

MEMORANDUM

To: MIC3 Executive Committee
From: Darren Embry, Samantha Nance, Stuart Michael
Date: August 5, 2022
Re: Citation Correction in MIC3 Compact

I. Introduction and Background

This memo was prepared at the request of the MIC3 Executive Committee to describe the scope of the problem presented by an error in the Compact’s model language. This error is present in Article II, in the definition of “active duty” where the model language currently references “10 U.S.C. Section 1209 and 1211,” but should instead refer to 10 U.S.C. Chapters 1209 and 1211. A full analysis of this error may be found in a previous memo to this Committee, dated April 12, 2022; this memo is intended to serve as a guide to and reference for the Commission during its discussion of how this error should be addressed at the 2022 annual business meeting.

II. Data Sources and Analytical Methodology

Data for this memo was collected from various sources. Compact statute citations and language were taken from each state’s legislature’s online statutory database and confirmed through LexisNexis. Numbers for National Guard and Reserve (NGR) children were taken from a table compiled by the NGR Task Force commissioned by MIC3 in 2020, which is based on data prepared by the Defense Manpower Data Center on August 19, 2020; accordingly, the number of NGR children indicated for each state below is only current as-of July 31, 2020. While this data is now just over two years old, it is sufficient to estimate the scope of the population in each state that could be impacted by the citation error identified in the Compact’s model language.

After gathering the above data, a state-by-state review was conducted to consider the scope of the revisions that would be necessary to correct the definition of “active duty” in each state. The magnitude of the necessary revisions was then considered alongside the scope of the impacted population to create three priority tiers:

- Priority Tier 1 consists of states who have the largest populations of NGR children who could be impacted by the error identified in the Compact’s model language and/or states where the definition of “active duty” is severely compromised by the current statutory language. Generally, these states have a population of 12,000 or more NGR children. It is recommended that the Commission focus its efforts on correcting the statutes in these states first.
- Priority Tier 2 consists of states who have adopted the Compact’s model language (either verbatim or in essential substance) and who have a moderate population of NGR children who could be impacted by this error. Generally, these states have a population between 6,000 and 12,000 NGR children. It is recommended that the Commission focus its efforts on correcting the statutes in Tier 2 states only after the exceptional cases in Tier 1 have been addressed.

- Priority Tier 3 consists of states with a minimal population of NGR children and/or relatively minor errors in their Compact statutes. Generally, these states have a population of less than 6,000 NGR children. As any errors present in the statutes in these states will impact a relatively small population of children, the statutes in these states should be corrected only after the states in Tiers 1 and 2 have been addressed.

Please note that the analysis in this memo assumes that each state's statute would be amended to refer to 10 U.S.C. Chapters 1209 and 1211. Should the Commission elect to pursue a different objective, the Priority Tiers in this memo should be re-evaluated in light of the Commission's new goal. For example, if the Commission elects to remove the statutory reference to the United States Code all together, Utah's statute would no longer need to be amended (whereas now it needs to be amended to refer to Chapters 1209 and 1211), and Iowa's statute would then need to be amended to remove the current reference to Chapters 1209 and 1211 (whereas now it does not need to be changed).

III. 50 State Analysis

1. Alabama

- i. **Compact Statute:** Ala. Code § 16-44B-1
- ii. **Citation Language:** "10 U.S.C. Sections 1209 and 1211"
- iii. **NGR Children:** 10,250
- iv. **Priority Analysis:** Priority Tier 2, due to a standard citation error and a moderate number of impacted NGR children.

2. Alaska

- i. **Compact Statute:** Alaska Stat. § 14.34.010
- ii. **Citation Language:** "10 U.S.C. 1209 and 1211"
- iii. **NGR Children:** 3,384
- iv. **Priority Analysis:** Priority Tier 3, due to a standard citation error and a relatively small number of impacted NGR children. By omitting "section" or the § symbol, Alaska has adopted a common shorthand that is nonetheless uniformly understood to refer to sections 1209 and 1211.

3. Arizona

- i. **Compact Statute:** Ariz. Rev. Stat. § 15-1911
- ii. **Citation Language:** "10 United States Code sections 1209 and 1211"
- iii. **NGR Children:** 10,953
- iv. **Priority Analysis:** Priority Tier 2, due to a standard citation error and a moderate number of impacted NGR children.

4. Arkansas

- i. **Compact Statute:** Ark. Code §§ 6-4-301 to 309
- ii. **Citation Language:** "10 U.S.C. Section 1209 and 1211"
- iii. **NGR Children:** 5,869

- iv. **Priority Analysis:** Priority Tier 3, due to a standard citation error and a relatively small number of impacted NGR children.

5. California

- i. **Compact Statute:** Cal. Ed. Code §§ 49700 to 49703
- ii. **Citation Language:** “10 U.S.C. Sections 1209 and 1211”
- iii. **NGR Children:** 28,211
- iv. **Priority Analysis:** Priority Tier 1. With a standard citation error and the second largest population of NGR children in the country, California represents a good opportunity to ensure Compact coverage for a significant population of NGR children with a moderate amount of effort. Moreover, as one of the largest states in the country efforts to correct the Compact in California are likely to be meaningful across the country and may serve as a model for subsequent efforts in other states.

6. Colorado

- i. **Compact Statute:** Colo. Rev. Stat. Ann. § 24-60-3402
- ii. **Citation Language:** “10 U.S.C. Section 1209 and 1211”
- iii. **NGR Children:** 9,685
- iv. **Priority Analysis:** Priority Tier 2, due to a standard citation error and a moderate number of impacted NGR children.

7. Connecticut

- i. **Compact Statute:** Conn. Gen. Stat. § 10-15f
- ii. **Citation Language:** “10 USC Section 1209 and 1211”
- iii. **NGR Children:** 3,187
- iv. **Priority Analysis:** Priority Tier 3, due to a standard citation error and a relatively small number of impacted NGR children.

8. Delaware

- i. **Compact Statute:** Del. Code Ann. tit. 14, §§ 160A to 177A
- ii. **Citation Language:** “10 U.S.C. §§ 1209 and 1211”
- iii. **NGR Children:** 1,906
- iv. **Priority Analysis:** Priority Tier 3, due to a standard citation error and a relatively small number of impacted NGR children.

9. District of Columbia

- i. **Compact Statute:** D.C. Code §§ 49-1101.01 to 49-1101.20
- ii. **Citation Language:** “10 U.S.C. §§ 1209 and 1211”
- iii. **NGR Children:** 439
- iv. **Priority Analysis:** Priority Tier 3, due to a standard citation error and a relatively small number of impacted NGR children.

10. Florida

- i. **Compact Statute:** Fla. Stat. § 1000.36
- ii. **Citation Language:** “10 U.S.C. ss. 1209 and 1211”
- iii. **NGR Children:** 24,098
- iv. **Priority Analysis:** Priority Tier 1. Florida represents an opportunity for the Commission to ensure Compact coverage for a significant number of NGR children and requires only the correction of a standard citation error to do so.

11. Georgia:

- i. **Compact Statute:** Ga. Code Ann. § 20-17-2
- ii. **Citation Language:** “10 U.S.C. Sections 1209 and 1211”
- iii. **NGR Children:** 16,638
- iv. **Priority Analysis:** Priority Tier 1, due to a standard citation error and a large number of impacted NGR children.

12. Hawaii

- i. **Compact Statute:** Haw. Rev. Stat. Ann. § 311D-1
- ii. **Citation Language:** “10 United States Code section 101(d)(1) and section 101(d)(6)(A)”
- iii. **NGR Children:** 5,301
- iv. **Priority Analysis:** Priority Tier 3. Hawaii has a smaller population of NGR children than many other member states, and a non-standard citation error that suggests additional efforts by the Commission may be necessary to correct this statute.

13. Idaho

- i. **Compact Statute:** Idaho Code Ann. § 37-5701
- ii. **Citation Language:** “10 U.S.C. sections 1209 and 1211”
- iii. **NGR Children:** 4,713
- iv. **Priority Analysis:** Priority Tier 3, due to a standard citation error and a relatively small number of impacted NGR children.

14. Illinois

- i. **Compact Statute:** 105 Ill. Comp. Stat. Ann. 70/1
- ii. **Citation Language:** “10 U.S.C. 1209 and 10 U.S.C. 1211”
- iii. **NGR Children:** 10,510
- iv. **Priority Analysis:** Priority Tier 1, with referral to Compliance Commission. Illinois is a special case in this analysis, as the state has an abnormal Compact statute. At this time, it appears that Illinois’ statues will need to be significantly revised and amended to bring this state into compliance with the Compact. In its current state, Illinois’ Compact statute raises serious questions as to whether this state has adequately joined the Compact. It is highly recommended that this issue be referred to the Compliance Committee for further review.

15. Indiana

- i. **Compact Statute:** Ind. Code Ann. § 20-38-3-1
- ii. **Citation Language:** “10 U.S.C. 1209 and 10 U.S.C. 1211”
- iii. **NGR Children:** 9,985
- iv. **Priority Analysis:** Priority Tier 2, due to a standard citation error and a moderate number of impacted NGR children.

16. Iowa

- i. **Compact Statute:** Iowa Code §§ 256H.1 to 256H.3
- ii. **Citation Language:** “10 U.S.C. ch. 1209 and 1211”
- iii. **NGR Children:** 5,484
- iv. **Priority Analysis:** No Priority. Iowa’s citation statute has already been corrected. No further amendments are necessary at this time.

17. Kansas

- i. **Compact Statute:** Kan. Stat. Ann. § 72-8268
- ii. **Citation Language:** ”10 U.S.C. section 1209 and 1211”
- iii. **NGR Children:** 7,091
- iv. **Priority Analysis:** Priority Tier 2, due to a standard citation error and a moderate number of impacted NGR children.

18. Kentucky

- i. **Compact Statute:** Ky. Rev. Stat. Ann. § 156.730
- ii. **Citation Language:** “10 U.S.C. secs. 1209 and 1211”
- iii. **NGR Children:** 6,947
- iv. **Priority Analysis:** Priority Tier 2, due to a standard citation error and a moderate number of impacted NGR children.

19. Louisiana

- i. **Compact Statute:** La. Rev. Stat. Ann. § 17:1915
- ii. **Citation Language:** “10 U.S.C. Section 1209 and 1211”
- iii. **NGR Children:** 7,898
- iv. **Priority Analysis:** Priority Tier 2, due to a standard citation error and a moderate number of impacted NGR children.

20. Maine

- i. **Compact Statute:** Me. Rev. Stat. Ann. tit. 20-A, §§ 20101 to 20118
- ii. **Citation Language:** “10 United States Code, Sections 1209 and 1211”
- iii. **NGR Children:** 2,361
- iv. **Priority Analysis:** Priority Tier 3, due to a standard citation error and a relatively small number of impacted NGR children.

21. Maryland

- i. **Compact Statute:** Md. Code Ann., Educ. § 7-1303
- ii. **Citation Language:** “10 U.S.C. Sections 1209 and 1211”
- iii. **NGR Children:** 9,839
- iv. **Priority Analysis:** Priority Tier 2, due to a standard citation error and a moderate number of impacted NGR children.

22. Massachusetts

- i. **Compact Statute:** Mass. Ann. Laws ch. 15E, §§ 1 to 19
- ii. **Citation Language:** “10 U.S.C. sections 1209 and 1211”
- iii. **NGR Children:** 5,581
- iv. **Priority Analysis:** Priority Tier 3, due to a relatively small population of NGR children and a standard citation error.

23. Michigan

- i. **Compact Statute:** Mich. Comp. Laws § 3.1041
- ii. **Citation Language:** “10 U.S.C. Section 1209 and 1211”
- iii. **NGR Children:** 8,460
- iv. **Priority Analysis:** Priority Tier 2, due to a standard citation error and a moderate number of impacted NGR children.

24. Minnesota

- i. **Compact Statute:** Minn. Stat. § 127A.85
- ii. **Citation Language:** “United States Code, title 10, sections 1209 and 1211”
- iii. **NGR Children:** 8,410
- iv. **Priority Analysis:** Priority Tier 2, due to a standard citation error and a moderate number of impacted NGR children. While statutory language differs from the model language, they are functionally identical.

25. Mississippi

- i. **Compact Statute:** Miss. Code Ann. § 37-135-31
- ii. **Citation Language:** “10 USC, Sections 1209 and 1211”
- iii. **NGR Children:** 8,117
- iv. **Priority Analysis:** Priority Tier 2, due to a standard citation error and a moderate number of impacted NGR children.

26. Missouri

- i. **Compact Statute:** Mo. Rev. Stat. § 160.2000
- ii. **Citation Language:** “10 U.S.C. Section 1209 and 1211”
- iii. **NGR Children:** 11,158
- iv. **Priority Analysis:** Priority Tier 2, due to a standard citation error and a moderate number of impacted NGR children.

27. Montana

- i. **Compact Statute:** Mont. Code Ann. § 20-1-230
- ii. **Citation Language:** “10 U.S.C. 12301(d) and 12304”
- iii. **NGR Children:** 2,593
- iv. **Priority Analysis:** Priority Tier 2. Despite a relatively small population of NGR children, Montana’s Compact statute adopted a different citation in an apparent attempt to correct the error in the model language; however, this citation will still need to be corrected to refer to Chapters 1209 and 1211. Montana has been elevated to Tier 2 to reflect the necessity of correcting this citation in a timely manner to clarify the intent of the member states under the Compact and ensure its uniform application throughout the country.

28. Nebraska

- i. **Compact Statute:** Neb. Rev. Stat. § 79-2201
- ii. **Citation Language:** “10 U.S.C. 1209 and 1211”
- iii. **NGR Children:** 4,182
- iv. **Priority Analysis:** Priority Tier 3, due to a standard citation error and a relatively small number of impacted NGR children.

29. Nevada

- i. **Compact Statute:** Nev. Rev. Stat. § 388F.010
- ii. **Citation Language:** “10 U.S.C. §§ 1209 and 1211”
- iii. **NGR Children:** 3,974
- iv. **Priority Analysis:** Priority Tier 3, due to a standard citation error and a relatively small number of impacted NGR children.

30. New Hampshire

- i. **Compact Statute:** N.H. Rev. Stat. Ann. §§ 110-D:1 to 110-D:19
- ii. **Citation Language:** “10 U.S.C. sections 1209 and 1211”
- iii. **NGR Children:** 2,105
- iv. **Priority Analysis:** Priority Tier 3, due to a standard citation error and a relatively small number of impacted NGR children.

31. New Jersey

- i. **Compact Statute:** N.J. Rev. Stat. §§ 18A:75A-1 to 18A:75A-19
- ii. **Citation Language:** “10 U.S.C. ss. 1209 and 1211”
- iii. **NGR Children:** 6,693
- iv. **Priority Analysis:** Priority Tier 2, due to a standard citation error and a moderate number of impacted NGR children.

32. New Mexico

- i. **Compact Statute:** N.M. Stat. §§ 11-8B-1 and 11-8B-2
- ii. **Citation Language:** “10 U.S.C. Sections 1209 and 1211”

- iii. **NGR Children:** 3,169
- iv. **Priority Analysis:** Priority Tier 3, due to a standard citation error and a relatively small number of impacted NGR children.

33. New York

- i. **Compact Statute:** N.Y. Educ. Law §§ 3300 to 3318
- ii. **Citation Language:** “10 U.S.C. sections 1209 and 1211”
- iii. **NGR Children:** 12,816
- iv. **Priority Analysis:** Priority Tier 1, due to a standard citation error and a large number of impacted NGR children.

34. North Carolina

- i. **Compact Statute:** N.C. Gen. Stat. § 115C-407.5
- ii. **Citation Language:** “10 U.S.C. § 12301, et. seq. and 10 U.S.C. § 12401, et. seq.”
- iii. **NGR Children:** 13,975
- iv. **Priority Analysis:** Priority Tier 1. With a higher number of NGR children and an irregular citation error, North Carolina represents a good opportunity for the Commission’s to correct a statute that differs from the model language. As other states have also adopted this citation, it should be corrected as quickly as possible to avoid any implication of a separate agreement among the member states with this language.

35. North Dakota

- i. **MIC3 Compact Statute:** N.D. Cent. Code § 15.1-04.1-01
- ii. **Citation Language:** “10 U.S.C. 1209 and 1211”
- iii. **NGR Children:** 2,253
- iv. **Priority Analysis:** Priority Tier 3, due to a standard citation error and a relatively small number of impacted NGR children.

36. Ohio

- i. **Compact Statute:** Ohio Rev. Code § 3301.60
- ii. **Citation Language:** “10 U.S.C. 1209 and 1211”
- iii. **NGR Children:** 13,667
- iv. **Priority Analysis:** Priority Tier 1, due to a standard citation error and a large number of impacted NGR children.

37. Oklahoma

- i. **Compact Statute:** Okla. Stat. tit. 70, § 510.1
- ii. **Citation Language:** “10 U.S.C., Sections 1209 and 1211”
- iii. **NGR Children:** 7,885
- iv. **Priority Analysis:** Priority Tier 2, due to a standard citation error and a moderate number of impacted NGR children.

38. Oregon

- i. **Compact Statute:** Or. Rev. Stat. § 326.552
- ii. **Citation Language:** “10 U.S.C. chapters 1209 and 1211 and members described in 32 U.S.C. 502(f)”
- iii. **NGR Children:** 4,980
- iv. **Priority Analysis:** Priority Tier 2. While Oregon contains a smaller number of NGR children than other Tier 2 states, its Compact statute has been broadened to cover NGR members under Title 32 orders as well as Title 10. This is inconsistent with the Compact’s apparent intent, and this citation will need to be revised to refer only to 10 U.S.C. Chapters 1209 and 1211.

39. Pennsylvania

- i. **Compact Statute:** 24 Pa. Stat. Ann. § 7302
- ii. **Citation Language:** “10 U.S.C. Section 12301 et seq. and 12401 et seq.”
- iii. **NGR Children:** 13,525
- iv. **Priority Analysis:** Priority Tier 1. Pennsylvania appears to have adopted the same strategy used in North Carolina in an apparent attempt to correct the error found in the model language.

40. Rhode Island

- i. **Compact Statute:** R.I. Gen. Laws § 16-92-3
- ii. **Citation Language:** “10 U.S.C. § 1209 and 1211”
- iii. **NGR Children:** 1,474
- iv. **Priority Analysis:** Priority Tier 3, due to a standard citation error and a relatively small number of impacted NGR children.

41. South Carolina

- i. **Compact Statute:** S.C. Code Ann. §§ 59-46-10 to 59-46-50
- ii. **Citation Language:** “U.S.C. Section 1209 and 1211”
- iii. **NGR Children:** 9,462
- iv. **Priority Analysis:** Priority Tier 2, due to a standard citation error and a moderate number of impacted NGR children.

42. South Dakota

- i. **Compact Statute:** S.D. Codified Laws §§ 13-53E-1 and 13-53E-2
- ii. **Citation Language:** “10 U.S.C. section 1209 and 1211”
- iii. **NGR Children:** 3,279
- iv. **Priority Analysis:** Priority Tier 3, due to a standard citation error and a relatively small number of impacted NGR children.

43. Tennessee

- i. **Compact Statute:** Tenn. Code Ann. § 49-12-301
- ii. **Citation Language:** “10 U.S.C. §§ 1209 and 1211”

- iii. **NGR Children:** 11,339
- iv. **Priority Analysis:** Priority Tier 2, due to a standard citation error and a moderate number of impacted NGR children.

44. Texas

- i. **Compact Statute:** Tex. Educ. Code §§ 162.001 to 162.005
- ii. **Citation Language:** “10 U.S.C. Sections 1209 and 1211”
- iii. **NGR Children:** 37,563
- iv. **Priority Analysis:** Priority Tier 1, due to a standard citation error and a large number of impacted NGR children. With the largest population of NGR children in the country, correcting the Compact statute in Texas should be among the Commission’s top priorities. Texas represents a good opportunity for the Commission to establish and refine its approach to correcting a standard citation error and to ensure Compact coverage for a significant number of NGR children while doing so.

45. Utah

- i. **Compact Statute:** Utah Code §§ 53E-3-901 to 53E-3-921
- ii. **Citation Language:** Not present as statute is not limited to active NGR members; statute refers generally to “members of the National Guard and Reserve.”
- iii. **NGR Children:** 9,747
- iv. **Priority Analysis:** Priority Tier 2. With a moderate population of NGR children in the state, Utah appears to have attempted to expand Compact coverage to all “members of the National Guard and Reserve.” As discussed in a separate memo, this change should be accomplished through stand-alone legislation enacted outside the Compact; as such, Utah’s statute should be amended to be consistent with the other member states. Amending this statute to reduce Compact coverage may be a difficult task politically, but it is essential that the Compact’s language be uniform throughout the member states.

46. Vermont

- i. **Compact Statute:** Vt. Stat. Ann. tit. 16, §§ 806 to 806q
- ii. **Citation Language:** “10 U.S.C. Chapter 1209 and 1211”
- iii. **NGR Children:** 1,378
- iv. **Priority Analysis:** No Priority. Vermont’s citation statute has already been corrected. No further amendments are necessary at this time.

47. Virginia

- i. **Compact Statute:** Va. Code Ann. §§ 22.1-360 and 22.1-361
- ii. **Citation Language:** “10 U.S.C. §§ 1209 and 1211”
- iii. **NGR Children:** 20,639
- iv. **Priority Analysis:** Priority Tier 1, due to a standard citation error and a large number of impacted NGR children.

48. Washington

- i. Compact Statute:** Wash. Rev. Code §§ 28A.705.010 and 28A.705.020
- ii. Citation Language:** “10 U.S.C. Secs. 1209 and 1211”
- iii. NGR Children:** 11,572
- iv. Priority Analysis:** Priority Tier 2, due to a standard citation error and a moderate number of impacted NGR children.

49. West Virginia

- i. Compact Statute:** W. Va. Code §§ 18-10F-1 and 18-10F-2
- ii. Citation Language:** “10 U.S.C. Sections 1209 and 1211”
- iii. NGR Children:** 3,293
- iv. Priority Analysis:** Priority Tier 3, due to a standard citation error and a relatively small number of impacted NGR children.

50. Wisconsin

- i. Compact Statute:** Wis. Stat. § 115.997
- ii. Citation Language:** “10 USC 1209 and 1211”
- iii. NGR Children:** 6,944
- iv. Priority Analysis:** Priority Tier 2, due to a standard citation error and a moderate number of impacted NGR children.

51. Wyoming

- i. Compact Statute:** Wyo. Stat. Ann. §§ 21-24-101 to 21-24-118
- ii. Citation Language:** “10 U.S.C. sections 1209 and 1211”
- iii. NGR Children:** 1,662
- iv. Priority Analysis:** Priority Tier 3, due to a standard citation error and a relatively small number of impacted NGR children.

IV. Conclusion

In light of the above information, the Commission should focus first on correcting the Compact statutes in California, Florida, Georgia, Illinois, New York, North Carolina, Ohio, Pennsylvania, Texas, and Virginia. These 10 states represent approximately 43% of the NGR children in the country and correcting the Compact statutes in these states will ensure Compact coverage for over 181,000 children. While it is almost impossible to predict how difficult it will be to correct this issue in any given state, it is almost certain to be easier to address these 9 states collectively than to correct the statutes across the 21 states in Tier 2 or the 18 states in Tier 3. As the Commission’s resources are finite, close attention should be paid to ensure that they are used in the most efficient manner.

This memo is intended to serve as a reference document only and does not include any information about the specific legislative process needed in each state. Further analysis will be necessary once the Commission has determined how it intends to collectively address the issue of NGR coverage under the Compact, whether that is through the specific citation correction discussed here or by some other means.



Going forward, each state's MIC3 council should be individually consulted to identify the unique challenges and procedures necessary to amend the Compact statute in that state. It may be necessary for the Commission to establish a new Committee or task force for this purpose, and to further address this issue.