

BILL ANALYSIS

Senate Research Center
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H.B. 706
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Criminal Justice
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Engrossed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

The Interstate Compact for Juveniles (ICJ) is a multi-state agreement involving all 50 states, the District of Columbia, the Virgin Islands, and Guam, established in 1955, that governs the return to their home states of youth 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 committed across state lines. The need for a new compact was determined through a survey of states conducted in 1999 by the Office of Juvenile Delinquency and Prevention, which determined that the language of the compact is antiquated, its rules and procedures not widely followed or understood, and its administrative structure inadequate. H.B. 706 amends Chapter 60, Family Code, to adopt a new ICJ to replace the current one.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Interstate Commission for Juveniles in ARTICLE VIII (Section B) of this bill.

SECTION BY SECTION ANALYSIS

ARTICLE 1. INTERSTATE COMPACT FOR JUVENILES

SECTION 1.01. Amends Chapter 60, Family Code, by adding Section 60.010, to enact the Interstate Compact for Juveniles, as follows:

Sec. 60.010. INTERSTATE COMPACT FOR JUVENILES

ARTICLE I

PURPOSE

Sets forth the policy and purpose of the Interstate Compact for Juveniles.

ARTICLE II

DEFINITIONS

Defines "bylaws," "compact administrator," "compacting state," "commissioner," "court," "deputy compact administrator," "Interstate Commission," "juvenile," "noncompacting state," "probation or parole," "rule," and "state."

ARTICLE III

INTERSTATE COMMISSION FOR JUVENILES

A. Provides that the compacting states create the Interstate Commission for Juveniles (commission). Requires the commission to be a body corporate and joint agency of the compacting states. Requires the commission to have all the responsibilities, powers, and duties set forth herein, 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. Requires the commission to consist of commissioners appointed by the appropriate appointing authority in each state pursuant to the rules and requirements of each compacting state. Requires the commissioner to be compact administrator, deputy compact administrator, or designee from that state who shall serve on the commission in such capacity under or pursuant to the applicable law of the compacting state.

C. Sets forth requirements for composition of the commission, in addition to the commissioners who are the voting representatives of each state. Requires all noncommissioner members of the commission to be ex officio (nonvoting) members. Authorizes the commission to 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. Provides that each compacting state represented at any meeting of the commission is entitled to one vote. Requires a majority of the compacting states to constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the commission.

E. Sets forth regular meeting requirements for the commission and authorizes the chairperson to call additional meetings and, upon the request of a simple majority of the compacting states, requires the chairperson to call additional meetings. Requires public notice to be given of all meetings and meetings to be open to the public.

F. Requires the commission to establish an executive committee. Sets forth requirements for the composition of the executive committee and sets forth the duties of said committee.

G. Requires that each member of the commission 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 commission. Requires a member to vote in person and prohibits a member from delegating a vote to another compacting state. Requires a commissioner from a state, in the absence of the commissioner from that state, to appoint another authorized representative to cast a vote on behalf of the compacting state at a specified meeting. Authorizes the bylaws to provide for members' participation in meetings by telephone or other means of telecommunications or electronic communication.

H. Requires the commission's bylaws to establish conditions and procedures under which the commission is required to make its information and official records available to the public for inspection or copying. Authorizes the commission to exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.

I. Requires public notice to be given of all meetings and all meetings to be open to the public, except as set forth in the rules or as otherwise provided in the compact. Authorizes the commission and any of its committees to close a meeting to the public when it determines by two-thirds vote that an open meeting would be likely to relate to or disclose certain matters or information or to involve accusing any person of a crime or formally censuring any person.

J. Requires the commission's legal counsel, for every meeting closed pursuant to this provision, to publicly certify that, in the legal counsel's opinion, the meeting may be closed to the public and requires the legal counsel to reference each relevant exemptive provision. Requires the commission to keep minutes which shall fully and clearly describe all matters discussed in any meeting and to provide a full and accurate summary of any actions taken, and the reasons therefore, including specific descriptions and recorded votes. Requires all documents considered in connection with any action to be identified in such minutes.

K. Requires the commission to collect standardized data concerning the interstate movement of juveniles as directed through its rules which are required to specify the data

to be collected, the means of collection and data exchange, and reporting requirements. Requires such methods of data collection, exchange, and reporting, insofar as is reasonably possible, to conform to up-to-date technology and coordinate the commission's information functions with the appropriate repository of records.

ARTICLE IV

POWERS AND DUTIES OF THE INTERSTATE COMMISSION

Sets forth the specific powers and duties of the commission.

ARTICLE V

ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION

Sec. A. Bylaws

1. Requires the commission, by a majority of the members present and voting, within 12 months of the first commission meeting, to adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to specific bylaws. [Section A as drafted does not contain a Section 2.]

Sec. B. Officers and Staff

1. Requires the commission, by a majority of the members, to elect annually from among its members a chairperson and a vice chairperson, each of whom is required to have such authority and duties as may be specified in the bylaws. Requires the chairperson, or in the chairperson's absence or disability, the vice chairperson, to preside at all meetings of the commission. Requires the officers so elected to serve without compensation or remuneration from the commission, provided that, subject to the availability of budgeted funds, the officers are required to 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 commission.

2. Requires the commission, through its executive committee, to appoint or retain an executive director for such period, upon such terms and conditions, and for such compensation as the commission may deem appropriate. Requires the executive director to serve as secretary to the commission, prohibits the executive director from being a member, and requires the executive director to hire and supervise such other staff as may be authorized by the commission.

Sec. C. Qualified Immunity, Defense, and Indemnification

1. Requires the commission's executive director and employees to 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. Prohibits 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 from exceeding the limits of liability set forth under the constitution and laws of that state for state officials, employees, and agents. Requires that nothing in this subsection 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. Requires the commission to defend the executive director or the employees or representatives of the commission and, subject to the approval of the attorney general of the state represented by any commissioner of a compacting state, to 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 commission employment, duties, or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of 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. Requires the commission to indemnify and hold the commissioner of a compacting state, or the commissioner's representatives or employees, or the 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 commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of 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.

ARTICLE VI

RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION

A. Requires the commission to promulgate and publish rules in order to effectively and efficiently achieve the purposes of the compact.

B. Requires rulemaking to occur pursuant to the criteria set forth in this article and the bylaws and rules adopted pursuant thereto. Requires such rulemaking to 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 commission deems appropriate consistent with due process requirements under the United States Constitution as now or hereafter interpreted by the United States Supreme Court. Requires all rules and amendments to become binding as of the date specified, as published with the final version of the rule as approved by the commission.

C. Sets forth requirements for the commission when promulgating a rule.

D. Provides that, not later than 60 days after a rule is promulgated, any interested person be allowed to file a petition in the United States District Court for the District of Columbia or in the federal district court where the commission's principal office is located for judicial review of the rule. Requires the court, if the court finds that the commission's action is not supported by substantial evidence in the rulemaking record, to hold the rule unlawful and set it aside. Provides that, for purposes of this subsection, evidence is substantial if it would be considered substantial under the Model State Administrative Procedures Act.

E. Authorizes those states whose legislatures reject a rule, if a majority of the states legislatures of the compacting states rejects a rule, to, by enactment of a statute or resolution in the same manner used to adopt the compact, cause that such rule is prohibited from having further force and effect in any compacting state.

F. Requires the existing rules governing the operation of the compact superseded by this Act to be null and void 12 months after the first meeting of the commission created under this compact.

G. Authorizes the commission, upon determination that an emergency exists, to promulgate an emergency rule which shall become effective immediately upon adoption, provided that the usual rulemaking procedures provided hereunder 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.

ARTICLE VII

OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION BY THE INTERSTATE COMMISSION

Sec. A. Oversight.

1. Requires the commission to oversee the administration and operations of the interstate movement of juveniles subject to this compact in the compacting states and to monitor such activities being administered in noncompacting states which may significantly affect compacting states.

2. Requires the courts and executive agencies in each compacting state to enforce this compact and to take all actions necessary and appropriate to effectuate the compact's purposes and intent. Requires the provisions of this compact and the rules promulgated hereunder to be received by all the judges, public officers, commissions, and departments of the state government as evidence of the authorized statute and administrative rules. Requires all courts to take judicial notice of the compact and the rules. Requires the commission, 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 commission, to be entitled to receive all services of process in any such proceeding, and to have standing to intervene in the proceeding for all purposes.

Sec. B. Dispute Resolution

1. Requires the compacting states to report to the 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. Requires the commission to 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. Requires the commission to promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

3. Requires the commission, in the reasonable exercise of its discretion, to enforce the provisions and rules of this compact using any or all means set forth in Article X of this compact.

ARTICLE VIII

FINANCE

A. Requires the commission to pay or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.

B. Requires the commission to levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the commission and its staff which must be in a total amount sufficient to cover the commission's annual budget as approved each year. Requires the aggregate annual assessment amount to be allocated based upon a formula to be determined by the

commission, taking into consideration the population of each compacting state and the volume of interstate movement of juveniles in each compacting state. Requires the commission to promulgate a rule binding upon all compacting states that governs said assessment.

C. Prohibits the commission from incurring any obligations of any kind prior to securing the funds adequate to meet the same, or pledging the credit of any of the compacting states, except by and with the authority of the compacting state.

D. Requires the commission to keep accurate accounts of all receipts and disbursements. Requires the receipts and disbursements of the commission to be subject to the audit and accounting procedures established under its bylaws. Requires all receipts and disbursements of funds handled by the commission to 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 commission.

ARTICLE IX

COMPACTING STATES, EFFECTIVE DATE, AND AMENDMENT

A. Provides that any state, as defined in Article II of this compact, is eligible to become a compacting state.

B. Requires the compact to become effective and binding upon legislative enactment of the compact into law by no less than 35 of the states. Requires the initial effective date to be the later of July 1, 2004, or upon enactment into law by the 35th jurisdiction. Requires the compact thereafter to become effective and binding, as to any other compacting state, upon enactment of the compact into law by that state. Requires that the governors of noncompacting states or their designees be invited to participate in commission activities on a nonvoting basis prior to adoption of the compact by all states.

C. Authorizes the commission to propose amendments to the compact for enactment by the compacting states. Prohibits an amendment from becoming effective and binding upon the commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

ARTICLE X

WITHDRAWAL, DEFAULT, TERMINATION, AND JUDICIAL ENFORCEMENT

Sec. A. Withdrawal

1. Requires that, once effective, the compact 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. Provides that the effective date of withdrawal is the effective date of the repeal.

3. Requires the withdrawing state to immediately notify the chairperson of the commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. Requires the commission to notify the other compacting states of the withdrawing state's intent to withdraw within 60 days of its receipt thereof.

4. Provides that 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. Requires reinstatement following withdrawal of any compacting state to occur upon the withdrawing state reenacting the compact or upon such later date as determined by the commission.

Sec. B. Technical Assistance, Fines, Suspension, Termination, and Default

1. Authorizes the commission, if the 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, to impose certain penalties.

2. Requires the commission, within 60 days of the effective date of termination of a defaulting state, to notify the governor, the chief justice or chief judicial officer of the state, and the majority and minority leaders of the defaulting state's legislature of such termination.

3. Provides that 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. Prohibits the commission from bearing any costs relating to the defaulting state unless otherwise mutually agreed upon in writing between the commission and the defaulting state.

5. Provides that reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the commission pursuant to the rules.

Sec. C. Judicial Enforcement

Authorizes the commission, by majority vote of the members, to initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the commission, in the federal district where the 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. Requires, in the event judicial enforcement is necessary, the prevailing party to be awarded all costs of such litigation including reasonable attorney's fees.

Sec. D. Dissolution of Compact

1. Provides that upon 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. Provides that 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 commission are required to be concluded and any surplus funds shall be distributed in accordance with the bylaws.

ARTICLE XI

SEVERABILITY AND CONSTRUCTION

A. Requires that provisions of this compact to be severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact to be enforceable.

B. Requires the provisions of this compact to be liberally construed to effectuate its purposes.

ARTICLE XII

BINDING EFFECT OF COMPACT AND OTHER LAWS

Sec. A. Other Laws

1. Provides that nothing herein prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact.
2. Provides that all compacting states' laws other than state constitutions and other interstate compacts conflicting with this compact are superseded to the extent of the conflict.

Sec. B. Binding Effect of the Compact

1. Provides all lawful actions of the commission, including all rules and bylaws promulgated by the Interstate Commission are binding upon the compacting states.
2. All agreements between the commission and the compacting states are binding in accordance with their terms.
3. Authorizes, upon the request of a party to a conflict over meaning or interpretation commission actions, and upon a majority vote of the compacting states, the commission to issue advisory opinions regarding such meaning or interpretation.
4. Requires, 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 commission to be ineffective and such obligations, duties, powers, or jurisdiction to remain in the compacting state and to 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.

ARTICLE 2. CONFORMING AMENDMENTS

SECTION 2.01. Amends Sections 60.001 and 60.009, Family Code, as follows:

Sec. 60.001. New heading: DEFINITIONS. Defines "commission," "compact," and "compact administrator." Deletes existing text referencing the Uniform Interstate Compact on Juveniles.

Sec. 60.009. Deletes existing text referring to Articles IV (Return of Runaways) and VI (Voluntary Return Procedure) of the compact for the return of a runaway juvenile.

SECTION 2.02. Amends Chapter 60, Family Code, by adding Sections 60.011 and 60.012, as follows:

Sec. 60.011. EFFECT OF TEXAS LAWS. Provides that if the laws of this state conflict with the compact, the compact controls, except that in the event of a conflict between the compact and the Texas Constitution, as determined by the courts of this state, the Texas Constitution controls.

Sec. 60.012. LIABILITIES FOR CERTAIN COMMISSION AGENTS. Provides that the compact administrator and each member, officer, executive director, employee, or agent of the commission acting within the scope of the person's employment or duties is, for the purpose of acts or omissions occurring within this state, entitled to the same protections under Chapter 104 (State Liability for Conduct of Public Servants), Civil Practice and Remedies Code, as an employee, a member of the governing board, or any other officer of a state agency, institution, or department.

SECTION 2.03. Amends Section 54.10(a), Family Code, to make conforming changes.

ARTICLE 3. TRANSITION, REPEALER, AND EFFECTIVE DATE

SECTION 3.01. Requires the governor to publish notice of the implementation of the compact in the Texas Register not later than the 30th day after the date the compact becomes effective under Article IX of the compact.

SECTION 3.02. Repealer: Sections 60.002 (Execution of Interstate Compact), 60.003 (Execution of Additional Article), and 60.004 (Execution of Amendment), Family Code.

SECTION 3.03. (a) Provides that except as provided by Subsection (b) of this section, this Act takes effect on the day on which the Interstate Compact for Juveniles takes effect, which according to the terms of the compact is the later of July 1, 2004, or the day on which the compact is enacted into law by the 35th state, as defined by the compact.

(b) Provides that Article 1 of this Act takes effect September 1, 2005.