

**HOUSE BILL NO. 1270
with Senate Amendments**

Fifty-seventh
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1270

Introduced by

Representatives DeKrey, Koppelman, Warner

Senator Lyson

1 A BILL for an Act to provide for an interstate compact for adult offender supervision; and to
2 provide an expiration date.

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

4 **SECTION 1. Compact for adult offender supervision.** The interstate compact for
5 adult offender supervision is entered with all jurisdictions legally joining the compact in the form
6 substantially as follows:

7 **Article 1. Purpose**

- 8 1. The compacting states to this interstate compact recognize that each state is
9 responsible for the supervision of adult offenders in the community who are
10 authorized pursuant to the bylaws and rules of this compact to travel across state
11 lines both to and from each compacting state in such a manner as to track the
12 location of offenders, transfer supervision authority in an orderly and efficient
13 manner and, when necessary, return offenders to the originating jurisdictions. The
14 compacting states also recognize that the United States Congress, by enacting
15 4 U.S.C. 112 [Pub. L. No. 89-554; 80 Stat. 608], has authorized and encouraged
16 compacts for cooperative efforts and mutual assistance in the prevention of crime.
- 17 2. It is the purpose of this compact and the interstate commission created under this
18 compact, through means of joint and cooperative action among the compacting
19 states:
 - 20 a. To provide the framework for the promotion of public safety and protect the
21 rights of victims through the control and regulation of the interstate movement
22 of offenders in the community;
 - 23 b. To provide for the effective tracking, supervision, and rehabilitation of these
24 offenders by the sending and receiving states; and

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- 1 2. "Bylaws" means those bylaws established by the interstate commission for its
2 governance or for directing or controlling the interstate commission's actions or
3 conduct.
- 4 3. "Compact administrator" means the individual in each compacting state appointed
5 under the terms of this compact responsible for the administration and
6 management of the state's supervision and transfer of offenders subject to the
7 terms of this compact, the rules adopted by the interstate commission, and policies
8 adopted by the state council under this compact.
- 9 4. "Compacting state" means any state that has enacted the enabling legislation for
10 this compact.
- 11 5. "Commissioner" means the voting representative of each compacting state
12 appointed pursuant to article 3 of this compact.
- 13 6. "Interstate commission" means the interstate commission for adult offender
14 supervision created by article 3 of this compact.
- 15 7. "Member" means the commissioner of a compacting state or the commissioner's
16 designee who is an individual officially connected with the commissioner.
- 17 8. "Noncompacting state" means any state that has not enacted the enabling
18 legislation for this compact.
- 19 9. "Offender" means an adult placed under or subject to supervision as the result of
20 the commission of a criminal offense and released to the community under the
21 jurisdiction of courts, paroling authorities, or corrections or other criminal justice
22 agencies.
- 23 10. "Person" means any individual or public or private legal entity.
- 24 11. "Rules" means acts of the interstate commission, adopted pursuant to article 8 of
25 this compact and substantially affecting interested parties in addition to the
26 interstate commission, which have the force and effect of law in the compacting
27 states.
- 28 12. "State" means a state of the United States, the District of Columbia, or any
29 territorial possession of the United States.
- 30 13. "State council" means the resident members of the state council for interstate adult
31 offender supervision created by each state under article 4 of this compact.

**Article 3. Interstate Commission for Adult
Offender Supervision**

1. The compacting states hereby create the interstate commission for adult offender supervision. The interstate commission is a body corporate and joint agency of the compacting states. The interstate commission has all the responsibilities, powers, and duties set forth in this compact, including the power to sue and be sued and any additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with this compact.
2. The interstate commission consists of commissioners selected and appointed by each state. In addition to the commissioners who are the voting representatives of each state, the interstate commission includes individuals who are not commissioners but who are members of interested organizations. The noncommissioner members include a member of the national organizations of governors, legislators, state chief justices, attorneys general, and crime victims. All noncommissioner members of the interstate commission are nonvoting members. The interstate commission may provide in its bylaws for additional nonvoting members as it deems necessary.
3. Each compacting state represented at any meeting of the interstate commission is entitled to one vote. A majority of the compacting states constitutes a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the interstate commission.
4. The interstate commission shall meet at least once each calendar year. The chairman may call additional meetings and, upon the request of twenty-seven or more compacting states, shall call additional meetings. Public notice must be given of all meetings and meetings are open to the public, except as provided in article 7 of this compact.
5. The interstate commission shall establish an executive committee that includes commission officers, members, and others as determined by the bylaws. The executive committee has the power to act on behalf of the interstate commission during periods when the interstate commission is not in session, with the exception of rulemaking or amendment to the compact. The executive committee oversees

1 the day-to-day activities managed by the executive director and interstate
2 commission staff, administers enforcement and compliance with the provisions of
3 the compact, its bylaws and rules and as directed by the interstate commission
4 and performs other duties as directed by the interstate commission or as set forth
5 in the bylaws and rules.

6 **Article 4. Compact Administrator and State Council**

- 7 1. The director of the department of corrections and rehabilitation, or the director's
8 designee, shall serve as the compact administrator for this state's commissioner to
9 the interstate commission.
- 10 2. The North Dakota state council for interstate adult offender supervision is
11 established, consisting of seven members. The director of the department of
12 corrections and rehabilitation, or the director's designee, is a member of the state
13 council and serves as chairman. Of the remaining members of the state council:
14 a. The governor shall appoint three members, one of whom must represent a
15 crime victim's organization; and
16 b. The chief justice of the supreme court, the president of the senate, and the
17 speaker of the house of representatives shall each appoint one member.
- 18 3. The term of office of a member is four years.
- 19 4. The state council shall meet at least twice a year.
- 20 5. The state council may advise the compact administrator on participation in the
21 interstate commission activities and administration of the compact.
- 22 6. Members of the state council are entitled to expenses as provided in sections
23 44-08-04 and 54-06-09. Legislative assembly members also are entitled to
24 compensation at the rate provided in section 54-35-10.

25 **Article 5. Powers and Duties of the Interstate Commission**

26 The interstate commission has the following powers:

- 27 1. To adopt suitable bylaws governing the management and operation of the
28 interstate commission.
- 29 2. To adopt rules that have the force and effect of law and are binding in the
30 compacting states to the extent and in the manner provided in this compact.

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- 1 3. To oversee, supervise, and coordinate the interstate movement of offenders
2 subject to the terms of this compact and any bylaws and rules adopted by the
3 interstate commission.
- 4 4. To enforce compliance with the compact and the rules and bylaws of the interstate
5 commission, using all necessary and proper means, including the use of judicial
6 process.
- 7 5. To establish and maintain offices.
- 8 6. To purchase and maintain insurance and bonds.
- 9 7. To borrow, accept, or contract for the services of personnel, including members
10 and their staffs.
- 11 8. To establish and appoint committees and hire staff it deems necessary to carry out
12 its functions, including an executive committee as required by article 3 of this
13 compact, which has the power to act on behalf of the interstate commission in
14 carrying out its powers and duties under this compact.
- 15 9. To elect or appoint officers, attorneys, employees, agents, or consultants, and to
16 fix their compensation, define their duties, and determine their qualifications, and
17 to establish the interstate commission's personnel policies and programs relating
18 to, among other things, conflicts of interest, rates of compensation, and
19 qualifications of personnel.
- 20 10. To accept, use, and dispose of donations and grants of money, equipment,
21 supplies, materials, and services.
- 22 11. To lease, purchase, accept contributions or donations of any property, or otherwise
23 to own, hold, improve, or use any property.
- 24 12. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise
25 dispose of any property.
- 26 13. To establish a budget and make expenditures and levy dues as provided in
27 article 10 of this compact.
- 28 14. To sue and be sued.
- 29 15. To provide for dispute resolution among compacting states.
- 30 16. To perform functions as may be necessary or appropriate to achieve the purposes
31 of this compact.

- 1 the termination of the compact after the payment or reserving of all of the
2 interstate commission's debts and obligations.
- 3 h. Providing transition rules for startup administration of the compact.
- 4 i. Establishing standards and procedures for compliance and technical
5 assistance in carrying out the compact.
- 6 2. a. The interstate commission, by a majority of the members, shall elect from
7 among its members a chairman and vice chairman, each of whom has the
8 authority and duties as may be specified in the bylaws. The chairman, or in
9 the chairman's absence or disability the vice chairman, shall preside at all
10 meetings of the interstate commission. The officers so elected serve without
11 compensation or remuneration from the interstate commission, provided that,
12 subject to the availability of budgeted funds, the officers are reimbursed for
13 any actual and necessary costs and expenses incurred by them in the
14 performance of their duties and responsibilities as officers of the interstate
15 commission.
- 16 b. The interstate commission shall, through its executive committee, appoint or
17 retain an executive director for the period, upon the terms and conditions and
18 for the compensation as the interstate commission may deem appropriate.
19 The executive director shall serve as secretary to the interstate commission
20 and shall hire and supervise other staff as may be authorized by the interstate
21 commission, but is not a member of the interstate commission.
- 22 3. The interstate commission shall maintain its corporate books and records in
23 accordance with the bylaws.
- 24 4. a. The liability of any member, officer, executive director, employee or agent of
25 the interstate commission acting within the scope of the person's employment
26 or duties for acts, errors, or omissions occurring within the state may not
27 exceed the limits set forth in chapter 32-12.2. This subsection does not
28 protect any person from suit or liability for any damage, loss, injury, or liability
29 caused by the intentional or willful and wanton misconduct of any person.
- 30 b. The interstate commission shall defend the commissioner of a compacting
31 state, the commissioner's representatives or employees, or the interstate

1 behalf of the director at a specified meeting. The bylaws may provide for
2 members' participation in meetings by telephone or other means of
3 telecommunication or electronic communication. Any voting conducted by
4 telephone or other means of telecommunication or electronic communication is
5 subject to the same quorum requirements of meetings where members are present
6 in person.

7 4. The interstate commission's bylaws must establish conditions and procedures
8 under which the interstate commission makes its information and official records
9 available to the public for inspection or copying. The interstate commission may
10 exempt from disclosure any information or official records to the extent the
11 information or records would adversely affect personal privacy rights or proprietary
12 interests. In adopting rules, the interstate commission may make available to law
13 enforcement agencies records and information otherwise exempt from disclosure
14 and may enter into agreements with law enforcement agencies to receive or
15 exchange information or records subject to nondisclosure and confidentiality
16 provisions.

17 5. Public notice must be given of all meetings and all meetings must be open to the
18 public, except as set forth in the rules or as otherwise provided in the compact.
19 The interstate commission shall adopt rules consistent with the principles
20 contained in the Government in the Sunshine Act [Pub. L. 104-231; 110 Stat.
21 3049; 5 U.S.C. 552]. The interstate commission and any of its committees may
22 close a meeting to the public when the interstate commission determines by
23 two-thirds vote that an open meeting would be likely to:

- 24 a. Relate solely to the interstate commission's internal personnel practices and
25 procedures;
- 26 b. Disclose matters specifically exempted from disclosure by statute;
- 27 c. Disclose trade secrets or commercial or financial information that is privileged
28 or confidential;
- 29 d. Involve accusing any person of a crime or formally censuring any person;
- 30 e. Disclose information of a personal nature when the disclosure would
31 constitute a clearly unwarranted invasion of personal privacy;

- 1 f. Disclose investigatory records compiled for law enforcement purposes;
- 2 g. Disclose information contained in or related to examination, operating, or
- 3 condition reports prepared by, or on behalf of or for the use of, the interstate
- 4 commission with respect to a regulated entity for the purpose of regulation or
- 5 supervision of the entity;
- 6 h. Disclose information when the premature disclosure would significantly
- 7 endanger the life of a person or the stability of a regulated entity; or
- 8 i. Specifically relate to the interstate commission's issuance of a subpoena or its
- 9 participation in a civil action or proceeding.
- 10 6. For every meeting closed pursuant to subsection 5, the interstate commission's
- 11 chief legal officer shall publicly certify that, in the officer's opinion, the meeting may
- 12 be closed to the public and shall make reference to each relevant provision
- 13 authorizing closure of the meeting. The interstate commission shall keep minutes
- 14 that fully and clearly describe all matters discussed in any meeting and shall
- 15 provide a full and accurate summary of any action taken, and the reasons therefor,
- 16 including a description of each of the views expressed on any item and the record
- 17 of any roll call vote. All documents considered in connection with any action must
- 18 be identified in the minutes.
- 19 7. The interstate commission shall collect standardized data concerning the interstate
- 20 movement of offenders as directed through its bylaws and rules that specify the
- 21 data to be collected, the means of collection and data exchange, and reporting
- 22 requirements.

23 **Article 8. Rulemaking Functions of the Interstate**

24 **Commission**

- 25 1. The interstate commission shall adopt rules in order to effectively and efficiently
- 26 achieve the purposes of the compact, including transition rules governing
- 27 administration of the compact during the period in which it is being considered and
- 28 enacted by the states.
- 29 2. Rulemaking must occur pursuant to the criteria set forth in this article and the
- 30 bylaws and rules adopted pursuant to this article. The rulemaking must
- 31 substantially conform to the principles of the Federal Administrative Procedure Act

- 1 [Pub. L. 103-272; 108 Stat. 1373; 5 U.S.C. 551 et seq.] and the Federal Advisory
2 Committee Act [5 U.S.C. Appendix 2, section 1 et seq.]. All rules and amendments
3 become binding as of the date specified in each rule or amendment.
- 4 3. If a majority of the legislatures of the compacting states reject a rule, by enactment
5 of a statute or adoption of a resolution in the same manner used to adopt the
6 compact, the rule has no further force and effect in any compacting state.
- 7 4. When adopting a rule, the interstate commission shall:
- 8 a. Publish the proposed rule, stating with particularity the text of the rule that is
9 proposed and the reason for the proposed rule;
- 10 b. Allow persons to submit written data, facts, opinions and arguments, which
11 information must be publicly available;
- 12 c. Provide an opportunity for an informal hearing; and
- 13 d. Adopt a final rule and its effective date, if appropriate, based on the
14 rulemaking record. Not later than sixty days after a rule is adopted, any
15 interested person may file a petition in the United States district court for the
16 District of Columbia or in the federal district court where the interstate
17 commission's principal office is located for judicial review of the rule. If the
18 court finds that the interstate commission's action is not supported by
19 substantial evidence in the rulemaking record, the court shall hold the rule
20 unlawful and set it aside. For purposes of this subdivision, evidence is
21 substantial if it would be considered substantial evidence under the Federal
22 Administrative Procedure Act [Pub. L. 103-272; 108 Stat. 1373; 5 U.S.C. 551
23 et seq.] and the Federal Advisory Committee Act [5 U.S.C. Appendix 2,
24 section 1 et seq.].
- 25 5. Rules related to the following subjects must be addressed within twelve months
26 after the first meeting of the interstate commission:
- 27 a. Notice to victims and opportunity to be heard;
- 28 b. Offender registration and compliance;
- 29 c. Violations and returns;
- 30 d. Transfer procedures and forms;
- 31 e. Eligibility for transfer;

- 1 f. Collection of restitution and fees from offenders;
- 2 g. Data collection and reporting;
- 3 h. Level of supervision to be provided by the receiving state;
- 4 i. Transition rules governing the operation of the compact and the interstate
5 commission during the period between the effective date of the compact and
6 the date on which the last eligible state adopts the compact; and
- 7 j. Mediation, arbitration, and dispute resolution.
- 8 6. The existing rules governing the operation of the previous compact superseded by
9 this compact are void twelve months after the first meeting of the interstate
10 commission created under this compact.
- 11 7. Upon determination by the interstate commission that an emergency exists, the
12 interstate commission may adopt an emergency rule that becomes effective
13 immediately upon adoption, provided that the usual rulemaking procedures
14 provided in this article are retroactively applied to the rule as soon as reasonably
15 possible, but no later than ninety days after the effective date of the rule.

16 **Article 9. Oversight, Enforcement, and Dispute Resolution by**
17 **the Interstate Commission**

- 18 1. a. The interstate commission shall oversee the interstate movement of adult
19 offenders in the compacting states and shall monitor those activities being
20 administered in noncompacting states which may significantly affect
21 compacting states.
- 22 b. The courts and executive agencies in each compacting state shall enforce
23 this compact and shall take all actions necessary and appropriate to
24 effectuate the compact's purposes and intent. In any judicial or administrative
25 proceeding in a compacting state pertaining to the subject matter of this
26 compact which may affect the powers, responsibilities, or actions of the
27 interstate commission, the interstate commission is entitled to receive all
28 service of process in any such proceeding and has standing to intervene in
29 the proceeding for all purposes.

1 commission must be audited yearly by a certified or licensed public accountant and
2 the report of the audit must be included in and become part of the annual report of
3 the interstate commission.

4 5. a. The interstate compact for adult offender supervision fund is established as a
5 special fund in the state treasury. The fund consists of moneys appropriated
6 for the purpose of meeting financial obligations imposed on the state as a
7 result of the state's participation in this compact.

8 b. An assessment levied or any other financial obligation imposed under this
9 compact is effective against the state only to the extent that moneys to pay
10 the assessment or meet the financial obligation have been appropriated and
11 deposited in the fund established in subdivision a of this subsection.

12 **Article 11. Compacting States, Effective Date,**
13 **and Amendment**

14 1. Any state is eligible to become a compacting state.

15 2. The compact becomes effective and binding upon legislative enactment of the
16 compact into law by thirty-five or more of states. The initial effective date is the
17 later of August 1, 2001, or upon enactment into law by the thirty-fifth state.
18 Thereafter, the compact becomes effective and binding, as to any other
19 compacting state, upon enactment of the compact into law by that state. The
20 governors of noncompacting states or their designees may be invited to participate
21 in interstate commission activities on a nonvoting basis before adoption of the
22 compact by all states.

23 3. Amendments to the compact may be proposed by the interstate commission for
24 enactment by the compacting states. No amendment becomes effective and
25 binding upon the interstate commission and the compacting states until it is
26 enacted into law by unanimous consent of the compacting states.

27 **Article 12. Withdrawal, Default, Termination, and**
28 **Judicial Enforcement**

29 1. a. Once effective, the compact continues in force and remains binding upon
30 every compacting state, but a compacting state may withdraw from the

- 1 compact by repealing the statute resolution that enacted the compact into
2 law. The effective date of withdrawal is the effective date of the repeal.
- 3 b. The withdrawing state shall notify the chairman of the interstate commission
4 in writing upon the introduction of legislation repealing this compact in the
5 withdrawing state. The interstate commission shall notify the other
6 compacting states of the withdrawing state's intent to withdraw within sixty
7 days of receipt of the notice.
- 8 c. The withdrawing state is responsible for all assessments, obligations, and
9 liabilities of that state incurred through the effective date of withdrawal,
10 including any obligations, the performance of which extend beyond the
11 effective date of withdrawal.
- 12 d. Reinstatement following withdrawal of any compacting state occurs upon the
13 withdrawing state reenacting the compact or upon a later date as determined
14 by the interstate commission.
- 15 2. a. If the interstate commission determines that any compacting state has at any
16 time defaulted in the performance of any of its obligations or responsibilities
17 under this compact or the bylaws or rules of the interstate commission, the
18 interstate commission may impose any one or more of the following penalties:
- 19 (1) Fines, fees, and costs in amounts as are deemed to be reasonable as
20 fixed by the interstate commission.
- 21 (2) Remedial training and technical assistance as directed by the interstate
22 commission.
- 23 (3) Suspension and termination of membership in the compact.
24 Suspension may be imposed only after all other reasonable means of
25 securing compliance under the bylaws and rules have been exhausted.
26 Immediate notice of suspension must be given by the interstate
27 commission to the governor, the chief justice, or chief judicial officer of
28 the defaulting state, the majority and minority leaders of the defaulting
29 state's legislative assembly, and the state council.
- 30 b. The grounds for default include failure of a compacting state to perform
31 obligations or responsibilities imposed upon it by this compact or the

- 1 interstate commission bylaws or rules. The interstate commission shall
2 immediately notify the defaulting state in writing of the penalty imposed by the
3 interstate commission on the defaulting state pending a cure of the default.
4 The interstate commission shall stipulate the conditions and the time period
5 within which the defaulting state must cure its default. If the defaulting state
6 fails to cure the default within the time period specified by the interstate
7 commission, in addition to any other penalties imposed, the defaulting state
8 may be terminated from the compact upon an affirmative vote of a majority of
9 the compacting states and all rights, privileges, and benefits conferred by this
10 compact must be terminated from the effective date of suspension. Within
11 sixty days of the effective date of termination of a defaulting state, the
12 interstate commission shall notify the governor, the chief justice, or chief
13 judicial officer of the defaulting state, the majority and minority leaders of the
14 defaulting state's legislative assembly, and the state council of the
15 termination.
- 16 c. The defaulting state is responsible for all assessments, obligations, and
17 liabilities of that state incurred through the effective date of termination,
18 including any obligations, the performance of which extend beyond the
19 effective date of termination.
- 20 d. The interstate commission does not bear any costs relating to the defaulting
21 state unless otherwise mutually agreed upon between the interstate
22 commission and the defaulting state. Reinstatement following termination of
23 any compacting state requires both a reenactment of the compact by the
24 defaulting state and the approval of the interstate commission pursuant to the
25 rules.
- 26 3. The interstate commission, by majority vote of the members, may initiate legal
27 action in the United States district court for the District of Columbia or, at the
28 discretion of the interstate commission, in the federal district court where the
29 interstate commission has its principal office to enforce compliance with the
30 compact, its rules, or bylaws against any compacting state in default. In the event

1 judicial enforcement is necessary, the prevailing party must be awarded all costs of
2 the litigation, including reasonable attorney fees.

3 4. a. The compact dissolves effective upon the date of the withdrawal or default of
4 the compacting state which reduces membership in the compact to one
5 compacting state.

6 b. Upon the dissolution of this compact, the compact becomes void and the
7 business and affairs of the interstate commission must be concluded and any
8 surplus funds must be distributed in accordance with the bylaws.

9 **Article 13. Binding Effect of Compact and Other Laws**

10 1. a. This compact does not prevent the enforcement of any other law of a
11 compacting state which is consistent with this compact.

12 b. The laws of the state, other than the Constitution of North Dakota, which
13 conflict with this compact are superseded to the extent of the conflict.

14 2. a. All lawful actions of the interstate commission, including all rules and bylaws
15 adopted by the interstate commission, are binding upon the state unless
16 contrary to the Constitution of North Dakota.

17 b. All agreements between the interstate commission and the compacting states
18 are binding in accordance with their terms.

19 c. Upon the request of a party to a conflict over meaning or interpretation of
20 interstate commission actions, and upon a majority vote of the compacting
21 states, the interstate commission may issue advisory opinions regarding the
22 meaning or interpretation.

23 d. In the event any provision of this compact exceeds the constitutional limits
24 imposed on the legislative assembly of any compacting state, the obligations,
25 duties, powers, or jurisdiction sought to be conferred by the provision upon
26 the interstate commission are ineffective and the obligations, duties, powers,
27 or jurisdiction remain in the compacting state and must be exercised by the
28 agency to which the obligations, duties, powers, or jurisdiction are delegated
29 by law in effect at the time this compact becomes effective.

30 3. The state is bound by the bylaws and rules adopted under this compact only to the
31 extent that the operation of the bylaws and rules does not impose an obligation

1 exceeding any limitation on state power or authority contained in the Constitution
2 of North Dakota as interpreted by the courts of this state.

3 **SECTION 2. EXPIRATION DATE.** This Act is effective through August 1, 2003, and
4 after that date is ineffective.