

**NCSL Standing Committee on Law and Public Safety
DRAFT POLICY BOOK
Boston, MA**

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1 **COMMITTEE: NATURAL RESOURCES, ENERGY & ENVIRONMENT;**
2 **LAW AND PUBLIC SAFETY**

3 **POLICY: NATURAL DISASTER MANAGEMENT**

4 **TYPE: JOINT DIRECTIVE (NEW)**

5 **SPONSOR: COMMITTEE DRAFT**

6 **WHEREAS**, natural disasters impacting the United States, including hurricanes, storms,
7 flooding, tornados, fires, wind, hail and extreme heat, are more severe, occurring more
8 frequently, and at greater scale. According to through the Federal Emergency
9 Management Agency (FEMA), 44 of 50 states experienced a federal disaster
10 declaration somewhere in their state in 2024 and almost every state is impacted by a
11 disaster every year; and

12 **WHEREAS**, the National Oceanic and Atmospheric Administration’s National Center for
13 Environmental Information has identified 73 natural disasters, largely comprised of
14 severe storms, tropical cyclones and winter storm events, between 2022 and 2024 with
15 individual losses of over \$1 billion adjusted for inflation. Five-year average costs have
16 spiked to \$151.2 billion in 2024 from \$19.1 billion in 1984, meaning states and local
17 communities rely on federal assistance before, during and after disasters now more
18 than ever; and

19 **WHEREAS**, in 2020 the National Institute of Building Sciences evaluated federal
20 investments in disaster mitigation since 1995 and found that for every \$1 federal
21 invested, communities saved \$13; and

22 **WHEREAS**, state and local governments own approximately 44% of public roads, 38%
23 of national bridges, over 900 hospitals and directly support about a third of the nation’s
24 airports. States are constantly working to improve disaster response and recovery
25 systems and technology and federal funding and technical assistance enhances state
26 investments in pre-disaster resiliency, disaster mitigation and preparedness and

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27 supports the rapid repair and replacement of damaged and destroyed infrastructure and
28 quicker economic recovery; and

29 **WHEREAS**, given the severity of natural disasters in recent years, federal support to
30 state activities and existing state funding mechanisms is vital to repairing damaged
31 communities; and

32 **WHEREAS**, the majority of federal disaster funding is distributed to states through
33 FEMA, which has obligated over \$160 billion in funding since 2017 as a result non-
34 Covid-19 disaster declarations; and

35 **WHEREAS**, state and local governments already have a 25% cost share with awarded
36 FEMA funds unless specifically adjusted by the president. The majority of states lack
37 sufficient funding, capacity and need for a full-time disaster-response staff, and are
38 unable to replace federal disaster-response infrastructure and expertise; and

39 **WHEREAS**, federal assistance to states which provides and supports the delivery of
40 basic services such as clean water, food and shelter to communities post-disaster is a
41 necessity; and

42 **WHEREAS**, the dissolution of federal agencies addressing disasters and assistance for
43 disaster preparedness, mitigation, resilience, response and recovery would result in the
44 loss of a centralized federal research and innovation hub for new resiliency techniques
45 and improved methods for protecting lives and property during emerging and
46 increasingly worsening disaster threats, an increase in direct cost burdens on states by
47 requiring states to spend more money on routine items and would adversely impact
48 investments in other areas and a decrease in national security during times of crisis;
49 and

50 **WHEREAS**, intergovernmental communications, ongoing federal-state partnerships and
51 long-term staff relationships are vital to effective coordination and disaster
52 preparedness and response; and

53

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54 **WHEREAS**, according to the Congressional Budget Office, insurers covered \$80 billion
55 in losses caused by natural disasters in 2023 and some insurers were rendered
56 insolvent due to the impacts of and the resulting claims after natural disasters. Other
57 insurance companies are reducing coverage and are pulling out of states like California
58 and Florida – both of which experienced catastrophic disasters in recent years; and

59 **WHEREAS**, given the interconnectedness of the global economy, vulnerable supply
60 chains and regionalized American industry, it is in America’s best economic interest to
61 ensure expedient services and relief to states after disasters to assist with speedy local,
62 regional and national economic recovery; and

63 **NOW, THEREFORE, BE IT RESOLVED**, the National Conference of State Legislatures
64 urges Congress and the administration to maintain and sustain the role, scope and
65 adequate and appropriate funding levels of all federal disaster agencies, programs,
66 grants and projects that assist states with disaster preparedness, mitigation, resilience,
67 response and recovery and to reject any changes to federal agencies, programs, grants
68 or projects that would disrupt or decrease federal disaster assistance funding currently
69 provided to states, create direct or indirect cost burden shifts to states, or create any
70 new direct or indirect spending or other precondition requirements, including the
71 implementation of a so called “disaster deductible,” for states to access federal funding
72 for disaster preparedness, mitigation, resilience, response or recovery; and

73 **LET IT BE FURTHER RESOLVED**, the National Conference of State Legislatures calls
74 on Congress, the administration and relevant federal agencies to ensure that federal
75 funding intended for shelter after disaster be continued, and ensure that the shelter and
76 services issued meet the needs of all Americans, both urban and rural; and

77 **LET IT BE FURTHER RESOLVED**, the National Conference of State Legislatures
78 urges Congress, the administration and relevant federal agencies to support the
79 principles of state-to-state mutual aid and resource sharing as agreed to by the
80 signatory states and territories of the Emergency Management Assistance Compact , in

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81 addition too, rather than as a replacement of, federal financial and technical support and
82 assistance; and

83 **LET IT BE FURTHER RESOLVED**, the National Conference of State Legislatures calls
84 on Congress, the administration and relevant federal agencies to enhance
85 intergovernmental partnerships; increase in-person assistance to states, including
86 communication and coordination assistance and other on the ground support before,
87 after, and during disaster response and recovery to better serve the needs of the
88 American public; and bolster clear and accurate communications with all relevant
89 stakeholders including state and local entities as well as the public about state and
90 federal disaster preparation, response and recovery efforts, before, during and after
91 disasters; and

92 **LET IT BE FURTHER RESOLVED**, the National Conference of State Legislatures calls
93 on Congress, the administration and relevant federal agencies to maintain federal
94 disaster resources for the public, including information to assist the public with
95 preparedness and response, scientific databases and federal data tracking and
96 collection programs; and

97 **LET IT BE FURTHER RESOLVED**, the National Conference of State Legislatures
98 supports efforts by the federal government to improve community preparedness prior to
99 disaster, including the federal government’s assistance with and facilitation of broad
100 preventative actions that could be conducted across the nation, such as contracting for
101 shelter in preparation for future disasters; and

102 **LET IT BE FURTHER RESOLVED**, the National Conference of State Legislatures calls
103 on Congress, the administration and relevant federal agencies to provide financial and
104 technical support for state resource sharing programs and disaster response systems
105 and software; and

106 **LET IT BE FURTHER RESOLVED**, the National Conference of State Legislatures
107 supports efforts by the federal government, in consultation with states, to improve,

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108 streamline, simplify, and increase the consistency, flexibility and transparency of federal
109 disaster funding applications and distribution processes to states, who are responsible
110 managers of federal dollars, to more quickly assist with disaster response and recovery;
111 and

112 **LET IT BE FURTHER RESOLVED**, the National Conference of State Legislatures
113 supports changes to the National Flood Insurance Program to ensure its solvency while
114 also maintaining its affordability and availability to all Americans.

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1 **COMMITTEE: LAW AND PUBLIC SAFETY**

2 **POLICY: CYBER CRIME**

3 **TYPE: RESOLUTION (NEW)**

4 **SPONSOR: COMMITTEE DRAFT**

5 **WHEREAS**, the Federal Bureau of Investigation’s Internet Crime Complaint Center
6 (IC3), which serves as the primary destination for the public to report cyber-enabled
7 crime, has received over 9 million complaints since its founding in 2000 and over 2,000
8 complaints per day since 2020.

9 **WHEREAS**, the IC3 defines cyber-enabled crime as any illegal activity that is assisted
10 using cyber-related means, which “may include, but [is] not limited to, advance-fee
11 schemes, non-delivery of goods or services, computer hacking, or
12 employment/business opportunity schemes, and intrusion-based crimes such as
13 ransomware and data breaches.”

14 **WHEREAS**, the IC3 saw over 850,000 total complaints as well as a new record of over
15 \$16.6 billion in losses due to cyber-enabled crime in 2024 alone, with individuals over
16 60 years old representing the bulk of reported losses and complaints filed.

17 **WHEREAS**, almost 5,000 complaints filed with the IC3 were from critical infrastructure
18 organizations, such as power plants, hospitals, water treatment plants, and airports, that
19 were affected by ransomware and data breaches.

20 **WHEREAS**, all states and territories have had at least 70 IC3 complaints filed per
21 100,000 residents in 2024, with some states experiencing complaint volume as high as

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22 900 per 100,000 residents, illustrating the ubiquity of cyber-enabled crime across the
23 country.

24 **WHEREAS**, the National Center for Missing & Exploited Children (NCMEC) received
25 over 450,000 reports of online enticement, where an individual is communicating with
26 someone believed to be a child with the intent to commit a sexual offense or abduction,
27 in 2024.

28 **WHEREAS**, NCMEC has observed a dramatic increase in child sextortion cases, where
29 children are blackmailed or threatened into sending sexual images and/or money to
30 perpetrators.

31 **WHEREAS**, a 2023 U.S. Government Accountability Office (GAO) report, “Cybercrime:
32 Reporting Mechanism Vary, and Agencies Face Challenges in Developing Metrics,”
33 outlined several difficulties in tracking and prosecuting cyber-enabled crimes due to
34 underreporting, costs of investigation and prosecution, victim concerns of reputational
35 impact, agency difficulties in retaining highly trained staff, lack of capacity for foreign
36 nations to participate in multi-jurisdictional criminal prosecutions, and inconsistent
37 definitions of cybercrime across federal agencies, among others.

38 **WHEREAS**, the Cybersecurity and Infrastructure Security Agency (CISA) serves as the
39 integral federal agency for identifying and managing risk to the cyber and physical
40 infrastructure that states and their residents rely on every hour of every day

41 **WHEREAS**, states have a vested interest in the safety of their residents and rely on
42 partnership with the federal government to enhance their capacity to address interstate
43 and international cyber-enabled crime.

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44 **NOW, THEREFORE, BE IT RESOLVED**, the National Conference of State Legislatures
45 urges Congress and the Administration to increase the capacity of federal agencies to
46 respond to and partner with state and local jurisdictions to combat cyber-enabled crime.

47 **LET IT BE FURTHER RESOLVED**, the National Conference of State Legislatures
48 urges Congress and the Administration to restore long-term funding to CISA in amounts
49 necessary to sustain the agency’s ability to serve as a resource for state cybersecurity
50 efforts and to ensure the continued viability of the CISA regional offices, as well as the
51 state and local cybersecurity grant that assists states with combatting cyber threats and
52 maintaining overall statewide cyber readiness

53 **LET IT BE FURTHER RESOLVED**, the National Conference of State Legislatures
54 urges Congress and the Administration to maintain funding for the U.S. Department of
55 Commerce’s National Institute of Standards and Technology, which develops voluntary
56 cybersecurity standards, guidelines, and resources for industry, federal agencies, and
57 other stakeholders.

58 **LET IT BE FURTHER RESOLVED**, the National Conference of State Legislatures
59 urges Congress and the Administration to continue existing and pursue new
60 international partnerships to address external cybersecurity concerns that affect United
61 States residents.

62 **LET IT BE FURTHER RESOLVED**, the National Conference of State Legislatures
63 urges Congress and the Administration to continue to support and invest in state-federal
64 partnerships as well as interstate information sharing centers and associated grant
65 programs.

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1 **COMMITTEE: LAW AND PUBLIC SAFETY**

2 **POLICY: HUMANE TREATMENT OF ASYLUM SEEKERS AT**
3 **SOUTHERN BORDER AND PORTS OF ENTRY**

4 **TYPE: RESOLUTION (RENEWAL)**

5 **WHEREAS**, the United States has a vested interest in securing its borders; and

6 **WHEREAS**, promoting legal immigration is paramount to the prosperity of the United
7 States; and

8 **WHEREAS**, the right to seek and enjoy asylum from persecution is a commonly
9 accepted human right in the international community that the United States upholds;
10 and

11 **NOW, THEREFORE, BE IT RESOLVED**, the National Conference of State Legislatures
12 urges Congress and the Administration to invest in procedural and technological
13 improvements to its ports of entry and judicial system in order to facilitate a safe,
14 efficient, timely, and humane immigration process for asylum seekers.

1 **COMMITTEE: LAW AND PUBLIC SAFETY**

2 **POLICY: INCREASING VISA CAPS AND LEGAL IMMIGRATION**
3 **TO END LABOR SHORTAGE**

4 **TYPE: RESOLUTION (RENEWAL)**

5 **WHEREAS**, the U.S. is experiencing a tight labor market and increased cultural and
6 ethnic diversity is a recognized benefit to our society; and

7 **WHEREAS**, the pandemic highlighted the need for a diverse and robust workforce able
8 to withstand shocks and unforeseen circumstances, particularly in industries such as
9 healthcare, manufacturing, agriculture, education, and trade industries; and

10 **WHEREAS**, immigrants tend to be of optimal working age and eager to find
11 employment; and

12 **WHEREAS**, employment-based visa holders are non-citizen workers that complement
13 U.S. workers and help to fill labor gaps in critical industries; and

14 **WHEREAS**, employment-based visa holders benefit the country not only with their
15 gainful employment but also by contributing to the tax base, as they pay federal, state,
16 Social Security, and Medicare taxes proportional to their wages; and

17 **WHEREAS**, employer control of these visa programs can constrain workers' rights and
18 may result in abuse and exploitation; and

19 **WHEREAS**, employment visa programs across industries have been shown to create
20 captive employment dynamics, undercut wages and working conditions, and drive down
21 labor standards; and

22 **WHEREAS**, according to the United States Department of State, permanent
23 employment-based immigration is statutorily limited to 140,000 principals and
24 dependents annually, number of H-2B visas statutorily limited to 66,000, and the

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25 number of H-1B visas limited to 65,000 with an additional 20,000 visas available for
26 those with a master's degree or doctorate.

27 **WHEREAS**, these visa caps are often met within the first few months of each year; and

28 **WHEREAS**, many visa recipients must reapply yearly and these applications can be
29 lengthy and burdensome; and

30 **NOW, THEREFORE, BE IT RESOLVED**, the National Conference of State Legislatures
31 urges Congress to significantly increase the statutory visa caps and simplify the
32 application and reapplication processes to allow employment-based visa recipients to
33 easily maintain their visa status; and

34 **LET IT BE FURTHER RESOLVED**, that NCSL shall call for reforms to work visa
35 programs to promote employer accountability, high labor standards, fair wages, safe
36 working conditions, and ensure rights and protections for U.S. and immigrant workers
37 alike; and

38 **LET IT BE FURTHER RESOLVED**, the National Conference of State
39 Legislatures urges Congress and the Administration to create legal pathways to
40 immigration and streamline the process for immigration into our country in order to
41 fortify the labor market and achieve economic prosperity.

1 **COMMITTEE: LAW AND PUBLIC SAFETY AND LABOR AND**
2 **ECONOMIC DEVELOPMENT**

3 **POLICY: IMPROVING H-2A VISA POLICY TO END**
4 **AGRICULTURAL LABOR SHORTAGES**

5 **TYPE: RESOLUTION (NEW) (Drafted by NCSL's Task Force**
6 **on Agriculture)**

7 **WHEREAS**, U.S. agricultural industries are currently experiencing labor shortages and
8 the U.S. agricultural workforce is experiencing a reduction in available labor; and

9 **WHEREAS**, the H-2A visa is a temporary work visa for foreign agricultural laborers and
10 does not provide a path to U.S. citizenship; and

11 **WHEREAS**, H-2A visa holders are foreign agricultural laborers that can help temporarily
12 fill labor gaps in the agricultural industry; and

13 **WHEREAS**, the pandemic highlighted the need for a diverse and robust workforce able
14 to withstand shocks and unforeseen circumstances, particularly in essential industries
15 experiencing labor shortages such as agriculture; and

16 **WHEREAS**, agricultural employers turn to employing H-2A visa holders when they can
17 demonstrate during the application process that there are no domestic laborers
18 available to fill needed positions;

19 **WHEREAS**, H-2A visa holders are valuable employees in the domestic and global
20 agricultural communities who desire and deserve opportunities, protections,
21 employment certainty and dignity; and

22 **WHEREAS**, agricultural employers and employees endure a costly and complex
23 employer-sponsored application process, fulfill burdensome reporting requirements and
24 comply with federally mandated wage requirements for both H-2A visa holders and
25 domestic laborers, as well as fulfill transportation, meal and housing requirements; and

26 **WHEREAS**, the H-2A visa program is the largest U.S. temporary work visa program,
27 despite the associated costs, and the number of applications by U.S. agricultural
28 employers to hire H-2A visa holders has been increasing dramatically over the past
29 decade, underscoring the severity of the current agricultural labor shortage; and

30 **WHEREAS**, current H-2A visa program rules prohibit the employment of H-2A visa
31 holders in any agricultural position that is not classified as temporary or seasonal in
32 nature, which disqualifies H-2A labors from filling most positions in dairy, livestock,
33 forestry and other year-round agricultural industries; and

34 **WHEREAS**, current H-2A visa program rules prohibit the employment of H-2A visa
35 holders for longer than one year, forcing employers to find replacement workers often
36 which is costly and burdensome for agricultural employers and employees; and

37 **WHEREAS**, H-2A visa holders are prohibited from extending their visa for more than
38 three years and H-2A visa holders must wait outside of the U.S. for a period of no less
39 than three months before they can reapply for a H-2A visa; and

40 **WHEREAS**, the H-2A visa program has been shown to create captive employment
41 dynamic, undercut wages, and working conditions, and drive down labor standards;

42 **NOW, THEREFORE, BE IT RESOLVED**, the National Conference of State Legislatures
43 urges Congress to extend H-2A visa holders' eligible length of employment by a single
44 agricultural employer to 12 months and further urges Congress to allow for an extension
45 of up to 12 months past the original term length when a verification of employment is
46 provided by the employer to decrease the burden on agricultural employers and H-2A
47 visa holders; and

48 **LET IT BE FURTHER RESOLVED**, the National Conference of State Legislatures
49 urges Congress and the Administration to expand the eligibility of H-2A visa labor to all
50 agricultural industries, including dairy, livestock, forestry and other year-round
51 agricultural industries; and

52 **LET IT BE FURTHER RESOLVED**, the National Conference of State Legislature urges
53 applicable federal agencies collaborate to streamline and modernize the H-2A visa
54 application and reapplication process and requirements, to allow greater flexibility,
55 increase efficiency and to reduce the financial and resource burdens on H-2A
56 employers and employees; and

57 **LET IT BE FURTHER RESOLVED**, the National Conference of State Legislatures
58 urges Congress to reform the H2A agricultural visa program to promote employer
59 accountability, high labor standards, fair wages, safe working conditions, and ensure
60 rights and protections for U.S. and immigrant agricultural workers alike; and

61 **LET IT BE FURTHER RESOLVED**, the National Conference of State Legislatures
62 urges the U.S. Department of Labor, the U.S. State Department, the U.S. Department of
63 Homeland Security, the U.S. Department of Agriculture and other applicable agencies to
64 consult with the National Conference of State Legislators on any proposed changes to
65 the H-2A visa application or program; and

66 **LET IT BE FURTHER RESOLVED**, the National Conference of State Legislatures
67 urges Congress and the Administration to expand the eligibility of temporary H-2A visa
68 labor to temporarily fulfill year-round and non-seasonal agricultural positions, including
69 production, preparation, processing or manufacturing of agricultural commodities, in all
70 agriculture industries during the requested length of employment within the valid work
71 period of the H-2A visa.

1 **COMMITTEE: LAW AND PUBLIC SAFETY**
2 **BANKING, FINANCIAL SERVICES, & INSURANCE**
3 **(LEAD)**

4 **POLICY: FRAUD AND SCAM PROTECTION**

5 **TYPE: DIRECTIVE (LEAD COMMITTEE SPONSORED**
6 **UPDATE)**

7 **Scale of Consumer Fraud**

8 Federal Trade Commission data shows that 2.6 million consumers filed fraud reports
9 and that consumers lost more than \$12.5 billion to fraud in 2024. The most reported
10 schemes were impostor scams; online shopping scams; scams involving prizes,
11 sweepstakes and lotteries; investment scams; and business and job opportunity scams.
12 Consumers lost more money to investment scams and imposter scams in 2024 than
13 any other category and the biggest losses were through bank transfers and
14 cryptocurrency.

15 Fraud and scams are becoming more prevalent online. In addition to robocalls and
16 spoofing, digital tools such as emails, text messaging, and social media are making it
17 easier than ever to target hard-working Americans. The emergence of artificial
18 intelligence technologies has significantly amplified the sophistication and reach of fraud
19 and scams, enabling scammers to create more convincing fake identities, deepfake
20 videos and personalized phishing attacks that are increasingly difficult for consumers to
21 detect.

22 **Disproportionate Impact on Older Adults and Veterans**

23 While a smaller percentage of older people report being victims of scams than younger
24 people, they tend to lose far more money to these crimes. Fraud victims in their 70s lost
25 a median of \$994. Fraud victims in their 80s lost a median of \$1,900 while those in their
26 20s lost about \$338. Veterans are victims of scams and fraud more often than the

27 general public because of their hard-earned benefits and resources, as well as their
28 general good will. According to data from the FTC, there were close to 93,000 military
29 reports of fraud with a median reported loss of about \$700 in 2024.

30 **Collaborative Efforts to Combat Fraud and Scams**

31 Fraud in all forms is a crime, and policymakers should encourage reporting of fraudulent
32 acts to law enforcement. The National Conference of State Legislatures urges the
33 federal government to work with state and local governments, law enforcement and
34 private industry to develop policies and practices that prevent, curtail and stop fraud
35 and, where possible, provide victims of fraud some options for relief and recovery.
36 Congress, federal agencies and the administration should support and not preempt
37 states' ability to adopt their own laws to curtail and stop fraud and scams in the best
38 interests of their residents.

1 **COMMITTEE: LAW AND PUBLIC SAFETY**

2 **POLICY: FEDERALISM**

3 **TYPE: DIRECTIVE (Committee sponsored update)**

4 Our American federalism creatively unites states with unique cultural, political, and
5 social diversity into a strong nation. It is built on the concepts of shared sovereignty and
6 delineated powers. The Tenth Amendment is the cornerstone of constitutional
7 federalism and reserves broad powers to the states and to the people. Federalism
8 protects liberty, enhances accountability and fosters innovation with less risk to the
9 nation. NCSL strongly urges federal lawmakers to maintain a collaborative federalism
10 that respects states' roles and empowers states to appropriately implement federal
11 standards, permit diversity without causing division, and foster unity and coordination
12 among states without enshrining uniformity. To revitalize federalism, the three branches
13 of the national government should carefully examine and refrain from enacting
14 proposals that would limit the ability of state legislatures to exercise discretion over
15 basic and traditional functions of state government.

16 The Constitution divides authority between federal and state governments for the
17 protection of individuals." *New York v. United States* 505 U.S. 144 (1992). This careful
18 balance enhances the express protections of civil liberties within the Constitution.
19 Effective governance requires appropriate devolution of decision-making authority from
20 the federal government to the states in order to encourage participation and inclusion in
21 our federalist system.

22 By retaining power to govern, states can more confidently innovate in response to
23 changing needs. As Justice Brandeis wrote: "It is one of the happy incidents of the
24 federal system that a single courageous state may, if its citizens choose, serve as a
25 laboratory; and try novel social and economic experiments without risk to the rest of the
26 country." *New State Ice Co. v. Liebmann*, 285 U.S. 262 (1932)

27 It is a suitable role for the federal government to encourage innovation by states. Our
28 country's founders did not contemplate a perfect union, but rather a more perfect union,
29 meaning there must be room for policy experimentation and different methods of self-
30 government at the state level. States are inherently capable of moving more quickly
31 than the federal Congress to correct errors observed in policy and can be more
32 sensitive to public needs.

33 The Supreme Court has sent a strong message to Congress that its powers under the
34 Commerce Clause have boundaries (*United States v. Lopez*, (1995). Congress must
35 heed the wisdom of Lopez and not exercise its commerce powers without a compelling
36 need to do so. The Supreme Court has recognized the negative practical effect that
37 federal overreach under the dormant Commerce Clause would have on states in our
38 global economy, and that such overreach would “cast a shadow over laws long
39 understood to represent valid exercises of the States’ constitutionally reserved powers.”
40 (*National Pork Producers Council v. Ross* (2023) The Supreme Court should add to the
41 ability of states to respond to pressing social and economic problems by interpreting the
42 dormant Commerce Clause in a restrained manner sensitive to the states
43 constitutionally derived authority in the federal system.

44 NCSL dedicates itself to restoring balance to federalism through changes in the political
45 process and through thoughtful consideration and broad national debate of proposals to
46 amend the Constitution or to clarify federal law that are specifically intended to redress
47 the erosion of state powers under the Constitution. NCSL does not endorse any specific
48 proposal for or against constitutional change or call for a constitutional convention.
49 NCSL continues to support all civil rights laws in force in this country.

50 **Preemption**

51 Congress must allow states flexibility to shape public policy. Creative solutions to public
52 problems can be achieved more readily when state laws are accorded due respect.
53 Every preemptive law diminishes other expressions of self-government; therefore,

54 NCSL maintains that state laws should never be preempted without substantial
55 justification, compelling need, and broad consensus. Substantial justification means a
56 reason so significant that federal preemption is necessary to achieve a particular
57 national objective or to resolve a direct conflict between state and federal laws.
58 Compelling need means there is a pressing necessity for federal law to take
59 precedence over state law to address issues that cannot be effectively managed at the
60 state level including but not limited to national security, public health emergencies and
61 large-scale disasters. Broad consensus means there is widespread bipartisan support
62 among states and the federal government for the preemption. Our federalism
63 anticipates diversity; our unity does not anticipate uniformity. While proponents of pre-
64 emption may claim expected benefits, any benefit must be balanced against the
65 potential loss of accountability, innovation, and responsiveness.

66 Preemption may be warranted in specific instances when it is clearly based upon
67 provisions of the U.S. Constitution authorizing such preemption and only when it is
68 clearly shown (1) that the exercise of authority in a particular area by individual states
69 has resulted in widespread and serious conflicts imposing a severe burden on national
70 economic activity or other national goals; (2) that solving the problem is not merely
71 desirable, but necessary to achieve a compelling national interest and (3) that pre-
72 emption of state laws is the only reasonable means of correcting the problem.

73 The authority of Congress under the Supremacy Clause to preempt state legislation is
74 exercised by the federal government assuming responsibility for regulating under
75 federal law. In addition, the Supremacy Clause allows the federal government to offer
76 states the option of regulating pursuant to federal standards. The power of Congress to
77 thus pre-empt state authority must not be expanded to permit the federal government to
78 commandeer states to administer federal programs.

79 Congress shall provide reasonable notice to state legislative leaders and governors of
80 any congressional intent to preempt and shall provide them with opportunity for formal
81 and informal comment prior to enactment. To ensure that Congress knows the effects of

82 its decisions on states, members of Congress shall investigate which of their state's
83 laws would be preempted by federal legislation before they vote on the pre-emptive
84 legislation. Congress shall develop processes and seek early and regular consultation
85 with state legislatures to fully understand the fiscal and other policy impacts of proposed
86 bills on states. NCSL supports the creation of congressional intergovernmental
87 committees or subcommittees and maintains that Congress shall refer bills that affect
88 state powers and administration to these intergovernmental committees or
89 subcommittees.

90 States should not be undercut through the regulatory process. It is not acceptable for
91 unelected federal agency officials to exercise legislative authority through regulation that
92 preempts the decisions of the elected legislatures of the sovereign states. Any agency
93 intending to preempt state laws and rules must have the express statutory authority
94 from Congress to preempt. The Executive Order on Federalism (E.O. 13132) provides
95 guidance for agency examination of intergovernmental impact. NCSL urges the
96 codification of E.O. 13132 and enforcement of its provisions. NCSL also advocates
97 against agency circumvention of rule-making procedures through interim final
98 rulemaking and urges its prohibition. NCSL supports the creation of an appropriate
99 congressional committee to review agency regulations to identify unjustified intrusions
100 into state sovereignty.

101 **State Contracts**

102 NCSL believes that states should partner or contract with religious organizations and
103 engage in charitable choice initiatives pursuant to state and local laws and prerogatives,
104 not nationally mandated standards.

105 **Grant Conditions and Mandates**

106 When national policymakers ignore the fiscal impact of proposals that are to be
107 implemented at the state level, it confronts states with an impossible choice – ignore

108 federal law and face stiff financial penalties or underfund other important state priorities
109 in order to comply with federal unfunded mandates. Ignoring state impact also creates a
110 rift in intergovernmental relations between states and the federal government. The
111 federal government must be accountable for its policy decisions that ultimately affect the
112 level of services states provide or the level at which states are compelled to tax their
113 citizens. NCSL believes that states must retain the predominant role in shaping policies
114 for which they will allocate the predominant share of resources.

115 Among the distortions caused by the excessive power of the national government is the
116 separation of decisions to tax from decisions to spend. The intractable federal debt
117 makes federal spending decisions more difficult and increases state reliance on
118 mandates or grant conditions to accomplish congressionally set goals. NCSL maintains
119 that the federal government must fully appropriate designated funds before application
120 of penalties to states contained in authorized programs. Where statutes are ambiguous,
121 agencies must establish regulatory guidance before states become subject to penalties.
122 Federal resources shall be adequate to offer meaningful encouragement to state efforts
123 and, at a minimum, to provide technical assistance and oversight.

124 In *New York v. United States*, the Supreme Court outlined guidelines appropriate for
125 limiting regulation under the Spending Clause. Conditions should be unambiguous and
126 should be reasonably related to the purpose of the expenditure. NCSL opposes
127 conditions on grants made to the states beyond such conditions that are necessary to
128 specify the purpose of the expenditure, except where the conditions, such as those
129 relating to civil and individual rights, may fulfill powers expressly delegated to Congress
130 by the Constitution. Existing grants should not automatically become subject to new
131 conditions.

132 NCSL believes that federal grants to states can achieve national goals without
133 disrupting state laws and procedures. NCSL supports federal legislation that respects
134 the role of the legislature and that does not create an unnecessary preference for state
135 executive decision-making. NCSL maintains that funds received by a state under

136 provisions of federal law shall be subject to appropriation by the state legislature,
137 consistent with the terms and conditions required under such federal law. Legislatures
138 shall also retain authority to designate implementing agencies and to review state plans
139 and applications for assistance. State court systems shall not be commandeered to
140 implement federal policies; in the event federal actions will result in an increased burden
141 on state courts, then the federal government shall also provide funds to implement
142 action by the courts.

143 NCSL opposes Congress placing responsibility for administrative oversight of grant
144 conditions in the federal courts by relying on beneficiaries to enforce federal grant
145 requirements through lawsuits. In the event the courts are to be relied upon for
146 enforcement, then the federal government shall waive its sovereign immunity and
147 become subject to suit for failures in administration of programs. This policy does not
148 relate to access to federal courts for enforcement of constitutional rights.

149 **Sovereign Immunity**

150 The Supreme Court has held that the powers delegated to Congress under Article I of
151 the United States Constitution do not include the power to subject non-consenting
152 States to private suits for damages in state courts (*Alden v. Maine* (1999)). The Court
153 in *Alden* also recognized that sovereign immunity does not derive from the 11th
154 Amendment, but from the structure of the original Constitution itself. The states have
155 been recognized as sovereign entities even before the ratification of the U.S.
156 Constitution.

157 The Court further constrained Congress' ability to abrogate state sovereign immunity
158 under Section 5 of the 14th Amendment to the Constitution in *College Savings Bank v.*
159 *Florida Prepaid Postsecondary Education Expense Board* (1999). The Court held that
160 Congress' powers under § 5 of the 14th Amendment are powers of enforcement only,
161 and that these enforcement powers are remedial. This means that in order for sovereign
162 immunity of a state to be waived under Section 5, Congress must be able to identify a

163 pervasive pattern of wrongdoing under the 14th Amendment, and the federal legislation
164 seeking to remedy the wrongdoing, must be narrowly tailored to do so.

165 It is NCSL's position that if Congress intends to abrogate state sovereign immunity it
166 must state its intent in unmistakably clear language, and the federal government should
167 waive its own immunity in order to enhance legislative consideration of the risks.
168 Normally, equitable and injunctive remedies are sufficient safeguards for ensuring
169 compliance with the law.

170 **Criminal Jurisdiction**

171 Federal expansion of criminal jurisdiction, while not specifically preempting state laws,
172 diminishes the role of state legislatures by permitting federal and state prosecutors to
173 circumvent state law. The choice to prosecute in federal court based upon federal
174 penalties entails a choice to bypass state legislative responsibility. NCSL opposes the
175 federalizing of state criminal offenses because federalism is weakened and because the
176 role of federal courts as courts of limited jurisdiction is thereby undermined. NCSL
177 recognizes that specific crimes may be appropriate for federal action if a systemic
178 failure makes state action impossible or ineffective; such crimes may include those that
179 have complex international or interstate implications, which relate to the protection of
180 civil rights, or where conflicts prevent effective state or local prosecution. NCSL deems
181 inadequacy of state resources to be an insufficient reason for federal takeover of
182 criminal jurisdiction.

183 **Courts**

184 It is NCSL's position that in the process of selecting nominees to the federal courts, the
185 President and the Senate should -- among other considerations -- be mindful of the vital
186 role federalism plays within our constitutional framework.

187 **Conclusion**

188 NCSL endorses periodic examination by Congress of the state of American federalism.
189 Members of Congress shall expand formal and informal communications with their state
190 legislatures in order to defend federal legislation that diminishes state powers and to
191 explore less intrusive means of achieving national goals. In exploring the dimensions of
192 federalism, Congress shall consider the need for statutory and constitutional remedies
193 to restore balance. Together, we should revive appreciation for the principle that sharing
194 power between levels of government enhances America's ability to develop responsive
195 policy in a changing world.

1 **COMMITTEE: LAW AND PUBLIC SAFETY**
2 **POLICY: SUCCESSFUL INMATE REENTRY INTO SOCIETY**
3 **TYPE: RESOLUTION (NEW)**
4 **SPONSOR: REP. MELISSA BALLARD**

5 **WHEREAS**, an incarcerated individual’s success upon re-entry is impacted by their
6 ability to access resources like education, housing, transportation, and affordable
7 healthcare.

8 **WHEREAS**, the Second Chance Act and its reauthorizations are vital to successful re-
9 entry because the Act enables states, through grants, to implement programs and
10 resources for individuals re-entering the community.

11 **WHEREAS**, the United States Department of Justice reported that since 2008, when
12 the Second Chance Act was passed, more than 386,000 individuals received services
13 funded by the Act’s grants.

14 **WHEREAS**, two examples of how the Second Chance Act funded re-entry programs
15 include Arizona, where grants were used to train community correctional officers on
16 best practices for supporting supervised offenders, and Ohio, where grants were used
17 to provide housing vouchers to formerly incarcerated individuals.

18 **WHEREAS**, the Council of State Governments Justice Center found that since the
19 Second Chance Act passed in 2008, reincarceration has decreased. In 2019, 27% of

20 individuals were reincarcerated within three years after re-entry, as opposed to 35%
21 who were reincarcerated within three years after re-entry in 2008.

22 **WHEREAS**, healthcare services like Medicaid are key to the successful re-entry of
23 incarcerated individuals and, without access to affordable healthcare, incarcerated
24 individuals may not seek medical care upon release.

25 **WHEREAS**, federal law has historically prohibited states from delivering Medicaid
26 services to incarcerated individuals unless they are a patient at a medical institution.

27 **WHEREAS**, new opportunities such as the Medicaid Re-entry Justice Involved Waiver
28 have provided states with new opportunities to leverage the Medicaid program to
29 provide critical care to incarcerated individuals up to 90 days pre-release.

30 **WHEREAS**, as of August 2024, the Center for Medicare and Medicaid Services had
31 approved 11 states' Medicaid Re-entry waivers with 13 other states pending proposals.

32 **NOW THEREFORE BE IT RESOLVED**, NCSL supports the 2025 Second Chance
33 Reauthorization Act as a vital component for states to implement re-entry programming.
34 NCSL urges Congress to vote in favor of the 2025 Second Chance Reauthorization Act
35 and restore any eliminated funding so that states can continue to provide services to
36 help individuals successfully re-enter into society.

37 **BE IT FURTHER RESOLVED**, NCSL acknowledges that incarcerated individuals who
38 will soon re-enter the community need access to affordable healthcare. NCSL

39 encourages Congress to support state policies and programs that provide incarcerated
40 individuals with access to healthcare prior to release from a correctional facility.

1 **COMMITTEE: LAW AND PUBLIC SAFETY**

2 **POLICY: PRISON SECURITY**

3 **TYPE: RESOLUTION (NEW)**

4 **SPONSOR: REP. MELISSA BALLARD**

5 **WHEREAS**, a 2018 National Survey of Correctional Contraband found that of 301
6 prisons across six states, cell phones were the second most common item of
7 contraband, with an average of 31 cell phones retrieved per 1,000 individuals.

8 **WHEREAS**, contraband cell phones used by incarcerated individuals enable the
9 continuance of crime such as drug trafficking and sexual exploitation.

10 **WHEREAS**, more than a dozen correctional officers have been convicted of providing
11 cell phones and phone parts to prisoners in exchange for bribes.

12 **WHEREAS**, the Urban Institute reported that more than 85% of correctional
13 administrators from 20 state prisons feel that contraband cell phones jeopardize the
14 safety of incarcerated individuals and correctional staff.

15 **WHEREAS**, the National Institute of Justice identified drones as a concern for
16 correctional facilities because drones can smuggle drugs, cell phones, weapons, GPS
17 trackers, and other contraband into facilities.

18 **WHEREAS**, drones may not only be used to smuggle in contraband but may also be
19 used for video surveillance of correctional facilities to aid inmate escapes.

20 **WHEREAS**, after the Federal Bureau of Prisons adopted a formal reporting process in
21 2018, reports of drones increased by 87 percent, with the Department of Justice
22 reporting 130 drone incidents in federal correctional facilities between 2015 and 2019.

23 **WHEREAS**, federal law does not currently prohibit drones from flying over correctional
24 facilities, but does, through a general prohibition, prohibit correctional facilities from
25 being able to control, capture, or destroy drones flying over facilities.

26 **NOW THEREFORE BE IT RESOLVED**, NCSL urges Congress to vote in favor of
27 implementing the 2025 Cellphone Jamming Reform Act (S. 1137) to prevent further
28 criminal activity in correctional facilities and communities.

29 **BE IT FURTHER RESOLVED**, NCSL asks Congress to criminalize the flying of drones
30 over correctional facilities and prioritize the prosecution of such incidents.

31 **BE IT FURTHER RESOLVED**, NSCL supports allowing law enforcement and
32 correctional facility agencies to mitigate drones that fly over critical infrastructure. NCSL
33 encourages Congress to permit a pilot program that enables law enforcement and
34 correctional facility agencies to mitigate drones that fly over critical infrastructure.