

CORRECTIONS, PAROLE, AND PROBATION

CHAPTER 124

HOUSE BILL NO. 1401

(Representatives Kroeber, Fairfield, Kretschmar, Mahoney)
(Senators Robinson, Wardner)

INMATE FINANCIAL OBLIGATIONS AND COSTS

AN ACT to create and enact a new section to chapter 12-44.1 of the North Dakota Century Code, relating to inmate accounts, payment of inmate financial obligations, and payment for medical and health care costs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 12-44.1 of the North Dakota Century Code is created and enacted as follows:

Establishment of inmate accounts - Withholding funds for inmate financial obligations - Health care costs - Payment of funds to inmate upon release.

1. The correctional facility administrator shall establish an inmate account for each inmate.
2. The correctional facility administrator may withdraw funds from an inmate's account to meet the inmate's legitimate financial obligations, including child support and restitution. The correctional facility administrator may withdraw funds from the inmate's account to pay for the inmate's medical, dental, and eye care costs while the inmate is incarcerated in the correctional facility. Before the funds may be withdrawn, the inmate must first receive written notice and be provided a hearing with the right to correctional facility staff assistance and the right to review by the correctional facility administrator. No written notice or hearing is required if the withdrawal of funds is being made to meet the inmate's child support obligation.
3. A correctional facility administrator may collect fees from inmates to offset health care costs as follows:
 - a. For a medical visit, up to ten dollars per medical visit made at the request of an inmate.
 - b. For self-inflicted injuries, the total amount of medical costs incurred.
 - c. For necessary health care services, the correctional facility may seek reimbursement from the inmate up to the total amount of

health care costs incurred. If the inmate has health insurance coverage, a medical or health care provider must file a claim for reimbursement from the health insurance coverage carrier. A correctional facility may not assess an inmate for any costs associated with an intake health care assessment and related testing or for an examination of an inmate made at the request of the facility.

- d. For elective health care requested by an inmate and as allowed by correctional facility policy, the inmate is responsible for the amount of the costs incurred.
 - e. A correctional facility may not deny necessary and nonelective medical and health care to an inmate who does not have health insurance or does not have the ability to pay the costs of the medical or health care.
4. The correctional facility administrator shall pay an inmate all funds in the inmate's account when the inmate is discharged from the correctional facility or when the inmate is transferred to another correctional facility, less the inmate's outstanding obligations to the correctional facility.
 5. This section does not limit or alter the provisions of chapter 14-09 relating to income withholding orders for child support.

Approved April 5, 2001
Filed April 5, 2001

CHAPTER 125

HOUSE BILL NO. 1398

(Representatives Kroeber, Fairfield, Kretschmar)
(Senators Robinson, Wardner)

CORRECTIONAL FACILITY RECORDS CONFIDENTIALITY

AN ACT to create and enact a new section to chapter 12-44.1 of the North Dakota Century Code, relating to correctional facility files and records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 12-44.1 of the North Dakota Century Code is created and enacted as follows:

Correctional facility files and records confidentiality.

1. The medical, psychological, and treatment records of an inmate are confidential and may not be disclosed directly or indirectly to any person, organization, or agency, except as provided in this section. A court may order the inspection of the records, or parts of the records, upon an application to the court and a showing that there is a proper and legitimate purpose for the inspection and the provision of written authorization from the inmate for the inspection. Notwithstanding any other provision of law relating to privilege or confidentiality, except for the confidentiality requirements of federal drug and alcohol treatment and rehabilitation laws, medical, psychological, or treatment records may be inspected by or disclosed to the following persons, organizations, or agencies without prior authorization from the inmate or an order from the court:
 - a. A criminal justice agency as defined in subsection 4 of section 44-04-18.7.
 - b. A division, department, official, or employee of the department of corrections and rehabilitation.
 - c. A federal, state, regional, county, or municipal correctional facility receiving physical custody of an inmate from the original correctional facility.
 - d. A municipal or district court.
 - e. The department of human services, a public hospital or treatment facility, or a licensed private hospital or treatment facility.
2.
 - a. A person, agency, or institution governed by statutory confidentiality requirements and receiving information or records under this section shall maintain the confidentiality requirements.

- b. Except as provided in subdivision a of this subsection, a person, organization, or agency receiving confidential records under subsection 1 may not redisclose the records and must maintain the confidentiality of the records.
3. The employment or work release status of an inmate is an open record.
4. Records with respect to inmate identification, charges, criminal convictions, bail information, and intake and projected release dates are open records.
5. Records with respect to a sentenced inmate's institutional discipline and conduct and protective management are exempt records as defined under section 44-04-17.1.
6. Institutional discipline and conduct and protective management records of all other inmates are confidential records and may only be disclosed as provided in subsection 1.

Approved April 13, 2001

Filed April 13, 2001

CHAPTER 126

SENATE BILL NO. 2061

(Government and Veterans Affairs Committee)

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

PENITENTIARY OFFICERS

AN ACT to amend and reenact section 12-47-05 of the North Dakota Century Code, relating to officers of the penitentiary and its affiliated facilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-47-05 of the North Dakota Century Code is amended and reenacted as follows:

12-47-05. Officers of penitentiary. The officers of the penitentiary ~~shall be~~ one include a warden, who ~~shall be~~ is its general superintendent; at least one deputy warden; and such other officers, agents, and employees as may be necessary. The director of the division of adult services, with the concurrence of the director of the department of corrections and rehabilitation, may appoint a warden for an affiliated facility of the penitentiary. A warden of an affiliated facility of the penitentiary is under the supervision and direction of the director of the division of adult services and has those powers and duties established by the director of the division of adult services which are consistent with this chapter, chapter 12-48, and chapter 12-48.1.

Approved March 16, 2001

Filed March 16, 2001

CHAPTER 127

HOUSE BILL NO. 1044 (Legislative Council) (Criminal Justice Committee)

DEPARTMENT OF CORRECTIONS RECORDS

AN ACT to amend and reenact sections 12-47-36 and 12-59-04 of the North Dakota Century Code, relating to open records and parole records of the department of corrections and rehabilitation; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

12-47-36. Records ~~confidential~~ exempt - Confidential - Exceptions.

1. The case history records of the department of corrections and rehabilitation or its divisions or departments relating to persons in the custody or under the supervision and management of the division of adult services of the department of corrections and rehabilitation are exempt records as defined in section 44-04-17.1. Upon application to the district court, with service of the application on the department of corrections and rehabilitation and opportunity for the department to submit a written response, the court may order the inspection of a case history record unless there is a showing by the department of corrections and rehabilitation that a proper and legitimate reason exists for denying inspection of the case history record. If the court issues an order allowing inspection, the court shall allow the department of corrections and rehabilitation to remove all identifying information that may create a risk of harm to property or to any person. As used in this section, "case history record" means any record of a person in the custody or under the supervision and management of the division of adult services of the department of corrections and rehabilitation except for medical, psychological, and treatment records and legal files. The term includes inmate disciplinary proceedings, administrative and disciplinary segregation placements, institutional and criminal investigation reports, supervision histories, job placements, education programs, inmate financial accounts under section 12-48-15, and protective management cases.
2. The medical, psychological, and treatment, ~~or social~~ records of the department of corrections and rehabilitation or its divisions or departments relating to persons in the custody or under the supervision and management of the division of adult services of the department of corrections and rehabilitation ~~must be kept~~ are confidential, and may not be disclosed directly or indirectly to any person, organization, or agency, except as otherwise provided in this section. A district court may order the inspection of ~~such~~ medical, psychological, and treatment records, or parts of such those records, upon application to the court and a showing that there is a proper and legitimate purpose for the inspection of the records, with service of the application on the

department of corrections and rehabilitation and opportunity for the department of corrections and rehabilitation to submit a written response.

3. Notwithstanding any other provisions of law relating to privilege or confidentiality, except for the confidentiality requirements of federal drug and alcohol treatment and rehabilitation laws, records may be inspected by or disclosed to the following persons, organizations, or agencies without prior application to the court may inspect case history, medical, psychological, or treatment records: ~~the~~
 - a. The governor; ~~the~~
 - b. The pardon advisory board, if the governor has appointed a pardon advisory board; ~~the~~
 - c. The parole board; ~~any~~
 - d. Any division, department, official, or employee of the department of corrections and rehabilitation; ~~another~~
 - e. Another state receiving a parolee or probationer under the provisions of chapter 12-56 or 12-56.1; a
 - f. A federal, state, regional, or county correctional facility receiving physical custody of a person under the legal custody of the department of corrections and rehabilitation; ~~the~~
 - g. The employees in the office of the attorney general and investigators, consultants, or experts retained by the state; ~~the~~
 - h. The risk management division of the office of management and budget for the purpose of investigating and defending actions or claims under chapter 32-12.2; ~~the state's attorney and~~
 - i. The district court of the county where the judgment of conviction was entered; a
 - j. A state or federal court where a person in the custody or under the supervision and management of the adult services division of the department of corrections and rehabilitation has commenced litigation and the records are relevant to the litigation; ~~or municipal, county, state, or federal law enforcement agencies~~
 - k. A criminal justice agency as defined in section 44-04-18.7; or
 - l. The United States social security administration and veterans administration.
4. Records with respect to the person's identity, location, legal files except records under court seal, criminal convictions, or projected date of release, except for the records of a person who is under protective management, are open records.
5. Medical, psychological, or treatment records may be disclosed without prior application to the court to a public hospital or treatment facility, the

department of human services, or to a licensed private medical or treatment facility, when necessary for the evaluation, treatment, or care of a person who is or who has been in the custody of, or is or who has been under the supervision and management of, the adult services division of the department of corrections and rehabilitation.

6. A criminal defendant's presentence investigation report, together with any attachment or addendum, is subject to rule 32 of the North Dakota Rules of Criminal Procedure and any amendments made thereto.
7. The parole board may permit the inspection of a person's preparole report, or parts of the report, prepared for the parole board. ~~The employment status of a person in the custody of or under the supervision and management of the department of corrections and rehabilitation may be disclosed to an agency or official charged with the enforcement of child support. Medical, psychological, or treatment records may be disclosed without prior application to the court to a public hospital or treatment facility, the department of human services, or to a licensed private medical or treatment facility, when necessary for the evaluation, treatment, or care of a person in the custody or under the supervision of the department of corrections and rehabilitation.~~
8. Any person, organization, or agency receiving exempt or confidential records under this section shall maintain the closed or confidential nature of the records and may not redisclose the records.
9. The department of corrections and rehabilitation shall maintain the confidentiality of witness protection program records and legal files under seal.

SECTION 2. AMENDMENT. Section 12-59-04 of the North Dakota Century Code is amended and reenacted as follows:

12-59-04. ~~Records confidential~~ Parole records - Inspection. All parole records of the department of corrections and rehabilitation records, including preparole reports, and the supervision history, obtained in the discharge of official duty by any member of the parole board or employee of a division or department of the department of corrections and rehabilitation, ~~are confidential and~~ on behalf of the parole board may not be disclosed except in the manner provided under section 12-47-36. An application for parole and the decision of the parole board on the application are open records.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 20, 2001
Filed March 20, 2001

CHAPTER 128

HOUSE BILL NO. 1350

(Representative Mahoney)
(Senator C. Nelson)

PRISONER TRANSPORTATION

AN ACT to create and enact a new section to chapter 12-47 of the North Dakota Century Code, relating to the transporting of certain prisoners.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 12-47 of the North Dakota Century Code is created and enacted as follows:

Transporting of prisoners. A prisoner who has been charged with, pled guilty to, or been convicted of a class A or class AA felony in this state may not be transported except by employees of the department of corrections and rehabilitation or by law enforcement officers or correctional officers employed by a governmental agency. For purposes of this section, "governmental agency" means an agency or department of this state or of any political subdivision of this state, of another state or of a political subdivision of another state, or of the United States.

Approved April 5, 2001

Filed April 5, 2001

CHAPTER 129

HOUSE BILL NO. 1431

(Representatives DeKrey, Berg, R. Kelsch, Monson)

CORRECTIONAL SYSTEM STUDY

AN ACT to provide for a legislative council study of this state's correctional system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Correctional system - Legislative council study. During the 2001-02 interim, the legislative council shall consider studying the correctional system in North Dakota, including its functions, responsibilities, funding, causes for increases in the state's inmate population, and the effectiveness of sentencing laws, incarceration, and treatment. The legislative council shall identify possible cost-effective alternatives to incarceration and methods for lowering recidivism and the state's crime rate. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-eighth legislative assembly.

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