

SUBJECT: Creation of new Interstate Compact for Adult Offender Supervision

COMMITTEE: Corrections — favorable, without amendment

VOTE: 7 ayes — Haggerty, Farrar, Allen, Hodge, Ellis, Hopson, Isett

0 nays

2 absent — Gray, Ritter

WITNESSES: For — None

Against — None

On — Wayne Scott, Texas Department of Criminal Justice; *Registered, but did not testify*: Melinda Hoyle Bozarth, Texas Department of Criminal Justice

BACKGROUND: The Interstate Compact for Adult Offender Supervision now in use was drafted in 1937 and gradually adopted by all 50 states, the District of Columbia, and the U.S. territories. Texas adopted the compact in 1965.

Federal law (4 U.S.C. §112) authorizes and encourages compacts for cooperative efforts and mutual assistance in the prevention of crime.

Code of Criminal Procedure, art. 42.11 outlines the uniform act for out-of-state probationer and parolee supervision. The compact allows Texas to send probationers or parolees to another state when those persons are residents of the other state or have family and can obtain employment there, or if they are neither residents of the other state nor have family residing there and the other state consents to having them sent there. The receiving state assumes supervision of the probationer or parolee. Texas can send officers to the receiving state to apprehend and retake the probationer or parolee without the permission of the receiving state unless the person is suspected of committing a new offense in that state. In that case, the person must be discharged from prosecution or imprisonment before Texas can retake the person without the receiving state's permission.

The governor of each state in the compact can designate an officer to act jointly with other states' officers to create rules and regulations to carry out the terms of the compact. The executive director of the Texas Department of Criminal Justice (TDCJ) or a designee is authorized and directed to do all things necessary to carry out the compact.

The compact remains binding on each state until renounced in writing by the state six months in advance of the withdrawal. The renunciation must be sent to all other participating states.

The National Institute of Corrections, with advice from the Council of State Governments, drafted a new Interstate Compact for Adult Offender Supervision. Fourteen states have enacted the compact and another 22, including Texas, are considering legislation to enact it. Once 35 states have adopted the compact, it will replace the one currently in use.

Government Code, secs. 2110.002, 2110.003 and 2110.008 describe the composition of state agency advisory committees, outline a presiding officer's selection and duties, and establish the duration of the committees.

Civil Practices and Remedies Code, ch. 104 outlines state liability for public servants.

DIGEST:

HB 2494 would add Chapter 510 to the Government Code to create a new Interstate Compact for Adult Offender Supervision. It would repeal Code of Criminal Procedure, art. 42.11, effective on the first anniversary of the date on which the Interstate Compact for Adult Offender Supervision was effective.

Texas State Council for Interstate Adult Offender Supervision. HB 2494 would establish the council and direct that it be composed of:

- ! an executive director or executive director's designee – either of whom would preside over the council and serve as Texas' compact administrator and commissioner to the Interstate Commission for Adult Offender Supervision;
- ! three members appointed by the governor, one of whom would have to represent a crime victims' rights organization; and

- ! one member each appointed by the presiding judge of the court of criminal appeals, the lieutenant governor, and the House speaker.

The members would serve staggered terms of six years, with two members' terms expiring February 1 of each odd-numbered year. The council would advise the compact administrator on the administration of the compact and Texas' participation in Interstate Commission activities. Members of the council and its employees and agents would have the same protections under Civil Practice and Remedies Code, Ch. 104 as any other state employee. Government Code, Ch. 2110 would apply to the council, with the exceptions of sec. 2110.002, 2110.003, and 2110.008, regarding advisory committees. If Texas laws conflicted with the compact, the compact would override Texas law unless it conflicted with the Texas Constitution.

Interstate Compact for Adult Offender Supervision. States involved in the compact would recognize that each state was responsible for supervising adult offenders who were authorized by the compact to travel across state lines. The states would have 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 purpose of the compact would be:

- ! to promote public safety and protect victim rights through controlling and regulating interstate movement of offenders in the community;
- ! to provide for effective tracking, supervision, and rehabilitation of these offenders by the sending and receiving states; and
- ! to distribute costs, benefits, and obligations of the compact equitably among participating states.

The compact also would be intended:

- ! to ensure notification and the opportunity for input for victims and jurisdictions where offenders are authorized to travel or relocate across state lines;
- ! to create uniform data collection and access to information on active cases by authorized officials;
- ! to ensure regular reporting of compact activities to state branches of government and the heads of state councils;

- ! to monitor compliance and address noncompliance with rules governing interstate movement of offenders, and
- ! to coordinate training and education on the rules regarding interstate movement of offenders.

The compacting states would recognize that an offender has no right to live in another state and that duly accredited officers of a sending state could at all times enter a receiving state and apprehend and retake an offender under supervision, subject to any provisions, bylaws, or rules of the compact. The states also would recognize that activities conducted by the Interstate Commission for Adult Offender Supervision would be intended to formulate public policy and therefore would be public business.

Interstate Commission for Adult Offender Supervision. The commission would have the power:

- ! to create rules that would have the effect of statutory law and be binding in the compacting states;
- ! to oversee, supervise, and coordinate the interstate movement of offenders under the compact; and
- ! to enforce compliance with the compact using all necessary and proper means including, but not limited to, using judicial process.

It also could conduct financial transactions, hire staff and elect officers, and provide dispute resolution among compacting states. The commission would be required to establish uniform standards for reporting, collecting, and exchanging data, to report annually to the several branches of government of the compacting states on its activities during the preceding year, and to coordinate education, training, and public awareness for state officials regarding the interstate movement of offenders.

Each state would select and appoint commissioners to the commission and would be entitled to one vote at any meeting. The commission would include non-voting members from national organizations of governors, legislators, state chief justices, attorneys general, and crime victims. A majority of the states involved in the compact would constitute a quorum for the transaction of business. The commission would meet at least once per calendar year, and the chairperson could call additional meetings, or on the request of 27 or more compacting states, be required to call additional meetings.

The commission would establish an executive committee to act on its behalf when the commission was not in session. The executive committee could not make rules or amendments to the compact, but would oversee day-to-day activities, enforce the requirements of the compact, and perform other duties as directed by the commission or set forth in the bylaws and rules.

Organization and operation of the commission. The commission would have to establish bylaws within 12 months of its first meeting to establish a fiscal year, an executive committee, procedures for the commission's operation and carrying out the compact, and for returning money to the states if the compact were terminated. The bill would include other necessary bylaws and permit the commission to establish others as it saw fit. The commission would be required to elect unpaid officers and appoint a salaried executive director that would hire staff and serve as a secretary to the commission. The commission would defend its employees or members of the commission in any civil lawsuit arising from an action within the commission's scope and would indemnify them in the amount of any settlement or judgement if the suit did not result from intentional wrongdoing.

Activities of the Interstate Commission. To make new rules, the commission would have to introduce them at one of its meetings and secure a majority vote of the members present, unless the bylaws specified otherwise. Members would have to vote in person on behalf of their own state unless the bylaws allowed them to participate in meetings by telephone or other electronic communication. The commission's bylaws would stipulate how its records would be available to the public. It could refuse to disclose to the public any information that would adversely affect personal privacy rights or proprietary interests, but could make those records available to law enforcement officials.

The commission would have to give public notice of its meetings and make them open to the public unless a two-thirds vote of the commission found that an open meeting would disclose certain personal or proprietary information. If the meeting were closed, the chief legal officer would publicly certify that it could be closed and would cite relevant provisions allowing its closure. The commission would have to keep minutes of closed meetings that fully and clearly described all matters discussed and action taken. The commission would be required to collect standardized data concerning the interstate movement of offenders through the compact.

Rulemaking functions of the Interstate Commission. The commission would create rules to achieve the purposes of the compact, including transition rules to govern the compact while states are considering and enacting it. The rulemaking would conform to federal law and commission bylaws. A majority of the legislatures of the compacting states could nullify a rule by enacting a statute or resolution to that effect. When introducing a rule, the commission would be required to publish it, allow comment, provide an opportunity for an informal hearing, and promulgate a final rule and its effective date, if appropriate, based on the rulemaking record. Not later than 60 days after a rule was promulgated, any interested person could petition a federal court for judicial review to determine if the commission's action would be supported by the rulemaking record. The court could override any rule it found unlawful. Rules regarding certain subjects, such as victim notification and eligibility of parolees to transfer to other states, would have to be addressed within 12 months after the commission's first meeting.

Rules governing the current interstate compact that would be superseded by the new compact would be null and void 12 months after the first meeting of the Interstate Commission created under the new compact. The commission could promulgate an emergency rule to become effective immediately, provided it allowed all rulemaking procedures to be retroactively applied within 90 days of the effective date of the rule.

Oversight, enforcement, and dispute resolution by the Interstate Commission. The commission would oversee the interstate movement of adult offenders in compacting states and monitor similar activities being administered in non-compacting states that could affect states in the compact. The courts and executive agencies in each compacting state would enforce the compact. The commission could intervene in any judicial or administrative proceeding in a compacting state pertaining to the compact and that could affect the powers, responsibilities, or actions of the commission. The states would have to report to the commission on issues or activities of concern to them and cooperate with the commission in the discharge of its duties. The commission would attempt to resolve any disputes or other issues subject to the compact that may arise among compacting states and non-compacting states.

Finance. The commission would pay for reasonable expenses of its establishment, organization, and ongoing activities. It would collect an annual assessment from each compacting state to cover the commission's costs, based on a formula that took into consideration the population of the states and the volume of interstate movement of offenders among them. The commission would not borrow money, nor would it pledge the credit of a compacting state without that state's permission. The commission would keep financial records that would be audited yearly by a certified public accountant and included in its annual report.

Compacting states, effective date and amendment. Any U.S. state, the District of Columbia, or U.S. territory would be eligible to become a compacting state. The compact would become effective and binding upon legislative enactment of the compact into law by no fewer than 35 of the jurisdictions eligible to become a compacting state. The effective date of the compact would be July 1, 2001, or upon enactment into law by the 35th jurisdiction, whichever was later. Afterward, the compact would be immediately effective and binding for any state that enacted it. The governors of non-compacting states could be invited to participate in commission activities on a non-voting basis before the adoption of the compact by all states. The commission could propose amendments to the compact, which would become binding upon enactment into law by the unanimous consent of the compacting states.

Withdrawal, default, termination, and judicial enforcement. Once effective, the compact would remain binding on a compacting state unless the state withdrew from the compact by repealing the statute that enacted it. The withdrawing state would be required to notify the chairperson of the Interstate Commission immediately in writing upon introduction of legislation to repeal the compact. Within 60 days, the commission would notify other states in the compact of a state's intent to withdraw. The withdrawing state would be responsible for all liabilities incurred through the effective date of withdrawal including any obligations that extended beyond the effective withdrawal date. Reinstatement of the compact would occur when a withdrawing state reenacted the compact or upon a later date determined by the commission.

The commission would have the following recourse if it determined that a compacting state had defaulted in performing any of its obligations or responsibilities under the compact:

- ! fines;
- ! remedial training and technical assistance; and
- ! suspension and termination of membership in the compact if all other reasonable means of securing compliance have been exhausted.

The commission would be required to notify the defaulting state in writing of the penalty and stipulate the conditions and time period within which the defaulting state would have to cure its default. If the defaulting state failed to meet the time period, it could be terminated from the compact upon an affirmative vote of a majority of the compacting states. The defaulting state would be responsible for all assessments, obligations, and liabilities incurred through the effective date of its termination, including any obligations that extended beyond the effective date of termination. The commission would not bear any costs related to the defaulting state unless it were mutually agreed upon by the state and the commission. Reinstatement to the compact after default would require both reenactment of the compact by statute in the defaulting state and the approval of the commission. By a majority vote of its members, the commission could initiate legal action in federal court to enforce compliance with the provisions of the compact, its rules, or bylaws against any compacting state in default. The prevailing party would be awarded all costs of litigation, including reasonable attorney fees.

The compact would dissolve on the date that enough states withdrew or defaulted to leave its membership at one state. Upon dissolution of the compact, it would become null and void, and any surplus funds would be distributed in accordance with the bylaws.

Severability and construction. If any phrase, clause, sentence, or provision of the compact were deemed unenforceable, all remaining provisions still would be enforceable. The provisions of the compact would be required to be construed liberally to accomplish its purposes.

Binding effect of compact and other laws. The compact would not prevent enforcement of laws in a compacting state that were not inconsistent with the compact. All agreements between the commission and compacting states

would be binding. The commission could issue advisory opinions about the meaning or interpretation of its actions upon the request of a party to a conflict over that meaning or the majority vote of the compacting states. No provision of the compact that exceeds the constitutional limits of a compacting state would be effective, and the obligations, duties, powers, or jurisdiction sought by the provision would be exercised by the agency in the state to which those powers are delegated by the law in effect at the time the compact became effective.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2001.

**SUPPORTERS
SAY:**

Texas must join the compact this legislative session because only the first 35 states to join will be able to vote on the rules and provisions of the compact. These rules include how much money each state belonging to the compact would be required to pay. It is important that Texas have a vote on the financial side of the compact because Texas currently exports more parolees and probationers than any other state. Thirty-five states could adopt the compact this year. Fourteen states already have ratified it, and 22 others have filed bills to do so. Once 35 states ratify the new compact, it will supersede the one currently in place.

Joining the new compact would work to Texas' advantage because the state sends out more parolees each year than it takes in. It makes sense to belong to a compact that would facilitate transfer of these offenders to other states, whose taxpayers pick up the cost of their supervision.

The new compact would provide a central body, chosen by the participating states, to allow stronger enforcement of the compact's provisions. Under current law, Texas works with other states on a one-to-one basis. HB 2494 would allow a central body to enforce all the rules of the compact and to fine or even remove from the compact states that failed to comply with the rules.

HB 2494 would provide a central database that would allow participating states to keep better tabs on parolees and probationers residing outside of their convicting state.

- OPPONENTS SAY:** HB 2494 could be expensive for Texas taxpayers. Although the fiscal note estimates that it would increase the cost to the state from \$2,000 to \$50,000 per year, the LBB also notes that costs associated with the bill ultimately would depend on the rules of and fees assessed by the Interstate Commission for Adult Offender Supervision. Those rules and fees could make the potential cost much higher.
- NOTES:** The companion bill, SB 1117 by Armbrister, has been referred to the Senate Criminal Justice Committee.