also contains a provision regarding the implementation of emergency rules. In addition, the bill would nullify the existing rules promulgated under the Interstate Compact for the Supervision of Parolees and Probationers (the current compact which would be replaced by the Interstate Compact for Adult Offender Supervision) within 12 months after the first meeting of the interstate commission.

Article IX: Oversight, Enforcement, and Dispute Resolution by the Interstate Commission. The interstate commission would be charged with overseeing the interstate movement of adult offenders in the compacting states and would also have to monitor those activities being administered in noncompacting states which could significantly affect the compacting states. The courts and executive agencies in each compacting state would have to enforce the compact within that state. (The interstate commission is also charged with enforcing the provisions of the compact pursuant to Article XII, Section B, of the compact.) If a judicial or administrative proceeding pertaining to the compact affected the powers, responsibilities, or actions of the interstate commission, the commission would be entitled to receive all service of process, and would have standing to intervene in the proceeding.

The interstate commission would also be charged with resolving any disputes arising among compacting states and noncompacting states, and would have to enact a bylaw or promulgate a rule to provide for both mediation and binding dispute resolution for disputes among compacting states.

Article X: Finance. The bill would authorize the interstate commission to levy and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the commission and staff. This amount would have to be sufficient to cover the annual budget as approved each year. The aggregate annual assessment would have to be allocated based on a formula to be determined by the interstate commission, but would have to take into consideration the population of a state and the volume of interstate movement of offenders. Accurate accounts of all receipts and disbursements would have to be kept, and would be subject to the audit and accounting procedures established under commission bylaws. All funds handled by the interstate commission would have to be audited yearly by a certified or licensed public accountant, and the audit report would have to be included in the commission's annual report.

Article XI: Compacting States, Effective Date, and Amendment. Any state, as defined in the bill, would be eligible to become a compacting state. The compact would become effective and binding – on compacting states - upon legislative enactment by at least 35 states. The governors or their designees of noncompacting states would be invited to participate in interstate commission activities on a nonvoting basis prior to adoption of the compact by all states and territories. The compact could be amended, but only by unanimous consent of the compacting states.

Article XII: Withdrawal, Default, Termination, and Judicial Enforcement. A compacting state could withdraw from the compact by repealing the compact's enabling legislation. A withdrawing state would have to provide written notice to the chairperson of the interstate

commission upon introduction of the legislation to repeal membership in the commission, and would be responsible for all assessments, obligations, and liabilities incurred through the effective date of the withdrawal (including the performance of any obligations which would extend beyond the effective date of the withdrawal).

Penalties, including fines and the suspension or termination of commission membership, could be levied if the interstate commission determined that a state defaulted in its performance of obligations or responsibilities under the compact, bylaws, or rules. The interstate commission could also initiate legal action in federal district court (either in the District of Columbia or the federal district where the interstate commission has its offices) to enforce compliance with the provisions of the compact, bylaws, or rules against any compacting state in default. The prevailing party would be awarded all costs of such litigation including reasonable attorney fees.

The Interstate Compact for Adult Offender Supervision would be dissolved, and would become null and void, on the date that only one state was left retaining its membership in the interstate commission.

Article XIII: Severability and Construction. The bill would specify that the provisions of the compact would be liberally constructed to effectuate its purposes. The provisions contained in the compact would be severable so that if any phrase, clause, sentence, or provision were deemed unenforceable, the remaining provisions of the compact would remain enforceable.

Article XIV: Binding Effect of Compact and Other Laws. All lawful actions of the interstate commission, including rules and bylaws, would be binding upon the compacting states. The compact would supercede any law of a compacting state that was inconsistent with the compact. However, if a compact provision exceeded the constitutional limits imposed on the legislature of a compacting state, then any obligations, duties, powers, or jurisdiction sought to be conferred by such provision upon the interstate commission would be ineffective; the obligations, duties, powers, or jurisdiction would have to remain in the compacting state and be exercised by the agency in that state to which such obligations, duties, powers, or jurisdiction had been delegated by law in effect at the time the compact became effective. If a conflict arose over the meaning or interpretation of interstate commission actions, the interstate commission could issue an advisory opinion upon request by a party to the conflict and upon a majority vote of the compacting states.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.