

2001 Montana Legislature

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SENATE BILL NO. 40

INTRODUCED BY C. CHRISTIAENS



AN ACT ADOPTING THE INTERSTATE COMPACT FOR ADULT OFFENDER SUPERVISION, WHICH PROVIDES FOR THE SUPERVISION OF CRIMINALS ON PAROLE WHO LEAVE THE STATE; AND REPEALING SECTIONS 46-23-1101, 46-23-1102, 46-23-1103, 46-23-1104, 46-23-1105, AND 46-23-1106, MCA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Interstate Compact for Adult Offender Supervision -- enactment and text -- short title. (1) The Interstate Compact for Adult Offender Supervision is enacted into law as contained in this section and is entered into with any other states legally joining in the compact in substantially the same form as contained in this section.

(2) This section may be cited as the "Interstate Compact for Adult Offender Supervision".

Article I. Purpose

(1) The states entering into this compact recognize that they are responsible for the supervision of offenders who are authorized pursuant to this compact to travel across state lines to and from the compacting states and that the compacting states are responsible for tracking the location of offenders, transferring supervision authority in an orderly and efficient manner, and when necessary, returning an offender to the originating jurisdiction. The compacting states also recognize that Congress has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

(2) It is the purpose of this compact and the commission to provide the framework for the promotion of public safety, to protect the rights of victims through the control and regulation of the interstate movement of offenders, to provide for the effective tracking, supervision, and rehabilitation of offenders by the sending and receiving states, and to equitably distribute the costs, benefits, and obligations of the compact among the compacting states.

(3) This compact creates a commission that will:

(a) establish uniform procedures to manage the movement between states of offenders placed under and released under the jurisdiction of courts, parole officers, correctional institutions, and other criminal justice agencies;

(b) ensure an opportunity for input and timely notice to victims and to jurisdictions where offenders are authorized to travel or to relocate across state lines;

(c) establish a system of uniform data collection, access to information on active cases by authorized criminal justice officials, and regular reporting of compact activities to heads of state councils and to state executive, judicial, and legislative branches and criminal justice administrators;

(d) monitor compliance with rules governing the interstate movement of offenders and initiate interventions to address and correct noncompliance; and

(e) coordinate training and education regarding the regulation of interstate movement of offenders for officials involved in that activity.

(4) The compacting states recognize that an offender does not have a right to live in another state and that accredited officers of a sending state may at any time enter a receiving state and apprehend an offender under supervision, subject to the provisions of state laws, this compact, and rules promulgated under this compact. It is the policy of the compacting states that the activities conducted by the commission are the formation of public policies and are therefore public business.

Article II. Definitions

As used in this compact, unless the context clearly requires a different construction, the following definitions apply:

(1) "Adult" means a person legally classified as an adult and a minor treated as an adult by court order or by a statute or other operation of law.

(2) "Commission" means the interstate commission for adult offender supervision.

(3) "Commissioner" means the voting representative of each compacting state appointed pursuant to Article IV of this compact.

(4) "Compact" means the Interstate Compact for Adult Offender Supervision.

(5) "Compact administrator" means the individual in each compacting state, appointed pursuant to Article IV of this compact, who is responsible for the administration and management of the state's supervision and transfer of offenders subject to the terms of this compact and rules adopted under this compact.

(6) "Compacting state" means a state that has enacted this compact.

(7) "Department" means the department of corrections.

(8) "Member" means the commissioner of a compacting state or the commissioner's designee, who must be an individual officially connected with the commissioner.

(9) "Noncompacting state" means a state that has not enacted this compact.

(10) "Offender" means an adult subject to supervision as the result of the commission of a criminal offense and released under the jurisdiction of a court, parole officer, correctional institution, or other criminal justice agency.

(11) "State" means a state of the United States, the District of Columbia, or a territorial possession of the United States.

(12) "State council" means the state council for interstate adult offender supervision created pursuant to Article IV of this compact.

Article III. The Compact Commission

(1) There is an interstate commission for adult offender supervision. The commission is a joint agency of the compacting states. The commission has the powers and duties set forth in this compact and any additional powers conferred upon it by subsequent action of the legislatures of the compacting states in accordance with the terms of this compact.

(2) The commission consists of commissioners appointed by resident members of the state councils for the compacting states. The commission also includes individuals appointed by the commission who are not commissioners and who are members of interested organizations. The noncommissioner members must include one member each of national organizations of governors, legislators, state chief justices, attorneys general, and crime victims. Noncommissioner members are ex officio nonvoting members. The commission may provide by rule for additional, ex officio nonvoting members as it considers necessary.

(3) Each compacting state represented at a meeting of the commission is entitled to one vote. A majority of the compacting states constitutes a quorum for the transaction of business, unless a larger quorum is required by a commission rule.

(4) The commission shall establish an executive committee, which must include commission officers, members, and others as determined by commission rule. The executive committee may act on behalf of the commission when the commission is not in session, except that the executive committee may not adopt commission rules. The executive committee shall conduct the daily activities of the commission, administer enforcement of and compliance with the compact and commission rules, and perform other duties assigned by the commission or set forth in commission rules.

Article IV. The State Council

(1) There is a state council. The state council is composed of:

- (a) a house member appointed by the speaker of the house;
- (b) a senate member appointed by the president of the senate;
- (c) a judge appointed by the chief justice;
- (d) the compact administrator; and

(e) a parole officer, a law enforcement officer, and a member of a victim's rights group, each appointed by the director of the department.

(2) State council members serve at the pleasure of the appointing authority.

(3) The state council is attached to the department for administrative purposes only as provided in 2-15-121.

(4) The governor shall appoint an individual who is knowledgeable concerning the interstate supervision of offenders as the compact administrator. The compact administrator is the compact commissioner and presiding officer of the council.

(5) The state council shall develop policies concerning the operation of the compact within this state. The state council may adopt rules, including rules proposed by the commission for adoption by this state, to implement the compact.

Article V. Powers and Duties of the Commission

The commission may:

(1) adopt a seal and suitable rules governing the management and operation of the commission;

(2) propose rules for adoption by the compacting states;

(3) oversee, supervise, and coordinate the interstate movement of offenders subject to the terms of this compact and applicable rules;

(4) enforce compliance with compact provisions and applicable commission rules, using all necessary and proper means, including but not limited to the use of judicial process;

(5) establish and maintain offices;

(6) purchase and maintain insurance and bonds;

(7) borrow, accept, or contract for services of personnel, agents, and consultants;

(8) appoint officers and committees;

(9) establish personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation, and qualifications of personnel;

(10) accept donations and grants of money or services or equipment, supplies, materials, or other personal property;

(11) lease, purchase, accept contributions or donations of, or otherwise own, hold, improve, or use real or personal property;

(12) sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of real and personal property;

- (13) establish a budget, make expenditures, and levy dues as provided in Article X of this compact;
- (14) sue and be sued;
- (15) provide by rule for resolution of disputes among compacting states;
- (16) report annually to the legislatures, governors, judiciaries, and state councils of the compacting states concerning the activities of the commission, including any recommendations of the commission;
- (17) coordinate education, training, and public awareness regarding the interstate movement of offenders for officials involved in that activity;
- (18) establish uniform standards for reporting, collecting, and exchanging data; and
- (19) perform other functions that may be necessary or appropriate to achieve the purposes of this compact.

Article VI. Organization and the Operation of the Commission

- (1) The commission shall, by a majority vote of the members, adopt rules to govern its conduct and necessary or appropriate to carry out the purposes of the compact, including but not limited to rules:
 - (a) establishing the fiscal year of the commission;
 - (b) establishing an executive committee and other necessary committees, providing reasonable standards and procedures for the committees, and governing general and specific delegations of authority or functions to the committees;
 - (c) providing reasonable procedures for calling and conducting meetings of the commission;
 - (d) establishing the titles and responsibilities of the officers of the commission;
 - (e) establishing personnel policies for commission staff;
 - (f) providing a mechanism for concluding the operations of the commission and the equitable return of any surplus funds that may exist upon the termination of the compact after the payment and reserving of all of its debts and other obligations;
 - (g) providing transition rules for initial administration of the compact;
 - (h) establishing standards and procedures for compliance and technical assistance in carrying out the compact;
 - (i) providing for notice to offenders' victims and an opportunity for the victims to be heard;
 - (j) relating to offender registration and compliance;
 - (k) relating to violations by and return of offenders;
 - (l) establishing offender transfer procedures and forms;

- (m) providing standards for offender eligibility for transfer;
- (n) providing for the collection of restitution and fees from offenders;
- (o) providing for data collection and reporting;
- (p) establishing the level of offender supervision to be provided by a receiving state;
- (q) providing for mediation, arbitration, and other methods of dispute resolution; and

(r) establishing conditions and procedures under which commission records are available to the public for inspection or copying. The rules may exempt records from disclosure that would adversely affect personal privacy rights or proprietary interests. The rules may make available to law enforcement agencies records and information otherwise exempt from disclosure, and the commission may enter into agreements with law enforcement agencies to exchange records and information otherwise exempt from disclosure.

(2) The commission's initial rules must be adopted within 12 months of the commission's first meeting.

(3) (a) The commission shall, by a majority vote of the members, elect from among its members a presiding officer and a vice presiding officer, each of whom has the powers and duties specified in commission rules. The presiding officer or the vice presiding officer in the event of the presiding officer's absence or disability shall preside at all meetings of the commission. The presiding officer and vice presiding officer shall serve without compensation or remuneration from the commission other than, subject to the availability of budgeted funds, reimbursement for actual and necessary costs and expenses incurred in the performance of their duties.

(b) The commission shall, through its executive committee, appoint an executive director for a term and upon conditions and for compensation that the commission considers appropriate. The executive director shall serve as secretary to the commission and shall hire and supervise staff as authorized by the commission. A member may not be appointed as executive director.

(4) The commission shall maintain its books and records in accordance with commission rules.

(5) (a) Except for a claim arising from intentional conduct or gross negligence, the members, officers, executive director, and employees of the commission are immune from suit and liability, either personally or in their official capacity, for any claim for personal injury or property damage arising out of an act, error, or omission that occurred within the course and scope of commission employment or duties.

(b) The commission shall defend an individual referred to in subsection (5)(a) in any civil action for which the individual is granted immunity under subsection (5)(a).

(c) The commission shall indemnify an individual referred to in subsection (5)(a) in the amount of any settlement obtained against the individual arising out of a civil action for which the individual is granted immunity under subsection (5)(a).

Article VII. Activities of the Commission

(1) The commission may take actions that are consistent with the provisions of this compact.

(2) Except as otherwise provided in this compact and unless a greater percentage is required by commission rule, the commission may act at a commission meeting by an affirmative vote of a majority of the members present.

(3) Each member of the commission may cast a vote and participate in the business and affairs of the commission. A member shall vote in person on behalf of the member's state and may not delegate a vote to another member, except that a state council may appoint another individual, in the absence of the member from that state, to cast a vote on behalf of the member at a specified meeting. The commission's rules may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication. Voting conducted by telephone or other means of telecommunication or electronic communication is subject to the quorum and majority vote requirements of meetings at which members are present in person.

(4) The commission shall meet at least once during each calendar year. The presiding officer may call additional meetings at any time and shall call a meeting upon the request of a majority of the members.

(5) Except as otherwise provided in this compact or commission rule, public notice must be given of all meetings and all meetings are open to the public. Commission rules closing meetings must be consistent with the principles contained in 5 U.S.C. 552(b). The commission or any committee may close a meeting if it determines by a two-thirds vote that an open meeting would be likely to:

(a) relate solely to the commission's internal personnel practices and procedures;

(b) disclose matters specifically exempted from disclosure by statute;

(c) disclose trade secrets or commercial or financial information that is privileged or confidential;

(d) involve accusing an individual of a crime or formally censuring an individual or disclose information of a personal nature that would constitute a clearly unwarranted invasion of personal privacy;

(e) disclose investigatory records compiled for law enforcement purposes;

(f) disclose information contained in or related to examination, operation, or condition reports prepared by, on behalf of, or for the commission with respect to a regulated entity for the purpose of regulation or supervision of the entity;

(g) disclose information that would significantly endanger the life of an individual or the stability of a regulated entity; or

(h) specifically relate to the commission's issuance of a subpoena or participation in a civil proceeding.

(6) If a meeting is closed under this section, the commission's chief legal officer shall publicly certify that in the officer's opinion, the meeting was properly closed to the public, stating the grounds under subsection (5) for closure of the meeting.

(7) The commission shall keep minutes that fully and clearly describe all matters discussed in a

meeting, actions taken, and the reasons for each action, including a description of each of the views expressed on any item and the roll call or other vote on each action. Any document considered in connection with any action must be included in the minutes or identified in the minutes in a manner reasonably allowing a person to obtain a copy of the document.

(8) The commission shall collect standardized data, as provided in its rules, concerning the interstate movement of offenders. The rules must specify the data to be collected, the means of collection, and data exchange and reporting requirements.

Article VIII. Rulemaking Functions of the Commission

(1) Commission rulemaking must conform to rulemaking criteria contained in this compact and commission rules and must substantially conform to the principles of the federal Administrative Procedure Act and the Federal Advisory Committee Act.

(2) A rule proposed or adopted by the commission is not binding on this state unless adopted by the department.

(3) Upon determination by the commission that an emergency exists, it may promulgate an emergency rule that becomes effective immediately upon adoption. The rule does not bind this state unless the department adopts it as an emergency rule of this state. The commission's emergency rule is effective for 90 days, but the commission may adopt the same rule using the principles referred to in subsection (1).

Article IX. Judicial and Administrative Proceedings

Affecting Compact

The courts and executive agencies in each compacting state may enforce this compact and take any action allowed by this compact or other law and necessary and appropriate to effectuate the compact's purposes and intent. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact that may affect the powers, responsibilities, or actions of the commission, the commission must be given a copy of any process served within the time for service on the party or parties served and may intervene in the proceeding.

Article X. Finance

(1) The commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.

(2) The commission shall levy an annual assessment on each compacting state to cover the cost of the internal operations and activities of the commission and its staff. The total aggregate annual assessment on the compact states combined must be allocated among those states based upon a formula contained in a commission rule, taking into consideration the population of each state and the volume of interstate movement of offenders in each state. Each state council shall present its state's annual assessment to its legislature for an appropriation funding that amount.

(3) The commission may not incur a financial obligation prior to securing funds adequate to meet the obligation.

(4) The commission shall keep accurate accounts of all receipts and disbursements. A commission rule must provide for an annual audit of the receipts and disbursements by a certified or licensed public accountant, and the audit report must be included in the commission's annual report.

Article XI. Effective Date of Compact and Amendments

(1) This compact is effective and binding upon the later of July 1, 2001, or the enactment of the compact into law by 35 states. After that date, the compact is effective as to and binding upon a state upon enactment of the compact into law by that state.

(2) Amendments to the compact may be proposed by the commission for enactment by the compacting states. An amendment is effective upon enactment into law by unanimous consent of the compacting states.

Article XII. Withdrawal, Default, Termination, and Judicial Enforcement

(1) (a) A compacting state may withdraw from the compact by enacting a statute specifically repealing the statute that enacted the compact into law.

(b) The effective date of withdrawal is the effective date of the repeal.

(c) A compact administrator shall immediately notify the presiding officer of the commission in writing upon the introduction of legislation for the repeal of this compact. The commission shall notify the other compacting states of the intent to withdraw within 60 days of the commission's receipt of the notice.

(d) A withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal, including obligations the performance of which extends beyond the effective date of withdrawal.

(2) (a) If the commission determines that a compacting state has defaulted in the performance of its obligations or responsibilities under this compact, the commission may, as provided in commission rules, impose one or more of the following penalties:

(i) reasonable fines, fees, and costs;

(ii) remedial training and technical assistance as directed by the commission;

(iii) suspension or termination of participation in the compact. Suspension or termination may be imposed only after all other reasonable means of securing compliance have been exhausted. The commission shall give immediate notice of suspension or termination to the governor, the chief justice, the majority and minority leaders of each house of the legislature, and the state council.

(b) The commission shall immediately notify the defaulting state in writing of any other penalty imposed by the commission. The commission shall stipulate the conditions and the time period for the state to cure its default. If the state fails to cure the default under the conditions or within the time period specified by the commission and the penalty imposed was not suspension or termination of participation in the compact, the commission may suspend or terminate participation in the compact.

(c) A defaulting state is responsible for all assessments, obligations, and liabilities incurred through

the effective date of a suspension or termination of participation, including obligations the performance of which extends beyond the effective date of the suspension or termination.

(d) The commission may not assume any assessments, obligations, or liabilities of a defaulting state except as agreed upon between the commission and the defaulting state. Reinstatement following a suspension or termination of participation in the compact must be by commission approval as provided in the commission's rules.

(3) The commission may, by a majority vote of the members, 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 against a compacting state in default to enforce compliance with the provisions of the compact or applicable rules. The prevailing party is entitled to all costs of litigation, including reasonable attorney fees.

(4) (a) The compact is dissolved effective upon the date that membership in the compact is reduced to one state because of withdrawals and terminations of participation.

(b) Upon dissolution of the compact, the compact is null and of no further force or effect, except that the business and affairs of the commission must be settled and any surplus funds must be distributed in accordance with applicable rules.

Article XIII. Severability and Construction

(1) The provisions of this compact are severable, and if a provision is invalid, the remaining provisions remain valid.

(2) This compact must be liberally constructed to effectuate its purposes.

Article XIV. Advisory Opinions

Upon the request of a party to a conflict over the meaning or interpretation of a commission action and upon a majority vote of the compacting states, the commission may issue an advisory opinion regarding the meaning or interpretation.

Section 2. Repealer. Sections 46-23-1101, 46-23-1102, 46-23-1103, 46-23-1104, 46-23-1105, and 46-23-1106, MCA, are repealed.

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 46, chapter 23, part 11, and the provisions of Title 46 apply to [section 1].

Section 4. Two-thirds vote required. Because Article VI (5)(a) of [section 1] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

- END -

Latest Version of SB 40 (*SB0040.ENR*)
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New language in a bill appears underlined, deleted material appears stricken.

Sponsor names are handwritten on introduced bills, hence do not appear on the bill until it is reprinted.
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