

# **CORRECTIONS, PAROLE, AND PROBATION**

## **CHAPTER 97**

### **HOUSE BILL NO. 1074**

(Judiciary Committee)

(At the request of the Department of Corrections and Rehabilitation)

## **INMATE TRANSFER TO STATE HOSPITAL REPEAL**

AN ACT to repeal sections 12-47-27, 12-47-28, and 12-47-29 of the North Dakota Century Code, relating to transfers of penitentiary inmates to the state hospital.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. REPEAL.** Sections 12-47-27, 12-47-28, and 12-47-29 of the North Dakota Century Code are repealed.

Approved March 17, 2003

Filed March 17, 2003

**CHAPTER 98****HOUSE BILL NO. 1271**

(Representatives Grande, Ekstrom, Hunskor, Wald)  
(Senators Lyson, Trenbeath)

**FEMALE INMATE HOUSING**

AN ACT to create and enact a new section to chapter 12-47 of the North Dakota Century Code, relating to the housing of female inmates.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1.** A new section to chapter 12-47 of the North Dakota Century Code is created and enacted as follows:

**Director to contract for housing female inmates.** If there is no qualified state facility available, the director of the department of corrections and rehabilitation shall contract with a county for the housing of female inmates in the county jail, to the extent space is available in the county jail. The county jail must be designed in a manner that can adequately segregate the female inmates from the male inmates. Any county with which the department contracts must have available and must provide the female inmates access to educational and vocational programs, chemical dependency treatment programs, mental health programs, medical services, and adequate recreational facilities.

Approved April 7, 2003

Filed April 7, 2003

## CHAPTER 99

### SENATE BILL NO. 2339

(Senators Lyson, Nelson)  
(Representatives DeKrey, Wieland)

## INTERSTATE TRANSFER OF PROBATIONERS

AN ACT to provide for the interstate transfer or travel of probationers; and to provide an appropriation.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

#### SECTION 1. Interstate transfer or travel of probationers - Fees.

1. Upon the approval by the department of corrections and rehabilitation of a request of a probationer who is under the supervision of the department of corrections and rehabilitation to transfer residence to another state under the interstate compact for adult offender supervision, the probationer shall pay to the department an application fee of one hundred fifty dollars. The department may waive the offender's application fee. If the department waives the offender's payment of the fee, the department shall pay the offender's application fee. In addition to the application fee paid by the probationer or the department, the county having jurisdiction over the probationer, upon approval of the application for transfer, shall pay to the department a fee of one hundred fifty dollars.
2. Any probationer residing in the state who requests a travel permit to travel to another state shall pay to the department a travel permit fee of ten dollars. In the case of illness or death in the probationer's family, the department may waive the travel permit fee for hardship.
3. The department shall transfer all funds collected or paid under this section to the state treasury for deposit in the probationer violation transportation fund. The funds deposited in this fund may be spent pursuant to legislative appropriation for the purpose of defraying the costs of returning to the state probationers who violate their conditions of supervision. The department may contract with a private entity to assist in the administration of the fund.
4. The department shall adopt rules for implementation of this section.

**SECTION 2. APPROPRIATION.** There is appropriated out of any moneys in the probationer violation transportation fund, not otherwise appropriated, the sum of \$165,000, or so much of the sum as may be necessary, to the department of corrections and rehabilitation for the purpose of defraying the costs of returning to the state probationers who violate their conditions of supervision, for the biennium beginning July 1, 2003, and ending June 30, 2005.

Approved April 14, 2003  
Filed April 14, 2003

**CHAPTER 100****SENATE BILL NO. 2223**

(Senators Flakoll, Brown, Nelson)

(Representatives Boehning, Iverson, Meier)

**FINGERPRINTING POLITICAL SUBDIVISION  
APPLICANTS**

AN ACT to authorize for a city or county to require the submission of fingerprints of an applicant for certain city or county employment.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. City or county fingerprinting - Criminal history record.** The governing body of a city by ordinance or a county by ordinance or resolution may require each applicant for a specified occupation with the city or county to provide two sets of fingerprints. The city or county may submit these fingerprints to the bureau of criminal investigation for nationwide criminal history record information that includes resubmission of the fingerprints by the bureau of criminal investigation to the federal bureau of investigation. Federal bureau of investigation criminal history record information obtained by a city or county is confidential. For a request for nationwide criminal history record information made by the city or county under this section, the bureau of criminal investigation is the sole source to receive the fingerprint submissions and responses from the federal bureau of investigation. A person who takes fingerprints under this section may charge a reasonable fee to offset the cost of fingerprinting. The bureau of criminal investigation may charge appropriate fees for criminal history information.

Approved April 8, 2003

Filed April 9, 2003

## CHAPTER 101

### SENATE BILL NO. 2346

(Senators Traynor, Lyson, Robinson)  
(Representatives Carlisle, DeKrey, Grande)

## PEACE OFFICERS STANDARDS AND TRAINING BOARD

AN ACT to create and enact three new sections to chapter 12-63 of the North Dakota Century Code, relating to membership on the peace officers standards and training board, temporary suspensions, and cost of prosecution; to amend and reenact sections 12-62-01, 12-62-01.1, 12-62-02, 12-62-07, 12-62-10, 12-63-01, 12-63-02, 12-63-03, 12-63-04, 12-63-05, 12-63-09, 12-63-10, and 12-63-12 of the North Dakota Century Code, relating to training responsibilities, statistics collection, and the peace officers standards and training board; to repeal sections 12-62-03, 12-62-05, 12-62-06, and 12-62-09 of the North Dakota Century Code, relating to law enforcement training; and to declare an emergency.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 12-62-01 of the North Dakota Century Code is amended and reenacted as follows:

**12-62-01. Criminal justice training and statistics division - Personnel - Purpose.** ~~A criminal~~ Criminal justice training and the collection of statistics ~~division is created under the~~ must be conducted by the office of attorney general. ~~The division shall consist of a director and such other personnel as may be designated by the attorney general. The attorney general shall supervise the criminal justice training and statistics division.~~ ‡ The office of attorney general shall be the purpose of the criminal justice training and statistics division to certify and conduct the training of peace officers; ~~local correctional officers;~~ and sheriffs; ~~to conduct training for state's attorneys and defense attorneys;~~ and to gather, analyze, and disseminate information regarding the state's criminal justice system.

**SECTION 2. AMENDMENT.** Section 12-62-01.1 of the North Dakota Century Code is amended and reenacted as follows:

**12-62-01.1. County and city officials to furnish crime statistics to director.** ~~In an effort to~~ To assist in controlling crime in the state through the use of reliable statistics relating to crimes and criminal activity, the ~~director, with the approval of the~~ attorney general; ~~may call upon and~~ obtain from the clerks of district courts, municipal courts, ~~sheriffs, police departments,~~ and ~~state's attorneys~~ criminal justice agencies all information that the ~~director may deem~~ attorney general deems necessary ~~in ascertaining to ascertain~~ the ~~condition~~ status of crimes and criminal activity in North Dakota. It is the duty of the officials to furnish ~~any such~~ the information ~~so~~ requested by the ~~director~~ attorney general on whatever forms or in whatever manner the ~~director~~ attorney general may prescribe.

**SECTION 3. AMENDMENT.** Section 12-62-02 of the North Dakota Century Code is amended and reenacted as follows:

**12-62-02. Powers and duties.** ~~The powers and duties of the criminal justice training and statistics division shall be~~ To ensure adequate training for law enforcement and to ensure the comprehensive collection of crime statistics the attorney general shall:

1. ~~To determine~~ Determine the specialized training needs of peace officers and conduct such training.
2. ~~To conduct training for peace officers which will meet their specialized needs.~~
3. ~~To prescribe the criteria for certification of basic, advanced, and specialized peace officer training curriculum, instructors, and schools.~~
4. ~~To certify curriculum, instructors, schools, and officers that have met the training certification criteria.~~
5. ~~To establish the curriculum for basic and advanced peace officer training.~~
6. ~~To prescribe minimum standards of sidearm training for peace officers prior to carrying a sidearm, and to certify officers who have met the established standards.~~
7. ~~To conduct and certify training for local correctional officers.~~
8. ~~To conduct training which meets the approved coursework requirements for continuing legal education credit for state's attorneys and their assistants, and for defense attorneys.~~
9. ~~To develop and maintain a manpower, training, and certification information system.~~
10. ~~To develop and maintain a jail information system.~~
11. ~~To analyze data available from the division's information system and other criminal justice related information systems and to compile appropriate periodic reports based on that data.~~
12. ~~To assist state and local criminal justice agencies in the development of record systems and information systems.~~
13. ~~To coordinate the utilization of data which is generated by state and local record information systems~~ Develop and maintain a staffing, training, and certification information system.
3. Analyze criminal justice data and compile appropriate periodic reports.
4. Coordinate the utilization of data generated by state and local record information systems.
14. 5. ~~To conduct~~ Conduct research projects designed to respond to criminal justice system needs and executive, judicial, or legislative branch requests.

- ~~15.~~ 6. ~~To accept~~ Accept and administer gifts, or grants, or contracts with persons or organizations, including the federal government, on such terms as may be beneficial to the state.

**SECTION 4. AMENDMENT.** Section 12-62-07 of the North Dakota Century Code is amended and reenacted as follows:

**12-62-07. Sheriffs - Training.** Every newly elected or appointed sheriff shall attend within the first year of employment a course of training on civil duties conducted by the ~~division~~ office of attorney general. The curriculum, location, and dates shall be determined by the ~~division~~ office of attorney general in cooperation with the sheriff's association. ~~Such~~ The course shall be open to all sheriffs and deputies.

**SECTION 5. AMENDMENT.** Section 12-62-10 of the North Dakota Century Code is amended and reenacted as follows:

**12-62-10. Rulemaking power.** The attorney general may adopt rules to carry out the powers and duties ~~assigned to the criminal justice training and statistics division~~ designated in this chapter. All rules adopted by the attorney general and appeals therefrom shall be in accordance with chapter 28-32.

**SECTION 6. AMENDMENT.** Section 12-63-01 of the North Dakota Century Code is amended and reenacted as follows:

**12-63-01. Definitions.** ~~In sections 12-63-04 through 12-63-14, unless the context or subject matter otherwise requires~~ As used in this chapter:

1. "Board" means the peace officer standards and training board.
2. ~~"Director" means the director of the division.~~
3. ~~"Division" means the training section of the bureau of criminal investigation.~~
4. "Peace officer" means a public servant authorized by law or by government agency or branch to enforce the law and to conduct or engage in investigations of violations of the law.

**SECTION 7.** A new section to chapter 12-63 of the North Dakota Century Code is created and enacted as follows:

**Peace officer standards and training board - Membership - Duties.** The peace officer standards and training board consists of nine members including the director of the law enforcement training center, six peace officers, one county government representative, and one city governmental representative. With the exception of the director of the law enforcement training center, all members must be appointed by the attorney general and serve staggered two-year terms. With the exception of the county government representative, the city government representative, and the director of the law enforcement training center, a member may not serve more than three consecutive terms. The attorney general shall also appoint the chairman of the board. The office of attorney general shall provide support staff to the board, including an employee to serve as the secretary of the board and as an ex officio nonvoting member of the board.

**SECTION 8. AMENDMENT.** Section 12-63-02 of the North Dakota Century Code is amended and reenacted as follows:

**12-63-02. License required.** An individual may not perform peace officer law enforcement duties in this state unless the individual is licensed ~~under sections 12-63-01 through 12-63-14~~ as required in this chapter.

**SECTION 9. AMENDMENT.** Section 12-63-03 of the North Dakota Century Code is amended and reenacted as follows:

**12-63-03. Persons and practices not affected.** ~~Sections 12-63-01 through 12-63-14 do~~ This chapter does not prevent or restrict the practice of peace officer duties or activities of:

1. Auxiliary personnel such as members of organized groups for purposes such as posse, search and rescue, and security at dances, if the group operates as adjunct to the police or sheriff's department, and does not have arrest powers or peace officer authority delegated to its members by the department.
2. A reserve officer such as an individual used by a municipal, county, or state law enforcement agency to provide services to that jurisdiction on a nonsalaried basis and who is granted full arrest authority.
3. A person who provides private investigative services in this state.
4. A person doing private security work or any private security agency.
5. A person performing peace officer duties in an official capacity as a federal officer.

**SECTION 10. AMENDMENT.** Section 12-63-04 of the North Dakota Century Code is amended and reenacted as follows:

**12-63-04. Board - Powers - Duties - Authority.** The board shall administer, coordinate, and enforce ~~sections 12-63-01 through 12-63-14~~ the provisions of this chapter, evaluate the qualifications of applicants, and approve the examinations for licensing under ~~sections 12-63-01 through 12-63-14~~ this chapter.

1. The board shall:
  - a. Prescribe the criteria for certification of basic, advanced, and specialized peace officer training curriculum, instructors, and schools;
  - b. Certify curriculum, instructors, schools, and officers that have met the training certification criteria;
  - c. Establish the curriculum for basic and advanced peace officer training; and
  - d. Prescribe minimum standards of sidearm training and certification for peace officers before they may carry a sidearm.
2. The board shall keep records and minutes necessary to carry out its functions. The board may:

4. a. Issue subpoenas, examine witnesses, administer oaths, and investigate allegations of practices violating ~~sections 12-63-01 through 12-63-14~~ the provisions of this chapter or rules adopted by the board.
2. b. Examine, under oath, any applicant for licensing.
3. c. Examine, under oath, any licensed peace officer during a hearing to suspend, revoke, or to not renew a license of a peace officer.
4. d. Adopt rules ~~that relate~~ relating to the professional conduct or carry out the policy of sections 12-63-01 through 12-63-14 of peace officers and to implement the requirements of this chapter, including rules relating to professional licensure, continuing education, and ~~to establishment of~~ ethical standards of practice, for persons holding a license to practice peace officer duties.

**SECTION 11. AMENDMENT.** Section 12-63-05 of the North Dakota Century Code is amended and reenacted as follows:

**12-63-05. Fees.** The board shall prescribe by rule the fee for application for examination, for an initial license, for renewal of a license, and for late renewal of a license. The board shall administer fees received under ~~sections 12-63-01 through 12-63-14~~ this chapter in accordance with section 54-44-12.

**SECTION 12. AMENDMENT.** Section 12-63-09 of the North Dakota Century Code is amended and reenacted as follows:

**12-63-09. Limited license.** Pending successful completion of the written examination required ~~by sections 12-63-01 through 12-63-14 in this chapter,~~ the board may grant a limited license to a person who has completed the education, medical, and psychological examination requirements and has been qualified to carry a sidearm. The limited license allows the person to practice peace officer duties in accordance with rules of the board. Except as otherwise provided, the limited license is valid for no longer than the earlier of the expiration of the next available training session, until the person is issued a license under section 12-63-10, or until the limited license is suspended or revoked by the board. After being employed but before taking the written examination, the person shall attend the first available basic training program recognized by the board. The limited license may be renewed one time if the person has failed the examination. On terms and conditions prescribed by the board, the limited license is limited to the jurisdiction in which the person is employed.

**SECTION 13. AMENDMENT.** Section 12-63-10 of the North Dakota Century Code is amended and reenacted as follows:

**12-63-10. Issuance of license.** The board shall issue a license to any person who meets the requirements of ~~sections 12-63-01 through 12-63-14~~ this chapter and who has paid the prescribed license fee.

**SECTION 14. AMENDMENT.** Section 12-63-12 of the North Dakota Century Code is amended and reenacted as follows:

**12-63-12. Adverse license action - Appeal.**

1. The board may deny a license, refuse to renew a license, suspend a license, or revoke a license, or may impose probationary conditions if the person:
  - a. Has been convicted or pled guilty or nolo contendere before a court of competent jurisdiction in any state, or before any court, of an offense determined by the board to have a direct bearing upon a person's ability to serve as a peace officer, or the board determines, following a conviction or adjudication, that the person is not rehabilitated under section 12.1-33-02.1.
  - b. Has used unjustified deadly force in the performance of the duties as a peace officer as described in section 12.1-05-07.
  - c. Has made a false material statement under oath to the board.
  - d. Has made a false material statement to the board while obtaining or renewing a license or permit.
  - e. Has violated ~~sections 12-63-01 through 12-63-14~~ this chapter.
2. Denial, refusal to renew, suspension, revocation, or imposition of probationary condition on a license may be ordered by the board after a hearing in a manner provided by rules adopted by the board. An application for reinstatement may be made to the board one year from the date of the refusal to renew or the revocation of the license. The board may accept or reject an application for reinstatement and may hold a hearing to consider the reinstatement. In the case of a denial of an application, the applicant may not reapply for a period of one year from the date of the order of denial.
3. An appeal from the final decision of the board to refuse to issue, to not renew, to suspend, or to revoke a license may be made to the district court. Venue is the county in which the aggrieved person resides. The appeal must be made within ninety days from the service of the decision on the person.

**SECTION 15.** A new section to chapter 12-63 of the North Dakota Century Code is created and enacted as follows:

**Temporary suspension - Appeal.**

1. The board may order a temporary suspension of a peace officer's license ex parte if the board finds, based on verified evidence, probable cause to believe that:
  - a. A peace officer has violated this chapter or a rule of the board;
  - b. Continued performance of peace officer law enforcement duties would create a significant risk of serious and ongoing harm to the public while a disciplinary proceeding is pending; and

- c. Immediate suspension of the peace officer's license is required to reasonably protect the public from that risk of harm.

For purposes of this section, evidence is verified if sworn to before an officer authorized to administer oaths or equivalent affirmations.

2. An ex parte temporary suspension remains in effect for not more than sixty days, unless otherwise terminated by the board.
3. The board shall set the date of a full hearing on the cause and grounds for discipline regarding the license at a time not later than sixty days after the issuance of the ex parte temporary suspension order. Within three days after the issuance of the ex parte suspension order, the board shall serve the peace officer with a copy of the order along with a copy of the complaint and notice of the date set for the full hearing.
4. The peace officer may appeal the ex parte temporary suspension order prior to the full hearing. For purposes of appeal, the district court shall decide whether the board acted reasonably or arbitrarily. The court shall give priority to the appeal for prompt disposition. Unless otherwise ordered by the district court, an appeal by the peace officer of the ex parte temporary suspension order does not stay the effectiveness or validity of the ex parte temporary license suspension.

**SECTION 16.** A new section to chapter 12-63 of the North Dakota Century Code is created and enacted as follows:

**Costs of prosecution - Disciplinary proceedings.** In a disciplinary proceeding in which disciplinary action is imposed against a peace officer, the board may direct the peace officer to pay the board a sum not to exceed the reasonable and actual costs of the case, including reasonable attorney's fees incurred by the board or its authorized representatives in the investigation, prosecution, resolution, and hearings, whether held before the board, a hearing officer, or administrative law judge. When applicable, the peace officer's license may be suspended until the costs are paid to the board. A peace officer may challenge the reasonableness of any cost in a hearing under chapter 28-32. The administrative law judge may approve, deny, or modify any cost, and determination of the judge is final. If requested, the hearing must occur before the peace officer's license may be suspended for nonpayment.

**SECTION 17. REPEAL.** Sections 12-62-03, 12-62-05, 12-62-06, and 12-62-09 of the North Dakota Century Code are repealed.

**SECTION 18. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 11, 2003  
Filed April 14, 2003

**CHAPTER 102****SENATE BILL NO. 2147**

(Judiciary Committee)

(At the request of the Department of Corrections and Rehabilitation)

**SUPERVISION OF ADULT OFFENDERS**

AN ACT to create and enact six new sections to chapter 12-65 of the North Dakota Century Code, relating to the supervision of adult offenders; to amend and reenact subsection 3 of section 12-47-36, subsection 4 of article 2 and subsection 2 of article 3 of section 12-65-01, and subsection 1 of section 54-57-03 of the North Dakota Century Code, relating to records of persons in the custody of or under the supervision and management of the department of corrections and rehabilitation, hearings before administrative law judges, and supervision of adult offenders; to repeal chapters 12-56 and 12-56.1 of the North Dakota Century Code and section 2 of chapter 141 of the 2001 Session Laws, relating to out-of-state parolee supervision, hearings for interstate parolees and probationers, and elimination of the expiration date of laws relating to the interstate compact for adult offender supervision; and to provide a penalty.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Subsection 3 of section 12-47-36 of the North Dakota Century Code is amended and reenacted as follows:

3. Notwithstanding any other provisions of law relating to privilege or confidentiality, except for the confidentiality requirements of federal drug and alcohol treatment and rehabilitation laws, the following persons, organizations, or agencies without prior application to the court may inspect case history, medical, psychological, or treatment records:
  - a. The governor;
  - b. The pardon advisory board, if the governor has appointed a pardon advisory board;
  - c. The parole board;
  - d. Any division, department, official, or employee of the department of corrections and rehabilitation;
  - e. Another state receiving a parolee or probationer under the provisions of chapter ~~12-56~~ or ~~12-56.1~~ 12-65;
  - f. A federal, state, regional, or county correctional facility receiving physical custody of a person under the legal custody of the department of corrections and rehabilitation;
  - g. The employees in the office of the attorney general and investigators, consultants, or experts retained by the state;

- h. The risk management division of the office of management and budget for the purpose of investigating and defending actions or claims under chapter 32-12.2;
- i. The district court of the county where the judgment of conviction was entered;
- j. A state or federal court where a person in the custody or under the supervision and management of the adult services division of the department of corrections and rehabilitation has commenced litigation and the records are relevant to the litigation;
- k. A criminal justice agency as defined in section 44-04-18.7; or
- l. The United States social security administration and veterans administration.

**SECTION 2. AMENDMENT.** Subsection 4 of article 2 of section 12-65-01 of the North Dakota Century Code is amended and reenacted as follows:

- 4. "Compact administrator" means the individual in each compacting state appointed under the terms of this compact, or the individual's designee, responsible for the administration and management of the state's supervision and transfer of offenders subject to the terms of this compact, the rules adopted by the interstate commission, and policies adopted by the state council under this compact.

**SECTION 3. AMENDMENT.** Subsection 2 of article 3 of section 12-65-01 of the North Dakota Century Code is amended and reenacted as follows:

- 2. The interstate commission consists of commissioners selected and appointed by each state. The governor shall appoint a commissioner and a deputy commissioner. In addition to the commissioners who are the voting representatives of each state, the interstate commission includes individuals who are not commissioners but who are members of interested organizations. The noncommissioner members include a member of the national organizations of governors, legislators, state chief justices, attorneys general, and crime victims. All noncommissioner members of the interstate commission are nonvoting members. The interstate commission may provide in its bylaws for additional nonvoting members as it deems necessary.

**SECTION 4.** Six new sections to chapter 12-65 of the North Dakota Century Code are created and enacted as follows:

**Custody and detention of offender for violation of terms and conditions of compact supervision - Hearing and waiver - Report to sending state.** Whenever it is alleged that an offender has violated any terms and conditions of supervision under the compact for the supervision of adult offenders, the compact administrator may issue a warrant to take the offender into custody and detain the offender and request that the sending state retake the offender. If there is probable cause to believe an offender has violated any of the terms or conditions of supervision under the compact for the supervision of adult offenders, a parole and probation officer or any peace officer directed by a parole and probation officer may take the offender into custody and detain the offender in a correctional facility pending application for a warrant of arrest and authority to detain. The offender may

not be released on bail pending the probable cause hearing under this chapter. The offender is entitled to a hearing to be held in accordance with this chapter within a reasonable time after being taken into custody to determine whether there is probable cause to find that the offender violated any of the terms and conditions of parole or probation while under compact supervision. The offender may waive the hearing and admit there is probable cause to find that the offender violated any of the terms and conditions of parole or probation while under compact supervision. As soon as practical after the hearing or waiver of the hearing, the compact administrator shall furnish a copy of the hearing record and make a report to the sending state with findings of fact regarding the violations of the terms and conditions of parole or probation while under compact supervision and shall make recommendations regarding the disposition of the offender. If it appears to the compact administrator that the sending state will retake the offender, the compact administrator may detain the offender for a reasonable period after the hearing or waiver in order for the sending state to arrange for retaking the offender.

**Waiver of extradition.** Authorized officers of a sending state may enter this state and apprehend and retake any offender from the sending state who is present in this state pursuant to the compact for the supervision of adult offenders. The sending state shall establish the authority of the officers and the identity of the offender before the officers may retake the offender back to the sending state. All legal requirements to obtain extradition of fugitives from justice are hereby expressly waived. The decision of the sending state to retake an offender is conclusive upon and not reviewable by this state. If the offender is alleged to have committed a criminal offense within this state, or if there is any criminal charge pending against an offender in this state, and unless permission has been obtained from the state's attorney in the county in which the criminal offense is alleged to have occurred, the sending state may not retake the offender from this state until the offender has been discharged from prosecution or released from imprisonment for the criminal offense.

**Who may hold a hearing.** A hearing pursuant to this chapter must be before a hearing officer designated by the compact administrator. The hearing may not be conducted by a person directly involved in the supervision of the offender or by the person bringing the allegation of a probation or parole violation.

**Conduct of hearing.** The offender is entitled to:

1. Notice in writing of the nature and content of the allegations against the offender and that the purpose of the hearing is to determine whether there is probable cause to believe that the offender has violated any terms and conditions of compact supervision that may result in the sending state retaking the offender and may result in revocation of parole or probation in the sending state.
2. Opportunity to be heard in person and present witnesses and evidence.
3. The opportunity to confront and cross-examine adverse witnesses, unless the hearing officer determines that confrontation may present a risk of harm to a witness.
4. Written findings of fact and an explanation of the decision.

**Force and effect of hearings in other states.** In a case of alleged parole or probation violation by an offender being supervised in another state pursuant to the interstate compact for the supervision of adult offenders, any appropriate judicial or administrative officer or agency in another state is authorized to hold a hearing on

the alleged violation. Upon receipt of the record of a parole or probation violation hearing held in another state pursuant to a statute substantially similar to this chapter, the record has the same standing and effect as though the proceeding of which it is a record was had before the appropriate officer or officers in this state, and any recommendations contained in or accompanying the record must be fully considered by the appropriate officer or officers of this state in making disposition of the matter.

**Violation of compact - Penalty.** An offender who is on parole or probation in another state, who is present in this state without the permission of the compact administrator, and who does not leave this state within seven days after being notified in writing by a law enforcement officer that the offender may not remain in this state without the permission of the compact administrator is guilty of a class C felony. Within twenty-four hours after a law enforcement officer has notified an offender that the offender may not remain within the state without the permission of the compact administrator, the law enforcement officer shall report the notification to the designated officer. An offender who is on parole or probation in another state may not remain in this state without the permission of the compact administrator. In a prosecution for an offense under this section, an offender's good-faith belief that the offender received permission to be present in this state is an affirmative defense if the offender acted in reasonable reliance upon the written statements of an authorized officer of this state or the state in which the offender is on parole or probation. This defense is not available to a person who remains present in this state after being notified in writing by the compact administrator that the offender does not have permission to be present.

**SECTION 5. AMENDMENT.** Subsection 1 of section 54-57-03 of the North Dakota Century Code is amended and reenacted as follows:

1. Notwithstanding the authority granted in chapter 28-32 allowing agency heads or other persons to preside in an administrative proceeding, all adjudicative proceedings of administrative agencies under chapter 28-32, except those of the public service commission, the industrial commission, the insurance commissioner, the workers compensation bureau, the state engineer, the department of transportation, job service North Dakota, and the labor commissioner, must be conducted by the office of administrative hearings in accordance with the adjudicative proceedings provisions of chapter 28-32 and any rules adopted pursuant to chapter 28-32. But, appeals hearings pursuant to section 61-03-22 and drainage appeals from water resource boards to the state engineer pursuant to chapter 61-32 must be conducted by the office of administrative hearings. Additionally, hearings of the department of corrections and rehabilitation for the parole board in accordance with ~~chapters 12-56.1 and chapter 12-59~~, regarding parole violations; job discipline and dismissal appeals to the board of higher education; Individuals With Disabilities Education Act and section 504 due process hearings of the superintendent of public instruction; and chapter 37-19.1 veterans' preferences hearings for any agency must be conducted by the office of administrative hearings in accordance with applicable laws.

**SECTION 6. REPEAL.** Chapters 12-56 and 12-56.1 of the North Dakota Century Code and section 2 of chapter 141 of the 2001 Session Laws are repealed.

## CHAPTER 103

### HOUSE BILL NO. 1254

(Representatives DeKrey, Delmore, Grande)  
(Senators Lyson, Nelson, Traynor)

## INTERSTATE COMPACT FOR JUVENILES

AN ACT to adopt the interstate compact for juveniles.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. Compact for juveniles.** This interstate compact for juveniles is entered with all jurisdictions legally joining the compact in the form substantially as follows:

#### Article 1. Purpose

The compacting states to this interstate compact recognize that each state is responsible for the proper supervision or return of juveniles, delinquents, and status offenders who are on probation or parole and who have absconded, escaped, or run away from supervision and control and in so doing have endangered their own safety and the safety of others. The compacting states also recognize that each state is responsible for the safe return of juveniles who have run away from home and in doing so have left their state of residence. The compacting states also recognize that the United States Congress, by enacting the Crime Control Act [Pub. L. 89-554; 80 Stat. 608; 4 U.S.C. 112] has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

It is the purpose of this compact, through means of joint and cooperative action among the compacting states to:

1. Ensure that the adjudicated juveniles and status offenders subject to this compact are provided adequate supervision and services in the receiving state as ordered by the adjudicating judge or parole authority in the sending state;
2. Ensure that the public safety interests of the citizens, including the victims of juvenile offenders, in both the sending and receiving states are adequately protected;
3. Return juveniles who have run away, absconded, or escaped from supervision or control or have been accused of an offense to the state requesting their return;
4. Make contracts for the cooperative institutionalization in public facilities in member states for delinquent youth needing special services;
5. Provide for the effective tracking and supervision of juveniles;
6. Equitably allocate the costs, benefits, and obligations of the compacting states;

7. Establish procedures to manage the movement between states of juvenile offenders released to the community under the jurisdiction of courts, juvenile departments, or any other criminal or juvenile justice agency that has jurisdiction over juvenile offenders;
8. Ensure immediate notice to jurisdictions where defined offenders are authorized to travel or to relocate across state lines;
9. Establish procedures to resolve pending charges against juvenile offenders before transfer or release to the community under the terms of this compact;
10. Establish a system of uniform data collection on information pertaining to juveniles subject to this compact that allows access by authorized juvenile justice and criminal justice officials, and regular reporting of compact activities to heads of state executive, judicial, and legislative branches and juvenile and criminal justice administrators;
11. Monitor compliance with rules governing interstate movement of juveniles and initiate interventions to address and correct noncompliance;
12. Coordinate training and education regarding the regulation of interstate movement of juveniles for officials involved in such activity; and
13. Coordinate the implementation and operation of the compact with the interstate compact for the placement of children, the interstate compact for adult offender supervision, and other compacts affecting juveniles particularly in those cases where concurrent or overlapping supervision issues arise. It is the policy of the compacting states that the activities conducted by the interstate commission are the formation of public policies and therefore are public business, and the compacting states shall cooperate and observe their individual and collective duties and responsibilities for the prompt return and acceptance of juveniles subject to the provisions of this compact. The provisions of this compact must be reasonably and liberally construed to accomplish the purposes and policies of the compact.

## **Article 2. Definitions**

As used in this compact, unless the context requires otherwise:

1. "Bylaws" means those bylaws established by the commission for its governance, or for directing or controlling its actions or conduct.
2. "Compact administrator" means the individual in each compacting state appointed pursuant to the terms of this compact, responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the commission, and policies adopted by the state council under this compact.
3. "Compacting state" means any state that has enacted the enabling legislation for this compact.

4. "Commission" means the interstate commission for juveniles created by article 3 of this compact.
5. "Commissioner" means the voting representative of each compacting state appointed pursuant to article 3 of this compact.
6. "Court" means any court having jurisdiction over delinquent, neglected, or dependent children.
7. "Deputy compact administrator" means the individual, if any, in each compacting state appointed to act on behalf of a compact administrator.
8. "Juvenile" means any individual defined as a juvenile in any member state or by the rules of the interstate commission, including:
  - a. An accused delinquent, who is an individual charged with an offense that, if committed by an adult, would be a criminal offense;
  - b. An adjudicated delinquent, who is an individual found to have committed an offense that, if committed by an adult, would be a criminal offense;
  - c. An accused status offender, who is an individual charged with an offense that would not be a criminal offense if committed by an adult;
  - d. An adjudicated status offender, who is an individual found to have committed an offense that would not be a criminal offense if committed by an adult; and
  - e. A nonoffender, who is an individual in need of supervision who has not been accused or adjudicated a status offender or delinquent.
9. "Noncompacting state" means any state that has not enacted the enabling legislation for this compact.
10. "Probation or parole" means any kind of supervision or conditional release of juveniles authorized under the laws of the compacting states.
11. "State" means a state of the United States, the District of Columbia, or its designee, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands.

### **Article 3. Interstate Commission for Juveniles**

1. The compacting states create the interstate commission for juveniles. The commission is a body corporate and joint agency of the compacting states. The commission has all the responsibilities, powers, and duties set forth in this compact, and any 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.
2. The commission consists of commissioners appointed by the appropriate appointing authority in each state pursuant to the rules and requirements of each compacting state and in consultation with the state

council for interstate juvenile supervision. The commissioner is the compact administrator, deputy compact administrator, or designee from that state who serves on the commission in that capacity under or pursuant to the applicable law of the compacting state.

3. In addition to the commissioners who are the voting representatives of each state, the commission must include individuals who are not commissioners, but who are members of interested organizations. The noncommissioner members include a member of the national organizations of governors, legislators, state chief justices, attorneys general, interstate compact for adult offender supervision, interstate compact for the placement of children, juvenile justice and juvenile corrections officials, and crime victims. All noncommissioner members of the commission are nonvoting members. The commission may provide in its bylaws for other additional nonvoting members, including members of other national organizations, in those numbers as determined by the commission.
4. Each compacting state represented at any 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 the bylaws of the commission.
5. The commission shall meet at least once each calendar year. The chairman may call additional meetings and, upon the request of a simple majority of the compacting states, shall call additional meetings. Public notice must be given of all meetings and meetings must be open to the public.
6. The commission shall establish an executive committee that includes commission officers, members, and others as determined by the bylaws. The executive committee shall act on behalf of the commission during periods when the commission is not in session, with the exception of rulemaking or amendment to the compact. The executive committee oversees the day-to-day activities of the administration of the compact managed by an executive director and commission staff; administers enforcement and compliance with the provisions of the compact, its bylaws and rules, and performs any other duties as directed by the commission or set forth in the bylaws.
7. Each member of the commission is entitled to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the interstate commission. A member shall vote in person and may not delegate a vote to another compacting state. However, a commissioner, in consultation with the state council, shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the compacting state at a specified meeting. The bylaws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication.
8. The commission's bylaws must establish conditions and procedures under which the commission makes its information and official records available to the public for inspection or copying. The commission may exempt from disclosure any information or official records to the extent

the information or records would adversely affect personal privacy rights or proprietary interests.

9. Public notice must be given of all meetings and all meetings are open to the public, except as set forth in the rules or as otherwise provided in the compact. The commission and any of its committees may close a meeting to the public when it determines by 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 any person of a crime or formally censuring any person;
  - e. Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
  - f. Disclose investigative records compiled for law enforcement purposes;
  - g. Disclose information contained in or related to examination, operating or condition reports prepared by, or on behalf of or for the use of, the commission with respect to a regulated person for the purpose of regulation or supervision of that person;
  - h. Disclose information, the premature disclosure of which would significantly endanger the stability of a regulated person; or
  - i. Specifically relate to the commission's issuance of a subpoena or its participation in a legal proceeding.
10. For every meeting closed pursuant to this provision, the commission's legal counsel shall publicly certify that, in the legal counsel's opinion, the meeting may be closed to the public and shall reference each relevant exemptive provision. The commission shall keep minutes that fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll call vote. All documents considered in connection with any action must be identified in the minutes.
11. The commission shall collect standardized data concerning the interstate movement of juveniles as directed through its rules which shall specify the data to be collected, the means of collection and data exchange, and reporting requirements. The methods of data collection, exchange, and reporting, insofar as is reasonably possible, must conform to up-to-date technology and coordinate its information functions with the appropriate repository of records.

#### **Article 4. Powers and Duties of the Commission**

The commission has the following powers and duties:

1. To provide for dispute resolution among compacting states.
2. To adopt rules to effect the purposes and obligations as enumerated in this compact, which have the force and effect of law and are binding in the compacting states to the extent and in the manner provided in this compact.
3. To oversee, supervise, and coordinate the interstate movement of juveniles subject to the terms of this compact and any bylaws adopted and rules adopted by the commission.
4. To enforce compliance with the compact provisions, the rules adopted by the commission, and the bylaws, using all necessary and proper means, including the use of judicial process.
5. To establish and maintain offices located within one or more of the compacting states.
6. To purchase and maintain insurance and bonds.
7. To borrow, accept, hire, or contract for services of personnel.
8. To establish and appoint committees and hire staff it determines necessary for the carrying out of its functions, including an executive committee as required by article 3, which has the power to act on behalf of the commission in carrying out its powers and duties under this compact.
9. To elect or appoint officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties, and determine their qualifications, and to establish the commission's personnel policies and programs relating to conflicts of interest, rates of compensation, and qualifications of personnel.
10. To accept, use, and dispose of donations and grants of money, equipment, supplies, materials, and services.
11. To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve, or use any property.
12. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property.
13. To establish a budget and make expenditures and levy dues as provided in article 8 of this compact.
14. To sue and be sued.
15. To adopt a seal and bylaws governing the management and operation of the commission.

16. To perform such functions as may be necessary or appropriate to achieve the purposes of this compact.
17. To report annually to the legislatures, governors, judiciary, and state councils of the compacting states concerning the activities of the commission during the preceding year. Reports must include any recommendations that may have been adopted by the commission.
18. To coordinate education, training, and public awareness regarding the interstate movement of juveniles for officials involved in that activity.
19. To establish uniform standards of the reporting, collecting, and exchanging of data.
20. To maintain its corporate books and records in accordance with the bylaws.

#### **Article 5. Organization and Operation of the Commission**

1. The commission, by a majority of the members present and voting, within twelve months after the first commission meeting, shall adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including:
  - a. Establishing the fiscal year of the commission;
  - b. Establishing an executive committee and any other committee as may be necessary;
  - c. Providing for the establishment of committees governing any general or specific delegation of any authority or function of the interstate commission;
  - d. Providing reasonable procedures for calling and conducting meetings of the commission and ensuring reasonable notice of each meeting;
  - e. Establishing the titles and responsibilities of the officers of the commission;
  - f. Providing a mechanism for concluding the operations of the commission and the return of any surplus funds that may exist upon the termination of the compact after the payment or reserving of all of its debts and obligations;
  - g. Providing startup rules for initial administration of the compact; and
  - h. Establishing standards and procedures for compliance and technical assistance in carrying out the compact.
2. The commission, by a majority of the members, shall elect annually from among its members a chairman and a vice chairman, each of whom has the authority and duties as may be specified in the bylaws. The chairman or, in the chairman's absence or disability, the vice chairman shall preside at all meetings of the commission. The officers so elected shall serve without compensation or remuneration from the commission,

provided that, subject to the availability of budgeted funds, the officers are reimbursed for any ordinary and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the interstate commission.

3. The commission, through its executive committee, shall appoint or retain an executive director for a period, upon the terms and conditions, and for the compensation as the commission determines appropriate. The executive director shall serve as secretary to the commission, but may not be a member, and shall hire and supervise any other staff as may be authorized by the commission.
4.
  - a. The commission's executive director and employees are 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 the person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities; provided, that the individual is not protected from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct.
  - b. The liability of any commissioner, or the employee or agent of a commissioner, acting within the scope of that individual's employment or duties for acts, errors, or omissions occurring within that individual's state may not exceed the limits of liability set forth under the constitution and laws of that state for state officials, employees, and agents. This subdivision does not protect any individual from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of that individual.
  - c. The commission shall 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, shall defend the 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 that individual.
  - d. The commission shall 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 the individuals 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 individuals 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 the intentional or willful and wanton misconduct on the part of the individuals.

### **Article 6. Rulemaking Functions of the Commission**

1. The commission shall adopt and publish rules to effectively and efficiently achieve the purposes of the compact.
2. Rulemaking must occur pursuant to the criteria set forth in this article and the bylaws and rules adopted pursuant to this article. The rulemaking must substantially conform to the principles of the Model State Administrative Procedures Act, 1981 Act, Uniform Laws Annotated, Vol. 15, p.1 (2000), or any other administrative procedures act, as the interstate commission deems appropriate consistent with due process requirements under the Constitution of the United States. All rules and amendments become binding as of the date specified, as published with the final version of the rule as approved by the commission.
3. When adopting a rule, the commission shall:
  - a. Publish the proposed rule's entire text stating the reason for that proposed rule;
  - b. Allow and invite any person to submit written data, facts, opinions, and arguments which must be added to the record, and be made publicly available;
  - c. Provide an opportunity for an informal hearing if petitioned by ten or more persons; and
  - d. Adopt a final rule and its effective date, if appropriate, based on comment from interested parties or state or local officials.
4. Not later than sixty days after a rule is adopted, any interested person may 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. If the court finds that the commission's action is not supported by substantial evidence in the rulemaking record, the court shall hold the rule unlawful and set it aside. For purposes of this subsection, evidence is substantial if it would be considered substantial evidence under the Model State Administrative Procedures Act.
5. If a majority of the legislatures of the compacting states rejects a rule, those states, by enactment of a statute or resolution in the same manner used to adopt the compact, may cause that the rule has no further force and effect in any compacting state.
6. The existing rules governing the operation of the interstate compact on juveniles superseded by this act are void twelve months after the first meeting of the commission.
7. Upon determination by the commission that a state of emergency exists, the commission may adopt an emergency rule that becomes effective

immediately upon adoption, provided that the usual rulemaking procedures provided in this article are retroactively applied to the rule as soon as reasonably possible, but no later than ninety days after the effective date of the emergency rule.

#### **Article 7. Oversight, Enforcement, and Dispute Resolution by the Commission**

1. The commission shall oversee the administration and operations of the interstate movement of juveniles subject to this compact in the compacting states and shall monitor those activities being administered in noncompacting states which may significantly affect compacting states.
2. The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. This compact and the rules adopted under this compact must be received by all the judges, public officers, commissions, and departments of the state government as evidence of the authorized statute and administrative rules. All courts must take judicial notice of the compact and the rules. 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 interstate commission, the commission is entitled to receive all service of process in the proceeding, and has standing to intervene in the proceeding for all purposes.
3. The compacting states shall 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.
4. The commission shall attempt, upon the request of a compacting state, to resolve any disputes or other issues that are subject to the compact and which may arise among compacting states and between compacting and noncompacting states. The commission shall adopt a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.
5. The commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact using any or all means set forth in article 11 of this compact.

#### **Article 8. 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 on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the commission and the commission's staff, which must be in a total amount sufficient to cover the commission's annual budget as approved each year. The aggregate annual assessment amount must 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 and shall adopt a rule binding upon all compacting states which governs the assessment.

3. The commission may not incur any obligations of any kind before securing the funds adequate to meet the obligations, nor may the commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.
4. The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission are subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the commission must be audited yearly by a certified or licensed public accountant and the report of the audit must be included in and become part of the annual report of the commission.

#### **Article 9. Compact Administrator and State Council**

1. The director of the department of corrections and rehabilitation, or the director's designee, shall serve as the compact administrator for this state's commissioner to the commission.
2. The North Dakota state council for interstate juvenile supervision is established, consisting of seven members. The director of the department of corrections and rehabilitation, or the director's designee, is a member of the state council and serves as chairman. Of the remaining members of the state council:
  - a. The governor shall appoint three members, one of whom must represent a crime victim's organization; and
  - b. The chief justice of the supreme court shall appoint one member and the chairman of the legislative council shall appoint one member from the house of representatives and one member from the senate.
3. The term of office of a member is four years.
4. The state council shall meet at least twice a year.
5. The state council may advise the compact administrator on participation in the commission activities and administration of the compact.
6. Members of the state council are entitled to expenses as provided in sections 44-08-04 and 54-06-09. Legislative assembly members also are entitled to compensation at the rate provided in section 54-35-10.

#### **Article 10. Compacting States, Effective Date, and Amendment**

1. Any state is eligible to become a compacting state.
2. The compact becomes effective and binding upon legislative enactment of the compact into law by no less than thirty-five states. The initial effective date is the later of July 1, 2004, or upon enactment into law by

the thirty-fifth jurisdiction. Thereafter, the compact becomes effective and binding, as to any other compacting state, upon enactment of the compact into law by that state. The governors of nonmember states or their designees must be invited to participate in the activities of the commission on a nonvoting basis before the adoption of the compact by all states and territories of the United States.

3. The commission may propose amendments to the compact for enactment by the compacting states. An amendment does not become effective and binding upon the commission and the compacting states until it is enacted into law by unanimous consent of the compacting states.

#### **Article 11. Withdrawal, Default, Termination, and Judicial Enforcement**

1. Once effective, the compact continues in force and remains binding upon every compacting state, but a compacting state may withdraw from the compact by specifically repealing the statute that enacted the compact into law. The effective date of withdrawal is the effective date of the repeal. The withdrawing state shall notify the chairman of the commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The commission shall notify the other compacting states of the withdrawing state's intent to withdraw within sixty days of receipt of the notice. 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. Reinstatement following withdrawal of any compacting state occurs upon the withdrawing state reenacting the compact or upon a later date as determined by the interstate commission.
2. 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 rules of the commission, the commission may impose any or all of the following penalties:
  - a. Remedial training and technical assistance as directed by the commission;
  - b. Alternative dispute resolution;
  - c. Fines, fees, and costs in those amounts as are determined to be reasonable as fixed by the commission; and
  - d. Suspension or termination of membership in the compact, which may be imposed only after all other reasonable means of securing compliance under the bylaws and rules have been exhausted and the commission has determined that the offending state is in default.
    - (1) Immediate notice of suspension must be given by the commission to the governor, the chief justice or the chief judicial officer of the state, the majority and minority leaders of the defaulting state's legislature, and the state council. The grounds for default include failure of a compacting state

to perform the obligations or responsibilities imposed upon the state by this compact, the bylaws, or rules and any other grounds designated in commission bylaws and rules. The commission shall notify the defaulting state in writing of the penalty imposed by the commission and of the default pending a cure of the default. The commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the commission, the defaulting state must be terminated from the compact upon an affirmative vote of a majority of the compacting states and all rights, privileges, and benefits conferred by this compact must be terminated from the effective date of termination.

- (2) Within sixty days of the effective date of termination of a defaulting state, the commission shall notify the governor, the chief justice or chief judicial officer, the majority and minority leaders of the defaulting state's legislature, and the state council of the termination. 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. The commission does not bear any costs relating to the defaulting state unless otherwise mutually agreed upon in writing between the commission and the defaulting state. 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.
3. The commission, by majority vote of the members, may 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 compact, its duly promulgated rules, and bylaws against any compacting state in default. If judicial enforcement is necessary, the prevailing party must be awarded all costs of the litigation, including reasonable attorney fees.
4. 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. Upon the dissolution of this compact, the compact becomes void and the business and affairs of the commission must be concluded and any surplus funds must be distributed in accordance with the bylaws.

#### **Article 12. Binding Effect of Compact and Other Laws**

1. This compact does not prevent the enforcement of any other law of a compacting state which is consistent with this compact. All compacting states' laws other than the Constitution of North Dakota and other interstate compacts conflicting with this compact are superseded to the extent of the conflict.
2. All lawful actions of the commission, including all rules and bylaws adopted by the commission, are binding upon the compacting states.

3. All agreements between the commission and the compacting states are binding in accordance with their terms.
4. Upon the request of a party to a conflict over meaning or interpretation of commission actions, and upon a majority vote of the compacting states, the commission may issue advisory opinions regarding the meaning or interpretation.
5. 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 the provision upon the commission are ineffective and the obligations, duties, powers, or jurisdiction remain in the compacting state and must be exercised by the agency to which the obligations, duties, powers, or jurisdiction are delegated by law in effect at the time this compact becomes effective.

Approved March 13, 2003

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