

BILL ANALYSIS

H.B. 706
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Juvenile Justice & Family Issues
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The Interstate Compact on Juveniles (“ICJ”) is a multi-State agreement (all 50 states, the District of Columbia, the Virgin Islands, and Guam), established in 1955, that governs the return of youth to their home states who have run away from home or escaped from custody; the transfer of juvenile probation or parole supervision of youth whose parents move to another state; and the requisition of youthful offenders accused of crimes that are committed across state lines. It includes provision for judicial review to help insure the requisitions are in order. The governor of each member state appoints the compact administrator for that state (in Texas, this is the executive director of the Texas Youth Commission). ICJ provisions are administered by the Association of Juvenile Compact Administrators (AJCA), a professional, tax-exempt association of compact administrators from the member states. This association is not created under the compact nor given explicit authority to make and enforce rules. It has no full-time staff to manage compact activities.

HB 706 amends Chapter 60, Family Code, to adopt a new Interstate Compact for Juveniles to replace the current one. The need for a new compact was determined through a survey of states that was conducted in 1999 by the federal Office of Juvenile Justice and Delinquency Prevention (“OJJDP”) which determined that the language of the compact is antiquated, its rules and procedures not widely followed or understood, and its administrative structure inadequate. Beginning in 2000, the Council of State Governments, which facilitated the drafting and adoption of the original compact, and OJJDP facilitated an Advisory Group of twenty-four policy experts representing a broad and diverse group of institutions and organizations with an interest in juvenile supervision issues.

Following the Advisory Group’s recommendations, a team of fifteen other policy experts drafted a proposed new juvenile compact that largely tracks the language of the new adult interstate compact that was enacted by the 77th Legislature. This proposed new compact has been endorsed by the AJCA. It provides for an independent compact operating authority to administer compact activities. This “Interstate Commission for Juveniles” is composed of a representative from each compacting state and the commission’s staff. It provides rule-making authority (each state has one vote) and provides that compact rules supersede state law (it takes legislation passed by a majority of state legislatures to override). It provides for significant sanctions to enforce the compact requirements (enforceable as a contract in the U.S. Federal District Court in the District of Columbia) and a mandatory funding mechanism to support the commission’s administrative support operations (the initial sliding-scale annual dues for Texas are projected to be \$37,000 – currently the fee is \$400). It provides for the collection of standardized information and the sharing of information about youth in the compact.

The proposed new compact provisions are being distributed to state legislatures by the Council of State Governments. HB 706 incorporates those provisions, but also includes a number of amendments to them. These amendments are for the purpose of restoring certain procedural protections that are present in the current compact and better delineating the rule-making authority that is delegated to the Interstate Commission for Juveniles (all these amendments are made in ARTICLE I, of Sec. 60.010, Family Code, beginning on page 1, line 23, and ending on page 3, line 26, of the bill). A section of the Council of State Governments’ proposal that requires states to establish state-level councils to advise the states’ participation in compact activities (one representative from the legislative, judicial and executive branches of government, a victims group representative, the compact administrator and deputy administrator) has been deleted in the interest of cutting costs for non-essential activities.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the The Interstate Commission in ARTICLE IV, Section 2, page 10-11, ARTICLE VI, Section A, B, C, D, G, pages 16-18, ARTICLE VII, Section B, Subsection 2 and 3, page 19, and ARTICLE VIII, Section B, page 20 of this bill.

ANALYSIS

ARTICLE 1.

Section 1.01 Amends Chapter 60 of the Family Code by adding Section 60.010 to enact the Interstate Compact for Juveniles.

ARTICLE I. PURPOSE – In stating the purpose of the new compact, this Article delineates the scope of rule-making authority that is delegated to the new Interstate Commission for Juveniles (which is established in Articles III and IV). The Commission will:

1. ensure that youth who are moved to another state for probation or parole supervision and services are governed in the receiving state by the same standards that apply to youth receiving such supervision and services in the receiving state;
2. ensure that public safety interests of the citizens, including the victims of juvenile offenders, in both the sending and receiving states are adequately protected and balanced with the youth's and the youth's family's best interests and welfare when an interstate movement is under consideration;
3. return youth who have run away, absconded, or escaped from supervision or control or have been accused of an offense to the state requesting their return through a fair and prompt judicial review process that ensures the requisition is in order and that the transport is properly supervised;
4. make provisions for contracts between member states for the cooperative institutionalization in public facilities in member states for delinquent youth needing special services;
5. provide for the effective tracking of youth who move interstate under the compact's provisions;
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, ensuring that a receiving state accepts supervision of a youth when the youth's parent or other person having legal custody resides or is undertaking residence there;
8. ensure immediate notice to jurisdictions where offenders are authorized to travel or to relocate across state lines;
9. establish a system of uniform data collection on information pertaining to youth who move interstate under this compact that prevents public disclosure of identity and individual treatment information but allows access by authorized juvenile justice and criminal justice officials and regular reporting of compact activities to public officials;
10. monitor compliance with rules governing interstate movement of youth and initiate interventions to address and correct noncompliance;

11. coordinate training and education for officials involved in compact activities; and
12. coordinate with the Interstate Compact for the Placement of Children, the Interstate Compact for Adult Offender Supervision and other compacts affecting children, particularly when overlapping supervision issues arise.

ARTICLE II. DEFINITIONS – Among the definition of terms used in the compact are the definitions of “juvenile” (any person defined as a juvenile in any member state or by the rules of the Interstate Commission and expressly includes accused as well as adjudicated delinquents and status offenders and nonoffenders). “State” includes the 50 states, the District of Columbia, Puerto Rico, U.S. Virgin Islands, Guam, Samoa, and Northern Marianas Islands.

ARTICLE III. INTERSTATE COMMISSION FOR JUVENILES – Establishes the Interstate Commission. Compact administrators or their deputies (or another designee) are voting members of the Interstate Commission. Representatives of interested organizations may be nonvoting members. Each member state has one vote and rules are adopted by majority vote of those states represented by a voting member present at the meeting when the vote is taken. At least a majority of the member states constitutes a quorum. A meeting must held annually and may be called when requested by a majority of the member states. When not in session, an executive committee of the Commission may act on its behalf, with the exception of rulemaking or amendment to the compact. The executive committee oversees the work of the executive director and compact staff. Provisions in the by-laws may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests. Public notice is given of all meetings and provision is made in particular situations for a closed meeting by two-thirds vote. Provision is made for meeting minutes. Provision is made for data collection and reporting using up-to-date technology.

ARTICLE IV. POWERS AND DUTIES OF THE INTERSTATE COMMISSION – The Interstate Commission’s powers and duties include providing for dispute resolution among the member states, promulgating rules having the force and effect of statutory law, overseeing the interstate movement of youth, enforcing compliance with rules and by-laws (including use of judicial process), establishing an office, purchasing insurance, hiring staff or contracting for personnel services, accepting donations and grants, owning or leasing real or personal property, establishing a budget, suing or being sued, submitting an annual report of activities to officials in member states, coordinating education and training, and establishing uniform standards for reporting and collecting data.

ARTICLE V. ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION – Provision is made for the adoption of bylaws within the first 12 months of the first meeting, adopted by majority vote of members present and voting. The bylaws will establish the fiscal year and the executive committee; provide for delegation of authority and the procedures for calling and giving notice of meetings; and provide start-up rules and a mechanism for wrapping up the affairs of the Commission. Provision is made for the annual election of officers and the appointment of an executive director by the executive committee. Provision is made for the immunity of the executive director and staff from liability in their personal or official capacities for non-intentional acts or omissions within the scope of their Commission duties. Liability of Commission members or their employees for conduct occurring within their states is governed by the laws of their states. The Commission is required to defend and indemnify the executive director or employees or representatives of the Commission (subject to the approval of the attorney general of the state represented by the commission member) for non-intentional acts or omissions within the scope of their Commission employment or duties.

ARTICLE VI. RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION – Provision is made for rule-making to substantially conform with the principles of the “Model State Administrative Procedures Act” or other such act,

consistent with due process. Provision is made for publication of proposed rules, opportunity for public comment, and informal hearing if requested by 10 or more persons. Provision is made for the adoption of an emergency rule. Within 60 days after a rule is adopted, provision is made for petitioning the federal district court in the District of Columbia or where the Commission is located to set aside a rule that is not supported by substantial evidence. Otherwise, a majority of the legislatures of the compacting states may reject a rule by enactment of a statute making the rule ineffective in that state. Existing rules of the ICJ become null and void 12 months after the first meeting of Interstate Commission.

ARTICLE VII. OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION BY THE INTERSTATE COMMISSION – Provision is made to require courts and agencies in each compacting state to enforce the compact and the Commission rules and to take judicial notice of Commission rules. The Commission is authorized to intervene in any proceeding that may affect the powers, responsibilities or actions of the Commission. The Commission is required to attempt, upon request, to resolve disputes that may arise between states and must adopt rules for mediation and binding dispute resolution.

ARTICLE VIII. FINANCE – Provision is made for the Commission to levy an annual assessment from each compact state to cover the costs of the Commission’s operations, allocated on the basis of a formula that takes into consideration the population of the state and the volume of interstate movement of youth. The Commission may not incur obligations prior to securing adequate funding and may not pledge the credit of any state without its consent. Provision is made for accounting procedures and annual audit by a certified or licensed public accountant.

ARTICLE IX. COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT – Provides that the new compact becomes effective on July 1, 2004 or the day on which the compact is enacted into law by the 35th state, whichever is later. The governors of noncompacting states or their designees are invited to participate on a non-voting basis prior to the adoption of the compact by all states. An amendment to the compact requires enactment of the amendment into law by all the compacting states.

ARTICLE X. WITHDRAWAL, DEFAULT, TERMINATION, AND JUDICIAL ENFORCEMENT – A state withdraws from the compact by enacting a repeal of the statute. The Commission chair must be notified immediately of any such legislation that is filed and notice is provided to other states. The withdrawing state is responsible for all assessments and liabilities incurred through the date of withdrawal, including for the performance of any obligations after that date. The Commission may impose penalties for default of any duty imposed on a state including remedial training, alternative dispute resolution, reasonable fines and costs as fixed by the Commission or suspension or termination of membership. Notice of the grounds for suspension or termination of membership must be provided, including a stipulation of the conditions and time period within which the defaulting state must cure its default. Termination requires a majority vote of member states. Within 60 days, notice of the termination is provided to the governor, chief judicial officer and leaders of the defaulting state’s legislature. The defaulting state is responsible for all assessments and liabilities incurred through the date of termination, including for the performance of any obligations after that date. By majority vote of the member states, the Commission may initiate legal action in the federal district court in the District of Columbia or where the Commission offices are located to enforce the provisions of the compact against any defaulting state. The compact dissolves upon the withdrawal or default of the next to last compacting state.

ARTICLE XI. SEVERABILITY AND CONSTRUCTION – Provision is made to sever out any provisions that are deemed unenforceable and for the liberal construction of the compact provisions.

ARTICLE XII. BINDING EFFECT OF COMPACT AND OTHER LAWS – Nothing prevents the enforcement of other laws that are not inconsistent with this

compact. These provisions take precedence over conflicting laws except for constitutional provisions or the provisions of other compacts. All lawful actions of the Commission, including its rules, bylaws and mutual agreements are binding on the compacting states. The Commission, upon majority vote, may issue advisory opinions about the meaning or interpretation of its rules. To the extent any compact provision exceeds the constitutional limits imposed on the legislature of any compacting state to confer a power, duty, obligation or jurisdiction to the Commission, that provision shall be ineffective and that power or duty remains in the compacting state and is not delegated to the Commission.

ARTICLE 2. CONFORMING AMENDMENTS

SECTION 2.01 – Amends Sections 60.001 and 60.009, Family Code to provide for conforming definitions of “Commission”, “Compact,” and “Compact Administrator.”

SECTION 2.02 – Provides that provisions in the compact control over other conflicting state laws, but not if they are determined by a court to violate the Texas Constitution. Provides that the protections of Chapter 104, Civil Practice and Remedies Code, (State Liability for Conduct of Public Servants) apply to the compact administrator and each member, officer, executive director, employee or agent of the Commission.

SECTION 2.03 – Corrects a reference to the new compact.

ARTICLE 3. TRANSITION, REPEALER, AND EFFECTIVE DATE

SECTION 3.01 – Requires publication of notice of the effective date of the new compact in the Texas Register within 30 days after it becomes effective.

SECTION 3.02 – Repeals the former ICJ.

EFFECTIVE DATE

This Act to take effect on the day on which the new Interstate Compact for Juveniles takes effect (the later of July 1, 2004, or the day on which the compact is enacted into law by the 35th state). Provides that the effective date of Article I of the bill is September 1, 2005.