

**Fifty-eighth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 7, 2003**

SENATE BILL NO. 2147

(Judiciary Committee)

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

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

3. Notwithstanding any other provisions of law relating to privilege or confidentiality, except for the confidentiality requirements of federal drug and alcohol treatment and rehabilitation laws, the following persons, organizations, or agencies without prior application to the court may inspect case history, medical, psychological, or treatment records:
 - a. The governor;
 - b. The pardon advisory board, if the governor has appointed a pardon advisory board;
 - c. The parole board;
 - d. Any division, department, official, or employee of the department of corrections and rehabilitation;
 - e. Another state receiving a parolee or probationer under the provisions of chapter ~~12-56 or 12-56.1~~ 12-65;
 - f. A federal, state, regional, or county correctional facility receiving physical custody of a person under the legal custody of the department of corrections and rehabilitation;
 - g. The employees in the office of the attorney general and investigators, consultants, or experts retained by the state;
 - h. The risk management division of the office of management and budget for the purpose of investigating and defending actions or claims under chapter 32-12.2;
 - i. The district court of the county where the judgment of conviction was entered;
 - j. A state or federal court where a person in the custody or under the supervision and management of the adult services division of the department of corrections and rehabilitation has commenced litigation and the records are relevant to the litigation;
 - k. A criminal justice agency as defined in section 44-04-18.7; or

- I. The United States social security administration and veterans administration.

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

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

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

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

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

Custody and detention of offender for violation of terms and conditions of compact supervision - Hearing and waiver - Report to sending state. Whenever it is alleged that an offender has violated any terms and conditions of supervision under the compact for the supervision of adult offenders, the compact administrator may issue a warrant to take the offender into custody and detain the offender and request that the sending state retake the offender. If there is probable cause to believe an offender has violated any of the terms or conditions of supervision under the compact for the supervision of adult offenders, a parole and probation officer or any peace officer directed by a parole and probation officer may take the offender into custody and detain the offender in a correctional facility pending application for a warrant of arrest and authority to detain. The offender may not be released on bail pending the probable cause hearing under this chapter. The offender is entitled to a hearing to be held in accordance with this chapter within a reasonable time after being taken into custody to determine whether there is probable cause to find that the offender violated any of the terms and conditions of parole or probation while under compact supervision. The offender may waive the hearing and admit there is probable cause to find that the offender violated any of the terms and conditions of parole or probation while under compact supervision. As soon as practical after the hearing or waiver of the hearing, the compact administrator shall furnish a copy of the hearing record and make a report to the sending state with findings of fact regarding the violations of the terms and conditions of parole or probation while under compact supervision and shall make recommendations regarding the disposition of the offender. If it appears to the compact administrator that the sending state will retake the offender, the compact administrator may detain the offender for a reasonable period after the hearing or waiver in order for the sending state to arrange for retaking the offender.

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

from the state's attorney in the county in which the criminal offense is alleged to have occurred, the sending state may not retake the offender from this state until the offender has been discharged from prosecution or released from imprisonment for the criminal offense.

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

Conduct of hearing. The offender is entitled to:

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

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

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

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

1. Notwithstanding the authority granted in chapter 28-32 allowing agency heads or other persons to preside in an administrative proceeding, all adjudicative proceedings of administrative agencies under chapter 28-32, except those of the public service commission, the industrial commission, the insurance commissioner, the workers compensation bureau, the state engineer, the department of transportation, job service North Dakota, and the labor commissioner, must be conducted by the office of

administrative hearings in accordance with the adjudicative proceedings provisions of chapter 28-32 and any rules adopted pursuant to chapter 28-32. But, appeals hearings pursuant to section 61-03-22 and drainage appeals from water resource boards to the state engineer pursuant to chapter 61-32 must be conducted by the office of administrative hearings. Additionally, hearings of the department of corrections and rehabilitation for the parole board in accordance with ~~chapters 12-56.1 and~~ chapter 12-59, regarding parole violations; job discipline and dismissal appeals to the board of higher education; Individuals With Disabilities Education Act and section 504 due process hearings of the superintendent of public instruction; and chapter 37-19.1 veterans' preferences hearings for any agency must be conducted by the office of administrative hearings in accordance with applicable laws.

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

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-eighth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2147.

Senate Vote: Yeas 47 Nays 0 Absent 0

House Vote: Yeas 74 Nays 0 Absent 20

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2003.

Approved at _____ M. on _____, 2003.

Governor

Filed in this office this _____ day of _____, 2003,

at _____ o'clock _____ M.

Secretary of State