

## **CHAPTER 12-65** **INTERSTATE COMPACT FOR ADULT OFFENDER SUPERVISION**

### **12-65-01. Compact for adult offender supervision.**

The interstate compact for adult offender supervision is entered with all jurisdictions legally joining the compact in the form substantially as follows:

#### **ARTICLE I - PURPOSE**

1. The compacting states to this interstate compact recognize that each state is responsible for the supervision of adult offenders in the community who are authorized pursuant to the bylaws and rules of this compact to travel across state lines both to and from each compacting state in such a manner as to track the location of offenders, transfer supervision authority in an orderly and efficient manner and, when necessary, return offenders to the originating jurisdictions. The compacting states also recognize that the United States Congress, by enacting 4 U.S.C. 112 [Pub. L. 89-554; 80 Stat. 608], has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.
2. It is the purpose of this compact and the interstate commission created under this compact, through means of joint and cooperative action among the compacting states:
  - a. To provide the framework for the promotion of public safety and protect the rights of victims through the control and regulation of the interstate movement of offenders in the community;
  - b. To provide for the effective tracking, supervision, and rehabilitation of these offenders by the sending and receiving states; and
  - c. To equitably distribute the costs, benefits, and obligations of the compact among the compacting states.
3. In addition, this compact is intended to:
  - a. Create an interstate commission that will establish uniform procedures to manage the movement between states of offenders placed under community supervision and released to the community under the jurisdiction of courts, paroling authorities, or corrections or other criminal justice agencies that will promulgate rules to achieve the purpose of this compact;
  - b. Ensure an opportunity for comment and time notice to victims and to jurisdictions where offenders are authorized to travel or to relocate across state lines;
  - c. Establish a system of uniform data collection, access to information on active cases by authorized criminal justice officials and regular reporting of compact activities to the heads of state councils, the state executive, judicial, and legislative branches, and the criminal justice administrators;
  - d. Monitor compliance with rules governing interstate movement of offenders and initiate interventions to address and correct noncompliance; and
  - e. Coordinate training and education on the regulation of interstate movement of offenders for officials involved in that activity.
4. The compacting states recognize that there is no right of any offender to live in another state and that duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any offender under supervision, subject to this compact and the bylaws and rules promulgated under this compact. It is the policy of the compacting states that the activities conducted by the interstate commission are intended to formulate public policy and are therefore public business.

#### **ARTICLE II - DEFINITIONS**

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

1. "Adult" means a person who is eighteen years of age or older or a person under eighteen years of age who is legally classified, either by statute or court order, as an adult.
2. "Bylaws" means those bylaws established by the interstate commission for its governance or for directing or controlling the interstate commission's actions or conduct.

3. "Commissioner" means the voting representative of each compacting state appointed pursuant to article 3 of this compact.
4. "Compact administrator" means the individual in each compacting state appointed under the terms of this compact, or the individual's designee, responsible for the administration and management of the state's supervision and transfer of offenders subject to the terms of this compact, the rules adopted by the interstate commission, and policies adopted by the state council under this compact.
5. "Compacting state" means any state that has enacted the enabling legislation for this compact.
6. "Interstate commission" means the interstate commission for adult offender supervision created by article 3 of this compact.
7. "Member" means the commissioner of a compacting state or the commissioner's designee who is an individual officially connected with the commissioner.
8. "Noncompacting state" means any state that has not enacted the enabling legislation for this compact.
9. "Offender" means an adult placed under or subject to supervision as the result of the commission of a criminal offense and released to the community under the jurisdiction of courts, paroling authorities, or corrections or other criminal justice agencies.
10. "Person" means any individual or public or private legal entity.
11. "Rules" means acts of the interstate commission, adopted pursuant to article 8 of this compact and substantially affecting interested parties in addition to the interstate commission, which have the force and effect of law in the compacting states.
12. "State" means a state of the United States, the District of Columbia, or any territorial possession of the United States.
13. "State council" means the resident members of the state council for interstate adult offender supervision created by each state under article 4 of this compact.

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

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

#### **ARTICLE IV - COMPACT ADMINISTRATOR AND STATE COUNCIL**

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

#### **ARTICLE V - POWERS AND DUTIES OF THE INTERSTATE COMMISSION**

The interstate commission has the following powers:

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

14. To sue and be sued.
15. To provide for dispute resolution among compacting states.
16. To perform functions as may be necessary or appropriate to achieve the purposes of this compact.
17. To report annually to the legislatures, governors, judiciary, and state councils of the compacting states concerning the activities of the interstate commission during the preceding year. Reports must also include any recommendations that may have been adopted by the interstate commission.
18. To coordinate education, training, and public awareness regarding the interstate movement of offenders for officials involved in such activity.
19. To establish uniform standards for the reporting, collecting, and exchanging of data.

## **ARTICLE VI - ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION**

1. The interstate commission, by a majority of the members within twelve months of the first interstate commission meeting, shall adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the compact, including:
  - a. Establishing the fiscal year of the interstate commission.
  - b. Establishing an executive committee and other committees as may be necessary.
  - c. Providing reasonable standards and procedures for establishing committees and governing any general or specific delegation of any authority or function of the interstate commission.
  - d. Providing reasonable procedures for calling and conducting meetings of the interstate commission and ensuring reasonable notice of each meeting.
  - e. Establishing the titles and responsibilities of the officers of the interstate commission.
  - f. Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the interstate commission. Notwithstanding any civil service laws or other similar laws of any compacting state, the bylaws exclusively govern the personnel policies and programs of the interstate commission.
  - g. Providing a mechanism for winding up the operations of the interstate commission and the equitable return of any surplus funds that may exist upon the termination of the compact after the payment or reserving of all of the interstate commission's debts and obligations.
  - h. Providing transition rules for startup administration of the compact.
  - i. Establishing standards and procedures for compliance and technical assistance in carrying out the compact.
2. a. The interstate commission, by a majority of the members, shall elect from among its members a chairman and vice chairman, each of whom has the authority and duties as may be specified in the bylaws. The chairman, or in the chairman's absence or disability the vice chairman, shall preside at all meetings of the interstate commission. The officers so elected serve without compensation or remuneration from the interstate commission, provided that, subject to the availability of budgeted funds, the officers are reimbursed for any actual and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the interstate commission.  
b. The interstate commission shall, through its executive committee, appoint or retain an executive director for the period, upon the terms and conditions and for the compensation as the interstate commission may deem appropriate. The executive director shall serve as secretary to the interstate commission and shall hire and supervise other staff as may be authorized by the interstate commission, but is not a member of the interstate commission.
3. The interstate commission shall maintain its corporate books and records in accordance with the bylaws.
4. a. The liability of any member, officer, executive director, employee, or agent of the interstate commission acting within the scope of the person's employment or duties for acts, errors, or omissions occurring within the state may not exceed the

limits set forth in chapter 32-12.2. This subsection does not protect any person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any person.

- b. The interstate commission shall defend the commissioner of a compacting state, the commissioner's representatives or employees, or the interstate commission's representatives or employees in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional wrongdoing on the part of such person.
- c. The interstate commission shall indemnify and hold the commissioner of a compacting state, the appointed representatives, or employees, or the interstate commission's representatives or employees, harmless in the amount of any settlement or judgment obtained against those persons arising out of any actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that the persons had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional wrongdoing on the part of those persons.

## **ARTICLE VII - ACTIVITIES OF THE INTERSTATE COMMISSION**

1. The interstate commission shall meet and take those actions consistent with this compact.
2. Except as otherwise provided in this compact and unless a greater percentage is required under the bylaws, in order to constitute an act of the interstate commission, the act must have been taken at a meeting of the interstate commission and must have received an affirmative vote of a majority of the members present.
3. Each member of the interstate commission has the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the interstate commission. A member must vote in person on behalf of the compacting state and may not delegate a vote to another compacting state. However, the director of the department of corrections and rehabilitation may designate another individual, in the absence of the director, to cast a vote on behalf of the director at a specified meeting. The bylaws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication. Any voting conducted by telephone or other means of telecommunication or electronic communication is subject to the same quorum requirements of meetings where members are present in person.
4. The interstate commission's bylaws must establish conditions and procedures under which the interstate commission makes its information and official records available to the public for inspection or copying. The interstate commission may exempt from disclosure any information or official records to the extent the information or records would adversely affect personal privacy rights or proprietary interests. In adopting rules, the interstate commission may make available to law enforcement agencies records and information otherwise exempt from disclosure and may enter into agreements with law enforcement agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.
5. Public notice must be given of all meetings and all meetings must be open to the public, except as set forth in the rules or as otherwise provided in the compact. The interstate commission shall adopt rules consistent with the principles contained in the Government in the Sunshine Act [Pub. L. 104-231; 110 Stat. 3049; 5 U.S.C. 552]. The interstate commission and any of its committees may close a meeting to the public when the interstate commission determines by two-thirds vote that an open meeting would be likely to:

- a. Relate solely to the interstate commission's internal personnel practices and procedures;
  - b. Disclose matters specifically exempted from disclosure by statute;
  - c. Disclose trade secrets or commercial or financial information that is privileged or confidential;
  - d. Involve accusing any person of a crime or formally censuring any person;
  - e. Disclose information of a personal nature when the disclosure would constitute a clearly unwarranted invasion of personal privacy;
  - f. Disclose investigatory records compiled for law enforcement purposes;
  - g. Disclose information contained in or related to examination, operating, or condition reports prepared by, or on behalf of or for the use of, the interstate commission with respect to a regulated entity for the purpose of regulation or supervision of the entity;
  - h. Disclose information when the premature disclosure would significantly endanger the life of a person or the stability of a regulated entity; or
  - i. Specifically relate to the interstate commission's issuance of a subpoena or its participation in a civil action or proceeding.
6. For every meeting closed pursuant to subsection 5, the interstate commission's chief legal officer shall publicly certify that, in the officer's opinion, the meeting may be closed to the public and shall make reference to each relevant provision authorizing closure of the meeting. The interstate commission shall keep minutes that fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any action taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll call vote. All documents considered in connection with any action must be identified in the minutes.
  7. The interstate commission shall collect standardized data concerning the interstate movement of offenders as directed through its bylaws and rules that specify the data to be collected, the means of collection and data exchange, and reporting requirements.

#### **ARTICLE VIII - RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION**

1. The interstate commission shall adopt rules in order to effectively and efficiently achieve the purposes of the compact, including transition rules governing administration of the compact during the period in which it is being considered and enacted by the states.
2. Rulemaking must occur pursuant to the criteria set forth in this article and the bylaws and rules adopted pursuant to this article. The rulemaking must substantially conform to the principles of the Federal Administrative Procedure Act [Pub. L. 103-272; 108 Stat. 1373; 5 U.S.C. 551 et seq.] and the Federal Advisory Committee Act [5 U.S.C. Appendix 2, section 1 et seq.]. All rules and amendments become binding as of the date specified in each rule or amendment.
3. If a majority of the legislatures of the compacting states reject a rule, by enactment of a statute or adoption of a resolution in the same manner used to adopt the compact, the rule has no further force and effect in any compacting state.
4. When adopting a rule, the interstate commission shall:
  - a. Publish the proposed rule, stating with particularity the text of the rule that is proposed and the reason for the proposed rule;
  - b. Allow persons to submit written data, facts, opinions, and arguments, which information must be publicly available;
  - c. Provide an opportunity for an informal hearing; and
  - d. Adopt a final rule and its effective date, if appropriate, based on the rulemaking record. Not later than sixty days after a rule is adopted, any interested person may file a petition in the United States district court for the District of Columbia or in the federal district court where the interstate commission's principal office is located for judicial review of the rule. If the court finds that the interstate commission's action is not supported by substantial evidence in the rulemaking record, the court shall hold the rule unlawful and set it aside. For purposes of this

- subdivision, evidence is substantial if it would be considered substantial evidence under the Federal Administrative Procedure Act [Pub. L. 103-272; 108 Stat. 1373; 5 U.S.C. 551 et seq.] and the Federal Advisory Committee Act [5 U.S.C. Appendix 2, section 1 et seq.].
5. Rules related to the following subjects must be addressed within twelve months after the first meeting of the interstate commission:
    - a. Notice to victims and opportunity to be heard;
    - b. Offender registration and compliance;
    - c. Violations and returns;
    - d. Transfer procedures and forms;
    - e. Eligibility for transfer;
    - f. Collection of restitution and fees from offenders;
    - g. Data collection and reporting;
    - h. Level of supervision to be provided by the receiving state;
      - i. Transition rules governing the operation of the compact and the interstate commission during the period between the effective date of the compact and the date on which the last eligible state adopts the compact; and
    - j. Mediation, arbitration, and dispute resolution.
  6. The existing rules governing the operation of the previous compact superseded by this compact are void twelve months after the first meeting of the interstate commission created under this compact.
  7. Upon determination by the interstate commission that an emergency exists, the interstate commission may adopt an emergency rule that becomes effective immediately upon adoption, provided that the usual rulemaking procedures provided in this article are retroactively applied to the rule as soon as reasonably possible, but no later than ninety days after the effective date of the rule.

#### **ARTICLE IX - OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION BY THE INTERSTATE COMMISSION**

1. a. The interstate commission shall oversee the interstate movement of adult offenders in the compacting states and shall monitor those activities being administered in noncompacting states which may significantly affect compacting states.
  - b. The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact which may affect the powers, responsibilities, or actions of the interstate commission, the interstate commission is entitled to receive all service of process in any such proceeding and has standing to intervene in the proceeding for all purposes.
2. a. The compacting states shall report to the interstate commission on issues or activities of concern to them and cooperate with and support the interstate commission in the discharge of its duties and responsibilities.
  - b. The interstate commission shall attempt to resolve any dispute or other issues that are subject to the compact and which may arise among compacting states and noncompacting states. The interstate commission shall adopt a bylaw or rule providing for both mediation and binding dispute resolution for disputes among the compacting states.
3. The interstate commission, in the reasonable exercise of its discretion, shall enforce this compact using any or all means set forth in subsection 2 of article 12 of this compact.

#### **ARTICLE X - FINANCE**

1. The interstate commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.
2. The interstate commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the interstate commission and its staff, which must be in a total amount sufficient to cover

the interstate commission's annual budget as approved each year. The aggregate annual assessment amount must be allocated based upon a formula to be determined by the interstate commission, taking into consideration the population of the state and the volume of interstate movement of offenders in each compacting state. The interstate commission shall adopt a rule binding upon all compacting states which governs the assessment.

3. The interstate commission may not incur any obligation of any kind before securing the funds adequate to meet the obligation, nor may the interstate commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.
4. The interstate commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the interstate commission are subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the interstate commission must be audited yearly by a certified or licensed public accountant and the report of the audit must be included in and become part of the annual report of the interstate commission.
5.
  - a. The interstate compact for adult offender supervision fund is established as a special fund in the state treasury. The fund consists of moneys appropriated for the purpose of meeting financial obligations imposed on the state as a result of the state's participation in this compact.
  - b. An assessment levied or any other financial obligation imposed under this compact is effective against the state only to the extent that moneys to pay the assessment or meet the financial obligation have been appropriated and deposited in the fund established in subdivision a.

#### **ARTICLE XI - COMPACTING STATES, EFFECTIVE DATE, AND AMENDMENT**

1. Any state is eligible to become a compacting state.
2. The compact becomes effective and binding upon legislative enactment of the compact into law by thirty-five or more states. The initial effective date is the later of August 1, 2001, or upon enactment into law by the thirty-fifth state. Thereafter, the compact becomes effective and binding, as to any other compacting state, upon enactment of the compact into law by that state. The governors of noncompacting states or their designees may be invited to participate in interstate commission activities on a nonvoting basis before adoption of the compact by all states.
3. Amendments to the compact may be proposed by the interstate commission for enactment by the compacting states. No amendment becomes effective and binding upon the interstate commission and the compacting states until it is enacted into law by unanimous consent of the compacting states.

#### **ARTICLE XII - WITHDRAWAL, DEFAULT, TERMINATION, AND JUDICIAL ENFORCEMENT**

1.
  - a. Once effective, the compact continues in force and remains binding upon every compacting state, but a compacting state may withdraw from the compact by repealing the statute resolution that enacted the compact into law. The effective date of withdrawal is the effective date of the repeal.
  - b. The withdrawing state shall notify the chairman of the interstate commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The interstate commission shall notify the other compacting states of the withdrawing state's intent to withdraw within sixty days of receipt of the notice.
  - c. The withdrawing state is responsible for all assessments, obligations, and liabilities of that state incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.
  - d. Reinstate ment following withdrawal of any compacting state occurs upon the withdrawing state re-enacting the compact or upon a later date as determined by the interstate commission.
2.
  - a. If the interstate commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under this

compact or the bylaws or rules of the interstate commission, the interstate commission may impose any one or more of the following penalties:

- (1) Fines, fees, and costs in amounts as are deemed to be reasonable as fixed by the interstate commission.
  - (2) Remedial training and technical assistance as directed by the interstate commission.
  - (3) Suspension and termination of membership in the compact. Suspension may be imposed only after all other reasonable means of securing compliance under the bylaws and rules have been exhausted. Immediate notice of suspension must be given by the interstate commission to the governor, the chief justice, or chief judicial officer of the defaulting state, the majority and minority leaders of the defaulting state's legislative assembly, and the state council.
- b. The grounds for default include failure of a compacting state to perform obligations or responsibilities imposed upon it by this compact or the interstate commission bylaws or rules. The interstate commission shall immediately notify the defaulting state in writing of the penalty imposed by the interstate commission on the defaulting state pending a cure of the default. The interstate commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the interstate commission, in addition to any other penalties imposed, the defaulting state may be terminated from the compact upon an affirmative vote of a majority of the compacting states and all rights, privileges, and benefits conferred by this compact must be terminated from the effective date of suspension. Within sixty days of the effective date of termination of a defaulting state, the interstate commission shall notify the governor, the chief justice, or chief judicial officer of the defaulting state, the majority and minority leaders of the defaulting state's legislative assembly, and the state council of the termination.
- c. The defaulting state is responsible for all assessments, obligations, and liabilities of that state incurred through the effective date of termination, including any obligations, the performance of which extend beyond the effective date of termination.
- d. The interstate commission does not bear any costs relating to the defaulting state unless otherwise mutually agreed upon between the interstate commission and the defaulting state. Reinstatement following termination of any compacting state requires both a re-enactment of the compact by the defaulting state and the approval of the interstate commission pursuant to the rules.
3. The interstate commission, by majority vote of the members, may initiate legal action in the United States district court for the District of Columbia or, at the discretion of the interstate commission, in the federal district court where the interstate commission has its principal office to enforce compliance with the compact, its rules, or bylaws against any compacting state in default. In the event judicial enforcement is necessary, the prevailing party must be awarded all costs of the litigation, including reasonable attorney's fees.
  4.
    - a. The compact dissolves effective upon the date of the withdrawal or default of the compacting state which reduces membership in the compact to one compacting state.
    - b. Upon the dissolution of this compact, the compact becomes void and the business and affairs of the interstate commission must be concluded and any surplus funds must be distributed in accordance with the bylaws.

#### **ARTICLE XIII - BINDING EFFECT OF COMPACT AND OTHER LAWS**

1.
  - a. This compact does not prevent the enforcement of any other law of a compacting state which is consistent with this compact.
  - b. The laws of the state, other than the Constitution of North Dakota, which conflict with this compact are superseded to the extent of the conflict.

2.
  - a. All lawful actions of the interstate commission, including all rules and bylaws adopted by the interstate commission, are binding upon the state unless contrary to the Constitution of North Dakota.
  - b. All agreements between the interstate commission and the compacting states are binding in accordance with their terms.
  - c. Upon the request of a party to a conflict over meaning or interpretation of interstate commission actions, and upon a majority vote of the compacting states, the interstate commission may issue advisory opinions regarding the meaning or interpretation.
  - d. In the event any provision of this compact exceeds the constitutional limits imposed on the legislative assembly of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by the provision upon the interstate commission are ineffective and the obligations, duties, powers, or jurisdiction remain in the compacting state and must be exercised by the agency to which the obligations, duties, powers, or jurisdiction are delegated by law in effect at the time this compact becomes effective.
3. The state is bound by the bylaws and rules adopted under this compact only to the extent that the operation of the bylaws and rules does not impose an obligation exceeding any limitation on state power or authority contained in the Constitution of North Dakota as interpreted by the courts of this state.

**12-65-02. Custody and detention of offender for violation of terms and conditions of compact supervision - Hearing and waiver - Report to sending state.**

1. Whenever it is alleged that an offender under compact supervision by the state has violated any terms and conditions of supervision under the compact for the supervision of adult offenders, the compact administrator may issue a warrant to take the offender into custody and detain the offender and request that the sending state retake the offender. The warrant must be entered into the national crime information center file with nationwide extradition and no bond amount. If there is probable cause to believe an offender has violated any of the terms or conditions of supervision under the compact for the supervision of adult offenders, a parole and probation officer or any peace officer directed by a parole and probation officer shall take the offender into custody and detain the offender in a correctional facility pending application for a warrant of arrest and authority to detain. The offender may not be released on bail pending the probable cause hearing under this chapter. The offender is entitled to a hearing to be held in accordance with this chapter within a reasonable time after being taken into custody to determine whether there is probable cause to find that the offender violated any of the terms and conditions of parole or probation while under compact supervision. The offender may waive the hearing and admit there is probable cause to find that the offender violated any of the terms and conditions of parole or probation while under compact supervision. As soon as practical after the hearing or waiver of the hearing, the compact administrator shall furnish a copy of the hearing record and make a report to the sending state with findings of fact regarding the violations of the terms and conditions of parole or probation while under compact supervision and shall make recommendations regarding the disposition of the offender. If it appears to the compact administrator that the sending state will retake the offender, the compact administrator may detain the offender for a reasonable period after the hearing or waiver in order for the sending state to arrange for retaking the offender.
2. Whenever a receiving state that is supervising an offender for the state issues a mandatory retaking of that offender, the parole board or the court with jurisdiction shall issue a warrant. The warrant must be entered into the national crime information center file with nationwide extradition and no bond amount. If requested by the state, the receiving state shall establish probable cause when the offender is apprehended.

### **12-65-03. Waiver of extradition.**

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

### **12-65-04. Who may hold a hearing.**

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

### **12-65-05. Conduct of hearing.**

The offender is entitled to:

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

### **12-65-06. Force and effect of hearings in other states.**

In a case of alleged parole or probation violation by an offender being supervised in another state pursuant to the interstate compact for the supervision of adult offenders, any appropriate judicial or administrative officer or agency in another state is authorized to hold a hearing on the alleged violation. Upon receipt of the record of a parole or probation violation hearing held in another state pursuant to a statute substantially similar to this chapter, the record has the same standing and effect as though the proceeding of which it is a record was had before the appropriate officer or officers in this state, and any recommendations contained in or accompanying the record must be fully considered by the appropriate officer or officers of this state in making disposition of the matter.

### **12-65-07. Violation of compact - Penalty.**

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

This defense is not available to a person who remains present in this state after being notified in writing by the compact administrator that the offender does not have permission to be present.

**12-65-08. Interstate transfer or travel of probationers and parolees - Fees.**

1. Upon the approval by the department of corrections and rehabilitation of a request of a probationer or parolee who is under the supervision of the department of corrections and rehabilitation to transfer residence to another state under the interstate compact for adult offender supervision, the probationer or parolee shall pay to the department an application fee of one hundred fifty dollars. The department may waive the offender's application fee. In addition to the application fee paid by the probationer, the county having jurisdiction over the probationer, upon approval of the application for transfer of that probationer, shall pay to the department a fee of one hundred fifty dollars. In addition to the application fee paid by the parolee, the department, upon approval of the application for transfer of that parolee, shall pay to the department a fee of one hundred fifty dollars. However, if the balance in the fund created pursuant to subsection 3 exceeds seventy-five thousand dollars on June thirtieth of the immediately preceding fiscal year, the department shall waive the entire fee otherwise required to be paid by the county or department.
2. Any probationer or parolee residing in the state who requests a travel permit to travel to another state shall pay to the department a travel permit fee of ten dollars, unless waived by the department.
3. The department shall transfer all funds collected or paid under this section to the state treasury for deposit in the probationer and parolee violation transportation fund. The funds deposited in this fund may be spent pursuant to legislative appropriation for the purpose of defraying the costs of returning to the state probationers and parolees who violate their conditions of supervision. The department may contract with a private entity to assist in the administration of the fund.
4. The department shall adopt rules for implementation of this section.