

CHAPTER 37-17.2

NATIONAL GUARD COUNTER-DRUG ACTIVITIES COMPACT

37-17.2-01. Ratification of compact. The national guard mutual assistance counter-drug activities compact is hereby enacted into law and entered into by this state, with all other states legally joining therein, in the form substantially as follows:

The contracting states solemnly agree that:

ARTICLE I - PURPOSE

The purposes of this compact are to:

1. Provide for mutual assistance and support among the party states in the utilization of the national guard in drug interdiction, counter-drug, and demand reduction activities.
2. Permit the national guard of this state to enter into mutual assistance and support agreements, on the basis of need, with one or more law enforcement agencies operating within this state, for activities within this state, or with a national guard of one or more other states, whether said activities are within or without this state in order to facilitate and coordinate efficient, cooperative enforcement efforts directed toward drug interdiction, counter-drug activities, and demand reduction.
3. Permit the national guard of this state to act as a receiving and a responding state as defined within this compact and to ensure the prompt and effective delivery of national guard personnel, assets, and services to agencies or areas that are in need of increased support and presence.
4. Permit and encourage a high degree of flexibility in the deployment of national guard forces in the interest of efficiency.
5. Maximize the effectiveness of the national guard in those situations which call for its utilization under this compact.
6. Provide protection for the rights of national guard personnel when performing duty in other states in counter-drug activities.
7. Ensure uniformity of state laws in the area of national guard involvement in interstate counter-drug activities by incorporating said uniform laws within the compact.

ARTICLE II - ENTRY INTO FORCE AND WITHDRAWAL

1. This compact enters into force when enacted into law by any two states. Thereafter, this compact becomes effective as to any other state upon its enactment thereof.
2. Any party state may withdraw from this compact by enacting a statute repealing the same.

ARTICLE III - MUTUAL ASSISTANCE AND SUPPORT

1. As used in this article:
 - a. "Demand reduction" means providing available national guard personnel, equipment, support, and coordination to federal, state, local, and civic organizations, institutions, and agencies for the purposes of the prevention of drug abuse and the reduction in the demand for illegal drugs.
 - b. "Drug interdiction and counter-drug activities" means the use of national guard personnel, while not in federal service, in any law enforcement support

activities that are intended to reduce the supply or use of illegal drugs in the United States. These activities are restricted to:

- (1) Providing information obtained during either the normal course of military training operations or during counter-drug activities, to federal, state, or local law enforcement officials that may be relevant to a violation of any federal or state law within the jurisdiction of such officials;
 - (2) Making available any equipment including associated supplies or spare parts, base facilities, or research facilities of the national guard to any federal, state, or local civilian law enforcement official for law enforcement purposes, in accordance with other applicable law or regulation;
 - (3) Providing available national guard personnel to train federal, state, or local civilian law enforcement in the operation and maintenance of equipment, including equipment made available above, in accordance with other applicable law;
 - (4) Providing available national guard personnel to operate and maintain equipment provided to federal, state, or local law enforcement officials pursuant to activities defined and referred to in this compact;
 - (5) Operation and maintenance of equipment and facilities of the national guard or law enforcement agencies used for the purposes of drug interdiction and counter-drug activities;
 - (6) Providing available national guard personnel to operate equipment for the detection, monitoring, and communication of the movement of air, land, and sea traffic, to facilitate communications in connection with law enforcement programs, to provide transportation for civilian law enforcement personnel, and to operate bases of operations for civilian law enforcement personnel;
 - (7) Providing available national guard personnel, equipment, and support for administrative, interpretive, or analytic purposes; and
 - (8) Providing available national guard personnel and equipment to aid federal, state, and local officials and agencies otherwise involved in the prosecution of individuals processed within the criminal justice system who have been arrested for criminal acts involving the use, distribution, or transportation of controlled substances as defined in 21 U.S.C. 801 et seq. or otherwise by law, in accordance with other applicable law.
- c. "Law enforcement agency" means a lawfully established federal, state, or local public agency that is responsible for the prevention and detection of crime and the enforcement of penal, traffic, regulatory, game, immigration, postal, customs, or controlled substances laws.
- d. "Mutual assistance and support agreement" or "agreement" means an agreement between the national guard of this state and one or more law enforcement agencies or between the national guard of this state and the national guard of one or more other states, consistent with the purposes of this compact.
- e. "Official" means the appointed, elected, designated, or otherwise duly selected representative of an agency, institution, or organization authorized to conduct those activities for which support is requested.

- f. "Party state" refers to a state that has lawfully enacted this compact.
 - g. "Requesting state" means that state whose governor requested assistance in the area of counter-drug activities.
 - h. "Responding state" means the state furnishing assistance, or requested to furnish assistance, in the area of counter-drug activities.
 - i. "State" means each of the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States.
2. Upon the request of a governor of a party state for assistance in the area of drug interdiction, counter-drug, and demand reduction activities, the governor of a responding state has authority under this compact to send without the borders of the governor's state and place under the temporary operational control of the appropriate national guard or other military authorities of the requesting state, for the purposes of providing such requested assistance, all or any part of the national guard forces of the governor's state as the governor may deem necessary, and the exercise of the governor's discretion in this regard is conclusive.
3. The governor of a party state, within the governor's discretion, may withhold the national guard forces of the governor's state from such use and recall any forces or part or member thereof previously deployed in a requesting state.
4. The national guard of this state is hereby authorized to engage in counter-drug activities and demand reduction.
5. The adjutant general of this state, in order to further the purposes of this compact, may enter into a mutual assistance and support agreement with one or more law enforcement agencies of this state, including federal law enforcement agencies operating within this state, or with the national guard of one or more other party states to provide personnel, assets, and services in the area of counter-drug activities, and demand reduction provided that all parties to the agreement are not specifically prohibited by law to perform said activities.
6. The agreement must set forth the powers, rights, and obligations of the parties to the agreement, where applicable, as follows:
 - a. Its duration;
 - b. The organization, composition, and nature of any separate legal entity created thereby;
 - c. The purpose of the agreement;
 - d. The manner of financing the agreement and establishing and maintaining its budget;
 - e. The method to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination;
 - f. Provision for administering the agreement, which may include creation of a joint board responsible for such administration;
 - g. The matter of acquiring, holding, and disposing of real and personal property used in this agreement, if necessary;

- h. The minimum standard for national guard personnel implementing the provisions of the agreement;
- i. The minimum insurance required of each party to the agreement, if necessary;
- j. The chain of command or delegation of authority to be followed by national guard personnel acting under the provisions of the agreement;
- k. The duties and authority that the national guard personnel of each party state may exercise; and
- l. Any other necessary and proper matters.

Agreements prepared under the provisions of this statute are exempt from any state law pertaining to intergovernmental agreements except an agreement with a tribal government.

- 7. As a condition precedent to an agreement becoming effective under this part, the agreement must be submitted to and receive the approval of the attorney general of North Dakota. The attorney general may delegate in writing approval authority to an assistant attorney general or a North Dakota national guard judge advocate.
 - a. The attorney general or the attorney general's designee shall approve an agreement submitted under this part unless that person finds that it is not in proper form, does not meet the requirements set forth in this part, or otherwise does not conform to the laws of North Dakota. If the attorney general or the attorney general's designee disapproves an agreement, that person shall provide a written explanation to the adjutant general.
 - b. If the attorney general or the attorney general's designee does not disapprove an agreement within thirty days after its submission, it is considered approved by the attorney general.
- 8. Whenever national guard forces of any party state are engaged in the performance of duties, in the area of drug interdiction, counter-drug, and demand reduction activities, pursuant to orders, section 37-01-12 applies.

ARTICLE IV - RESPONSIBILITIES

- 1. Nothing in this compact may be construed as a waiver of any benefits, privileges, immunities, or rights otherwise provided for national guard personnel performing duty pursuant to title 32 of the United States Code nor may anything in this compact be construed as a waiver of coverage provided for under the Federal Torts Claims Act. In the event that national guard personnel performing counter-drug activities do not receive rights, benefits, privileges, and immunities otherwise provided for national guard personnel as stated above, the following provisions apply:
 - a. Whenever national guard forces of any responding state are engaged in another state in carrying out the purposes of this compact, the members thereof so engaged have the same powers, duties, rights, privileges, and immunities as members of national guard forces of the requesting state. The requesting state shall save and hold members of the national guard forces of responding states harmless from civil liability, except as otherwise provided herein, for acts or omissions which occur in the performance of their duty while engaged in carrying out the purposes of this compact, whether responding forces are serving the requesting state within the borders of the requesting state or are attached to the requesting state for the purposes of operational control.

- b. Subject to the provisions of subdivisions c, d, and e, all liability that may arise under the laws of the requesting state or the responding states, on account of or in connection with a request for assistance or support must be assumed and borne by the requesting state.
 - c. Any responding state rendering aid or assistance pursuant to this compact must be reimbursed by the requesting state for any loss or damage to, or expense incurred in the operation of any equipment answering a request for aid, and for the cost of the materials, transportation, and maintenance of national guard personnel and equipment incurred in connection with such request, provided that nothing herein contained shall prevent any responding state from assuming such loss, damage, expense, or other cost.
 - d. Unless there is a written agreement to the contrary, each party shall provide, in the same amounts and manner as if they were on duty within their state, for pay and allowances of the personnel of its national guard units while engaged without the state pursuant to this compact and while going to and returning from such duty pursuant to this compact.
 - e. Each party state providing for the payment of compensation and death benefits to injured members and the representatives of deceased members of its national guard forces in case such members sustain injuries or are killed within their own state, shall provide for the payment of compensation and death benefits in the same manner and on the same terms in the event such members sustain injury or are killed while rendering assistance or support pursuant to this compact. Such benefits and compensation must be deemed items of expense reimbursable pursuant to subdivision c.
2. Officers and enlisted personnel of the national guard performing duties subject to proper orders pursuant to this compact are subject to and governed by the provisions of their home state code of military justice whether they are performing duties within or without their home state. In the event that any national guard member commits, or is suspected of committing, a criminal offense while performing duties pursuant to this compact without that member's home state, that member may be returned immediately to that member's home state and said home state is responsible for any disciplinary action to be taken. However, nothing in this section abrogates the general criminal jurisdiction of the state in which the offense occurred.

ARTICLE V - DELEGATION

Nothing in this compact may be construed to prevent the governor of a party state from delegating any of the governor's responsibilities or authority respecting the national guard; provided, that such delegation is otherwise in accordance with law. For purposes of this compact, however, the governor may not delegate the power to request assistance from another state.

ARTICLE VI - LIMITATIONS

Nothing in the compact:

1. Authorizes or permits national guard units or personnel to be placed under the operational control of any person not having the national guard rank or status required by law for the command in question.
2. Deprives a properly convened court of jurisdiction over an offense or a defendant merely because of the fact that the national guard, while performing duties pursuant to this compact, was utilized in achieving an arrest or indictment.

37-17.2-02. Authorization to implement compact. The governor and adjutant general are authorized to enter appropriate agreements and participate in drug interdiction and counter-drug activities pursuant to section 37-17.2-01.