

**Sixtieth Legislative Assembly of North Dakota
In Regular Session Commencing Wednesday, January 3, 2007**

HOUSE BILL NO. 1122

(Judiciary Committee)

(At the request of the Commission on Legal Counsel for Indigents)

AN ACT to amend and reenact subsection 3 of section 12.1-04.1-23, subsection 2 of section 12.1-04.1-26, subsection 4 of section 12.1-32-07, subdivision a of subsection 4 of section 12.1-32-08, subsection 6 of section 14-15-19, subsection 2 of section 23-07.6-03, sections 23-07.6-05, 23-07.6-06, and 25-01.2-11, subsection 2 of section 27-20-17, subsection 4 of section 27-20-22, section 27-20-26, subsections 2 and 3 of section 27-20-49, and sections 27-22-02, 29-07-01.1, 29-32.1-05, and 31-01-16 of the North Dakota Century Code, relating to providing legal counsel at public expense.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 12.1-04.1-23 of the North Dakota Century Code is amended and reenacted as follows:

3. At least sixty days before a date for review fixed in a court order, the director or superintendent of the treatment facility shall inquire as to whether the individual is presently represented by counsel and file with the court a written report of the facts ascertained. If the individual is not represented by counsel, ~~the court shall appoint~~ must be provided at public expense to consult with the individual and, if appropriate the individual is indigent, to apply to the court for appointment seek arrangement of counsel at public expense to represent the individual in a proceeding for conditional release or discharge.

SECTION 2. AMENDMENT. Subsection 2 of section 12.1-04.1-26 of the North Dakota Century Code is amended and reenacted as follows:

2. In a proceeding under sections 12.1-04.1-20 through 12.1-04.1-25 for an initial order of disposition, in a proceeding for modification or termination of an order of commitment to a treatment facility initiated by the individual at the time of a review, or in a proceeding in which the status of the individual might be adversely affected, the individual has a right to counsel. If the court finds that the individual ~~lacks sufficient financial resources to retain counsel~~ is indigent and that counsel is not otherwise available, ~~it shall appoint~~ must be provided at public expense to represent the individual.

SECTION 3. AMENDMENT. Subsection 4 of section 12.1-32-07 of the North Dakota Century Code is amended and reenacted as follows:

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 career and technical education 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 or provided at public expense 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 4 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.

SECTION 4. AMENDMENT. Subdivision a of subsection 4 of section 12.1-32-08 of the North Dakota Century Code is amended and reenacted as follows:

- a. Under section 12.1-32-07, the court may order that the defendant reimburse indigent defense costs and expenses as a condition of probation. The court shall notify the defendant, the defendant's probation officer, and the prosecuting attorney of the amount of costs and expenses to be reimbursed, as determined by the commission on legal counsel for indigents, and of the defendant's right to a hearing on the

reimbursement amount. It is a rebuttable presumption that reasonable reimbursement of costs and expenses consists of seventy-five dollars per hour for ~~appointed~~ counsel services plus reasonable expenses. The reimbursement amount must include an application fee imposed under section 29-07-01.1 if the fee has not been paid before disposition of the case and the court has not waived payment of the fee. If the defendant requests a hearing within thirty days of receiving notice under this subdivision, the court shall schedule a hearing at which the basis for the amount to be reimbursed must be demonstrated. In determining the amount and method of reimbursement, the court shall consider the financial resources of the defendant and the nature of the burden that reimbursement of costs and expenses will impose.

SECTION 5. AMENDMENT. Subsection 6 of section 14-15-19 of the North Dakota Century Code is amended and reenacted as follows:

6. Before the petition is heard, notice of the hearing on the petition and opportunity to be heard must be given the parents of the child, the guardian of the child, the person having legal custody of the child, any proposed custodian of the child, and, in the discretion of the court, a person ~~appointed to represent~~ representing any party.

SECTION 6. AMENDMENT. Subsection 2 of section 23-07.6-03 of the North Dakota Century Code is amended and reenacted as follows:

2. Isolation or quarantine with notice.
 - a. Authorization. The state or a local health officer may make a written petition to the trial court for an order authorizing the isolation or quarantine of an individual or groups of individuals.
 - b. Content of petition. A petition under subdivision a must specify the identity of the individual or groups of individuals subject to isolation or quarantine, including identification by characteristics if actual identification is impossible or impractical; the premises subject to isolation or quarantine; the date and time at which isolation or quarantine commences; the suspected contagious disease if known; recommended decontamination, treatment, or preventative measures for the suspected contagious disease; a statement of compliance with the conditions and principles authorizing isolation and quarantine under this chapter; and a statement of the basis upon which isolation or quarantine is justified in compliance with this chapter. The petition must be accompanied by the sworn affidavit of the state or local health officer attesting to the facts asserted in the petition, with any further information that may be relevant and material to the court's consideration.
 - c. Notice. Notice to the individuals or groups of individuals identified in the petition must be accomplished within twenty-four hours in accordance with the North Dakota Rules of Civil Procedure. The notice must include a statement that the respondent has the right to counsel, including ~~appointed~~ counsel provided at public expense if indigent and must include a copy of this chapter.

SECTION 7. AMENDMENT. Section 23-07.6-05 of the North Dakota Century Code is amended and reenacted as follows:

23-07.6-05. Court hearing. A hearing must be held on a petition filed under subsection 2 of section 23-07.6-03 within five days of filing the petition. For a good cause shown, the court may continue the hearing for up to ten days. A respondent has the right to a court hearing in the district court serving the county in which the respondent resides. A record of the proceedings pursuant to this section must be made and retained. If parties cannot personally appear before the court due to risks of contamination or the spread of disease, proceedings may be conducted by their authorized representatives and be held via any means that allows all parties to fully participate. The respondent has a right to counsel and if the respondent is indigent ~~or otherwise unable to pay for or obtain counsel,~~

the respondent has the right to have counsel ~~appointed~~ provided at public expense. The respondent, respondent's representative, or respondent's counsel has the right to cross-examine witnesses testifying at the hearing. A petition for a hearing does not stay a written directive ordering confinement. The court shall determine by a preponderance of the evidence if the respondent is infected with a communicable disease, if the respondent poses a substantial threat to the public health, and if confinement is necessary and is the least restrictive alternative to protect or preserve the public health. The court shall also determine whether to order the respondent to follow the state or local health ~~officers~~ officer's directive for decontamination, treatment, or preventative measures if the petition is granted. If the written directive was issued by a local health officer, the state health officer has the right to be made a party to the proceedings.

SECTION 8. AMENDMENT. Section 23-07.6-06 of the North Dakota Century Code is amended and reenacted as follows:

23-07.6-06. Notice of hearing. Notice of the hearing must be given to the respondent and must inform the respondent of the respondent's right to counsel or ~~appointed~~ counsel at public expense under this chapter and must include a copy of this chapter.

SECTION 9. AMENDMENT. Section 25-01.2-11 of the North Dakota Century Code is amended and reenacted as follows:

25-01.2-11. Psychosurgery, sterilization, or research - Court order required - Hearing - Right to ~~court-appointed~~ attorney at public expense - Application to residential institution or facility. A court of competent jurisdiction may issue the orders required for the procedures or treatments in subsection 4 of section 25-01.2-09 upon application of the party alleging the necessity of the procedure, the person who is receiving or is entitled to receive the treatment, or the person's guardian, following a hearing on the application.

1. The person receiving or entitled to treatment shall:
 - a. Receive prior notice of the hearing;
 - b. Have the right and the opportunity to present evidence; and
 - c. Have the right to be confronted with and to cross-examine witnesses.
2. If the developmentally disabled person ~~cannot afford counsel, the court is indigent, counsel shall appoint an attorney~~ be provided at public expense not less than ten days before the hearing.
3. The burden of proof is on the party alleging the necessity of the procedure or treatment.
4. An order allowing the procedure or treatment may not be granted unless the party alleging the necessity of the procedure or treatment proves by clear and convincing evidence that the procedure is in the best interest of the recipient and that no less drastic measures are feasible.

This section applies only with respect to an institution or facility that provides residential care.

SECTION 10. AMENDMENT. Subsection 2 of section 27-20-17 of the North Dakota Century Code is amended and reenacted as follows:

2. If the child is not released, a judge or referee shall hold a detention or shelter care hearing promptly and not later than ninety-six hours after the child is placed in detention or shelter care to determine whether there is probable cause to believe the child has committed the delinquent or unruly acts alleged, or the child is deprived and whether the child's detention or shelter care is required under section 27-20-14. Reasonable notice thereof, either oral or written, stating the time, place, and purpose of the detention or shelter care hearing must be given to the child and, if they can be found, to the child's parents, guardian, or

other custodian. Prior to the commencement of the hearing, the court shall inform the parties of their right to counsel and to ~~appointed~~ counsel at public expense if they are ~~needy persons~~ indigent, and of the child's right to remain silent with respect to any allegations of delinquency or unruly conduct.

SECTION 11. AMENDMENT. Subsection 4 of section 27-20-22 of the North Dakota Century Code is amended and reenacted as follows:

4. The summons must state that a party is entitled to counsel in the proceedings and that ~~the court will appoint~~ counsel will be provided at public expense if the party is ~~unable without undue financial hardship to employ counsel~~ indigent.

SECTION 12. AMENDMENT. Section 27-20-26 of the North Dakota Century Code is amended and reenacted as follows:

27-20-26. Right to counsel.

1. Except as otherwise provided under this chapter, a party is entitled to representation by legal counsel at custodial, post-petition, and informal adjustment stages of proceedings under this chapter and, if ~~as a needy person the party is unable to employ counsel~~ indigent, to have ~~the court provide~~ counsel provided at public expense for the party. If a party appears without counsel the court shall ascertain whether the party knows of the party's right to counsel and to be provided with counsel ~~by the court if the party is a needy person~~ at public expense, if indigent. The court may continue the proceeding to enable a party to obtain counsel and ~~shall provide~~ counsel shall be provided for an unrepresented ~~needy~~ indigent person upon the person's request. Counsel must be provided for a child not represented by the child's parent, guardian, or custodian at custodial, post-petition, and informal adjustment stages of proceedings under this chapter. If the interests of two or more parties conflict, separate counsel must be provided for each of them.
2. ~~A needy~~ An indigent person is one who at the time of requesting counsel is unable, without undue financial hardship, to provide for full payment of legal counsel and all other necessary expenses for representation. A child is not to be considered ~~needy~~ indigent under this section if the child's parents or parent can, without undue financial hardship, provide full payment for legal counsel and other expenses of representation. Any parent entitled to the custody of a child involved in a proceeding under this chapter is, unless undue financial hardship would ensue, responsible for providing legal counsel and for paying other necessary expenses of representation for the parent's child. The court may enforce performance of this duty by appropriate order. As used in this subsection, the word "parent" includes adoptive parents.

SECTION 13. AMENDMENT. Subsections 2 and 3 of section 27-20-49 of the North Dakota Century Code are amended and reenacted as follows:

2. The commission on legal counsel for indigents shall pay reasonable compensation for services and related expenses of counsel ~~appointed by the court~~ provided at public expense for a party and the supreme court shall pay reasonable compensation for a guardian ad litem. The attorney general shall pay the witness fees, mileage, and travel expense of witnesses incurred in the proceedings under this chapter in the amount and at the rate provided for in section 31-01-16. Expenses of the state include the cost of any necessary transportation for medical and other examinations and treatment of a child ordered by the court if the child is in the legal custody of a state agency in which case the cost must be reimbursed to the county by that state agency at the state mileage rate, excluding meals and lodging, plus twenty-nine cents per mile.
3. If, after due notice to the parents or other persons legally obligated to care for and support the child, and after affording them an opportunity to be heard, the court finds that they are financially able to pay all or part of the costs and expenses stated in subsection 1, and

expenses payable by the commission on legal counsel for indigents or the supreme court under subsection 2, the court may order them to pay the same and prescribe the manner of payment. Unless otherwise ordered, payment shall be made to the clerk of the juvenile court for remittance to the person to whom compensation is due, or if the costs and expenses have been paid by the county or the state to the county treasurer of the county or to the state treasurer.

SECTION 14. AMENDMENT. Section 27-22-02 of the North Dakota Century Code is amended and reenacted as follows:

27-22-02. Execution of compact - Text. The governor is hereby authorized and directed to execute a compact on behalf of this state with any other state or states legally joining therein in the form substantially as follows:

Article I - Findings and Purposes.

That juveniles who are not under proper supervision and control, or who have absconded, escaped or run away, are likely to endanger their own health, morals, and welfare, and the health, morals, and welfare of others. The cooperation of the states party to this compact is therefore necessary to provide for the welfare and protection of juveniles and of the public with respect to:

1. Cooperative supervision of delinquent juveniles on probation or parole;
2. The return, from one state to another, of delinquent juveniles who have escaped or absconded;
3. The return, from one state to another, of nondelinquent juveniles who have run away from home; and
4. Additional measures for the protection of juveniles and of the public, which any two or more of the party states may find desirable to undertake cooperatively.

In carrying out the provisions of this compact, the party states shall be guided by the noncriminal, reformatory, and protective policies which guide their laws concerning delinquent, neglected, or dependent juveniles generally. It shall be the policy of the states party to this compact to cooperate and observe their respective responsibilities for the prompt return and acceptance of juveniles and delinquent juveniles who become subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the foregoing purposes.

Article II - Existing Rights and Remedies.

That all remedies and procedures provided by this compact shall be in addition to and not in substitution for other rights, remedies, and procedures, and shall not be in derogation of parental rights and responsibilities.

Article III - Definitions.

That, for the purposes of this compact, "delinquent juvenile" means any juvenile who has been adjudged delinquent and who, at the time the provisions of this compact are invoked, is still subject to the jurisdiction of the court that has made such adjudication or to the jurisdiction or supervision of an agency or institution pursuant to an order of such court; "probation or parole" means any kind of conditional release of juveniles authorized under the laws of the states party hereto; "court" means any court having jurisdiction over delinquent, neglected, or dependent children; "state" means any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico; and "residence" or any variant thereof means a place at which a home or regular place of abode is maintained.

Article IV - Return of Runaways.

1. That the parent, guardian, person, or agency entitled to legal custody of a juvenile who has not been adjudged delinquent but who has run away without the consent of such parent, guardian, person, or agency may petition the appropriate court in the demanding state for the issuance of a requisition for the juvenile's return. The petition shall state the name and age of the juvenile, the name of the petitioner and the basis of entitlement to the juvenile's custody, the circumstances of the juvenile's running away, the juvenile's location if known at the time application is made, and such other facts as may tend to show that the juvenile who has run away is endangering the juvenile's own welfare or the welfare of others and is not an emancipated minor. The petition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the document or documents on which the petitioner's entitlement to the juvenile's custody is based, such as birth certificates, letters of guardianship, or custody decrees. Such further affidavits and other documents as may be deemed proper may be submitted with such petition. The judge of the court to which this application is made may hold a hearing thereon to determine whether for the purposes of this compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not the juvenile is an emancipated minor, and whether or not it is in the best interest of the juvenile to compel the juvenile's return to the state. If the judge determines, either with or without a hearing, that the juvenile should be returned, the judge shall present to the appropriate court or to the executive authority of the state where the juvenile is alleged to be located a written requisition for the return of such juvenile. Such requisition shall set forth the name and age of the juvenile, the determination of the court that the juvenile has run away without the consent of a parent, guardian, person, or agency entitled to the juvenile's legal custody, and that it is in the best interest and for the protection of such juvenile that the juvenile be returned. In the event that a proceeding for the adjudication of the juvenile as a delinquent, neglected, or dependent juvenile is pending in the court at the time when such juvenile runs away, the court may issue a requisition for the return of such juvenile upon its own motion, regardless of the consent of the parent, guardian, person, or agency entitled to legal custody, reciting therein the nature and circumstances of the pending proceeding. The requisition shall in every case be executed in duplicate and shall be signed by the judge. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of such court. Upon the receipt of a requisition demanding the return of a juvenile who has run away, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing the peace officer or other appropriate person to take into custody and detain such juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No juvenile detained upon such order shall be delivered over to the officer whom the court demanding the juvenile shall have appointed to receive the juvenile, unless the juvenile shall first be taken forthwith before a judge of a court in the state, who shall inform the juvenile of the demand made for the juvenile's return, and who may appoint ~~counsel~~ or a guardian ad litem for the juvenile or counsel may be provided at public expense. If the judge of such court shall find that the requisition is in order, the judge shall deliver such juvenile over to the officer whom the court demanding the juvenile shall have appointed to receive the juvenile. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding. Upon reasonable information that a person is a juvenile who has run away from another state party to this compact without the consent of a parent, guardian, person, or agency entitled to the juvenile's legal custody, such juvenile may be taken into custody without a requisition and brought forthwith before a judge of the appropriate court who may appoint ~~counsel~~ or a guardian ad litem for such juvenile or counsel may be provided at public expense, and who shall determine after a hearing whether sufficient cause exists to hold the person, subject to the order of the court, for the person's own protection and welfare, for such a time not exceeding ninety days as will enable the person's return to

another state party to this compact pursuant to a requisition for the person's return from a court of that state. If, at the time when a state seeks the return of a juvenile who has run away, there is pending in the state wherein the juvenile is found any criminal charge, or any proceeding to have the juvenile adjudicated a delinquent juvenile for an act committed in such state, or if the juvenile is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, the juvenile shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention, or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the juvenile being returned, shall be permitted to transport such juvenile through any and all states party to this compact, without interference. Upon the juvenile's return to the state from which the juvenile ran away, the juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

2. That the state to which a juvenile is returned under this article shall be responsible for payment of the transportation costs of such return.
3. That "juvenile" as used in this article means any person who is a minor under the law of the state of residence of the parent, guardian, person, or agency entitled to the legal custody of such minor.

Article V - Return of Escapees and Absconders.

1. That the appropriate person or authority from whose probation or parole supervision a delinquent juvenile has absconded or from whose institutional custody the juvenile has escaped shall present to the appropriate court or to the executive authority of the state where the delinquent juvenile is alleged to be located a written requisition for the return of such delinquent juvenile. Such requisition shall state the name and age of the delinquent juvenile, the particulars of the juvenile's adjudication as a delinquent juvenile, the circumstances of the breach of the terms of the juvenile's probation or parole or of the juvenile's escape from an institution or agency vested with the juvenile's legal custody or supervision, and the location of such delinquent juvenile, if known, at the time the requisition is made. The requisition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the judgment, formal adjudication, or order of commitment which subjects such delinquent juvenile to probation or parole or to the legal custody of the institution or agency concerned. Such further affidavits and other documents as may be deemed proper may be submitted with such requisition. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of the appropriate court. Upon the receipt of a requisition demanding the return of a delinquent juvenile who has absconded or escaped, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing the peace officer or other appropriate person to take into custody and detain such delinquent juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No delinquent juvenile detained upon such order shall be delivered over to the officer whom the appropriate person or authority demanding the juvenile shall have appointed to receive the juvenile, unless the juvenile shall first be taken forthwith before a judge of an appropriate court in the state, who shall inform the juvenile of the demand made for the juvenile's return and who may appoint ~~counsel~~ or a guardian ad litem for the juvenile or counsel may be provided at public expense. If the judge of such court shall find that the requisition is in order, the judge shall deliver such delinquent juvenile over to the officer whom the appropriate person or authority demanding the juvenile shall have appointed to receive the juvenile. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with that person's legal custody or supervision in any state party to this compact, such person may be taken into custody in any other state party to this compact without a requisition. But in such event, that person must be taken forthwith before a judge of the appropriate court, who may appoint ~~counsel~~ of a guardian ad litem for such person or counsel may be provided at public expense, and who shall determine, after a hearing, whether sufficient cause exists to hold the person subject to the order of the court for such a time, not exceeding ninety days, as will enable the person's detention under a detention order issued on a requisition pursuant to this article. If, at the time when a state seeks the return of a delinquent juvenile who has either absconded while on probation or parole or escaped from an institution or agency vested with the juvenile's legal custody or supervision, there is pending in the state wherein the juvenile is detained any criminal charge or any proceeding to have the juvenile adjudicated a delinquent juvenile for an act committed in such state, or if the juvenile is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, the juvenile shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention, or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the delinquent juvenile being returned, shall be permitted to transport such delinquent juvenile through any and all states party to this compact, without interference. Upon the juvenile's return to the state from which the juvenile escaped or absconded, the delinquent juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

2. That the state to which a delinquent juvenile is returned under this article shall be responsible for the payment of the transportation costs of such return.

Article VI - Voluntary Return Procedure.

That any delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with the juvenile's legal custody or supervision in any state party to this compact, and any juvenile who has run away from any state party to this compact, who is taken into custody without a requisition in another state party to this compact under the provisions of article IV, 1. or of article V, 1., may consent to the juvenile's immediate return to the state from which the juvenile absconded, escaped, or ran away. Such consent shall be given by the juvenile or delinquent juvenile and the juvenile's counsel or guardian ad litem if any, by executing or subscribing a writing, in the presence of a judge of the appropriate court, which states that the juvenile or delinquent juvenile and the juvenile's counsel or guardian ad litem, if any, consent to the juvenile's return to the demanding state. Before such consent shall be executed or subscribed, however, the judge, in the presence of counsel or guardian ad litem, if any, shall inform the juvenile or delinquent juvenile of the juvenile's rights under this compact. When the consent has been duly executed, it shall be forwarded to and filed with the compact administrator of the state in which the court is located and the judge shall direct the officer having the juvenile or delinquent juvenile in custody to deliver the juvenile to the duly accredited officer or officers of the state demanding the juvenile's return, and shall cause to be delivered to such officer or officers a copy of the consent. The court may, however, upon the request of the state to which the juvenile or delinquent juvenile is being returned, order the juvenile to return unaccompanied to such state and shall provide the juvenile with a copy of such court order; in such event a copy of the consent shall be forwarded to the compact administrator of the state to which said juvenile or delinquent juvenile is ordered to return.

Article VII - Cooperative Supervision of Probationers and Parolees.

1. That the duly constituted judicial and administrative authorities of a state party to this compact, herein called "sending state", may permit any delinquent juvenile within such state, placed on probation or parole, to reside in any other state party to this compact, herein called "receiving state", while on probation or parole, and the receiving state shall

accept such delinquent juvenile, if the parent, guardian, or person entitled to the legal custody of such delinquent juvenile is residing or undertakes to reside within the receiving state. Before granting such permission, opportunity shall be given to the receiving state to make such investigations as it deems necessary. The authorities of the sending state shall send to the authorities of the receiving state copies of pertinent court orders, social case studies, and all other available information which may be of value to and assist the receiving state in supervising a probationer or parolee under this compact. A receiving state, in its discretion, may agree to accept supervision of a probationer or parolee in cases when the parent, guardian, or person entitled to the legal custody of the delinquent juvenile is not a resident of the receiving state, and if so accepted the sending state may transfer supervision accordingly.

2. That each receiving state will assume the duties of visitation and of supervision over any such delinquent juvenile and in the exercise of those duties will be governed by the same standards of visitation and supervision that prevail for its own delinquent juveniles released on probation or parole.
3. That, after consultation between the appropriate authorities of the sending state and of the receiving state as to the desirability and necessity of returning such a delinquent juvenile, the duly accredited officers of a sending state may enter a receiving state and there apprehend and retake any such delinquent juvenile on probation or parole. For that purpose, no formalities will be required, other than establishing the authority of the officer and the identity of the delinquent juvenile to be retaken and returned. The decision of the sending state to retake a delinquent juvenile on probation or parole shall be conclusive upon and not reviewable within the receiving state, but if, at the time the sending state seeks to retake a delinquent juvenile on probation or parole, there is pending against the juvenile within the receiving state any criminal charge or any proceeding to have the juvenile adjudicated a delinquent juvenile for any act committed in such state or if the juvenile is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, the juvenile shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, detention, or supervision for such offense or juvenile delinquency. The duly accredited officers of the sending state shall be permitted to transport delinquent juveniles being so returned through any and all states party to this compact without interference.
4. That the sending state shall be responsible under this article for paying the costs of transporting any delinquent juvenile to the receiving state or of returning any delinquent juvenile to the sending state.

Article VIII - Responsibility for Costs.

1. That the provisions of articles IV, 2., V, 2., and VII, 4. of this compact shall not be construed to alter or affect any internal relationship among the departments, agencies, and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.
2. That nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency, or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to articles IV, 2., V, 2., or VII, 4. of this compact.

Article IX - Detention Practices.

That, to every extent possible, it shall be the policy of states party to this compact that no juvenile or delinquent juvenile shall be placed or detained in any prison, jail, or lockup nor be detained or transported in association with criminal, vicious, or dissolute persons.

Article X - Supplementary Agreements.

That the duly constituted administrative authorities of a state party to this compact may enter into supplementary agreements with any other state or states party hereto for the cooperative care, treatment, and rehabilitation of delinquent juveniles whenever they shall find that such agreements will improve the facilities or programs available for such care, treatment, and rehabilitation. Such care, treatment, and rehabilitation may be provided in an institution located within any state entering into such supplementary agreement. Such supplementary agreements shall:

1. Provide the rates to be paid for the care, treatment, and custody of such delinquent juveniles, taking into consideration the character of facilities, services, and subsistence furnished;
2. Provide that the delinquent juvenile shall be given a court hearing prior to the juvenile being sent to another state for care, treatment, and custody;
3. Provide that the state receiving such a delinquent juvenile in one of its institutions shall act solely as agent for the state sending such delinquent juvenile;
4. Provide that the sending state shall at all times retain jurisdiction over delinquent juveniles sent to an institution in another state;
5. Provide for reasonable inspection of such institutions by the sending state;
6. Provide that the consent of the parent, guardian, person, or agency entitled to the legal custody of said delinquent juvenile shall be secured prior to the juvenile being sent to another state; and
7. Make provision for such other matters and details as shall be necessary to protect the rights and equities of such delinquent juveniles and of the cooperating states.

Article XI - Acceptance of Federal and Other Aid.

That any state party to this compact may accept any and all donations, gifts, and grants of money, equipment, and services from the federal or any local government, or any agency thereof and from any person, firm, or corporation, for any of the purposes and functions of this compact, and may receive and utilize the same subject to the terms, conditions, and regulations governing such donations, gifts, and grants.

Article XII - Compact Administrators.

That the governor of each state party to this compact shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

Article XIII - Execution of Compact.

That this compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form or execution to be in accordance with the laws of the executing state.

Article XIV - Renunciation.

That this compact shall continue in force and remain binding upon each executing state until renounced by it. Renunciation of this compact shall be by the same authority which executed it, by sending six months' notice in writing of its intention to withdraw from the compact to the other states party hereto. The duties and obligations of a renouncing state under article VII hereof shall continue as

to parolees and probationers residing therein at the time of withdrawal until retaken or finally discharged. Supplementary agreements entered into under article X hereof shall be subject to renunciation as provided by such supplementary agreements, and shall not be subject to the six months' renunciation notice of the present article.

Article XV - Severability.

That the provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstances shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

SECTION 15. AMENDMENT. Section 29-07-01.1 of the North Dakota Century Code is amended and reenacted as follows:

29-07-01.1. Payment of expenses for defense of indigents - Reimbursement of indigent defense costs and expenses - Indigent defense administration fund - Continuing appropriation.

1. Lawyers ~~appointed~~ provided to represent indigent persons must be compensated at a reasonable rate to be determined by the commission on legal counsel for indigents. Expenses necessary for the adequate defense of an indigent person prosecuted in district court, when approved by the judge commission, must be paid by the state ~~if the action is prosecuted in district court and~~. Expenses necessary for the adequate defense of an indigent person prosecuted in municipal court, when approved by the judge, must be paid by the city in which the alleged offense took place if the action is prosecuted in municipal court. The city shall also pay the expenses in any appeal taken to district court from a judgment of conviction in municipal court pursuant to section 40-18-19. A defendant requesting representation by ~~appointed~~ counsel at public expense, or for whom ~~appointed~~ counsel provided at public expense without a request is considered appropriate by the court, shall submit an application for ~~appointed~~ indigent defense services. For an application for ~~appointed~~ indigent defense services in the district court, a nonrefundable application fee of twenty-five dollars must be paid at the time the application is submitted. The district court may extend the time for payment of the fee or may waive or reduce the fee if the court determines the defendant is financially unable to pay all or part of the fee. If the application fee is not paid before disposition of the case, the fee amount must be added to the amount to be reimbursed under this section. Application fees collected under this subsection must be forwarded for deposit in the indigent defense administration fund established under subsection 4.
2. A defendant ~~with appointed~~ for whom counsel is provided at public expense, subject to this subsection, shall reimburse the state or city such sums as the state or city expends on the defendant's behalf.
 - a. At the time counsel is ~~appointed~~ provided for a defendant, the ~~appointing~~ court shall advise the defendant of the defendant's potential obligation to reimburse the appropriate governmental entity the amounts expended on behalf of the defendant.
 - b. Within ninety days after its judgment of conviction or after conclusion of an appeal of its initial judgment of conviction, the court ~~that appointed counsel for the defendant~~ shall notify the defendant and the prosecuting attorney of the amount of indigent defense costs and expenses, as determined by the commission, the defendant is obligated to reimburse if able to do so and of the defendant's right to a hearing on the reimbursement amount. It is a rebuttable presumption that reasonable reimbursement of costs and expenses consists of seventy-five dollars per hour for

~~appointed~~ counsel services plus reasonable expenses. If the defendant requests a hearing within thirty days of receiving notice under this subdivision, the court shall schedule a hearing at which the basis for the amount to be reimbursed must be demonstrated. In determining the amount of reimbursement and method of payment, the court shall consider the financial resources of the defendant and the nature of the burden that reimbursement of costs and expenses will impose.

- c. A defendant who is required to reimburse indigent defense costs and expenses and who is not willfully in default in that reimbursement may at any time petition the court to waive reimbursement of all or any portion of the costs and expenses. If the court is satisfied that reimbursement of the amount due will impose undue hardship on the defendant or the defendant's immediate family, the court may waive reimbursement of all or any portion of the amount due or modify the method of payment.
3. The state's attorney of the county or prosecuting attorney of the city in which the alleged offense took place, if reimbursement has not been received, shall seek civil recovery of any amounts expended on the defendant's behalf anytime the state's attorney or city attorney determines the person for whom counsel was appointed may have funds to repay the state or city within six years of the date such amount was paid on that person's behalf. A person against whom civil recovery is sought under this subsection is entitled to all exemptions accorded to other judgment debtors. The state's attorney may contract with a private sector collection agency for assistance in seeking recovery of such funds. Before referring the matter to a collection agency, the state's attorney shall notify the person who is the subject of the collection action.
4. The indigent defense administration fund is a special fund in the state treasury. The state treasurer shall deposit in the fund all application fees collected under subsection 1. All moneys in the indigent defense administration fund are appropriated on a continuing basis to the commission on legal counsel for indigents to be used in the administration of the indigent defense system.

SECTION 16. AMENDMENT. Section 29-32.1-05 of the North Dakota Century Code is amended and reenacted as follows:

29-32.1-05. ~~Appointment of counsel~~ Counsel at public expense - Applicant's inability to pay costs and litigation expenses.

1. If an applicant requests ~~appointment of counsel~~ and the court is satisfied that the applicant is ~~unable to obtain adequate representation, the court shall appoint~~ indigent, counsel shall be provided at public expense to represent the applicant.
2. Costs and expenses incident to a proceeding under this chapter, including fees for ~~appointed~~ counsel provided at public expense, must be reimbursed in the same manner as are costs and expenses incurred in the defense of criminal prosecutions.

SECTION 17. AMENDMENT. Section 31-01-16 of the North Dakota Century Code is amended and reenacted as follows:

31-01-16. Compensation and mileage and travel expense of witness. A witness in a civil or criminal case is entitled to receive:

1. A sum of twenty-five dollars for each day necessarily in attendance before the district court or before any other board or tribunal, except municipal court.
2. A sum for mileage and travel expense reimbursement equal to the reimbursement rates provided for state employees in sections 44-08-04 and 54-06-09.

In all criminal cases in district court, the attorney general shall pay prosecution witness fees and expenses; and the ~~supreme court shall pay other witness fees for indigents and expenses~~ commission on legal counsel for indigents shall pay witness fees and expenses for witnesses in those cases in which counsel has been provided by the commission. Prisoners may not be compensated as witnesses under this section.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixtieth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1122.

House Vote: Yeas 91 Nays 0 Absent 3

Senate Vote: Yeas 41 Nays 0 Absent 6

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2007.

Approved at _____ M. on _____, 2007.

Governor

Filed in this office this _____ day of _____, 2007,

at _____ o'clock _____ M.

Secretary of State