

JUDICIARY COMMITTEE

Senator David Hogue, Chairman

December 11, 2013

Mr. Chairman and members of the Judiciary Committee, my name is Charles Placek and I am the appointed North Dakota Commissioner for the Interstate Commission for Adult Offender Supervision. I represent the State of North Dakota on the National Commission that regulates the Interstate Compact for the supervision of Parolees and Probationers.

I am here today to provide information concerning the implementation of HB 1302 as it relates to the Interstate Commission for Adult Offender Supervision. Specifically, NDCC 39-08-01 (5b) which currently is concerning to me as your State Commissioner. Currently, as written, the Court must sentence all convicted offenders with a second offense to include at least 10 days imprisonment; a fine of \$1,500; an order for addiction evaluation by an appropriate licensed addiction treatment program; and at least 12 months participation in the twenty four seven sobriety program under chapter 54-12 as a mandatory condition of probation. My concern is regarding the mandatory minimum of 12 months of twenty four seven (24/7) sobriety program participation as a mandatory condition of probation. This condition triggers the compact as the law is currently written. With that language all convicted second offense offenders fall under the Interstate Compact for the Supervision of Adult Offenders if they relocate outside of North Dakota during their probation period. Currently the vast majority of these offenders are placed on unsupervised probation and their Court ordered conditions are monitored either by the Court Clerks or the local Sheriff regarding the 24/7 program. The concern I have as your State Commissioner is we do not know who has been placed on probation and the offenders are unaware that if they relocate to another state they will need to have their probation transferred. Failure to transfer these offenders under the Interstate Compact is a liability concern for the state.

The conflict with the Interstate Compact centers on two Compact rules: Rule 1.101 - Definitions and Rule 2.105 - Misdemeanors. Rule 1.101 defines "Supervision" to mean the oversight exercised by authorities of a sending or receiving state over an offender for a period of time determined by a court or releasing authority, during which time the offender is required to report or be monitored by supervising authorities, and to comply with regulations and conditions, other than monetary conditions, imposed on the offender at the time of the offender's release to the community or during the period of supervision in the community. The Interstate Compact would be triggered for an offender that has been convicted of their second offense that requires 24/7 as a mandatory condition of probation for at least 12 months. The majority of these offenders are placed on unsupervised probation but since they have a monitored condition other than monetary for a period of one year or greater the Interstate Compact is triggered.

The accompanying Rule 2.105 defines the Misdemeanor offenses that fall under the rules of the Interstate Compact for the Supervision of Adult Offenders. Rule 2.105 - Misdemeanants, (a) A

misdemeanor offender whose sentence includes 1 year or more of supervision shall be eligible for transfer, provided that all other criteria for transfer, as specified in Rule 3.101, have been satisfied; and the instant offense includes one or more of the following -

- (1) an offense in which a person has incurred direct or threatened physical or psychological harm;
- (2) an offense that involves the use or possession of a firearm;
- (3) a second or subsequent misdemeanor offense of driving while impaired by drugs or alcohol;**
- (4) a sexual offense that requires the offender to register as a sex offender in the sending state.

Due to the mandatory language in NDCC 39-08-01 (5b) requiring at least 12 months of 24/7 program participation as a condition of probation it meets the requirements of Rule 1.101 and Rule 2.105 of the Interstate Compact, therefore, if any of these offenders during their probation period relocate outside of North Dakota we must transfer their probation.

In the past misdemeanor probation has not been a concern of mine as the Court has been trained to know what triggers the Interstate Compact. Since all felony offenders require supervision by the DOC&R the Interstate Compact issues are handled by their staff. Misdemeanor offenders are generally sentenced to a period under one year, therefore, eliminating the need to be concerned about transfer under the Interstate Compact.

As a result of passage of HB 1302, I along with members of the ND DOC&R have provided training to a number of Municipal Court Judges. We will need train and address our concerns with the District Court Judges. We have also met with the Supreme Court administrator and Unit Court administrators to discuss ways to inform offenders.

NDCC 39-08-01 (5b) requiring at least 12 months of 24/7 participation is the concern as it triggers the requirement for transfer under the compact if the offender relocates out of North Dakota. In addition, we are faced with attempting to transfer offenders to a receiving state that may not have a 24/7 program. In the past when faced with that knowledge the DOC&R staff, if warranted, requested the Court to modify their original Court order. Since NDCC 39-08-01 (5b) language is mandatory, the Court cannot legally modify their original order. I would recommend a change in the language that would allow participation in a program that is equal to the 24/7 program requirements if the offender lives in another state.

Also, if the language in NDCC 39-08-01 (5b) could be modified requiring a period of 24/7 participation of less than one year, the second offense offender's sentence would not trigger the Interstate Compact transfer. A change in the language to a period under one year would limit the State's liability under the rules of the Interstate Compact.