1999 SENATE JUDICIARY

SB 2185

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2185

Senate Judiciary Committee

❑ Conference Committee

Hearing Date January 27, 1999

Tape Number	Side A	Side B	Meter #
1	x		3493 - end
1		x	0 - 1600
Committee Clerk Signature	Jackie Tollmon		

Minutes:

SB2185 relates to the violation by parolees and probationers of the interstate compact for out-of-state supervision; and to provide a penalty.

SENATOR STENEHJEM opened the hearing on SB2185 at 10:00 A.M.

All were present.

SENATOR WATNE testified in support of SB2185. Testimony attached.

DOUG MATTSON, Ward County State's Attorney, testified in support of SB2185. This is a bill would be helpful for us to have in North Dakota. We would like an amendment to change residence to presence and a 7 day notice thing.

SENATOR STENEHJEM asked that under the Interstate Compact, aren't they supposed to set this up.

DOUG MATTSON stated that is correct, that is what they are supposed to do, but under the Compact there is no penalty for noncompliance.

SENATOR TRAYNOR asked that as the bill is now it would just be people who live here.

DOUG MATTSON stated that yes and that is where the amendment would come in. We would like to change reside to is present, then people passing through may be subject also.

WARREN EMMER, Department of Corrections, testified in support of SB2185. Testimony attached.

CHARLES PLACEK, Interstate Compact Coordinator, testified in support of SB2185. Testimony attached. Also proposed amendments attached.

SENATOR NELSON asked if there is a chance there may be a person without a country.

CHARLS PLACEK stated that if a person is a resident of North Dakota, there is mandatory acceptance.

SENATOR STENEHJEM stated that some of the states say that they are booked up and can't accept anyone.

CHARLES PLACEK stated that in some states if it doesn't meet mandatory acceptance, they won't accept them.

SENATOR STENEHJEM asked if it were possible to amend this bill to provide a defense for a good faith belief by a probationer that he was entitled to be here.

CHARLES PLACEK stated that their attorneys believe this could be done.

MEL JACOBS testified as an information source on SB2185. This is equivalent to Federal law, can supersede the state statute. Why is this law being brought up. I was recently told about the Minnesota law. They do not enforce this law. The Compact has in place a grievance process to

take care of its own issues. If a state is in violation, there is a step by step process to get this resolved.

SENATOR STENEHJEM SUSPENDED the hearing on SB2185.

SENATOR STENEHJEM RECONVENED the meeting at 2:30 p.m.

KEN SORENSON testified with information on SB2185. Amendments attached.

The Compact is looking at supervised probation.

SENATOR STENEHJEM asked what about unsupervised probation.

CHARLES PLACEK stated that he did not know if that was addressed in the Interstate Compact. It would be covered under the Compact under a travel permit.

SENATOR STENEHJEM asked who would give the 7 day notice.

CHARLES PLACEK stated that Elaine Little or her deputies would serve this notice.

SENATOR STENEHJEM asked if these notices should be in writing.

CHARLES PLACEK stated that he believed it should be in writing so they have proof of service. The rate of adhering to the Compact in Minnesota has increased.

SENATOR NELSON asked what is the relationship between the Compact and an Indian Reservation.

CHARLES PLACEK stated that it depends on the reservation. We have a reciprocal with some of the reservations.

SENATOR STENEHJEM stated he felt that on the amendment, we should add to be notified in writing.

SENATOR WATNE made a motion on Amendments, SENATOR LYSON seconded. Motion carried.

SENATOR WATNE made a motion for DO PASS AS AMENDED, SENATOR LYSON seconded. Motion carried.

SENATOR LYSON will carry the bill.

5 - 0 - 0

Date: 1-27-99
Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2185

Senate Judiciary Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Amendments

Motion Made By Watne Seconded By Lyson

Senators	Yes	No	Senators	Yes	No
Senator Wayne Stenehjem	X				
Senator Darlene Watne	X				
Senator Stanley Lyson	X				
Senator John Traynor	X				
Senator Dennis Bercier					
Senator Caroloyn Nelson	X				

Total (Yes) 5 No 0

Absent 0

Floor Assignment _____

Date: 1-27-99
Roll Call Vote #: 2

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2185

Senate Judiciary Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass As Amended

Motion Made By Watne Seconded By Lyson

Senators	Yes	No	Senators	Yes	No
Senator Wayne Stenehjem	X				
Senator Darlene Watne	X				
Senator Stanley Lyson	X				
Senator John Traynor	X				
Senator Dennis Bercier					
Senator Caroloyn Nelson	X				

Total (Yes) 5 No 0

Absent 1

Floor Assignment Lyson

REPORT OF STANDING COMMITTEE

SB 2185: Judiciary Committee (Sen. W. Stenehjem, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2185 was placed on the Sixth order on the calendar.

Page 1, line 8, replace "resides" with "is present" and replace "in violation of section 12-56-01 is guilty of a class C felony" with "without the permission of the officer of this state designated under subsection 5 of section 12-56-01 and who does not leave this state within seven days after being notified by a law enforcement officer that the individual may not remain in this state without such permission, is guilty of a class C felony. Within twenty four hours after a law enforcement officer has notified an individual that the individual may not remain within the state without the permission of the designated officer, the law enforcement officer shall report the notification to the designated officer. An individual who is on parole or probation in another state may not remain in this state without the permission of the officer of this state designated under subsection 5 of section 12-56-01. In a prosecution for an offense under this section, an individual's good-faith belief that the individual received permission to be present in this state is an affirmative defense if the individual acted in reasonable reliance upon the statements of an authorized officer of this state or the state in which the individual 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 designated officer of this state that the individual does not have permission to be present"

Renumber accordingly

1999 HOUSE JUDICIARY

SB 2185

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. : 2185

House Judiciary Committee

❑ Conference Committee

Hearing Date : March 2, 1999

Tape Number	Side A	Side B	Meter #
1	X		0
Committee Clerk Signature			

Minutes:

SEN. LYSON Along our borders , workers come in from out of state to work and our law enforcement people don't know when they are on probation. This bill is intended to require the reporting that the compact seems to require.

SEN. WATNE Presented written testimony, a copy of which is attached.

WARREN EMMER Presented written testimony, a copy of which is attached.

REP. KLEMIN The law we have on the books has been there for over 50 years - why change now?

EMMER That law hasn't been working for the last 20 years.

KEN SORENSON Presented written testimony, a copy of which is attached

.COMMITTEE ACTION: March 9, 1999

REP DEKREY presented suggested amendments prepared by the LC.

REP. HAWKEN moved the adoption of the amendments. Rep. Koppelman seconded and the motion passed on an unanimous voice vote.

REP KLEMIN moved that the committee recommend that the bill DO PASS AS AMENDED. Rep. Hawken seconded and the motion carried on a roll call vote with 12 ayes, 1 nay and 2 absent. Rep. Koppelman was assigned to carry the bill on the floor.

90118.0201
Title.0300

Prepared by the Legislative Council staff for
Representative DeKrey
March 8, 1999

VR 3/9/99

HOUSE AMENDMENTS TO ENGROSSED SENATE BILL NO. 2185 **3/10/99 JUD.**

Page 1, line 8, after the first "state" insert a comma

Page 1, line 9, after "12-56-01" insert a comma

Page 1, line 10, after "notified" insert "in writing"

Page 1, line 11, replace "such" with "the" and replace the comma with "of the designated officer"

Page 1, line 19, remove "or the state in which the individual is on parole or probation"

Renumber accordingly

Date: 3/9
Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2185

House JUDICIARY Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass As Am

Motion Made By Klemin Seconded By Rep Hawken

Representatives	Yes	No	Representatives	Yes	No
REP. DEKREY	✓		REP. KELSH	✓	
REP. CLEARY	·	✓	REP. KLEMIN	✓	
REP. DELMORE	✓		REP. KOPPELMAN	✓	
REP. DISRUD	✓		REP. MAHONEY	✓	
REP. FAIRFIELD			REP. MARAGOS	✗	
REP. GORDER	✓		REP. MEYER	✓	
REP. GUNTER	✓		REP. SVEEN	✓	
REP. HAWKEN	✓				

Total Yes 12 No 1

Absent 2

Floor Assignment Koppelman

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2185, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 1 NAY, 2 ABSENT AND NOT VOTING). Engrossed SB 2185 was placed on the Sixth order on the calendar.

Page 1, line 8, after the first "state" insert a comma

Page 1, line 9, after "12-56-01" insert a comma

Page 1, line 10, after "notified" insert "in writing"

Page 1, line 11, replace "such" with "the" and replace the comma with "of the designated officer"

Page 1, line 19, remove "or the state in which the individual is on parole or probation"

Renumber accordingly

1999 SENATE JUDICIARY

SB 2185

CONFERENCE COMMITTEE

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2185

Senate Judiciary Committee

☒ Conference Committee

Hearing Date March 22, 1999

Tape Number	Side A	Side B	Meter #
2	x		0 - 1010
Committee Clerk Signature	Jackie Follman		

Minutes:

SENATOR WATNE opened the conference committee on SB2185.

Senator Watne, Senator Traynor, Senator Nelson, Representative Sveen, Representative Klemin, and Representative Mahoney were present.

SENATOR WATNE stated that there were no objections to the first three parts.

SENATOR TRAYNOR asked who proposed the House amendments.

SENATOR WATNE stated it looks like Representative DeKrey had them made up by Legislative Council.

REPRESENTATIVE KLEMIN stated that on line 8 the person who is present in the state without the permission of the officer of the state designated under subsection 5 of section 12-56-01 and then line 10 talks about a law enforcement officer, now we have two different officers, and so the designated officer in that section, the Governor has designated Director of

Department of Corrections and Rehabilitation as the official administrator of the Compact and the staff officer actually handles the day to day operations. I think the reason designated was put in line 11 is to avoid any ambiguity as to which of those two officers we are talking about.

SENATOR WATNE stated that some of them were here in good faith, that they had been given insurance from the state in which they came from and that information hadn't gotten to North Dakota. They just didn't have a good notification system. So we have to give a little open door for those people who were here on good faith belief, so by taking that out you are hurting those people.

SENATOR KLEMIN stated that the rationale for taking that out on line 19 was to make it tougher and to keep the burden on the other state.

SENATOR MAHONEY stated that it would have to be reasonable reliance on the statements of an authorized officer of this state and it means they will not allow it to be an affirmative defense for them to say "Well, somebody in Kentucky told me I could stay here." So it still has to be permission of this state with conjunction with the other state before they will have an affirmative defense.

SENATOR WATNE stated that this is talking about a good faith belief.

SENATOR KLEMIN stated that an affirmative defense, he has to have a burden of proving that it is not just something that he says "Well, I thought it was okay because someone in Kentucky told me it was. He needs some evidence to that effect."

WARREN EMMER stated that Representative DeKrey had indicated that the Governor's office felt it would be more appropriate to have an officer of this state be responsible for saying whether or not the person was allowed permission to be here, rather than have it bifurcated where

the other state say they had permission. From our perspective, it is better to have both the other state and ours, I think the original language in the Senate was more useful for the Interstate Compact where a person could have a travel permit demonstrating they had permission to be here. The other problem that Representative DeKrey had is that Bob Harms had a problem with this and that concerns me from the standpoint, I don't where the Governor would stand if this got to his desk with that language back in it. It is not harmful the way it is coming from the House, but it would be better with the language that was available in the original sentence.

SENATOR MAHONEY asked that with the House amendments and what Harms is expecting is that the permission has to go through our state before it can be given to him and be valid.

WARREN EMMER stated that what he is envisioning is that he is thinking we would have someone from our state giving the testimony and am assuming that hearsay would be admissible I would check with the other state and the other state says they didn't give him permission and he says no, they did it is one of those kinds of things. I think to protect the defendant's rights it wouldn't be anymore cumbersome to have something from the other state whether they did or did not give their permission.

SENATOR TRAYNOR asked if we are concerned about oral statements being subject to misinterpretation or that sort of thing.

WARREN EMMER stated he did not know. I haven't spoken to Bob Harms, I can only assume that is what he was thinking. The Governor has made the designated officer the Director of Field Services.

REPRESENTATIVE KLEMIN asked if they would have a problem if the statement was in writing.

WARREN EMMER stated that he didn't think Bob would have a problem with it then.

REPRESENTATIVE KLEMIN stated that if said on line 18, the individual acted in reasonable reliance upon the written statements of an authorized officer of this state or the state in which he was from. Would that be fair.

WARREN EMMER stated that with managing the Compact, there would be no problem with that.

REPRESENTATIVE KLEMIN stated that we would put back in the language that the House took out on line 19 and put in written on line 18.

REPRESENTATIVE KLEMIN made a motion that the House will recede from their amendments and the bill be amended to include the amendments that the House previously made on page 1, line 8, line 9, line 10 and line 11. On line 18, the word written be inserted before the word statements. REPRESENTATIVE MAHONEY seconded. Motion carried.

REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE) - 420

07398

(Bill Number) SB2185 (, as (re)engrossed):

Your Conference Committee Judiciary

For the Senate:

Senator Watne Y
Senator Traynor Y
Senator Nelson Y

For the House:

Representative Sveen Y
Representative Klemin Y
Representative Mahoney Y

☒ recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from) (723/724 725/726 S724/H726 S723/H725)
the (Senate/House) amendments on (SJ/HJ) page(s) 697 - ____

☐ and place _____ on the Seventh order. (727)

☒ , adopt (further) amendments as follows, and place
SB2185 on the Seventh order:

☐ having been unable to agree, recommends that the committee be discharged and a new committee be appointed. (690/515)

((Re)Engrossed) _____ was placed on the Seventh order of business on the calendar.

DATE: 3/22/99

CARRIER: Senator Watne

LC NO. _____ . _____ of amendment

LC NO. _____ . _____ of engrossment

Emergency clause added or deleted _____

Statement of purpose of amendment _____

(1) LC (2) LC (3) DESK (4) COMM.

REPORT OF CONFERENCE COMMITTEE

SB 2185, as engrossed: Your conference committee (Sens. Watne, Traynor, C. Nelson and Reps. Sveen, Klemin, Mahoney) recommends that the **HOUSE RECEDE** from the House amendments on SJ page 697, adopt amendments as follows, and place SB 2185 on the Seventh order:

That the House recede from its amendments as printed on page 697 of the Senate Journal and pages 785 and 786 of the House Journal and that Engrossed Senate Bill No. 2185 be amended as follows:

Page 1, line 8, after the first "state" insert a comma

Page 1, line 9, after "12-56-01" insert a comma

Page 1, line 10, after "notified" insert "in writing"

Page 1, line 11, replace "such" with "the", replace the comma with "of the designated officer", and replace "twenty four" with "twenty-four"

Page 1, line 18, after the second "the" insert "written"

Renumber accordingly

Engrossed SB 2185 was placed on the Seventh order of business on the calendar.

1999 TESTIMONY

SB 2185

NORTH DAKOTA SENATE

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360

enator Darlene Watne
strict 5
8th Avenue SW
, ND 58701-7065

COMMITTEES:
Judiciary,
Vice Chairman
Political Subdivisions

Chairman Stenehjem and Members of the Senate Judiciary Committee:

Senate bill 2185 relates to the violation by parolees and probationers of the interstate compact for out-of-state supervision and provides a penalty for such violation.

The bill reads, "An individual who is on parole or probation in another state who resides in this state in violation of Section 12-56-01 is guilty of a Class C Felony." Section 12-56-01 is our interstate compact law.

In other words, what we are saying in North Dakota is: If you are on parole or probation from another state, you better stay out of North Dakota if you don't have permission because if you do, you'll end up being charged with a Class C Felony.

For your information, attached is a copy of the North Dakota Parole Board Policy.

A law such as this became effective in Minnesota on August 1, 1997, and I urge North Dakota to do the same through this legislation. I urge a DO PASS.

Respectfully,

Darlene

Darlene Watne
Senator, Fifth District

SENATE JUDICIARY
SENATOR WAYNE STENEHJEM, CHAIRMAN
JANUARY 27,1999

WARREN R. EMMER, DIRECTOR
DEPARTMENT OF CORRECTIONS
FIELD SERVICES DIVISION
TESTIMONY IN SUPPORT OF SB 2185

A) Interstate offenders effected by this bill will come to us in four different ways:

1) The offender is here, probably going to college or working, he/she goes some where else on vacation and gets in trouble, goes on supervision, and then comes home. The sending state has failed to notify us and the paperwork is missing.

2) The offender that is under Interstate Supervision that gets into trouble and the other state is dragging their feet returning him/her (the Bismarck murderer is an example of this).

3) The offender that comes to North Dakota without permission or with out reporting instructions.

4) The" Bonnie or Clyde" type offender that has warrants from their originating state but is fortunate enough to know that the other state has decided that they won't come and get him (Clyde) or her (Bonnie).

B) We have developed an amendment that would give the defendant a week notice to square things away before being subject to the law. Charles Placek will report on the details.

1) The seven-day waiting/notice period will effectively force the sending state to get their act together re: example #1, or face some civil liability. It also doesn't preclude us some "wiggle room" to convince the States Attorney to defer his/her decision until we can get things straightened out with the sending state. We will actually be able to advocate for the defendant.

2) The #2 scenario (possibly) and #4 scenario (definitely) would allow us to take action independent of the other state, in the interest of public safety.

3) The #3 scenario gives the defendant the opportunity to square things away or leave. Here too we will be able to advocate for the defendant that deserves assistance.

Fifty-sixth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENT TO SENATE BILL NO. 2185

Page 1, line 8, replace "resides" with "is present" and after "section 12-56-01" insert: "and who does not leave the state within seven days after being notified by a law enforcement officer of the violation" and after 'felony." insert: "A law enforcement officer who notifies an individual of a violation of section 12-56-01 shall make a report of the notification to the department of corrections and rehabilitation within twenty four hours after notifying the individual of the violation."

Renumber accordingly

State of Minnesota

Minnesota Department of Corrections

July 16. 1997

To: All Compact Administrators/Deputy Compact Administrators

Re: Interstate Compact legislation - Minnesota

Below is Minnesota legislation that becomes law effective August 1, 1997:

> **Sec. 19. [243.161] [RESIDING IN MINNESOTA WITHOUT PERMISSION UNDER INTERSTATE COMPACT; PENALTY.]**
>
> *Any person who is on parole or probation in another state who resides in this state in violation of section 243.16, may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than $10,000, or both.*

This law refers to section 243.16, which is Minnesota's statute regarding the Interstate Compact for the supervision of parolees and probationers. This new law is attaching a penalty to Compact rule 3-101, which is already in existence.

This rule would not apply to any offender who meets the criteria for emergency reporting instructions and is given those instructions by Minnesota. The position Minnesota is taking is that if an offender is charged under this statute, we will not do an investigation as he is already presumed to be in violation of his/her probation or parole due to this felony charge. Please notify all of the agents in your state of this new law.

Please contact my office if you have any questions. I thank you in advance for your cooperation in this matter.

Sincerely,

Rose Ann Bisch

Rose Ann Bisch
Acting Deputy Compact Administrator
Minnesota Department of Corrections

cc: Interstate Compact

90118.0100

Fifty-sixth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2185

Introduced by

Senators Watne, Lyson, W. Stenehjem

Rel Jacobs 223-4456

A BILL for an Act to create and enact a new section to chapter 12-56 of the North Dakota Century Code, relating to the violation by parolees and probationers of the interstate compact for out-of-state supervision; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 12-56 of the North Dakota Century Code is created and enacted as follows:

Violation of compact - Penalty. An individual who is on parole or probation in another state who resides in this state in violation of section 12-56-01 is guilty of a class C felony.

5 NDSP + 5,000.00 or both or Any thing Less!
Primary apparently came up with this based
on the New Minnesota STATUTE, that is
seldom used by the (MN) Courts - but is used
by Law Enforcement or the PO's to
threaten the offenders, and this discourages
the offenders from remaining in the STATE of
Minnesota, and thus relocates IN another
Jurisdiction UN-beknown To that Jurisdiction,
thus remaining ON the Loose UNSupervised,
only INCreasing the Public Safety concerns!
This Also Grossly INCreases VICTIMISATION!

Fifty-sixth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENT TO SENATE BILL 2185

Page 1, line 8, replace "resides" with "is present" and replace "in violation of section 12-56-01 is guilty of a class C felony" with: "without the permission of the officer of this state designated under section 12-56-01(5) and who does not leave this state within seven days after being notified by a law enforcement officer that the individual may not remain in this state without such permission is guilty of a class C felony. Within twenty four hours after a law enforcement officer has notified an individual that the individual may not remain within the state without the permission of the officer of this state designated under section 12-56-01(5), the law enforcement officer shall make a report of the notification to the officer of this state designated under 12-56-01(5). An individual who is on parole and probation in another state may not remain in this state without the permission of the officer of this state designated under section 12-56-01(5). In a prosecution for an offense under this section, an individual's good faith belief that the individual received permission to be present in this state is an affirmative defense if the individual acted in reasonable reliance upon the statements of an authorized officer of this state or the state in which the individual is on parole or probation. This defense is not available to a person who remains present in this state after being notified by the officer of this state designated under 12-56-01(5) that the individual does not have permission to be present."

Renumber accordingly.

[redacted]ator Darlene Watne
strict 5
20 28th Avenue SW
Minot, ND 58701-7065

NORTH DAKOTA SENATE

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360

COMMITTEES:
Judiciary,
Vice Chairman
Political Subdivisions

Chairman DeKrey and Members of the House Judiciary Committee:

I am Darlene Watne, Senator for the 5th District, Minot.

Senate bill 2185 relates to the violation by parolees and probationers of the interstate compact for out-of-state supervision and provides a penalty for such violation.

The bill originally read, "An individual who is on parole or probation in another state who resides in this state in violation of Section 12-56-01 is guilty of a Class C Felony." Section 12-56-01 is our interstate compact law.

In other words, what we are saying in North Dakota is: If you are on parole or probation from another state, you better stay out of North Dakota if you don't have permission because if you do, you'll end up being charged with a Class C Felony.

For your information, attached is a copy of the North Dakota Parole Board Policy. A law such as this became effective in Minnesota on August 1, 1997.

Now, when this bill got to the Senate Judiciary we heard that not all states are efficient with their reporting from state-to-state and sometimes a parolee/probationer comes to our state accurately believing he/she has permission even though the state he came from did not let our state know.

Therefore, the Senate Judiciary added amendments to cover the innocent. We added a notification process, and if a person does not leave within seven days after being notified, he has a problem. Also, within 24 hours after the parolee/probationer is notified, law enforcement must report to the designated officer. The final amendments affect the parolee/probationer if he/she has a good faith belief he/she has received permission. That then does become an affirmative defense. We were told of cases where the individual had been given permission but North Dakota had not been notified.

So, with these amendments this seems to be a very good and thorough bill and I urge a "do pass" recommendation from this committee. Law enforcement tells me it is needed and it sends the strong message: If you are on parole or probation from another state, you better stay out of North Dakota if you don't have permission because if you do, you'll end up being charged with a Class C Felony. That was the original intent and it is still the basis of the bill.

Respectfully,

Darlene Watne

Darlene Watne
Senator, Fifth District

NORTH DAKOTA

PAROLE BOARD

POLICY

MARCH 10, 1998

I. AUTHORITY:

Authority for this policy is found in Chapter 12.1-34, 12-47, 12-59, 54-07 and 54-23.3 of the North Dakota Century Code (NDCC).

II. DEFINITIONS:

A. Parole Eligibility: A tentative parole release date adopted by the Parole Board. The date is contingent upon the offenders positive behavior and the determination by the Board that the offender will comply with the terms and conditions of parole and will not present a serious risk to the community.

III. POLICY:

A. The vast majority of offenders confined in correctional facilities are eventually returned to the community. The Parole Board may grant parole to appropriate offenders with conditions of supervision which provide for public safety while helping the offender engage in lawful behavior.

B. The mission of the Parole Board is to make decisions concerning requests for parole or other applicable reduction in custody, as well as requests for the revocation of parole, in a manner that best protects society and aids in the rehabilitation of criminal offenders.

IV. PAROLE BOARD:

A. Membership. The governor shall appoint three members to the Board.

1. One member must be experienced in law enforcement, one member must be a licensed attorney and one member must be qualified by special experience in education or training.

2. The governor shall appoint one member as the chairperson and one member as the vice-chairperson.

3. The Board may only take action with the concurrence of at least two members.

4. The director of the Division of Parole and Probation shall be the clerk of the Parole Board.

V. PROCEDURE:

A. Meetings.

1. The Board will schedule at least twelve meetings per year to conduct parole

reviews. Eight meetings will be conducted in Bismarck at the North Dakota State Penitentiary and four meetings (February, May, August and November) will be conducted in Jamestown at the James River Correctional Center (once the facility is operational). Meetings will be scheduled in coordination with Pardon Advisory Board meetings so that the Pardon Advisory Board meets at least one day before the Parole Board.

2. Teleconferences and video conferences may be used for any of the meetings, for miscellaneous reviews, victim information in lieu of an appearance, and for offenders housed away from the location of the Parole Board meeting.

B. Rules.

1. The Parole Board is not an administrative agency as defined by NDCC 28-32-01 (1) (p) and is not subject to the Administrative Agencies Practice Act. Any rules the Board may adopt need not be published in the North Dakota Administrative Code.

C. Duties and responsibilities of the Board.

1. The Board shall consider offenders for parole based on the guidelines in this policy and applicable statutes.

2. The Board may allow good time for offenders on parole at the rate of five days per month for offenders on condition that they are gainfully employed, participating in recommended treatment or educational programs and are engaged in behavior consistent with the conditions of their release. The supervising parole officer shall make a written report to the Board any time the offender is not in compliance with the rules regarding parole good time. The Board will make all final decisions regarding the withdrawal of good time.

D. Notifications.

1. Officers of the DOCR and its divisions and departments may be invited to provide direct testimony or written comments for the Board to consider when the offender is on supervision or has recently been on supervision by the department. Written comments will be in the form of a historical summary of supervision.

2. Victims will be notified as allowed by law and may provide information to the Board in person, in written form or via video tape, as allowed by the Board.

3. Notice of application for parole and of the time and place of hearing shall be

given to the clerk of court and the office of the states attorney where the offender was charged.

E. Parole consideration.

1. Qualified offender's parole eligibility status shall be considered by the Board within approximately sixty days of their arrival at the North Dakota State Penitentiary.

   a) Offenders will be given an application for parole while in the orientation unit when the DOCR personnel makes it's scheduled presentation to new offenders.

   b) DOCR personnel will provide appropriate information to the Parole Board to aid in their decision to grant or deny parole.

   c) The clerk or designee will review all applications for emergency parole and make a recommendation to the Parole Board.

   d) DOCR staff may recommend an earlier review of an offender for extraordinary circumstances. The clerk will review recommendations for an early review based on guidance from the Board.

2. Parole Eligibility.

   a) The Board will establish a parole eligibility date considering the criteria found in the matrix at Appendix A of this policy. The Board may reconsider the parole eligibility date at any time.

   b) The Board will review all parole eligibility dates approximately sixty days before the scheduled release date to confirm that the offender is engaged in positive behavior.

   c) If the offender fails to earn good time at any time during his or her incarceration, the Parole Board will review the parole eligibility date before the offender is released from incarceration.

   d) Offenders not qualified for parole due to minimum mandatory or the provisions of NDCC 12.1-32-09.1 (Sentencing of Violent Offenders) will not be granted parole while serving the mandatory portion of their sentence.

3. When making decisions regarding parole eligibility the Board may grant offenders a personal appearance or may review appropriate documents and

make a decision without the offender present. The clerk will schedule all reviews by the Board.

F. Parole Eligibility.

1. Consideration for parole. In order to determine whether an applicant may receive a parole, the Parole Board will consider all pertinent information regarding the applicant, including the circumstances of the offense, the applicant's family, education, social history, and criminal record. The Board will consider the applicant's conduct, employment, and participation in education and treatment programs while incarcerated, and the applicant's medical and psychological history and records. The Board will also consider whether the applicant will conform with terms and conditions of parole established by the Board and by the Division of Parole and Probation and whether the applicant will be a risk to the community. Included in the documents the Board may review will be a valid and verified parole plan.

2. Terms and conditions of parole. If the Parole Board determines that an applicant may be granted a parole, the Parole Board will establish terms and conditions of parole. The applicant will abide by the reasonable requests of the supervising parole officer, that will assist the applicant with his or her rehabilitation, and that will reasonably protect the safety of the community.

3. Intermediate terms and conditions of parole. In addition to the terms and conditions of parole the Parole Board has established, the Division of Parole and Probation may establish intermediate conditions of parole, including incarceration for a period of up to seventy-two hours, and restitution, when the Division of Parole and Probation determines that intermediate terms and conditions of parole are necessary for the rehabilitation of the parolee, or are appropriate in lieu of revocation proceedings, or are necessary for the safety of the community. The Parole Board may review the intermediate terms and conditions of parole.

G. Parole sanctions, revocation and reconsideration.

1. Officers will give written notice to the Parole Board when they institute a sanction for alleged violations of parole conditions.

2. Parole revocation.

a) Unless extraordinary conditions exist, the supervising officer shall consult with their supervisor before initiating revocation proceedings. If the officer feels that the violation(s) warrant the

immediate apprehension of the offender, the director of the Division of Parole and Probation or designee may issue a warrant (Authority to Hold). The officer may apprehend the offender without a warrant (Authority to Hold) but must obtain the warrant (Authority to Hold) as soon as practical.

b) The supervising parole officer will serve notice of allegation(s) of parole violation(s) to the offender as soon as practical after the decision to file a revocation has been made.

c) The supervising officer will prepare the packet required for a parole revocation hearing process as required by the Parole Board.

3. Once revoked, offenders may again apply for parole once they establish a pattern of positive behavior in the institution by earning institutional good time for three consecutive months.

This policy with subsequent changes becomes effective when signed by the Director of the Division of Parole and Probation, the Chairperson of the North Dakota Parole Board and the Governor of the State of North Dakota.

Warren R. Emmer, Director
Clerk of the Parole Board

3-10-98
Date

Mary Nordsven
Chairperson, North Dakota Parole Board

3-10-98
Date

Edward T. Schafer
Governor, State of North Dakota

31 March 98
Date

Appendix A to Policy #1002

Parole Eligibility Calculation	
Risk Classification	Percentage of Sentence to Serve Before Parole Eligibility
Minimum	25%
Medium	33%
Maximum	50%
Intensive	75%

Concurrent Sentences: Calculate the parole eligibility using each sentence and base the parole eligibility on the calculation yielding the longest "percentage of sentence to serve before parole eligibility."

Consecutive Sentences: Calculate each sentence independently to yield multiple parole eligibility dates.

If the parole eligibility date falls on a weekend or holiday, adjust the parole eligibility date to the normal working day before the weekend or holiday.

Parole Eligibility Equation
(Sentence Imposed By the Court) times the (Percentage of Sentence to Serve Before Parole Eligibility) equals the (Amount of Time to Serve Before Parole Eligibility)

Parole Eligibility Equation EXAMPLE
An inmate is sentenced to serve four years. The sentence begins February 1, 1997. A risk assessment classifies the inmate as "medium". 48 Sentence Imposed By the Court (in months) .33 Percentage of Sentence to Serve Before Parole Eligibility 14.52 Rounded to fourteen and one half months The parole eligibility date would be April 15, 1998, a Wednesday, which is 14.5 months after the sentence begin.

Fifty-sixth
Legislative Assembly
Of North Dakota

SENATE BILL NO. 2185

BEFORE THE HOUSE JUDICIARY COMMITTEE
DUANE DEKREY, CHAIRMAN

Mr. Chairman, Members of the House Judiciary Committee:

My name is Ken Sorenson, Assistant Attorney General, and I am submitting this written testimony on behalf of the Field Services Division of the North Dakota Department of Corrections and Rehabilitation.

The Interstate Compact for the Supervision of Parolees and Probationers, found at chapter 12-56 of the North Dakota Century Code, was enacted to provide for cooperation between the states in the control of crime and the rehabilitation of probationers and parolees by allowing them to travel and relocate to other states in order to improve their employment and social situation.

In order to have consistency in the application of the Compact, the Compact, through Article 5, provides that the Compact Administrators shall promulgate rules and regulations to carry out the terms of the Compact. The rules and regulations appear in the Interstate Compact for the Supervision of Parolees and Probationers Manual.

The Compact and the rules and regulations set forth in the manual allow one state, referred to as the sending state, to permit a parolee or probationer, to reside in another state, referred to as the receiving state, while on probation and parole, based on the following two primary criteria:

(1) The offender is a resident of the receiving state or has family residing in the receiving state and can obtain employment. The offender must have an offer of employment or a visible means of support. The receiving state must still consent to supervision; or

(2) Even though the offender is not a resident of the receiving state and the offender does not have family residing in the receiving state, the receiving state consents to such person being sent to the receiving state. This situation basically contemplates that the parolee or probationer has presented a plan to both the sending and the receiving state that shows merit and will contribute to the offender's rehabilitation.

Even with the controls of the Interstate Compact and the Compact Manual, there are times when a parolee or probationer may be in the state without being in compliance with Interstate Compact and Compact Manual requirements. The most likely situations are: 1) The parolee or probationer has simply came into North Dakota; 2) The parolee or probationer has came into North Dakota with the perception that the parolee or probationer had the permission of his or her

supervising officer, but neither the parolee or the probationer and the supervising officer bothered with or properly complied with the Interstate Compact requirements; or 3) The parolee or probationer had initially came into North Dakota in compliance with the Compact, but North Dakota has legitimately ceased supervision and the parolee or probationer has refused to leave North Dakota or the sending state has refused to return the parolee or probationer from the North Dakota to the sending state. Senate Bill No. 2185 responds to the problem of out-of-state parolees or probationers being in the state without compliance under the Compact by making it a class C felony.

Senate Bill 2185 as it was originally introduced used language that was virtually identical to a Minnesota statute on the same topic. While the DOCR's Division of Field Services, which is responsible for administering the Compact, was receptive to the concept presented by the original bill draft, both the Senate Judiciary Committee and the Division saw different potential problems with the bill as drafted. The Division prepared an amendment to the bill that reconciled both the Division's and the Senate Judiciary Committee's concerns and that made the proposed legislation enforceable, yet still allowing the Division the flexibility that is necessary to administer the bill and covers each of the situations that are described in the above paragraph in a fair and even manner. Engrossed Senate Bill 2185 reflects the Division's amendment.

Under the engrossed bill, a parolee or probationer's presence in the state will be sufficient to trigger the provisions of the proposed legislation. The word "presence" is used instead of "resides" because the term "resides" has a more specific legal meaning that requires intent to make the current location a legal residence.

The engrossed bill refers to "the officer of this state designated under subsection 5 of section 12-56-01". The governor has designated the Director of the Department of Corrections and Rehabilitation as the official administrator of the compact. A staff officer of the Department of Corrections and Rehabilitation's Division of Field Services handles the actual day-to-day duties of compact administration.

The engrossed bill includes a safety net of sorts. Part of the safety net is that the proposed legislation provides for a "grace" period of seven days. If an out-of-state parolee or probationer is in the state without compliance with the Compact and a law enforcement officer notifies the parolee or probationer that he or she may not remain in the state without compliance with the Compact, it will be a class C felony for the parolee or probationer to remain in the state. The seven day grace period has the purpose of allowing the Division of Field Services to develop some background on the parolee or probationer because it is possible that there was a bureaucratic mix up or failure on the part of the sending state to get its paperwork in order and the parolee or probationer was not aware of the problem and still came to North Dakota and had the paperwork been done correctly, the state of North Dakota would have consented to supervision. Another possibility is that the parolee's or probationer's supervising officer gave verbal or written permission to the parolee or probationer to go to a different state and without bothering to comply with the requirements of the Compact. If those were the circumstances, the grace period will allow the sending state and the parolee or probationer opportunity to comply with the Compact

requirements, or to leave the state if the state does not consent to supervision. The other part of the safety net is that it provides an affirmative defense to a parolee or probationer who has a good faith belief that he or she had permission to be present in the state if the parolee or probationer acted in reasonable reliance on the statements of an authorized officer of this state or of the state which originally had supervision of the parolee or probationer. The defense will not be available to a person who remains in the state after receiving notice that there is no permission to be present in the state.

12-55-32. Governor to report reprieves, remissions, commutations, and pardons to legislative assembly. Repealed by S.L. 1967, ch. 115, § 1.

12-55-33. Governor may issue warrant. The governor may issue his warrant to all proper officers to carry into effect any act which he has power to do and which is regulated by the provisions of this chapter, and all such officers shall obey such warrant.

Source: R.C. 1895, § 8442; R.C. 1899, § 8442; R.C. 1905, § 10252; C.L. 1913, § 11110; R.C. 1943, § 12-5533.

12-55-34. Records privileged — Inspection. All medical reports, supervision history reports, board minutes, and all other records, reports, and minutes obtained in the discharge of official duty by any member or employee of the board of pardons, shall be privileged and shall not be disclosed directly or indirectly to anyone other than the board, a judge of the supreme or district court, committees of the legislative assembly, or others entitled by law to receive such information, except that the board of pardons or district court may, in its discretion, permit the inspection of any such reports, records, or minutes, or parts thereof, by the defendant or prisoner, his attorney, or other person having a proper interest therein.

Source: S.L. 1977, ch. 119, § 1.

CHAPTER 12-56

OUT-OF-STATE PAROLEE SUPERVISION

Section

12-56-01. Out-of-state parolee supervision — Compact with other states. The governor may execute a compact on behalf of the state of North Dakota with any of the United States legally joining therein, substantially as follows:

Compact. Entered into by and among the contracting states, signatories hereto, with the consent of the Congress of the United States, granted by an act entitled "An Act Granting the Consent of Congress to any two or more States to enter into Agreements or Compacts for Cooperative effort and Mutual Assistance in the Prevention of Crime and for other purposes".

The contracting states solemnly agree:

1. That it shall be competent for the duly constituted judicial and administrative authorities of a state party to this compact, herein called "sending state", to permit any person convicted of an offense within such state and placed on probation or released on parole to reside in any other state party to this compact, herein called "receiving state", while on probation or parole, if:
   a. Such person is in fact a resident of or has his family residing within the receiving state and can obtain employment there.

b. Though not a resident of the receiving state and not having his family residing there, the receiving state consents to such person being sent there. Before granting such permission, opportunity shall be granted to the receiving state to investigate the home and prospective employment of such person.

2. That such receiving state will assume the duties of visitation of and supervision over probationers or parolees of any sending state and in the exercise of those duties will be governed by the same standards that prevail for its own probationers and parolees.
3. That duly accredited officers of a sending state at all times may enter a receiving state and there apprehend and retake any person on probation or parole. For that purpose no formalities will be required other than establishing the authority of the officer and the identity of the person to be retaken. All legal requirements to obtain extradition of fugitives from justice are hereby expressly waived on the part of the state party hereto as to such persons. The decision of the sending state to retake a person on probation or parole shall be conclusive upon and not reviewable within the receiving state, but if at the time when a state seeks to retake a probationer or parolee there should be pending against him within the receiving state any criminal charge, or he should be suspected of having committed within such state a criminal offense, he shall not be retaken without the consent of the receiving state until discharged from prosecution or from imprisonment for such offense.
4. That the duly accredited officers of the sending state will be permitted to transport prisoners being retaken through any and all states parties to this compact, without interference.
5. That the governor of each state may designate an officer who, acting jointly with like officers of other contracting states, if and when appointed, shall promulgate such rules and regulations as may be deemed necessary more effectively to carry out the terms of this compact.
6. That this compact shall become operative immediately upon its execution by any state as between it and any other state or states executing. When executed it shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state.
7. That this compact shall continue in force and remain binding upon each executing state until renounced by it. The duties and obligations hereunder of a renouncing state shall continue as to parolees or probationers residing therein at the time of withdrawal until retaken or finally discharged by the sending state. Renunciation of this compact shall be by the same authority which executed it, by sending six months' notice in writing of its intention to withdraw from the compact to the other states party hereto.

Source: S.L. 1941, ch. 233, § 1; R.C. 1943, § 12-5601.

Comparative Legislation.

Ala. Code § 15-22-1.
Alaska Stat. § 33.10.010.
Ariz. Rev. Stat. Ann. § 31-461.
Ark. Stat. Ann. § 43.2816-17.
Cal. Penal Code § 11175.
Colo. Rev. Stat. § 24-60-301.

Conn. Gen. Stat. Ann. § 54-133.
Del. Code Ann. tit. 11, § 4358.
Fla. Stat. § 949.07.
Ga. Code §§ 42-9-70, 42-9-71.
Hawaii Rev. Stat. § 353-81.
Idaho Code § 20-301-2.
Ill. Rev. Stat. ch. 38, § 1003-14-1.
Ind. Code § 11-13-4.1.
Iowa Code § 247.40.
Kan. Stat. Ann. § 22-3717.
Ky. Rev. Stat. § 439.560.
La. Code Crim. Proc. Ann. art. 15, § 574.14.
Me. Rev. Stat. Ann. tit. 34, § 1721.
Md. Code Ann. art. 41, § 129.
Mass. Gen. Laws Ann. ch. 127, § 151K.
Mich. Comp. Laws § 798.101.
Minn. Stat. §§ 243.09, 243.10.
Miss. Code Ann. § 47-7-71.
Mo. Rev. Stat. §§ 549.280, 549.310.
Mont. Code Ann. §§ 46-23-1101 to 46-23-1106.
Nebr. Rev. Stat. § 29-2637.
Nev. Rev. Stat. § 213.185.
N.H. Rev. Stat. Ann. § 651:56.
N.J. Rev. Stat. § 2A:168-14.
N.M. Stat. Ann. § 31-5-1.
N.Y. Executive Law § 259-M.
N.C. Gen. Stat. § 148-65.1.
Ohio Rev. Code Ann. § 2965.34.
Okla. Stat. tit. 57, § 347.
Ore. Rev. Stat. §§ 144.610 — 144.620.
Pa. Stat. Ann. tit. 61, § 321.
R.I. Gen. Laws §§ 13-9-1 to 13-9-5.
S.C. Code Ann. §§ 24-21-810 to 24-21-830.
S.D. Codified Laws § 24-16-5.
Tenn. Code Ann. § 40-28-401-04.
Tex. Crim. Proc. Code Ann. § 42.11.
Utah Code Ann. § 77-62-39.
Vt. Stat. Ann. tit. 28, § 1301.
Va. Code § 53.1-166-167.
Wash. Rev. Code § 9.95.270.
W. Va. Code ch. 62, art. 28, §§ 1, 2.
Wis. Stat. § 57.13.
Wyo. Stat. § 7-13-416.

12-56-02. Definition of resident of receiving state. A resident of the receiving state, within the meaning of this chapter, is one who has been an actual inhabitant of such state continuously for more than one year prior to his coming to the sending state, and has not resided within the sending state more than six continuous months immediately preceding the commission of the offense for which he has been convicted.

Source: S.L. 1941, ch. 233, § 1; R.C. 1943, § 12-5602.

CHAPTER 12-56.1

INTERSTATE PAROLEES AND PROBATIONERS

Section
12-56.1-01. Hearing for supervised parolee or probationer suspected of violations — Waiver — Report to sending state — Detention of parolee or probationer.
12-56.1-02. Who may hold hearing.
12-56.1-03. Conduct of hearing — Notice to and rights of parolee or probationer.
12-56.1-04. Force and effect of hearings in other states.

12-56.1-01. Hearing for supervised parolee or probationer suspected of violations — Waiver — Report to sending state — Detention of parolee or probationer. Where supervision of a parolee or probationer is being administered pursuant to the interstate compact contained in chapter 12-56, the appropriate judicial or administrative authorities in this state shall notify the compact administrator of the sending state whenever, in their view, consideration should be given to retaking or reincarceration for a parole or probation violation. Prior to the giving of any such notification, a hearing shall be held in accordance with this chapter within a reasonable time, unless such hearing is waived by the parolee or probationer. The appropriate officer or officers of this state shall as soon as practicable following termination of any such hearing: report to the sending state, furnish

a copy of the hearing record, and make recommendations regarding the disposition to be made of the parolee or probationer by the sending state. Pending any proceeding pursuant to this section, the appropriate officers of this state may take custody of and detain the parolee or probationer involved for a period not to exceed fifteen days prior to the hearing and, if it appears to the hearing officer or officers that retaking or reincarceration is likely to follow, for such reasonable period after the hearing or waiver as may be necessary to arrange for the retaking or reincarceration.

Source: S.L. 1973, ch. 113, § 1.

12-56.1-02. Who may hold hearing. Any hearing pursuant to this chapter may be before the chief parole officer, a deputy, or any other person authorized pursuant to the laws of this state to hear cases of alleged parole or probation violation, except that no hearing officer shall be the person making the allegation of violation.

Source: S.L. 1973, ch. 113, § 2.

12-56.1-03. Conduct of hearing — Notice to and rights of parolee or probationer. With respect to any hearing pursuant to this chapter, the parolee or probationer:

1. Shall have reasonable notice in writing of the nature and content of the allegations to be made, including notice that its purpose is to determine whether there is probable cause to believe that he has committed a violation that may lead to a revocation of parole or probation.
2. Shall be permitted to advise with any persons whose assistance he reasonably desires, prior to the hearing.
3. Shall have the right to confront and examine any persons who have made allegations against him, unless the hearing officer determines that such confrontation would present a substantial present or subsequent danger of harm to such person or persons.
4. May admit, deny, or explain the violation alleged and may present proof, including affidavits and other evidence, in support of his contentions. A record of the proceedings shall be made and preserved.

Source: S.L. 1973, ch. 113, § 3.

12-56.1-04. Force and effect of hearings in other states. In any case of alleged parole or probation violation by a person being supervised in another state pursuant to the interstate compact embodied in chapter 12-56, 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, such record shall have 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 shall be fully considered by the appropriate officer or officers of this state in making disposition of the matter.

Source: S.L. 1973, ch. 113, § 4.

close interest from the sending state.

2) The receiving state shall close its records at any time if the parolee or probationer is an absconder, but such closure shall not jeopardize the sending state's right to retake that individual without extradition. Should said absconder be located within the receiving state, the provisions of these rules and the Compact requiring the receiving state to hold a preliminary hearing shall still apply.

3) The receiving state shall place the records of interstate supervisees who have been institutionalized or imprisoned in the receiving state in the "inactive" file.

4) No receiving state shall close its records on a violator while the sending state is in the process of retaking the parolee or probationer.

Commentary

It has been established by various court decisions that even when the receiving state has closed its records on an absconder, such closure does not jeopardize the right of the sending state to retake him/her without extradition. The closing of case records merely implies that the receiving state has removed the case from the "active" file on the assumption that the sending state would take the initiative in finding the parolee. Since the Compact does not state that a transferee under the Compact must report at specific intervals, the receiving state, by removing the case from the active file, is merely lengthening the reporting interval, not discontinuing supervision.

The same reasoning applies to records of interstate supervisees who have been institutionalized or imprisoned in the receiving state. If no supervision is to be provided, the records shall be placed in the "inactive" file.

A case shall not be closed on a violator while the sending state is in the process of retaking. The case shall be closed after the offender is removed from the receiving state or when the violator begins to serve a new sentence in the sending state. As a general principal, receiving states shall treat Compact cases as they would treat their own state's non-Compact cases.

Section 4-108.
DISCHARGE IN RECEIVING STATE

The sending state shall notify the receiving state's Compact Administrator of a parolee or probationer's discharge from supervision.

Commentary

Notices of discharge shall always be sent to the receiving state's Administrator, so that they will not be in the position of supervising an individual who is no longer on probation or parole. The

receiving state's authority to supervise springs from the fact that it is acting as "agent" for the sending state. Therefore, the receiving state shall not continue supervision when there has been a discharge.

It is noted that some states discharge supervisees despite the fact that the receiving state has called attention to the need for continued supervision. The sending state has a legal right to make the final decision regarding discharge; however, it also was agreed that there shall be cooperation in these matters.

Section 4-109.
SUPERVISION OF INDIVIDUALS WHO BECOME MENTALLY ILL OR PHYSICALLY HANDICAPPED WHILE IN THE RECEIVING STATE

A receiving state shall continue supervision of an offender who is determined to be mentally ill or physically handicapped while in the receiving state, unless the prognosis for recovery is diagnosed as long term or of a permanent nature, where the supervision of long-term commitments reverts back to the sending state.

Commentary

It must be remembered in setting supervision rules for the mentally ill or physically handicapped offender, that most such cases are committed for short terms or usually after being charged with a new offense in the receiving state. Closing and resuming Compact supervision on these short commitments would place a needless administrative burden on both the receiving and sending states.

Section 4-110.
INTERPRETATION AND PRACTICES REGARDING VIOLATORS

1) **Reports of Violations**
A receiving state shall promptly, upon violation, notify the sending state of such violation utilizing the appropriate forms provided for by these rules.

2) **Crimes Against the Laws of the Receiving State**
A receiving state may detain a parolee or probationer who has committed a crime against the laws of the receiving state and hold a trial on that offense.

3) **Detainers Placed by the Sending State**
The following are procedures regarding detainers placed by the sending state against interstate supervisees incarcerated in the receiving state:

A) A preliminary hearing shall be conducted as soon as possible by the receiving state and forwarded to the sending state if requested, except where a waiver admitting the fact of the violation has been executed.

B) The receiving state shall send full information to the sending state regarding such things as the nature of the crime and the length of the new sentence.

C) The sending state shall, when filing a detainer, send a letter to accompany the detainer to the receiving state expressing the wishes of the sending state when the individual is released from prison in the receiving state.

4) **Detainers Placed by a Receiving State**
Where allowed by the law of the receiving state, detainers or Compact warrants may be placed by a receiving state upon a violator under the Compact pending a warrant or revocation by the sending state.

5) **Requests for Preliminary Hearings**
All requests by sending states that a receiving state hold a preliminary hearing on a violation shall be honored, except where a waiver admitting the fact of the violation has been executed (unless waivers are prohibited by the sending state).

6) **Bail**
No interstate supervisee who has been arrested in the receiving state shall be admitted to bail while the sending state is in the process of returning the supervisee.

Commentary

Section 4-110(1): Section 5 of the Parole and Probation Rules and Regulations specifies that the receiving state shall "promptly upon violation notify the sending state." An Administrator must give due credit to the recommendations of individual field officers, but should screen notices of violation rather carefully to be sure that there is good and sufficient reason for asking the sending state to retake its parolee or probationer.

The term "revocation of parole" has different meanings under various state laws. When corresponding about violations with the receiving state, it may be well to substitute other terms, such as "delinquency status" or "suspension of parole."

Section 4-110(2): If a violator has committed a crime against the laws of the receiving state, that violator may, of course, be held and tried on new charges. This is in accordance with Article 3 of the Compact which states, if at the time when a state seeks to retake a probationer or parolee there should be pending against him within the receiving state any criminal charge, or that suspicion exists of having committed within such state a criminal offense, he shall not be retaken without the consent of the receiving state until discharge from prosecution or from imprisonment for such offense."

Sending states clearly have a legal and contractual obligation under the Compact to return an individual where requested, just as receiving states have the related responsibility not to violate in Compact cases more readily than they do in their own cases. The length of a new sentence in the

receiving state has no bearing on the sending state's right to retake an individual once the sentence has been served.

Section 4-110(3): Subsection (B): The receiving state shall confront all available adverse witnesses at the preliminary hearing where the violation is technical or based on untried complaints. In the case of a new conviction, the receiving state shall send certified minutes of the conviction.

The receiving state shall authenticate any other materials including the violation report and summary of the preliminary (on site) hearing if required by the sending state.

Section 4-110(4): When an interstate supervisee has been arrested in the receiving state, such supervisee shall not be admitted to bail while the sending state is in the process of making the return. The Morrissey decision and subsequent court decisions are predicated upon the assumption that the preliminary hearing determines the existence of reason to hold the individual, therefore eliminating the basis for allowance of bail. There shall be a special effort made to advise police, prosecutors and judges of the existence of the sending state's violation warrant.

Section 4-111.
FACTORS INVOLVED IN THE MAKING OF A DECISION TO RETAKE A CASE

1) **Obligation to Retake a Violator**
A receiving state shall consider a parolee or probationer's residence and family ties before asking a sending state to retake a violator, particularly when the violator has only a few months left to serve for the sending state and is under a new sentence in the receiving state.

2) **Alternatives to Retaking Out-of-State Cases**
There are two alternatives to retaking out-of-state cases:

A) In the case of a violator who has committed a crime in the receiving state it may be possible to arrange concurrent supervision.

B) Any violator may be committed by the sending state to an institution of the receiving state if both states are signatory to the Out-of-State Incarceration Amendment.

3) **Continuation of Supervision when the Sending State Refuses to Retake a Violator**
A sending state shall apply the same standard for retaking of parolees or probationers as is applied to the taking custody of parolees or probationers within the sending state. The decision of the sending state to retake a person on parole or probation shall be conclusive and non-reviewable within the receiving state.

Commentary

Section 4-111(1): The receiving state shall try to give due consideration to residence and family ties

before asking a sending state to retake a violator, particularly when the violator has only a few months left to serve for the sending state and is under a new sentence in the receiving state. The Association has adopted the following:

> "That this Association go on record as favoring the continuance of the practice regarding return principles that has been followed over the years, namely that when a receiving state requests return, the request be honored unless another plan satisfactory to both states can be found."

In special situations the receiving state may feel compelled to ask the sending state to retake a parolee or probationer, even though the violations are relatively minor. It is suggested that in these cases the receiving state explain fully the pressures and special problems which make the continuance of supervision infeasible.

Section 4-111 (3): Article 3 requires that " [t] he decision of the sending state to retake a person on probation or parole shall be conclusive upon and not reviewable within the receiving state." See PPCAA Executive Council Rulings Section. Ruling No. 4 -Sending State's Refusal to Order Return of an Offender.

> The sending state shall reply to any violation report with either a decision or status report within 30 days of its receipt.

Section 4-112.
FORMS

The forms in reference to (1) Investigation Request; (2) Information When Subject is Sent to Receiving State; (3) Application for Compact Services and Agreement to Return; (4) Progress and Conduct Report; (5) Violation Report; and (6) Report of Arrival, are found in Chapter 4 and made part of these rules and regulations and are to be used for the purpose indicated. The Reply to Investigation Request Form, also found in Chapter 4, is optional.

Commentary

The objective in using standardized forms is to provide a degree of uniformity in the type and quality of information transmitted between states. Although there may be some minor differences in the format of forms used by the various states, every effort should be made to conform to the requirements of the rule regarding the use of forms. This is especially true where use of the Application for Compact Services and Agreement to Return is concerned as the language used in this form must conform in every respect with the language adopted by the Administrators.

SECTION 500 RETAKING CASES FROM ANOTHER JURISDICTION

Section 5-101.
GENERAL LEGAL ASPECTS

A duly accredited officer of a sending state may at any time enter a receiving state and apprehend and retake any person on probation or parole after due process.

Commentary

Article 3 of the Compact was reinterpreted by the Supreme Court (1972 & 1973) in *Morrissey v. Brewer* and *Gagnon v. Scarpelli.* The Court expanded certain limited due process rights to parole and probation offenders prior to the return of the alleged violator to the receiving state. A preliminary probable cause hearing is required prior to return.

At the time of application for Compact services, a waiver of extradition is executed. All legal requirements to obtain extradition of fugitives from justice are hereby expressly waived on the part of states party hereto, as to such persons. Some states require an identity hearing prior to return of the alleged violator to the sending state.

Article 3 also prohibits the removal of an alleged violator from the receiving state if: 1) there remains pending within the state any criminal charges, 2) if the alleged violator is suspected of having committed any criminal offenses, 3) unless, the receiving state grants consent to remove the violator prior to discharge from prosecution or from imprisonment for such offense.

Section 5-102.
PROBABLE CAUSE HEARINGS

Morrissey v. Brewer and *Gagnon v. Scarpelli* mandate the holding of preliminary probable cause hearings in the receiving state prior to returning an alleged violator to the sending state.

Commentary

In the early 1970's the U.S. Supreme Court held in *Morrissey v. Brewer* and *Gagnon v. Scarpelli* that alleged parole and probation violators must be afforded limited due process rights upon arrest and confinement in the receiving state. The court held that an informal hearing is mandated to give assurance that the finding of parole or probation violation is based on verifiable facts and that a reasonably prompt inquiry is made by an impartial hearing officer near the place of alleged violation. The hearing is held to determine whether probable cause exists to believe that a parole or probation condition has been violated.

Section 5-103.
WAIVER OF PROBABLE CAUSE HEARINGS

Waiver of probable cause hearings by a parolee or probationer under the Compact against whom revocation proceedings have begun shall not be accepted unless said waiver shall also include an admission of violation of probation or parole, knowingly signed by the parolee or probationer unless such waivers are prohibited by the sending state.

Commentary

Historically, practices differ among states as to the conditions of and acceptability of waivers of probable cause hearings. Problems have occurred in substantiating parole/probation violations in the receiving state based upon waivers which do not include an admission of violation. To prevent the loss of violation action by the sending state, all waivers of probable cause hearings shall include a signed admission of violation by the parolee or probationer.

Section 5-104.
ON-SITE PROBABLE CAUSE HEARINGS

1) Parole or probation revocation actions against individuals transferred under the Interstate Compact shall include a preliminary probable cause hearing conducted in the receiving state when at the time of initiation of revocation the parolee or probationer was physically within a receiving state pursuant to transfer under the Compact.

2) Preliminary probable cause hearings shall be conducted in a timely and reasonable manner and may be held by courts of appropriate jurisdiction or by administrative officials who are neutral and detached from the specific proceedings as otherwise allowed by law.

3) Preliminary probable cause hearings shall be subject to the procedures of the receiving state where not in conflict with the Compact.

4) Any evidence acceptable in a preliminary probable cause hearing shall be sufficient when transferred to a sending state as part of the official record of the preliminary probable cause hearing for acceptance as evidence for consideration in a final revocation hearing in the sending state, notwithstanding that it may be otherwise insufficient or objectionable in the form in which it is transferred. See Probable Cause Hearing Information Form.

Commentary

The Adult Compact clearly mandates that policies and practices in the treatment of Compact offenders are to be governed by the receiving state. Therefore, to maintain uniformity in the administration of interstate preliminary probable cause hearings, the policies, procedures and practices of the receiving state shall prevail. Conflicts between states on the acceptability/admissibility of evidence are resolved through the execution of the Probable Cause Hearing Information Form signed by the parole or probation offender at the time of application for Compact services.

#3 MCA - 46-23-1101 #3

Section 5-105.
WAIVER OF EXTRADITION

No transfer shall occur under the Compact without a duly executed waiver of extradition signed by the parolee/probationer.

Commentary

1) Article (3) of the Compact greatly simplifies the procedure for interstate rendition of parolees and probationers. It means that the signatory states have agreed that extradition proceedings shall not be required when a sending state wishes to retake its parolee or probationer.

This agreement between the states is buttressed by an agreement signed by the parolee or probationer leaving the sending state for supervision in the receiving state. By signing this agreement (Form III of the Parole and Probation Forms - "Application for Compact Services and Agreement to Return") the offender waives any right to extradition proceedings in return for the privilege of interstate supervision and agrees to make no contest of "any effort by any state" to force return to the sending state upon demand.

Thus the states, with the consent of Congress, have expressly waived all of their legal requirements to obtain extradition of fugitives under the Compact - and the individual parolees or probationers have agreed - in advance and as a specific condition of their transfer - to waive their right to contest the effort of any state to return them to the sending state. The right of states to retake Compact cases without extradition has been challenged in court many times, but no court of last resort has ever handed down an unfavorable decision to the Compact.

2) The courts in recent years have ruled that if a parolee or probationer has signed a waiver of extradition as part of the agreement, extradition is not necessary. There are numerous relevant court cases (not one court of higher jurisdiction has ever ruled against this method of return). Quite to the contrary, the courts of higher jurisdiction, the U.S. 5th, 7th and 8th Circuits have ruled that a pre-signed waiver (without a Compact transfer) can be used and denied civil judgment against officials involved under USC Section 42, 1983. The courts have also ruled that:

(A) Prior waiver of extradition as a condition of parole is not an unreasonable or coerced condition. See *Pierson v. Grant,* 527 F.2d 161 (8th Cir.1975).

(B) Prior waiver is enforceable if the offender had a "general knowledge and understanding" of the waiver. See *Forester v. California Adult Authority,* 510 F.2d 58 (8th Cir.1975).

(C) Extradition is not an exclusive remedy. See *Cook v. Kern,* 330 F2d 1003 (5th Cir.1964).

(D) It need only to establish identity of the offender and the authority of the retaking officer.

See Simmons on behalf of *Gra-V v. Lohman*, 228 E2d 824 (7th Cir.).

See PPCAA Executive Council Rulings Section, Ruling No. 5 - Refusal to Honor Waiver of Extradition.

Section 5-106.
THIRD PARTY STATE RETURN OF PAROLE/PROBATION VIOLATORS

When a parolee or probationer executes the Application for Compact Services and Agreement to Return Form (Form III) the individual also waives the right to extradition from any jurisdiction where such person may be found.

Commentary

There has been no difficulty experienced by probation or parole agencies in effecting the return of violators who are apprehended in the receiving state, particularly where the probationer or parolee has signed the Compact Form III. The courts have uniformly upheld the right of the state to retake in this situation without extradition and no reported case has been found to the contrary. The great weight of authority also holds that a parolee or probationer who has been released to supervision under the Compact in another state and absconds to a third party state may also be returned without formality of extradition proceedings. There are several court decisions upholding the return of an alleged violator from any other state under a pre-signed waiver. The courts have ruled that:

1. Prior waiver of extradition as a condition of parole is not an unreasonable or coerced condition;

2. Prior waiver is enforceable if the offender had "general knowledge and understanding" of the waiver;

3. Extradition is not an exclusive remedy;

4. There is need only to establish identity of the offender and the authority of the retaking officer.

Section 5-107.
RIGHT OF PAROLEES AND PROBATIONERS TO LEGAL PROCEEDINGS

No parolee or probationer under the Compact shall be denied the right to appeal to a court for the protection of individual rights.

Commentary

Parolees and probationers have sometimes made the claim that the Compact procedure for securing

the return of interstate cases is in violation of the Fourteenth Amendment because it deprives them of liberty without due process of the law. This claim has always been rejected.

The following excerpt taken from the *Niederer v. Caty*, 240 N.W.2d 626 (Wis. 1976) case indicates the line of reasoning generally followed by the courts, in upholding the Compact's waiver provisions, "because a parolee is deprived of no federally protected right, constitutional or statutory, in not being afforded an extradition proceeding, there is no due process violation."

The Compact does not and cannot deny to a parolee or probationer the right to appeal to a court for the protection of individual rights. However, the rights of a parolee or probationer are not unlimited and must be balanced against the rights of society. Article 3 of the Interstate Compact under which supervision occurs states, "the decision of the sending state to retake a person on probation or parole shall be conclusive upon and not reviewable within the receiving state." Therefore, certain claims of violation of individual rights must be decided by the courts of the sending state rather than the courts of the receiving state.

The following is a summary of interpretations regarding the jurisdiction of courts of sending and receiving states over claims made by parolees and probationers:

(1) If the parolee or probationer claims to be the wrong person when the sending state attempts to retake the individual: by the very terms of the Compact the individual can apply in the asylum (receiving) state where the individual is found for a writ of habeas corpus to test "the identity of the person to be retaken."

(2) If the parolee or probationer claims that the officer sent to retake is not the duly accredited officer of the sending state: by the terms of the Compact, application can be made in the asylum (receiving) state for a writ of habeas corpus to test "the authority of the officer."

(3) If the parolee or probationer claims that conviction by the sending state was unjust or that the sentence received was disproportionate: the remedy is to appeal to the courts of the demanding (sending) state. There is no right to test innocence or guilt on habeas corpus in the receiving state.

(4) If the parolee or probationer claims that the sentence has already been served in full: the individual must appeal to a court of the sending state for a decision as to that person's status under the laws of the sending state.

(5) If the parolee or probationer claims that the violation for which retaking is underway is not serious enough to warrant return to the sending state: the court of the receiving state is relieved of jurisdiction by the express terms of the Compact which states, "the decision of the sending state to retake a person on probation or parole shall be conclusive upon and not reviewable within the receiving state."

GRIEVANCE PROCEDURE

Grievance Procedure Step 1 (To be utilized by individual states):

A. The complaining state will contact the working person (Compact Administrator or Deputy Compact Administrator) in the offending state by telephone in an effort to resolve the dispute informally.

B. The complaining state will send a form letter to the Compact Administrator or Deputy Compact Administrator of the offending state via registered mail within ten (10) days of the initial telephone call, outlining the nature of the complaint. In this letter the complaining state will request a response from the offending state within thirty (30) days, outlining their intent to resolve the dispute.

C. The complaining state will follow up with a telephone call to the Compact Administrator or Deputy Compact Administrator in the offending state to confirm receipt of the letter.

Grievance Procedure Step 2 (To be utilized by PPCAA President after an individual state's grievance procedure has been exhausted as outlined in Step 1.):

A. The complaining state will send a Grievance Procedure Form and the necessary attachments to the President of PPCAA to see if the dispute can be resolved informally. (The respective parties should be provided copies).

B. The President will contact all parties, and try to resolve the dispute.

C. A decision/resolution should be made within thirty (30) days.

Grievance Procedure Step 3

A. The President will refer the Grievance to the Executive Council if the dispute cannot be resolved at Step 2.

(The President or any other Council Member is prohibited from participating in grievances involving their respective state. In these cases the grievance would be referred to another PPCAA Officer).

B. The Council will attempt to resolve the dispute and issue its decision within thirty (30) days.

C. If the above grievance procedure has been exhausted and no resolution has been achieved, the Executive Council will make use of any or all of the following remedies.

1. Seek the assistance of the offending state's legal counsel.

2. Seek the assistance of the offending state's Attorney General.

3. Seek the assistance of the United States Attorney General.

4. Orchestrate a succession of letters from neutral states urging reconsideration by the offending state.

5. Write a letter of reprimand to the offending state's Compact Administrator or Deputy Compact Administrator.

6. Write a letter of reprimand to the offending state's Compact Administrator or Deputy Compact Administrator with a copy to the Administrator's immediate superior.

7. Write a letter of reprimand to the offending state's Compact Administrator or Deputy Compact Administrator with copies to the Administrator's immediate superior and Governor.

8. Write a letter of complaint with a request for action to the Governor of the offending state.

9. Seek the assistance of the Legislature of the offending state.

10. Request a vote of censure by the full membership at the Annual Meeting of PPCAA.

11. Request the withdrawal of the offending state from the Compact through the appropriate legislative process.

12. Take appropriate legal action.

13. Other - as the particular situation suggests.

PAROLE AND PROBATION
COMPACT ADMINISTRATORS ASSOCIATION
GRIEVANCE FORM

PARTIES INVOLVED

COMPLAINING STATE ADMINISTRATOR

OFFENDING STATE ADMINISTRATOR

TELEPHONE VERIFICATION OF ATTEMPT TO SOLVE THE PROBLEM

Date Sent	Results
1.	1.
2.	2.

REGISTERED LETTER OF COMPLAINT

Date Sent	Results
1.	1.
2.	2.

Date of Response

RULE(S) VIOLATED

SPECIFIC ARTICLE(S) OF PPCAA RULES

ISSUE:

BACKGROUND:

REMEDY SOUGHT

SIGNED FOR COMPLAINING STATE

_____, Title: _____ Date: _____

PRESIDENT'S ACTION

RESPONSE:

REFERRED TO EXECUTIVE COUNCIL | DATE REFERRED | PRESIDENT, PPCAA

EXECUTIVE COUNCIL DECISION

REMEDY:

EXECUTIVE COUNCIL ACTION

CHAIR, PPCAA EXECUTIVE COUNCIL **DATE SIGNED**

Star track athlete, FloJo, dies at age 38/1D

Farmers protest tra

Plan a bike ride to s

THE Bismarck

Tuesday, September 22, 1998 ☐ Bismarck/Mandan, N.D. ☐ Ca

Pair caught

Murder suspects in Texas

JANELL COLE
Bismarck Tribune

The two men suspected of murdering Barbara and Gordon Erickstad of Bismarck are in a Texas jail, awaiting extradition following their arrest late Sunday night.

Brian Erickstad, 18, son of the victims, and Robert Lawrence, 27, were arrested after a sheriff's deputy in Grand Prairie, Texas, saw them drinking beer by their pickup and negotiating with a prostitute at about 11:30 p.m. Sunday.

The city is a suburb of Dallas, between Dallas and Fort Worth.

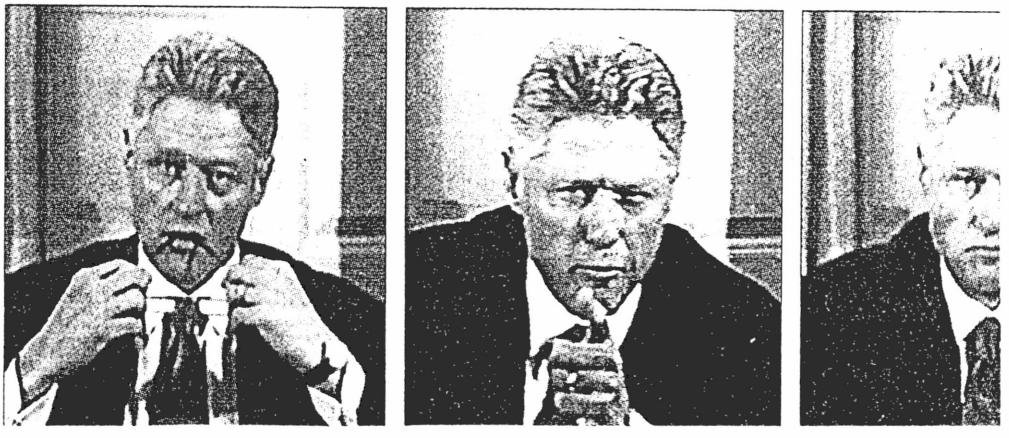
The Erickstads' bodies were found off state Highway 6 on the Standing Rock Indian Reservation on Friday evening, about 10 hours after someone went to police and suggested that the couple's home be investigated. Police who went to the home at 245 Laredo Drive on Bismarck's south side found what is believed to be the scene of a double murder, but no bodies. Both of the couple's vehicles were gone. They had last been seen alive at about 7:45 p.m. Wednesday.

When the suspects were arrested in Texas, they still had the light pewter pickup stolen from the Erickstads and it still had the original North Dakota license plates, something that surprised Bismarck police and led to a speedy arrest. There was no altercation as the two were arrested and they are not believed to have been armed.

"We're glad they made it easy for us, that's for sure," said Bismarck Police Chief Deborah Ness. "It's those mistakes that make our job a little bit easier."

Bismarck police Lt. Myron "Duffy" Heinle said the two suspects gave Texas authorities false names, but the ruse didn't last. Texas police and Bismarck police conferred by phone about tattoos and other identifying

(More on SUSPECTS, Page 6A)



1641.8 -0.20 20,100 cfs

Today's expected discharge.....20,000 cfs

cfs - cubic feet per second.

UV Index

The higher the UV Index number, the greater the need for eye and skin protection.

	Today	Wed		Today	Wed
9 a.m.	1	1	Noon	4	4
3 p.m.	4	3	6 p.m.	1	1

1-3, **Low**; 4-5, **Minimal**; 6-7, **Moderate**; 8-9, **High**; 10+, **Very High.**
Source: Ray-Ban UV Network℠

Sun & Moon

	Sunrise	Sunset
Today:	7:29 a.m.	7:41 p.m.
Tomorrow:	7:31 a.m.	7:39 p.m.

First	Full	Last	New
Sep 28	Oct 5	Oct 12	Oct 20

City	Hi	Lo	W	City	Hi	Lo	W	City	Hi	Lo	W
Albany	80	67	pc	Denver	51	46	r	Omaha	68	49	c
Albuquerque	88	60	pc	Des Moines	61	50	sh	Orlando	83	71	sh
Amarillo	93	61	s	Detroit	80	67	s	Philadelphia	86	67	pc
Anchorage	55	43	pc	El Paso	88	72	pc	Phoenix	96	70	s
Asheville	76	65	r	Fairbanks	54	41	c	Pittsburgh	82	67	pc
Atlanta	82	72	sh	Honolulu	86	76	pc	Portland, ME	71	58	c
Atlantic City	83	67	pc	Houston	93	76	pc	Portland, OR	79	51	s
Austin	98	75	pc	Indianapolis	80	66	pc	Raleigh	85	67	c
Baltimore	85	63	pc	Jacksonville	85	75	r	Reno	73	50	s
Birmingham	80	74	r	Juneau	59	47	c	Richmond	87	67	pc
Boise	68	47	pc	Kansas City	68	58	sh	St. Louis	81	69	r
Boston	79	63	pc	Las Vegas	88	67	s	Sacramento	81	56	s
Brownsville	95	77	pc	Little Rock	93	74	pc	Salt Lake City	55	43	r
Buffalo	79	68	pc	Los Angeles	75	64	c	San Diego	74	66	c
Burlington	81	63	pc	Louisville	84	73	r	San Francisco	67	55	pc
Casper	53	43	r	Lubbock	101	71	pc	St. Ste. Marie	59	36	sh
Charleston, WV	73	70	r	Memphis	91	72	pc	Seattle	74	50	s
Charlotte	77	70	sh	Miami	90	77	pc	Spokane	73	38	pc
Cheyenne	46	41	sh	Milwaukee	64	53	pc	Tampa	89	76	pc
Chicago	66	58	pc	Nashville	85	70	c	Topeka	75	59	r
Cincinnati	82	65	pc	New Orleans	88	77	pc	Tucson	93	72	pc
Cleveland	79	66	c	New York	84	70	pc	Tulsa	84	74	pc
Columbus, OH	82	69	pc	North Platte	60	47	r	Washington	87	70	pc
Dallas	97	76	s	Oklahoma City	96	72	pc	Wilmington	84	68	pc

Weather(W): **s**-sunny, **pc**-partly cloudy, **c**-cloudy, **sh**-showers, **t**-thunderstorms, **r**-rain, **sf**-snow flurries, **sn**-snow, **i**-ice, **Prcp**-precipitation, **Tr**-trace.

Suspects: Extradition the next step for police

FROM PAGE 1A

marks on the men and the suspects eventually admitted they were the wanted men.

The Arlington, Texas, Star Telegram reported that sheriff's department Detective Tim Pickle was working an off-duty security job monitoring an apartment complex parking lot when he noticed the pickup with two men and a woman pull into the lot.

"When I saw the truck pull up and the female got out and started talking to people in the parking lot I thought, 'Something's hincky here'," Pickle said. He said that area of Grand Prairie is known for drug trafficking.

After blocking the truck with his vehicle, Pickle started asking routine questions. When the suspects' stories didn't jibe, Pickle called Grand Prairie Police for back-up.

While he waited, the Star-Telegram reported, Pickle asked one of the suspects if they wanted to sit on the bed of the truck. The man declined, and later police found blood stains on the truck bed, along with a blood-covered bedspread. The paper reported that no weapons were recovered from the pickup.

Burleigh County State's Attorney Patricia Burke said Monday morning that she had already begun the extradition proceedings. Depending on whether Erickstad and Lawrence waive extradition, it could take a matter of days or more than a month to bring the two back to face charges.

Burke said she and the Burleigh County Sheriff's Department, which would be in charge of transport, have not yet decided whether to make a special trip to Texas to get the suspects or whether they would use an interstate prisoner van transport system.

Meanwhile, Ness said Heinle and Sgt. Robert Haas of the police department's investigations section were to fly to Texas later Monday to interview the suspects and look at the confiscated pickup.

Each suspect is charged with two counts of class AA murder and with two counts of stealing the Erickstads' vehicles. The couple's Cadillac was found in a sunflower field near West Fargo on Friday morning, nearly two hours before police realized they may have been murdered.

The capture of the two men brought a sense of relief to the police department, Ness and Burke said.

"The detectives this morning were all just smiling," relieved that the stress of the search was over, Burke said. "I've watched the tension drain from their faces."

Ness and Heinle said that because Lawrence came to North Dakota from Texas, police here sent special dispatches of information about the murder and the suspects to five locations in Texas — Brazos County, Dallas, Austin, Huntsville and Bryan.

Burke estimated that with the capture, the case against the two men is approximately 40 percent complete. Now the emphasis will be on building a case that will ensure their convictions.

She said the capture can be attributed not only to the suspects' mistakes but to the overwhelming effort put forth by the police department.

"The Bismarck Police Department pulled out the stops. I have nothing but praise for the Bismarck Police Department," she said.

Meanwhile, Bismarck police said Monday that two juveniles, a girl and a boy, were cited for hindering law enforcement in connection with the Erickstad investigation. No other information about them or the alleged hindering was released.

le policies/1B
e fall colors/1C

Coming Wednesday: Time to seal up your garden for winter

5 YEARS

Tribune

223-2500 or Toll Free 1-800-472-2273 ☐ Single copy 50¢

Suspects captured

By JASON LUEDER of the Tribune

Texas suspect here with family

JANELL COLE
Bismarck Tribune

The Texas suspect in the murder of a Bismarck couple was paroled to North Dakota, with North Dakota authorities' approval, in May 1997.

Robert Lawrence, 27, picked North Dakota because he had relatives in Mandan and a prospect for a job here, said Warren Emmer, director of North Dakota's Parole and Probation Department. He did not identify the relatives. He said the job was as a roofer. Under state law, much parole information is not public record.

"His history was nonviolent," Emmer said, and North Dakota did not object to his coming here. His parole was on a burglary sentence.

Emmer said that when Lawrence subsequently twice got into trouble in Bismarck and Mandan, his department tried to get Texas to take him back, but Texas refused to extradite him. Instead, Lawrence went to the North Dakota State Penitentiary for nine months on a local charge.

Lawrence spent time in N.D. pen.

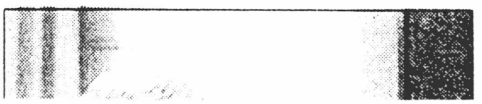
After Lawrence was released on Aug. 24, Emmer's department was still trying to send him back to Texas, but could not find him.

Emmer said Monday his depart-

(More on PAROLE, Page 6A)

Clinton raw — anger, sorrow

■ An embarrassing and personal thing, president



Parole: Suspect taken in N.D. because history was nonviolent

FROM PAGE 1A

ment agreed with Texas authorities in 1997 that North Dakota would supervise Lawrence under what's called the Interstate Compact for the Transfer of Parolees and Probationers.

Commonly referred to in the corrections business as simply "the Interstate Compact," it has been around since the 1930s, and all 50 states and U.S. territories participate, Emmer said.

Under the compact, North Dakota sends far more probationers and parolees to other states than it accepts, Emmer said.

One rationale for the compact is to get parolees back to communities where they have relatives and prospects for work.

For example, Emmer said, out-of-staters who travel through on I-94 and commit a crime often are paroled in their home states. If they were put on parole in North Dakota, where they don't have family or job prospects, the risk that they would flee is higher. It's better for North Dakota and the convict for the compact to allow the parolee to be supervised in another state.

If North Dakota suddenly stopped accepting any other states' parolees, Emmer said, those other states would not accept North Dakota's.

"If we shut that down, we won't get any reciprocation," he said. "If you put barriers up, those barriers work both ways."

For example, the North Dakota Parole Board recently agreed to parole convicted Minot murderer Michael Fahrner. He plans to move to Arizona, where his mother now lives. In that case Arizona must agree to supervise Fahrner, or his parole will not go through.

Emmer said that, starting Monday, he has made one change at his department based on the Robert Lawrence case. When an out-of-state parolee is in violation of his parole, North Dakota will immediately arrest him without a warrant from the other state, then notify the other state that it has 14 days to get the parolee.

Even so, "we run the risk of antagonizing other states," he said.

Here's the time line Emmer spelled out on Lawrence's case:

May, 1997: North Dakota agrees to accept Lawrence from Texas.

July 26, 1997: Lawrence released on mandatory supervision after serving three years at the Texas Department of Correction for burglaries.

Sept. 22, 1997: Lawrence charged with giving false information to a police officer. Emmer believes this was a Mandan Municipal Court case and that the penalty was a fine.

Nov. 21, 1997: Lawrence pleads guilty to the Mandan charge.

Dec. 1: Lawrence charged with hindering law enforcement in Burleigh County.

Dec. 12: Based on the local charges, North Dakota requests Texas authorities start parole revocation actions with an arrest warrant.

Feb. 17, 1998: North Dakota receives warrant from Texas. Lawrence is arrested.

Feb. 23: Lawrence pleads guilty to reduced charge in Burleigh County, giving false information to law enforcement, and Judge Dennis Schneider sentences him to one year in prison, with three months suspended.

Feb. 24: Lawrence is transported to the State Penitentiary to begin his sentence; is given credit for 77 days in custody.

March 16: Texas informs North Dakota it won't extradite Lawrence as a parole violator, in part because he is already in prison.

Aug. 24: Lawrence completes his sentence at the State Penitentiary and is released. Though he has three more months of North Dakota probation, it is unsupervised and he is under no obligation to report to a parole officer for the probation. But, he is told to report to the Parole and Probation Department because of his still-active Texas parole.

Sept. 11: Because Lawrence never reported to Parole and Probation, North Dakota again requests a warrant from Texas. North Dakota authorities seek to arrest him on their own authority but cannot find him.

Sept. 16: Barbara and Gordon Erickstad of Bismarck believed murdered by Lawrence and Brian Erickstad.

Sept. 20: Lawrence and Erickstad arrested in Grand Prairie, Texas.