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DATE: April 5, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME PREVENTION, CORRECTIONS & SAFETY
ANALYSIS**

BILL #: HB 1765

RELATING TO: Adult Offender Supervision / Interstate Compact

SPONSOR(S): Representative(s) Melvin

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) CRIME PREVENTION, CORRECTIONS & SAFETY
 - (2) COUNCIL FOR HEALTHY COMMUNITIES
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

The existing Interstate Compact for the Supervision of Parolees and Probationers allows states to cooperate in the movement of supervised offenders from one state to another. This Compact has been in existence, unchanged, since 1937. It is two pages long and costs states approximately \$400 per year to participate. The Florida Department of Corrections, along with other state correctional systems, the National Institute of Corrections, and the Council of State Governments, have expressed concern over the increasing ineffectiveness of the current Interstate Compact.

This legislation provides that the state of Florida will adopt the new *Interstate Compact for Adult Offender Supervision* and become a signatory to the Compact. The *Interstate Compact for Adult Offender Supervision* is an updated version of the current Compact, and has been drafted to amend the weaknesses and concerns raised by the original Compact. The new Compact will have the authority to pass and enforce rules binding on the compacting states, hire staff to carry out its work, and facilitate the cooperation between the compacting states in the job of supervising offenders who change states of residence.

It is estimated that Florida's dues to the new compact will begin at \$46,000 yearly.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

House Bill 1765 does not promote "less government" because it requires the creation of a national "Interstate Commission" and a statewide "Council for Interstate Adult Offender Supervision."

B. PRESENT SITUATION:

Prior to 1937, states lacked legislative authority to track and monitor the activities of probationers and parolees who visited and relocated to other states. It was not uncommon for the courts to order offenders to move out of a state. Since no official mechanism existed between states to exchange information about the offender on the move, public safety was often in question. The *Interstate Compact for the Supervision of Parolees and Probationers* was developed in 1937 and Florida became a signatory to the Compact in 1941. This Compact, which remains in effect in Florida today, allows states to cooperate in the movement of supervised offenders from one state to another. Section 949.07, F.S., contains the language for the current Compact. The signatory states to the current Compact agree:

- the state where the person is under supervision may send supervised offenders to another state if the offender is a resident of the receiving state or has family and opportunity there, or if the receiving state consents to the relocation
- the receiving state will assume the duties of the sending state and will supervise the offender under its own standards
- the sending state will have the authority to reclaim the offender at any time while the offender is on supervision, unless the offender has pending charges in the receiving state, which would take precedence
- the officers of the sending state have the authority to transport the reclaimed offender through all other states without interference
- the Governor has the authority to name the state officers to work with other states to promulgate the rules to implement to the compact

The current definition of a state includes all fifty states, the District of Columbia, Puerto Rico, and the Virgin Islands.¹ The current compact does not apply to juveniles.

The current Compact has remained largely unchanged since 1937, according to the Council of State Governments. Since then there has been a large increase in the number of offenders being supervised (4,000,000 people nationwide currently on parole or probation), and a large increase in the number of offenders who relocate to another state while under supervision (250,000 offenders

¹ § 949.071, F.S.

cross state lines each year). The increase in offender movement has resulted in increases in paperwork and workload. The Department of Corrections has raised the following concerns with regard to the current Compact and the increase in offender movement:

- offenders arrive in receiving jurisdictions prior to review or approval of their transfers
- gaps in offender supervision occur during the relay of paperwork
- sending states' unresponsiveness to reports of offender violations often leaves the status of supervision or return of offender in question
- background information is inadequate to fully understand individual offender risk or program needs
- newly-legislated offender registration (specifically regarding sex offenders), DNA specimen collection, and victim notification provisions are not addressed by the current Compact

C. EFFECT OF PROPOSED CHANGES:

This legislation would replace the current Compact language utilized by Florida to coordinate the movement of parolees and probationers among Florida and other states. The language in the bill is drawn from a model version of the Compact. The new provisions include:

- A statement of purpose that describes the need to form an interstate compact to coordinate the movement of offenders and their supervision in order to prevent crime.
- A description of the "Interstate Commission for Adult Offender Supervision" which would be the corporate body and a joint agency of the compacting states. The Commission would consist of the representatives of the compacting states and the support staff. The Commission would be required to meet at least once a year to conduct business.
- A requirement to form a "State Council" to oversee that state's participation in the Compact.
- A provision that empowers the Commission to supervise the interstate movement of offenders, enforce compliance with the rules of the Commission, maintain offices, conduct the normal business of an agency or similar commission, and resolve disputes between compacting states.
- A provision that each member (state) of the Commission will have an equal vote in establishing the rules and policies of the Commission and Compact. All meetings will be public. The Commission will have the authority to make rules; however, if a majority of the compacting states' Legislatures rejects a commission rule, that rule would be repealed.
- A statement specifying that jurisdiction for contesting actions or rules of the Commission would be the United States District Court for the District of Columbia or the federal district court where the Commission's principal office is located.

When 35 states or territories have agreed to join the new Compact, pursuant to Article X, there will be an organizational meeting. The original 35 signatories will establish the organization (Interstate Commission) that will oversee the Compact operations and facilitate cooperation between the states.²

If the new Compact is enacted into law, and Florida does not become a signatory state to the Compact, then other states will not be required to notify Florida when they send probationers to reside in the state of Florida.

² As of March 27, 2001, 15 states have signed the Compact into law: Arkansas, California, Colorado, Connecticut, Hawaii, Idaho, Iowa, Kentucky, Missouri, Montana, Oklahoma, South Dakota, Utah, Vermont, and Wyoming. The Interstate Compact legislation has been introduced in 24 states/territories: Alaska, Arizona, Florida Georgia, Kansas, Louisiana, Maine, Maryland, Minnesota, Mississippi, Nevada, New Mexico, New York, North Dakota, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Virginia, Washington, West Virginia, and Guam.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: This section provides for the title “Interstate Compact for Adult Offender Supervision.”

Section 2: This section contains the operative language of the Interstate Compact for Adult Offender Supervision (“Compact”) that will be enacted into law if passed by the Legislature. It does not contain the actual rules or bylaws that will be used to facilitate the interstate movement of offenders.³ The Compact is broken down by Article, and each Article will be analyzed in this analysis.

Article I – Purpose of the Compact

The purpose of the Compact is to:

- provide a framework for the promotion of public safety,
- protect the rights of victims through the control and regulation of the interstate movement of offenders in the community,
- provide for the effective tracking, supervision, and rehabilitation of these offenders by the sending and receiving states, and
- equitably distribute the costs, benefits, and obligations of the compact among the compacting states.

Article I of the Compact also creates the Interstate Commission, which shall be charged with:

- establishing uniform procedures to manage the movement of offenders between states,
- ensuring opportunities for input and timely notice to victims and jurisdictions where offenders are authorized to travel or relocate,
- establishing systems of uniform data collection and regular reporting of Compact activities to state councils, state government branches and criminal justice administrators,
- monitoring compliance with rules governing interstate movement of offenders and initiating interventions to address and correct noncompliance, and
- coordinating training and education regarding regulation of interstate offender movement.

Article I also makes the recognition that offenders do not have a “right” to live in another state and therefore, duly accredited officers of a sending state may at any time enter a receiving state and apprehend any offender.

Article II – Definitions

Article II pertains to definitions. The Article defines several terms, including “adult,” “Compact administrator,” “Compacting state,” “Commissioner,” “Interstate Commission,” “member,” “noncompacting state,” “offender,” “state,” and “State Council.”

Article III – The Interstate Commission

Article III authorizes the compacting states to establish an “Interstate Commission for Adult Offender Supervision” (“Commission”). The Commission is a body corporate and a joint agency of the compacting states, and will have all the responsibilities, powers, and duties set forth in the Compact, including the power to sue and be sued. The Commission will meet at least once each calendar year. Additional meetings may be called by the Chairperson or by the request of 27 or more compacting states. All Commission meetings will be noticed and open to the public.

³ The bylaws of the Commission are not yet in existence. The bylaws will be drawn up by the first 35 states who join the Interstate Compact for Adult Offender Supervision. The bylaws must be adopted, by a majority vote, within 12 months after the first official meeting of the Interstate Commission.

The Commission will consist of commissioners selected and appointed by resident members of the State Council for Interstate Adult Offender Supervision for each state.⁴ Each commissioner will be a voting representative for his or her state. In addition to commissioners (who have the right to vote), the Commission must also include noncommissioners in its membership. Such noncommissioner members must include legislators, state chief justices, attorneys general, crime victims, and a member of the national organization of governors.

Article III of the Compact requires that each state create a "State Council for Interstate Adult Offender Supervision" ("State Council"). Membership of the State Council may be determined by the state, but such membership must include at least one representative from each branch of government, victims' groups, and compact administrators.

Each compacting state represented at any meeting of the Interstate Commission will be entitled to one vote. This means that the state of Florida, which is the fourth largest state prison system and has more offenders on supervision than many other states, will have a vote that is equal to every other state.

Finally, Article III requires the Interstate Commission to establish an executive committee, which will act on behalf of the Commission during periods when the Commission is not in session. The executive committee will oversee the day-to-day activities of the Commission and will be responsible for administering enforcement and compliance with the provisions of the Compact.

Article IV – Powers and Duties of the Interstate Commission

Article IV enumerates 19 specific powers and duties of the Commission. Some of the powers and duties have been listed below. For the complete list, please refer to the bill.

- Adopt rules which shall have the force and effect of statutory law and will be binding in the compacting states.
- Oversee, supervise, and coordinate the interstate movement of offenders.
- Enforce compliance with Compact provisions and Commission rules using all necessary and proper means, including but not limited to, the use of the judicial process.
- Establish and maintain officers.
- Establish and appoint committees and hire staff for the carrying out of Commission functions.
- Establish a budget and make expenditures and levy dues.
- Sue and be sued.
- Provide for dispute resolution among compacting states.
- Report annually to the legislatures, governors, judiciary, and state councils of the compacting states concerning the activities of the Commission.
- Coordinate education, training, and public awareness regarding the interstate movement of offenders.
- Establish uniform standards for the reporting, collecting, and exchanging of data.

Article V – Organization and Operation of the Interstate Commission

Article V is broken down into Sections.

Section A concerns the bylaws of the Commission. Within 12 months after the first Commission meeting, the Commission shall adopt bylaws, by a majority vote, to govern its conduct. The bylaws include establishing a fiscal year, establishing procedures for calling and conducting meetings, and establishing responsibilities of officers of the Commission. (For the complete list of bylaws, please refer to the bill.)

⁴ Such a council does not currently exist in Florida. Statute language should be added to permit the creation of a "State Council for Interstate Adult Offender Supervision."

Section B concerns the officers and staff of the Commission. This section requires the members of the Commission to elect a chairperson and a vice chairperson, and also to appoint an executive director to serve as secretary to the Commission. The executive director will also be responsible for hiring and supervising other staff as authorized by the Commission.

Section C simply requires the Commission to maintain its corporate books and records in accordance with the bylaws.

Section D, which pertains to qualified immunity, defense, and indemnification, provides immunity from suit and liability to the members, officers, executive director, and employees of the Commission.

Article VI – Activities of the Interstate Commission

This Article sets forth the requirement that all acts of the Commission, except as otherwise provided, be considered at official, noticed meetings of the Commission, and that such acts must receive an affirmative vote of a majority of the members present in order for the act to be enforced. All states, through their commissioners, have equal voting power. This Article requires the Commission to meet at least once per year and to give public notice of all meetings, except as set forth in the rules.

Article VII – Rulemaking Functions of the Interstate Commission

The Commission is authorized to adopt rules in order to achieve the purposes of the Compact. The Commission is also authorized to adopt transitional rules that will allow the Commission to govern the administration of the Compact during the period in which the Compact is being considered and enacted by the states. Unless permitted otherwise by the bylaws of the Commission, all rulemaking must conform to the principles of the Federal Administrative Procedures Act and the Federal Advisory Committee Act. All rules and amendments will be considered binding as of the date specified in each rule or amendment. However, if a majority of the legislatures of the compacting states rejects a rule, by enactment of a statute or resolution, then the rule will have no further force or effect in any compacting state.

The existing rules governing the previous Compact will be null and void 12 months after the first meeting of the Interstate Commission.

Article VIII – Oversight, Dispute Resolution, and Enforcement by the Interstate Commission

Article VII is broken down into sections.

Section A pertains to oversight. The Commission has oversight of the interstate movement of adult offenders in the compacting states. The courts and executive agencies in each compacting state are required to enforce the Compact.

Section B pertains to dispute resolution. Compacting states that have specific concerns, issues, or problems are to address them to the Commission. The Commission will be responsible for attempting to resolve any disputes or other such issues among the compacting states. A rule or bylaw must be adopted to provide for both mediation and binding dispute resolution.

Section C pertains to enforcement. The Commission is authorized to enforce all provisions of the Compact using any of the means set forth by Article XI (Withdrawal, Default, Judicial Enforcement and Termination).

Article IX – Finance

Each compacting state will be assessed a fee which will go toward covering the costs of internal operations and activities of the Commission and its staff. The assessment amount will vary among states and will be based upon a formula approved by the Commission. When determining the assessment formula, the Commission will take into consideration the population of the compacting state and the volume of interstate movement of offenders in each compacting state. The Commission is not permitted to pledge the credit of any compacting state, unless the state has given such permission to the Commission.

The Florida Department of Corrections has estimated that Florida will be assessed an amount around \$46,000 per year for the first three years, with a slight increase in subsequent years.

Article X – *Compacting States, Effective Date, and Amendment*

Any state is eligible to become a compacting state. The Interstate Compact will only become effective when 35 or more states have enacted this legislation. After the 35th state has enacted this legislation, the Compact is considered effective and binding with all compacting states and with any other state, subsequent to the 35th state, to join the Compact. The governors of nonmember states will be invited to participate in Commission activities on a nonvoting basis

The Compact can only be amended by unanimous consent of all compacting states.

Article XI – *Withdrawal, Default, Judicial Enforcement, and Termination*

Article XI is broken down into sections.

Section A pertains to withdrawal. A compacting state may withdrawal from the Compact by enacting a statute that specifically repeals the statute that enacted the Compact into law. The effective date of the state's withdrawal will be the effective date of the statute.

The application of this section to Florida means that once Florida enacts this legislation (i.e., joins the Compact), Florida will be bound to the Compact until such time as the Legislature is in session and available to consider legislation that would withdraw Florida from the Compact. In other words, unless the Governor were to call a Special Session for the purpose of withdrawing from the Compact, the state of Florida would be bound to the Compact for at least one year, until the next session in March of 2002.

Section B pertains to default. If the Commission determines that a state has defaulted with regard to responsibilities or financial obligations required by the Compact, then the Commission is authorized to impose a variety of penalties against the defaulting state, including fines, remedial training, suspension, or termination.

Section C pertains to judicial enforcement. The Commission, by a majority vote of its members, is authorized to initiate legal action in the United States District Court for the District of Columbia or in the federal district where the Commission's offices are located.

Section D pertains to dissolution. The Compact shall be considered dissolved upon the date of withdrawal or default by the compacting state that reduces the membership in the Compact to one compacting state.

Article XII – *Severability and Construction*

If any phrase, clause, sentence, or provision of the Compact is deemed unenforceable, it will not affect the other parts of the Compact, and the remaining portions of the Compact will still be enforceable.

Article XIII – *Other Laws and Binding Effect of the Compact*

Article XIII is broken down into sections.

Section A pertains to existing laws of compacting states. A law of a compacting state that conflicts with a rule or provision of the Compact will be superseded by the Compact rule, to the extent of the conflict.

Section B pertains to the binding effective of the Compact. All lawful actions of the Commission, including all rules and bylaws, are binding upon the compacting states. The Commission may offer advisory opinions regarding the meaning or interpretation of any Commission action.

Section 3

Section 3 provides for the act to take effect upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Florida Department of Corrections has estimated that Florida will be obligated to pay annual dues to the Interstate Commission in the amount of \$46,000 per year for the first three years, with a slight increase in subsequent years.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds.

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B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

Article III of the Compact requires that each state create a "State Council for Interstate Adult Offender Supervision" ("State Council"). Membership of the State Council may be determined by the state, but such membership must include at least one representative from each branch of government, victims' groups, and compact administrators.

There is no current statute language or specific legislation which permits Florida to create such a council. An amendment is anticipated which will address the issue of the State Council.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

An amendment is anticipated which will make the bill identical to its Senate companion, CS/CS/SB 306.

VII. SIGNATURES:

COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

Prepared by:

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