

CRIMINAL CODE

CHAPTER 130

HOUSE BILL NO. 1453

(Representative Disrud)

(Senator Fischer)

PUBLIC DUTY AND PROBATION CONDITIONS

AN ACT to create and enact a new subsection to section 12.1-05-02 and a new subsection to section 12.1-32-07 of the North Dakota Century Code, relating to execution of public duty and conditions of probation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 12.1-05-02 of the North Dakota Century Code is created and enacted as follows:

Conduct engaged in by an individual at the direction of a public servant, known by that individual to be a law enforcement officer, to assist in the investigation of a criminal offense is justified unless the individual knows or has a firm belief, unaccompanied by substantial doubt, that the conduct is not within the law enforcement officer's official duties or authority. For purposes of this subsection, conduct "not within the law enforcement officer's official duties or authority" is conduct in which the law enforcement officer alone could not lawfully engage in that officer's official capacity. When practicable, permission must be obtained from a parent or guardian of a minor who is under the age of eighteen years and is neither married nor in the military service of the United States before the minor may engage in conduct, other than the providing of information, to assist in a criminal investigation under the direct supervision of a public servant.

⁵⁵ **SECTION 2.** A new subsection to section 12.1-32-07 of the 1999 Supplement to the North Dakota Century Code is created and enacted as follows:

Notwithstanding any other provision of law, the court may authorize the defendant to assist law enforcement officers in an investigation of a criminal offense upon the terms and conditions as the court may require by written order. The court shall hold a hearing in camera before issuing an order under this subsection. The order must be sealed and is subject to inspection only upon order of the court.

Approved March 21, 2001
Filed March 21, 2001

⁵⁵ Section 12.1-32-07 was also amended by section 3 of House Bill No. 1363, chapter 133, and section 1 of Senate Bill No. 2135, chapter 139.

CHAPTER 131

HOUSE BILL NO. 1092

(Judiciary Committee)

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

ESCAPES

AN ACT to create and enact a new subsection to section 12.1-08-06 of the North Dakota Century Code, relating to escapes and jurisdiction over escapes; to amend and reenact subsection 1 of section 12.1-08-06 of the North Dakota Century Code, relating to escapes; to repeal sections 29-03-15 and 29-03-16 of the North Dakota Century Code, relating to escapes; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 12.1-08-06 of the North Dakota Century Code is created and enacted as follows:

The jurisdiction of a violation of this section when the person is in the legal custody of a warden of the penitentiary, the department of corrections and rehabilitation, or other lawful authority is in the county where the violation occurred if the violation occurred within this state, and is in Burleigh County or in the county in which the order committing the person to official detention was entered if the violation occurred outside this state.

SECTION 2. AMENDMENT. Subsection 1 of section 12.1-08-06 of the North Dakota Century Code is amended and reenacted as follows:

1. A person is guilty of escape if, without lawful authority, the person removes or attempts to remove himself from official detention or fails to return to official detention following temporary leave granted for a specified purpose or limited period. A person who is subject to official detention under this section is guilty of escape, if while outside the state of North Dakota and without lawful authority, the person removes or attempts to remove himself from official detention, or fails to return to official detention following temporary leave granted for a specified purpose or limited period, when at the time the person is in the legal custody of a warden of the penitentiary, department of corrections and rehabilitation, or other competent authority by virtue of a lawful commitment to official detention.

SECTION 3. REPEAL. Sections 29-03-15 and 29-03-16 of the North Dakota Century Code are repealed.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.

Approved February 16, 2001
Filed February 16, 2001

CHAPTER 132

SENATE BILL NO. 2426

(Senators Trenbeath, Lyson, Traynor)
(Representatives Klemin, Kretschmar, Mahoney)

JUROR HARASSMENT AND COMMUNICATIONS

AN ACT to amend and reenact section 12.1-09-04 of the North Dakota Century Code, relating to harassment of and communication with jurors; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-09-04 of the North Dakota Century Code is amended and reenacted as follows:

12.1-09-04. Harassment of and communication with jurors.

1. A person is guilty of a class A misdemeanor if, with intent to influence the official action of another as juror, ~~he that person~~ communicates directly or indirectly with him orally or by means of a sound broadcasting or transmitting device the juror, other than as part of the proceedings in a case, or harasses or alarms ~~him~~ the juror. A person is guilty of a class A misdemeanor if, with the intent to harass or annoy a former juror because of the verdict returned by the jury or the participation of the juror in the verdict, that person communicates directly or indirectly with the juror in a manner that intimidates the juror or conveys a threat of injury or damage to the juror's property or person. Conduct directed against the juror's spouse or other relative residing in the same household with the juror shall be deemed conduct directed against the juror.
2. In this section, "juror" means a grand juror or a petit juror and includes a person who has been drawn or summoned to attend as a prospective juror, and any referee, arbitrator, umpire, or assessor authorized by law to hear and determine any controversy.

Approved March 28, 2001

Filed March 28, 2001

CHAPTER 133

HOUSE BILL NO. 1363

(Representatives Delmore, Carlisle, Mahoney)
(Senators Lyson, C. Nelson)

ASSAULT IN DOMESTIC VIOLENCE CASES

AN ACT to create and enact a new subsection to section 12.1-17-01 of the North Dakota Century Code, relating to a mandatory assessment process for simple assault in domestic violence cases; to amend and reenact subsection 2 of section 12.1-17-01 and subsection 1 of section 12.1-32-07 of the North Dakota Century Code, relating to the penalty for assault in a domestic violence case and supervision of probation; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 12.1-17-01 of the North Dakota Century Code is amended and reenacted as follows:

2. ~~Simple assault is a class B misdemeanor except~~ The offense is:
 - a. ~~A class C felony~~ when the victim is a peace officer or correctional institution employee acting in an official capacity, which the actor knows to be a fact, a person engaged in a judicial proceeding, or a member of a municipal or volunteer fire department or emergency medical services personnel unit or emergency department worker in the performance of the member's duties; ~~in which case the offense is a class C felony.~~
 - b. A class B misdemeanor for the first offense when the victim is an actor's family or household member as defined in subsection 4 of section 14-07.1-01 and a class A misdemeanor for a second or subsequent offense when the victim is an actor's family or household member as defined in subsection 4 of section 14-07.1-01 and the actor has a prior conviction for simple assault involving the commission of domestic violence as defined in subsection 2 of section 14-07.1-01. For purposes of this subdivision, a prior conviction includes a conviction of simple assault in which a finding of domestic violence was made under a law or ordinance of another state which is equivalent to this subdivision.
 - c. A class B misdemeanor except as provided in subdivision a or b.

SECTION 2. A new subsection to section 12.1-17-01 of the North Dakota Century Code is created and enacted as follows:

The sentence for an offense against an actor's family or household member as defined in subsection 4 of section 14-07.1-01 must include an order to complete a domestic violence offender treatment program, unless the court makes written findings for the record explaining why such a sentence would be inappropriate.

⁵⁶ **SECTION 3. AMENDMENT.** Subsection 1 of section 12.1-32-07 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. When the court imposes probation upon conviction for a felony, the court shall place the defendant under the supervision and management of the department of corrections and rehabilitation. In class A misdemeanor cases, except for a violation of subdivision b of subsection 2 of section 12.1-17-01, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation or other responsible party. In all other cases, the court may place the defendant under the supervision and management of a community corrections program other than the department of corrections and rehabilitation. If an appropriate community corrections program is not reasonably available, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation. The department of corrections and rehabilitation may arrange for the supervision and management of the defendant by a community corrections program selected by the department of corrections and rehabilitation. A community corrections program means a program for the supervision of a defendant, including monitoring and enforcement of terms and conditions of probation set by the court or pursuant to a conditional release from the physical custody of a correctional facility or the department of corrections and rehabilitation.

Approved April 13, 2001
Filed April 13, 2001

⁵⁶ Section 12.1-32-07 was also amended by section 2 of House Bill No. 1453, chapter 130, and section 1 of Senate Bill No. 2135, chapter 139.

CHAPTER 134

SENATE BILL NO. 2035

(Legislative Council)
(Criminal Justice Committee)

SEX CRIMES

AN ACT to create and enact sections 12.1-20-05.1 and 12.1-20-12.2 and a new section to chapter 29-04 of the North Dakota Century Code, relating to sexual offenses, the luring of minors by computer, and a statute of limitations for gross sexual imposition; to amend and reenact subsection 4 of section 12.1-20-02, sections 12.1-20-04, 12.1-20-05, 12.1-20-12.1, subsection 1 of section 12.1-31-01, subdivision e of subsection 1 of section 12.1-32-15, and subdivision c of subsection 5 of section 15-36-15.1 of the North Dakota Century Code, relating to sexual offenses and disorderly conduct; to repeal section 12.1-22-03.1 of the North Dakota Century Code, relating to surreptitious intrusion; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 12.1-20-02 of the North Dakota Century Code is amended and reenacted as follows:

4. "Sexual contact" means any touching, whether or not through the clothing or other covering, of the sexual or other intimate parts of the person, or the penile ejaculation or ejaculate or emission of urine or feces upon any part of the person, for the purpose of arousing or satisfying sexual or aggressive desires.

SECTION 2. AMENDMENT. Section 12.1-20-04 of the North Dakota Century Code is amended and reenacted as follows:

12.1-20-04. Sexual imposition.

4. A person who engages in a sexual act or sexual contact with another, or who causes another to engage in a sexual act or sexual contact, is guilty of ~~an offense~~ a class B felony if the actor ~~compels~~:
 1. Compels the other person to submit by any threat that would render a person of reasonable firmness incapable of resisting; or
 2. ~~The offense is a class C felony unless the victim is a minor, fifteen years of age or older, in which case it is a class B felony.~~ Engages in a sexual act or sexual contact with another, whether consensual or not, as part of an induction, initiation, ceremony, pledge, hazing, or qualification to become a member or an associate of any criminal street gang as defined in section 12.1-06.2-01.

SECTION 3. AMENDMENT. Section 12.1-20-05 of the North Dakota Century Code is amended and reenacted as follows:

12.1-20-05. Corruption or solicitation of minors.

1. An adult who engages in, solicits with the intent to engage in, or causes another to engage in a sexual act with another person or who causes another person to engage in a sexual act a minor, is guilty of a class A misdemeanor if the ~~other person~~ victim is a minor fifteen years of age or older, ~~or is guilty of a class C felony if the adult is at least twenty-two years of age and the other person is a minor fifteen years of age or older.~~
2. An adult who solicits a ~~person under the age of fifteen years~~ with the intent to engage in a sexual act or sexual contact with a minor under age fifteen or engages in or causes another to engage in a sexual act when the adult is at least twenty-two years of age and the victim is a minor fifteen years of age or older, is guilty of a class A ~~misdemeanor~~ C felony.

SECTION 4. Section 12.1-20-05.1 of the North Dakota Century Code is created and enacted as follows:

12.1-20-05.1. Luring minors by computer. An adult is guilty of luring minors by computer when:

1. The adult knows the character and content of a communication that, in whole or in part, implicitly or explicitly discusses or depicts actual or simulated nudity, sexual acts, sexual contact, sadomasochistic abuse, or other sexual performances and uses any computer communication system that allows the input, output, examination, or transfer of computer data or computer programs from one computer to another to initiate or engage in such communication with a person the adult believes to be a minor; and
2. By means of that communication the adult importunes, invites, or induces a person the adult believes to be a minor to engage in sexual acts or to have sexual contact with the adult, or to engage in a sexual performance, obscene sexual performance, or sexual conduct for the adult's benefit, satisfaction, lust, passions, or sexual desires.
3. A violation of this section is a class A misdemeanor, but if the adult is twenty-two years of age or older or the adult reasonably believes the minor is under the age of fifteen, violation of this section is a class C felony.

SECTION 5. AMENDMENT. Section 12.1-20-12.1 of the North Dakota Century Code is amended and reenacted as follows:

12.1-20-12.1. Indecent exposure.

1. A person shall be guilty of a class B misdemeanor for, with intent to arouse, appeal to, or gratify that person's lust, passions, or sexual desires, is guilty of a class A misdemeanor if that person:
4. ~~Knowingly exposing one's penis, vulva, or anus in a public place with the intent to annoy or harass another person.~~

2- Masturbating

- a. Masturbates in a public place; or
- b. Exposes one's penis, vulva, or anus in a public place.

2. A person is guilty of a class C felony if the person violates subsection 1 after a previous conviction for violating subsection 1, after a previous conviction for violating section 12.1-20-12.2, or after being required to register under section 12.1-32-15.

SECTION 6. Section 12.1-20-12.2 of the North Dakota Century Code is created and enacted as follows:

12.1-20-12.2. Surreptitious intrusion.

1. An individual, with the intent to arouse, appeal to, or gratify that individual's lust, passions, or sexual desires, is guilty of a class A misdemeanor if that individual does any of the following:

- a. With intent to intrude upon or interfere with the privacy of another, enters upon another's property and surreptitiously gazes, stares, or peeps in the window or any other aperture of a house or place of dwelling of another.
- b. With intent to intrude upon or interfere with the privacy of another, enters upon another's property and surreptitiously installs or uses any device for observing, photographing, recording, amplifying, or broadcasting sounds or events through the window or any other aperture of a house or place of dwelling of another.
- c. With intent to intrude upon or interfere with the privacy of the occupant, surreptitiously gazes, stares, or peeps in the window or other aperture of a tanning booth, a sleeping room in a hotel, or other place where a reasonable individual would have an expectation of privacy and has exposed or is likely to expose that individual's intimate parts or has removed the clothing covering the immediate area of the intimate parts.
- d. With intent to intrude upon or interfere with the privacy of the occupant, surreptitiously installs or uses any device for observing, photographing, recording, amplifying, or broadcasting sounds or events through the window or other aperture of a tanning booth, a sleeping room in a hotel, or other place where a reasonable individual would have an expectation of privacy and has exposed or is likely to expose that individual's intimate parts or has removed the clothing covering the immediate area of the intimate parts.

2. A person is guilty of a class C felony if the person violates subsection 1 after a previous conviction for violating subsection 1, after a previous conviction for violating section 12.1-20-12.1, or after being required to register under section 12.1-32-15.

SECTION 7. AMENDMENT. Subsection 1 of section 12.1-31-01 of the North Dakota Century Code is amended and reenacted as follows:

1. An individual is guilty of a class B misdemeanor if, with intent to harass, annoy, or alarm another person or in reckless disregard of the fact that another person is harassed, annoyed, or alarmed by the individual's behavior, the individual:
 - a. Engages in fighting, or in violent, tumultuous, or threatening behavior;
 - b. Makes unreasonable noise;
 - c. In a public place, uses abusive or obscene language, knowingly exposes that individual's penis, vulva, or anus, or makes an obscene gesture;
 - d. Obstructs vehicular or pedestrian traffic, or the use of a public facility;
 - e. Persistently follows a person in or about a public place or places;
 - f. While loitering in a public place for the purpose of soliciting sexual contact, the individual solicits the contact;
 - g. Creates a hazardous, physically offensive, or seriously alarming condition by any act that serves no legitimate purpose; or
 - h. Engages in harassing conduct by means of intrusive or unwanted acts, words, or gestures that are intended to adversely affect the safety, security, or privacy of another person.

⁵⁷ **SECTION 8. AMENDMENT.** Subdivision e of subsection 1 of section 12.1-32-15 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- e. "Sexual offender" means a person who has pled guilty to or been found guilty of a violation of section 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-05.1, 12.1-20-06, 12.1-20-07, 12.1-20-11, 12.1-20-12.1, or 12.1-20-12.2, chapter 12.1-27.2, or subsection 2 of section 12.1-22-03.1, or an equivalent ordinance, or an attempt to commit these offenses.

SECTION 9. AMENDMENT. Subdivision c of subsection 5 of section 15-36-15.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- c. "Sexual offense" means a violation of section 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-06, 12.1-20-07, 12.1-20-11, or ~~12.1-22-03.1~~ 12.1-20-12.2, or chapter 12.1-27.2, or an equivalent ordinance.

⁵⁷ Section 12.1-32-15 was also amended by section 1 of Senate Bill No. 2446, chapter 140.

SECTION 10. A new section to chapter 29-04 of the North Dakota Century Code is created and enacted as follows:

Prosecution for gross sexual imposition. Except as otherwise provided by law, a prosecution for a violation of subdivision a of subsection 1 of section 12.1-20-03 must be commenced in the proper court within seven years after the commission of the offense.

SECTION 11. REPEAL. Section 12.1-22-03.1 of the North Dakota Century Code is repealed.

Approved March 12, 2001

Filed March 12, 2001

CHAPTER 135

SENATE BILL NO. 2254

(Senators Lyson, Cook, Watne)
(Representatives Carlisle, Porter)

SEXUAL ABUSE AND ASSAULT

AN ACT to amend and reenact sections 12.1-20-06 and 12.1-20-07 of the North Dakota Century Code, relating to sexual abuse of wards and sexual assault; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-20-06 of the North Dakota Century Code is amended and reenacted as follows:

12.1-20-06. Sexual abuse of wards. A person who engages in a sexual act with another person, or any person who causes another to engage in a sexual act is guilty of a class ~~A misdemeanor~~ C felony if the other person is in official custody or detained in a hospital, prison, or other institution and the actor has supervisory or disciplinary authority over the other person.

SECTION 2. AMENDMENT. Section 12.1-20-07 of the North Dakota Century Code is amended and reenacted as follows:

12.1-20-07. Sexual assault.

1. A person who knowingly has sexual contact with another person, or who causes another person to have sexual contact with that person, is guilty of an offense if:
 - a. That person knows or has reasonable cause to believe that the contact is offensive to the other person;
 - b. That person knows or has reasonable cause to believe that the other person suffers from a mental disease or defect which renders that other person incapable of understanding the nature of that other person's conduct;
 - c. That person or someone with that person's knowledge has substantially impaired the victim's power to appraise or control the victim's conduct, by administering or employing without the victim's knowledge intoxicants, a controlled substance as defined in chapter 19-03.1, or other means for the purpose of preventing resistance;
 - d. The other person is in official custody or detained in a hospital, prison, or other institution and the actor has supervisory or disciplinary authority over that other person;
 - e. The other person is a minor, fifteen years of age or older, and the actor is the other person's parent, guardian, or is otherwise

responsible for general supervision of the other person's welfare;
or

- f. The other person is a minor, fifteen years of age or older, and the actor is an adult.
2. The offense is a class C felony if the actor's conduct violates subdivision b, c, d, or e of subsection 1, or subdivision f of subsection 1 if the adult is at least twenty-two years of age, a class A misdemeanor if the actor's conduct violates ~~subdivision d of subsection 4 or~~ subdivision f of subsection 1 if the adult is at least eighteen years of age and not twenty-two years of age or older, or a class B misdemeanor if the actor's conduct violates subdivision a of subsection 1.

Approved March 22, 2001

Filed March 22, 2001

CHAPTER 136

SENATE BILL NO. 2116

(Judiciary Committee)
(At the request of the Attorney General)

TOBACCO SALE TO MINORS

AN ACT to amend and reenact section 12.1-31-03 and subsection 17 of section 27-20-02 of the North Dakota Century Code, relating to the sale of tobacco to minors; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-31-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12.1-31-03. Sale of tobacco to minors and use by minors prohibited.

1. It is an infraction for any person to sell or furnish to a minor, or procure for a minor, cigarettes, cigarette papers, cigars, snuff, or tobacco in any other form in which it may be utilized for smoking or chewing. As used in this subsection, "sell" includes dispensing from a vending machine under the control of the actor.
2. It is ~~an infraction~~ a noncriminal offense for a minor to purchase, possess, smoke, or use cigarettes, cigars, cigarette papers, snuff, or tobacco in any other form in which it may be utilized for smoking or chewing. However, an individual under eighteen years of age may purchase and possess tobacco as part of a compliance survey program when acting with the permission of the individual's parent or guardian and while acting under the supervision of any law enforcement authority. A state agency, city, county, board of health, tobacco retailer, or association of tobacco retailers may also conduct compliance surveys, after coordination with the appropriate local law enforcement authority.
3. A city or county may adopt an ordinance or resolution regarding the sale of tobacco to minors and use of tobacco by minors which ~~is more stringent than this section~~ includes prohibitions in addition to those in subsection 1 or 2. Any ordinance or resolution adopted which deems must include provisions deeming a violation of subsection 4 or 2 a noncriminal violation and must provide for a fee of not less than twenty-five dollars for a minor fourteen years of age or older who has been charged with an offense under subsection 2. The failure to post a required bond or pay an assessed fee by an individual found to have violated the ordinance or resolution is punishable as a contempt of court, except a minor may not be imprisoned for the contempt.
4. A minor fourteen years of age or older found to have violated subsection 2 must pay a fee of twenty-five dollars.
 - a. Any individual who has been cited for a violation ~~that is designated a noncriminal offense~~ of subsection 2 may appear before a court of

competent jurisdiction and pay the ~~statutory~~ fee by the time scheduled for a hearing, or if bond has been posted, may forfeit the bond by not appearing at the scheduled time. An individual appearing at the time scheduled in the citation may make a statement in explanation of that individual's action and the judge may waive, reduce, or suspend the ~~statutory~~ fee or bond, or both. If the individual cited follows the procedures of this subdivision, that individual has admitted the violation and has waived the right to a hearing on the issue of commission of the violation. The bond required to secure appearance before the court must be identical to the ~~statutory~~ fee. This subdivision does not allow a ~~hearing~~ citing officer to receive the ~~statutory~~ fee or bond.

- b. If an individual cited for a violation ~~that is designated a noncriminal offense of subsection 2~~ does not choose to follow ~~any procedure~~ the procedures provided under subdivision a, that individual may request a hearing on the issue of the commission of the violation ~~charged cited~~. The hearing must be held at the time scheduled in the citation or at some future time, not to exceed ninety days later, set at that first appearance. At the time of a request for a hearing on the issue on commission of the violation, the individual ~~charged cited~~ shall deposit with the court an appearance bond equal to the ~~statutory~~ fee for the violation ~~charged cited~~.
 - c. The failure to post bond or to pay an assessed fee is punishable as a contempt of court, except a minor may not be imprisoned for the contempt.
5. The ~~state~~ prosecution must prove the commission of a ~~charged cited~~ violation ~~at the hearing~~ under ~~this section~~ subsection 2 by a preponderance of the evidence.
 4. 6. A law enforcement officer ~~or juvenile court~~ that cites a minor for violation of this section shall mail a notice of the violation to the parent or legal guardian of the minor within ten days of the citation.
 7. A person adjudged guilty of contempt for failure to pay a fee or fine may be sentenced by the court to a sanction or order designed to ensure compliance with the payment of the fee or fine or to an alternative sentence or sanction including community service.

⁵⁸ **SECTION 2. AMENDMENT.** Subsection 17 of section 27-20-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

17. "Unruly child" means a child who:
 - a. Is habitually and without justification truant from school;

⁵⁸ Section 27-20-02 was also amended by section 9 of House Bill No. 1049, chapter 55, and section 1 of House Bill No. 1358, chapter 288.

- b. Is habitually disobedient of the reasonable and lawful commands of the child's parent, guardian, or other custodian and is ungovernable; or who is willfully in a situation dangerous or injurious to the health, safety, or morals of the child or others;
 - c. Has committed an offense applicable only to a child, except for an offense committed by a minor fourteen years of age or older under subsection 2 of section 12.1-31-03 or an equivalent local ordinance or resolution;
 - d. Has committed a noncriminal traffic offense without ever having been issued an operator's license or permit if one was required; ~~or~~
 - e. Has committed an offense in violation of section 39-08-18 or 5-01-08; ~~and~~ or
 - f. Is under the age of fourteen years and has purchased, possessed, smoked, or used tobacco or tobacco-related products in violation of subsection 2 of section 12.1-31-03; and
- f. g. In any of the foregoing instances is in need of treatment or rehabilitation.

Approved April 18, 2001
Filed April 18, 2001

CHAPTER 137

SENATE BILL NO. 2079

(Judiciary Committee)

(At the request of the Supreme Court)

TEMPORARY PROTECTION AND RESTRAINING ORDERS

AN ACT to amend and reenact subsections 4 and 7 of section 12.1-31.2-01 and subsection 3 of section 14-07.1-03 of the North Dakota Century Code, relating to temporary protection and disorderly conduct restraining orders.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 4 and 7 of section 12.1-31.2-01 of the North Dakota Century Code are amended and reenacted as follows:

4. If the petition for relief alleges reasonable grounds to believe that an individual has engaged in disorderly conduct, the court, pending a full hearing, may grant a temporary disorderly conduct restraining order ordering the individual to cease or avoid the disorderly conduct or to have no contact with the person requesting the order. A temporary restraining order may be entered only against the individual named in the petition. The court may issue the temporary restraining order without giving notice to the respondent. The Unless otherwise terminated by the court, the temporary restraining order is in effect for not more than thirty days, unless otherwise terminated by the court until a restraining order issued under subsection 5 is served.
7. A disorderly conduct restraining order must contain a conspicuous notice to the respondent providing:
 - a. The specific conduct that constitutes a violation of the order;
 - b. Notice that violation of the restraining order is punishable by imprisonment of up to one year or a fine of up to ~~one~~ two thousand dollars or both; and
 - c. Notice that a peace officer may arrest the respondent without a warrant and take the respondent into custody if the peace officer has probable cause to believe the respondent has violated an order issued under this section.

SECTION 2. AMENDMENT. Subsection 3 of section 14-07.1-03 of the North Dakota Century Code is amended and reenacted as follows:

3. ~~At~~ Unless otherwise terminated by the court, an ex parte temporary protection order remains in effect, in the court's discretion, for not more than thirty days, unless otherwise terminated by the court until an order issued under section 14-07.1-02 is served.

Approved March 14, 2001

Filed March 14, 2001

CHAPTER 138

SENATE BILL NO. 2118

(Judiciary Committee)
(At the request of the Attorney General)

SENTENCING ALTERNATIVES

AN ACT to amend and reenact subsection 9 of section 12.1-32-02 of the North Dakota Century Code, relating to sentencing alternatives.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 9 of section 12.1-32-02 of the North Dakota Century Code is amended and reenacted as follows:

9. A person who is convicted of a felony and sentenced to imprisonment for not more than one year is deemed to have been convicted of a misdemeanor ~~upon successful completion of the term of imprisonment and any term of probation imposed as part of the sentence.~~ However, if an order is entered revoking a probation imposed as a part of the sentence, the person is deemed to have been convicted of a felony. This subsection does not apply to a person convicted of violating subdivision a, b, or c of subsection 1 of section 19-03.1-23.

Approved April 13, 2001
Filed April 13, 2001

CHAPTER 139

SENATE BILL NO. 2135

(Judiciary Committee)

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

PROBATION COSTS AND FEES

AN ACT to amend and reenact section 12.1-32-07 and subsection 15 of section 54-23.3-04 of the North Dakota Century Code, relating to probation supervision costs and fees, powers and duties of the director of the department of corrections and rehabilitation, and civil collection of supervision costs and fees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁵⁹ **SECTION 1. AMENDMENT.** Section 12.1-32-07 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12.1-32-07. (Effective for fees collected before January 1, 2001, for offenses committed before July 1, 1999) Supervision of probationer - Conditions of probation - Revocation.

1. When the court imposes probation upon conviction for a felony, the court shall place the defendant under the supervision and management of the department of corrections and rehabilitation. In class A misdemeanor cases, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation or other responsible party. In all other cases, the court may place the defendant under the supervision and management of a community corrections program other than the department of corrections and rehabilitation. If an appropriate community corrections program is not reasonably available, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation. The department of corrections and rehabilitation may arrange for the supervision and management of the defendant by a community corrections program selected by the department of corrections and rehabilitation. A community corrections program means a program for the supervision of a defendant, including monitoring and enforcement of terms and conditions of probation set by the court or pursuant to a conditional release from the physical custody of a correctional facility or the department of corrections and rehabilitation.
2. The conditions of probation must be such as the court in its discretion deems reasonably necessary to ensure that the defendant will lead a law-abiding life or to assist the defendant to do so. The court shall provide as an explicit condition of every probation that the defendant not commit another offense during the period for which the probation

⁵⁹ Section 12.1-32-07 was also amended by section 3 of House Bill No. 1363, chapter 133, and section 2 of House Bill No. 1453, chapter 130.

remains subject to revocation. The court shall order supervision costs and fees of not less than thirty dollars per month unless the court makes a specific finding on record that the imposition of fees will result in an undue hardship. If the offender has not paid the full amount of supervision fees and costs before completion or termination of probation, the court may issue an order, after opportunity for hearing, to determine the amount of supervision fees and costs that are unpaid. The order may be filed, transcribed, and enforced by the department of corrections and rehabilitation in the same manner as civil judgments rendered by a district court of this state.

3. The court shall provide as an explicit condition of every probation that the defendant may not possess a firearm, destructive device, or other dangerous weapon while the defendant is on probation.

Unless waived on the record by the court, the court shall also provide as a condition of probation that the defendant undergo various agreed-to community constraints and conditions as intermediate measures of the department of corrections and rehabilitation to avoid revocation, which may include:

- a. Community service;
 - b. Day reporting;
 - c. Curfew;
 - d. Home confinement;
 - e. House arrest;
 - f. Electronic monitoring;
 - g. Residential halfway house; or
 - h. Intensive supervision program.
4. When imposing a sentence to probation, probation in conjunction with imprisonment, or probation in conjunction with suspended execution or deferred imposition of sentence, the court may impose such conditions as it deems appropriate, and may include any one or more of the following:
 - a. Work faithfully at a suitable employment or faithfully pursue a course of study or of vocational training that will equip the defendant for suitable employment.
 - b. Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose.
 - c. Attend or reside in a facility established for the instruction, recreation, or residence of persons on probation.
 - d. Support the defendant's dependents and meet other family responsibilities.

- e. Make restitution or reparation to the victim of the defendant's conduct for the damage or injury which was sustained, or perform other reasonable assigned work. When restitution, reparation, or assigned work is a condition of probation, the court shall proceed as provided in subsection 1 or 2, as applicable, of section 12.1-32-08.
 - f. Pay a fine imposed after consideration of the provisions of section 12.1-32-05, except when imposition of sentence is deferred.
 - g. Refrain from excessive use of alcohol, or any use of narcotics or of another dangerous or abusable drug without a prescription.
 - h. Permit the probation officer to visit the defendant at reasonable times at the defendant's home or elsewhere.
 - i. Remain within the jurisdiction of the court, unless granted permission to leave by the court or the probation officer.
 - j. Answer all reasonable inquiries by the probation officer and promptly notify the probation officer of any change in address or employment.
 - k. Report to a probation officer at reasonable times as directed by the court or the probation officer.
 - l. Submit to a medical examination or other reasonable testing for the purpose of determining the defendant's use of narcotics, marijuana, or other controlled substance whenever required by a probation officer.
 - m. Refrain from associating with known users or traffickers in narcotics, marijuana, or other controlled substances.
 - n. Submit the defendant's person, place of residence, or vehicle to search and seizure by a probation officer at any time of the day or night, with or without a search warrant.
 - o. Serve a term of imprisonment of up to one-half of the maximum term authorized for the offense of which the defendant was convicted or one year, whichever is less.
 - p. Reimburse the costs and expenses determined necessary for the defendant's adequate defense when counsel is appointed for the defendant. When reimbursement of indigent defense costs and expenses is imposed as a condition of probation, the court shall proceed as provided in subsection 3 of section 12.1-32-08.
 - q. Provide community service for the number of hours designated by the court.
 - r. Refrain from any subscription to, access to, or use of the internet.
5. When the court imposes a sentence to probation, probation in conjunction with imprisonment, or probation in conjunction with suspended execution or deferred imposition of sentence, the defendant

must be given a certificate explicitly setting forth the conditions on which the defendant is being released.

6. The court, upon notice to the probationer and with good cause, may modify or enlarge the conditions of probation at any time prior to the expiration or termination of the period for which the probation remains conditional. If the defendant violates a condition of probation at any time before the expiration or termination of the period, the court may continue the defendant on the existing probation, with or without modifying or enlarging the conditions, or may revoke the probation and impose any other sentence that was available under section 12.1-32-02 or 12.1-32-09 at the time of initial sentencing or deferment. In the case of suspended execution of sentence, the court may revoke the probation and cause the defendant to suffer the penalty of the sentence previously imposed upon the defendant.
7. The court may continue or modify probation conditions or revoke probation for a violation of probation conditions occurring before the expiration or termination of the period of probation notwithstanding that the order of the court is imposed after the expiration or termination has occurred. The petition for revocation must be issued within sixty days of the expiration or termination of probation.
8. Jurisdiction over a probationer may be transferred from the court that imposed the sentence to another court of this state with the concurrence of both courts. Retransfers of jurisdiction may also occur in the same manner. The court to which jurisdiction has been transferred under this subsection may exercise all powers permissible under this chapter over the defendant.

(Effective for fees collected after December 31, 2000, for offenses committed after June 30, 1999) Supervision of probationer - Conditions of probation - Revocation.

1. When the court imposes probation upon conviction for a felony, the court shall place the defendant under the supervision and management of the department of corrections and rehabilitation. In class A misdemeanor cases, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation or other responsible party. In all other cases, the court may place the defendant under the supervision and management of a community corrections program other than the department of corrections and rehabilitation. If an appropriate community corrections program is not reasonably available, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation. The department of corrections and rehabilitation may arrange for the supervision and management of the defendant by a community corrections program selected by the department of corrections and rehabilitation. A community corrections program means a program for the supervision of a defendant, including monitoring and enforcement of terms and conditions of probation set by the court or pursuant to a conditional release from the physical custody of a correctional facility or the department of corrections and rehabilitation.
2. The conditions of probation must be such as the court in its discretion deems reasonably necessary to ensure that the defendant will lead a

law-abiding life or to assist the defendant to do so. The court shall provide as an explicit condition of every probation that the defendant not commit another offense during the period for which the probation remains subject to revocation. The court shall order supervision costs and fees of not less than thirty-six dollars per month unless the court makes a specific finding on record that the imposition of fees will result in an undue hardship. If the offender has not paid the full amount of supervision fees and costs before completion or termination of probation, the court may issue an order, after opportunity for hearing, to determine the amount of supervision fees and costs that are unpaid. The order may be filed, transcribed, and enforced by the department of corrections and rehabilitation in the same manner as civil judgments rendered by a district court of this state.

3. The court shall provide as an explicit condition of every probation that the defendant may not possess a firearm, destructive device, or other dangerous weapon while the defendant is on probation.

Unless waived on the record by the court, the court shall also provide as a condition of probation that the defendant undergo various agreed-to community constraints and conditions as intermediate measures of the department of corrections and rehabilitation to avoid revocation, which may include:

- a. Community service;
 - b. Day reporting;
 - c. Curfew;
 - d. Home confinement;
 - e. House arrest;
 - f. Electronic monitoring;
 - g. Residential halfway house; or
 - h. Intensive supervision program.
4. When imposing a sentence to probation, probation in conjunction with imprisonment, or probation in conjunction with suspended execution or deferred imposition of sentence, the court may impose such conditions as it deems appropriate, and may include any one or more of the following:
 - a. Work faithfully at a suitable employment or faithfully pursue a course of study or of vocational training that will equip the defendant for suitable employment.
 - b. Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose.
 - c. Attend or reside in a facility established for the instruction, recreation, or residence of persons on probation.

- d. Support the defendant's dependents and meet other family responsibilities.
- e. Make restitution or reparation to the victim of the defendant's conduct for the damage or injury which was sustained, or perform other reasonable assigned work. When restitution, reparation, or assigned work is a condition of probation, the court shall proceed as provided in subsection 1 or 2, as applicable, of section 12.1-32-08.
- f. Pay a fine imposed after consideration of the provisions of section 12.1-32-05, except when imposition of sentence is deferred.
- g. Refrain from excessive use of alcohol, or any use of narcotics or of another dangerous or abusable drug without a prescription.
- h. Permit the probation officer to visit the defendant at reasonable times at the defendant's home or elsewhere.
- i. Remain within the jurisdiction of the court, unless granted permission to leave by the court or the probation officer.
- j. Answer all reasonable inquiries by the probation officer and promptly notify the probation officer of any change in address or employment.
- k. Report to a probation officer at reasonable times as directed by the court or the probation officer.
- l. Submit to a medical examination or other reasonable testing for the purpose of determining the defendant's use of narcotics, marijuana, or other controlled substance whenever required by a probation officer.
- m. Refrain from associating with known users or traffickers in narcotics, marijuana, or other controlled substances.
- n. Submit the defendant's person, place of residence, or vehicle to search and seizure by a probation officer at any time of the day or night, with or without a search warrant.
- o. Serve a term of imprisonment of up to one-half of the maximum term authorized for the offense of which the defendant was convicted or one year, whichever is less.
- p. Reimburse the costs and expenses determined necessary for the defendant's adequate defense when counsel is appointed for the defendant. When reimbursement of indigent defense costs and expenses is imposed as a condition of probation, the court shall proceed as provided in subsection 3 of section 12.1-32-08.
- q. Provide community service for the number of hours designated by the court.
- r. Refrain from any subscription to, access to, or use of the internet.

5. When the court imposes a sentence to probation, probation in conjunction with imprisonment, or probation in conjunction with suspended execution or deferred imposition of sentence, the defendant must be given a certificate explicitly setting forth the conditions on which the defendant is being released.
6. The court, upon notice to the probationer and with good cause, may modify or enlarge the conditions of probation at any time prior to the expiration or termination of the period for which the probation remains conditional. If the defendant violates a condition of probation at any time before the expiration or termination of the period, the court may continue the defendant on the existing probation, with or without modifying or enlarging the conditions, or may revoke the probation and impose any other sentence that was available under section 12.1-32-02 or 12.1-32-09 at the time of initial sentencing or deferment. In the case of suspended execution of sentence, the court may revoke the probation and cause the defendant to suffer the penalty of the sentence previously imposed upon the defendant.
7. The court may continue or modify probation conditions or revoke probation for a violation of probation conditions occurring before the expiration or termination of the period of probation notwithstanding that the order of the court is imposed after the expiration or termination has occurred. The petition for revocation must be issued within sixty days of the expiration or termination of probation.
8. Jurisdiction over a probationer may be transferred from the court that imposed the sentence to another court of this state with the concurrence of both courts. Retransfers of jurisdiction may also occur in the same manner. The court to which jurisdiction has been transferred under this subsection may exercise all powers permissible under this chapter over the defendant.

SECTION 2. AMENDMENT. Subsection 15 of section 54-23.3-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15. To collect costs and fees from persons on correctional supervision for the supervision services, control devices, and programs as implemented by the department to assist in making community corrections an effective alternative to incarceration. A person on active supervision is presumed able to pay assessed fees unless the director, giving due consideration to the fiscal obligations and resources of the probationer, determines otherwise. A person with the ability to pay assessed fees who refuses to pay must be returned to the court for a judicial determination. In addition to any other remedies allowed by law, the department may enforce and collect any unpaid supervision costs and fees imposed as a condition of parole, probation, or under a program implemented under this section in a civil judgment entered by a district court of this state and may employ licensed collection agencies to enforce and collect any unpaid supervision costs and fees.

CHAPTER 140

SENATE BILL NO. 2446

(Senators G. Nelson, Christmann, Nething)
(Representatives Delmore, Koppelman, Meier)

SEXUAL OFFENDER REGISTRATION

AN ACT to create and enact a new subdivision to subsection 2 of section 28-32-01 of the North Dakota Century Code, relating to exclusions from the definition of administrative agency; and to amend and reenact section 12.1-32-15 of the North Dakota Century Code, relating to the registration of sexual offenders and offenders against children.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁶⁰ **SECTION 1. AMENDMENT.** Section 12.1-32-15 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12.1-32-15. Offenders against children and sexual offenders - Sexually violent predators - Registration requirement - Penalty.

1. As used in this section:
 - a. "A crime against a child" means a violation of chapter 12.1-16, 12.1-17, 12.1-18, 12.1-29, or subdivision a of subsection 1 or subsection 2 of section 14-09-22, or an equivalent ordinance, in which the victim is a minor or is otherwise of the age required for the act to be a crime or an attempt to commit these offenses.
 - b. "Department" means the department of corrections and rehabilitation.
 - c. "Mental abnormality" means a congenital or acquired condition of an individual that affects the emotional or volitional capacity of the individual in a manner that predisposes that individual to the commission of criminal sexual acts to a degree that makes the individual a menace to the health and safety of other individuals.
 - d. "Predatory" means an act directed at a stranger, or at an individual with whom a relationship has been established or promoted for the primary purpose of victimization.
 - e. "Sexual offender" means a person who has pled guilty to or been found guilty of a violation of section 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-06, 12.1-20-07, 12.1-20-11, chapter 12.1-27.2, or subsection 2 of section 12.1-22-03.1, or an equivalent ordinance, or an attempt to commit these offenses.

⁶⁰ Section 12.1-32-15 was also amended by section 8 of Senate Bill No. 2035, chapter 134.

- f. "Sexually dangerous individual" means an individual who meets the definition specified in section 25-03.3-01.
 - g. "Temporarily domiciled" means staying or being physically present at a location for longer than ten days, attending school for longer than ten days, or maintaining employment in the jurisdiction for longer than ten days, regardless of the state of the residence.
2. The court shall impose, in addition to any penalty provided by law, a requirement that the individual register, within ten days of coming into a county in which the individual resides or is temporarily domiciled. The individual must register with the chief of police of the city or the sheriff of the county if the individual resides, attends school, or is employed in an area other than a city. The court shall require an individual to register by stating this requirement on the court records, if that individual:
- a. Has pled guilty or nolo contendere to, or been found guilty as a felonious sexual offender or an attempted felonious sexual offender, including juvenile delinquent adjudications of equivalent offenses unless the offense is listed in subdivision c.
 - b. Has pled guilty or nolo contendere to, or been found guilty as a sexual offender for a misdemeanor or attempted misdemeanor. The court may deviate from requiring an individual to register if the court first finds the individual is no more than three years older than the victim if the victim is a minor, the individual has not previously been convicted as a sexual offender or of a felony crime against a child, and the individual did not exhibit mental abnormality or predatory conduct in the commission of the offense.
 - c. Is a juvenile found delinquent under subdivision d of subsection 1 of section 12.1-20-03, subdivision a of subsection 2 of section 12.1-20-03, or as a sexual offender for a misdemeanor. The court may deviate from requiring the juvenile to register if the court first finds the juvenile has not previously been convicted as a sexual offender or for a felony crime against a child, and the juvenile did not exhibit mental abnormality or predatory conduct in the commission of the offense.
 - d. Has pled guilty or nolo contendere to, or been found guilty of, a felony crime against a child or an attempted felony crime against a child, including juvenile delinquent adjudications of equivalent offenses. Except if the offense is described in section 12.1-29-02, or section 12.1-18-01 or 12.1-18-02 and the person is not the parent of the victim, the court may deviate from requiring an individual to register if the court first finds the individual has not previously been convicted as a sexual offender or for a felony crime against a child, and the individual did not exhibit mental abnormality or predatory conduct in the commission of the offense.
 - e. Has pled guilty or nolo contendere, been found guilty, or been adjudicated delinquent of any crime against another individual which is not otherwise specified in this section if the court finds the individual demonstrated mental abnormality or sexual predatory conduct in the commission of the offense and therefore orders registration for the individual. If the court orders an individual to

register as an offender under this section, the individual shall comply with all of the registration requirements in this chapter.

3. If a court has not ordered an individual to register in this state, the individual shall register if the individual:
 - a. Is incarcerated or is on probation or parole ~~on August 4~~ after July 31, 1995, for a crime against a child described in section 12.1-29-02, or section 12.1-18-01 or 12.1-18-02 if the individual was not the parent of the victim, or as a sexual offender;
 - b. Has pled guilty or nolo contendere to, or been found guilty of, an offense in a court of this state for which registration is mandatory under this section or another state or the federal government equivalent to those offenses set forth in this section if the individual was ordered by a court or required to register as a sexual offender, or for a crime against a child in another state or by the federal government; or
 - c. Has pled guilty or nolo contendere to, or has been found guilty of, a felonious crime against a child or as a sexual offender for which registration is mandatory under this section if the conviction occurred ~~within ten years prior to August 4, 1995~~ after July 31, 1985.
4. In its consideration of mental abnormality or predatory conduct, the court shall consider the age of the offender, the age of the victim, the difference in ages of the victim and offender, the circumstances and motive of the crime, the relationship of the victim and offender, and the mental state of the offender. The court may order an offender to be evaluated by a qualified counselor, psychologist, or physician before sentencing. Except as provided under subdivision e of subsection 2, the court shall state on the record in open court its affirmative finding for not requiring an offender to register.
5. When an individual is required to register under this section, the official in charge of a facility or institution where the individual required to register is confined, or the department, shall, before the discharge, parole, or release of that individual, inform the individual of the duty to register pursuant to this section. The official or the department shall require the individual to read and sign a form as required by the attorney general, stating that the duty of the individual to register has been explained to that individual. The official in charge of the place of confinement, or the department, shall obtain the address where the individual expects to reside, attend school, or work upon discharge, parole, or release and shall report the address to the attorney general. The official in charge of the place of confinement, or the department, shall give three copies of the form to the individual and shall send three copies to the attorney general no later than forty-five days before the scheduled release of that individual. The attorney general shall forward one copy to the law enforcement agency having jurisdiction where the individual expects to reside, attend school, or work upon discharge, parole, or release, one copy to the prosecutor who prosecuted the individual, and one copy to the court in which the individual was prosecuted. All forms must be transmitted and received by the law

enforcement agency, prosecutor, and court thirty days before the discharge, parole, or release of the individual.

6. An individual who is required to register pursuant to this section who is released on probation or discharged upon payment of a fine must, before the release or discharge, be informed of the duty to register under this section by the court in which that individual is convicted. The court shall require the individual to read and sign a form as required by the attorney general, stating that the duty of the individual to register under this section has been explained to that individual. The court shall obtain the address where the individual expects to reside, attend school, or work upon release or discharge and shall report the address to the attorney general within three days. The court shall give one copy of the form to the individual and shall send two copies to the attorney general. The attorney general shall forward one copy to the appropriate law enforcement agency having jurisdiction where the individual expects to reside, attend school, or work upon discharge, parole, or release.
7. Registration consists of a written statement signed by the individual, giving the information required by the attorney general, and the fingerprints and photograph of the individual. Within three days after registration, the registering law enforcement agency shall forward the statement, fingerprints, and photograph to the attorney general. If an individual required to register pursuant to this section has a change in name, school, or address, that individual shall inform in writing, within ten days, the law enforcement agency with whom that individual last registered of the individual's new name, school, or address, or employment address if the individual is working in this state but not residing in this state. The law enforcement agency, within three days after receipt of the information, shall forward it to the attorney general. The attorney general shall forward the appropriate registration data to the law enforcement agency having local jurisdiction of the new place of residence, school, or employment. Upon a change of address, the individual required to register shall also register within ten days at the law enforcement agency having local jurisdiction of the new place of residence, school, or employment. A law enforcement agency that has previously registered an offender may omit the fingerprint portion of the registration if that agency has a set of fingerprints on file for that individual and is personally familiar with and can visually identify the offender. These provisions also apply in any other state that requires registration.
8. An individual required to register under this section shall comply with the registration requirement for the longer of the following periods:
 - a. A period of ten years after the date of sentence or order deferring or suspending sentence upon a plea or finding of guilt or after release from incarceration, whichever is later; or
 - b. For the life of the individual, if that individual:
 - (1) On two or more occasions has pled guilty or nolo contendere to, or been found guilty of, an offense in which that individual was ordered by a court or otherwise required to register as a felonious sexual offender or felonious offender against a child under this section;

- (2) Pleads guilty or nolo contendere to, or is found guilty of, an offense committed after August 1, 1999, which is described in subdivision a of subsection 1 of section 12.1-20-03, section 12.1-20-03.1, or subdivision d of subsection 1 of section 12.1-20-03 if the person is an adult and the victim is under age twelve, or section 12.1-18-01 if that individual is an adult other than a parent of the victim; or
 - (3) Has been civilly committed as a sexually dangerous individual under chapter 25-03.3, under the laws of another state, or by the federal government.
9. An individual required to register under this section who violates this section is guilty of a class A misdemeanor. A court may not relieve an individual, other than a juvenile, who ~~willfully~~ violates this section from serving a term of at least ninety days in jail and completing probation of one year. An individual who violates this section who previously has pled guilty or been found guilty of violating this section is guilty of a class C felony.
10. When an individual is released on parole or probation and is required to register pursuant to this section, but fails to do so within the time prescribed, the court shall order the probation, or the parole board shall order the parole, of the individual revoked. ~~The statements, photographs, and fingerprints required by this section are open to inspection by the public.~~
11. If an individual required to register pursuant to this section is temporarily sent outside the facility or institution where that individual is confined under conviction or sentence, the local law enforcement agency having jurisdiction over the place where that individual is being sent must be notified within a reasonable time period before that individual is released from the facility or institution. This subsection does not apply to any individual temporarily released under guard from the facility or institution in which that individual is confined.
12. The attorney general, with the assistance of the department and the juvenile courts, shall develop guidelines for the risk assessment of sexual offenders who are required to register, with a low-risk, moderate risk, or high-risk level being assigned to each offender as follows:
 - a. The department shall conduct a risk assessment of sexual offenders who are incarcerated in institutions under the control of the department and sexual offenders who are on supervised probation. The department, in a timely manner, shall provide the attorney general any information, including the offender's level of risk and supporting documentation, concerning individuals required to be registered under this section who are about to be released or placed into the community.
 - b. The attorney general shall conduct a risk assessment of sexual offenders who are not under the custody or supervision of the department. The attorney general may adopt a law enforcement agency's previous assignment of risk level for an individual if the assessment was conducted in a manner substantially similar to the guidelines developed under this subsection.

- c. The juvenile courts or the agency having legal custody of a juvenile shall conduct a risk assessment of juvenile sex offenders who are required to register under this section. The juvenile courts or the agency having legal custody of a juvenile shall provide the attorney general any information, including the offender's level of risk and supporting documentation, concerning juveniles required to register and who are about to be released or placed into the community.
- d. The agency responsible for conducting the risk assessment shall notify the offender as to the level of risk assigned. An offender may request a review of that determination with the appropriate agency and may present any information that the offender believes may lower the assigned risk level.
13. Relevant and necessary conviction and registration information must be disclosed to the public by a law enforcement agency if the individual is a moderate or high risk and the agency determines that the individual registered under this section is a public risk and disclosure of the conviction and registration information is necessary for public protection. The department, in a timely manner, shall provide law enforcement agencies any information the department determines is relevant concerning individuals required to be registered under this section who are about to be released or placed into the community. A state officer, law enforcement agency, or school district, and an appointee, officer, or employee of these entities are not subject to civil or criminal liability for making risk determinations or for disclosing or for failing to disclose information as permitted by this section. Nonregistration information concerning an offender required to register under this section consisting of the name of the offender, the last known address of the offender, the offense or offenses as defined in subsection 4 to which the offender pled guilty or of which the offender was found guilty, the date of the judgment or order imposing a sentence or probation and the court entering the judgment or order, the sentence or probation imposed upon the offender, and any disposition, if known, of a sentence or probation may be disclosed to the public. The attorney general shall compile nonregistration information concerning offenders required to register under this section from criminal history record information maintained pursuant to chapter 42-60 or from an agency or department of another state or the federal government and shall provide the information upon request at no cost. The attorney general shall develop guidelines for public disclosure of offender registration information. Public disclosure may include internet access if the offender:
- a. Is required to register for a lifetime under subsection 8;
- b. Has been determined to be a high risk to the public by the department, the attorney general, or the courts, according to guidelines developed by those agencies; or
- c. Has been determined to be a high risk to the public by an agency of another state or the federal government.

If the offender has been determined to be a moderate risk, public disclosure must include at a minimum, notification to the victim of the

offense and to any agency, civic organization, or group of persons who have characteristics similar to those of a victim of the offender. Upon request, law enforcement agencies may release conviction and registration information regarding low-risk, moderate-risk, or high-risk offenders.

14. A state officer, law enforcement agency, or school district, or any appointee, officer, or employee of those entities is not subject to civil or criminal liability for making risk determinations or for disclosing or for failing to disclose information as permitted by this section.
- ~~43.~~ 15. If a juvenile is adjudicated delinquent and required or ordered to register as a sexual offender or as an offender against a child under this section, the juvenile shall comply with the registration requirements in this section. Notwithstanding any other provision of law, a law enforcement agency shall register a juvenile offender in the same manner as adult offenders and may release any relevant and necessary information on file to other law enforcement agencies, the department of human services, the superintendent or principal of the school the juvenile attends, or the public if disclosure is necessary to protect public health or safety. The school administration may notify others in similar positions if the juvenile transfers to another learning institution in or outside the state.
44. 16. If an individual has been required to register as a sexual offender or an offender against a child under section 12.1-32-15 or 27-20-52.1 before August 1, 1999, the individual may petition the court to be removed from the offender list if registration is no longer mandatory for that individual. In considering the petition, the court shall comply with the requirements of this section.

⁶¹ **SECTION 2.** A new subdivision to subsection 2 of section 28-32-01 of the 1999 Supplement to the North Dakota Century Code is created and enacted as follows:

The attorney general with respect to guidelines adopted under section 12.1-32-15 for the risk assessment of sexual offenders, the risk level review process, and public disclosure of information under section 12.1-32-15.

Approved April 12, 2001
Filed April 12, 2001

⁶¹ Section 28-32-01 was created by section 12 of House Bill No. 1030, chapter 293, and amended by section 18 of Senate Bill No. 2032, chapter 488, and section 4 of Senate Bill No. 2251, chapter 501.

CHAPTER 141

HOUSE BILL NO. 1270

(Representatives DeKrey, Koppelman, Warner)
(Senator Lyson)

INTERSTATE COMPACT FOR ADULT OFFENDER SUPERVISION

AN ACT to provide for an interstate compact for adult offender supervision; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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 1. 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. No. 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 2. 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 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 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 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 4. 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 5. 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 6. 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.

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 8. 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 9. 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 10. 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 of this subsection.

Article 11. 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 of 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 12. 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. Reinstatement following withdrawal of any compacting state occurs upon the withdrawing state reenacting the compact or upon a later date as determined by the interstate commission.
2. 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 reenactment 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 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 13. 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.

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

Approved April 5, 2001

Filed April 5, 2001