

**Fifty-seventh Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 9, 2001**

SENATE BILL NO. 2016
(Appropriations Committee)
(At the request of the Governor)

AN ACT to provide an appropriation for defraying the expenses of the department of corrections and rehabilitation; to provide for line item transfers; to provide legislative intent; to provide for a legislative council study; to create and enact a new section to chapter 54-23.3 of the North Dakota Century Code, relating to the establishment of new programs by the director of the department of corrections and rehabilitation; and to amend and reenact section 12-59-02, subsection 1 of section 12.1-32-08, and subsection 2 of section 54-23.4-12 of the North Dakota Century Code, relating to compensation of parole board members, indigent defense costs and expenses, and crime victims compensation subrogation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the department of corrections and rehabilitation for the purpose of defraying the expenses of its various divisions, for the biennium beginning July 1, 2001, and ending June 30, 2003, as follows:

Subdivision 1.

CENTRAL OFFICE

Salaries and wages	\$1,155,357
Operating expenses	171,447
Equipment	<u>65,750</u>
Total all funds	\$1,392,554
Less estimated income	<u>11,160</u>
Total general fund appropriation	\$1,381,394

Subdivision 2.

JUVENILE SERVICES

Salaries and wages	\$10,647,498
Operating expenses	4,917,407
Equipment	148,700
Capital improvements	707,747
Grants	<u>4,413,877</u>
Total all funds	\$20,835,229
Less estimated income	<u>7,825,075</u>
Total general fund appropriation	\$13,010,154

Subdivision 3.

ADULT SERVICES

Victims services	\$3,423,566
Institutional offender services	3,863,128
Community offender services	11,353,870
Support services	21,514,202
Program services	3,778,761
Security and safety	24,977,530
Roughrider industries	<u>10,842,290</u>
Total all funds	\$79,753,347
Less estimated income	<u>17,296,864</u>

Total general fund appropriation	\$62,456,483
Grand total general fund appropriation S.B. 2016	\$77,048,031
Grand total special fund appropriation S.B. 2016	\$25,133,099
Grand total all funds appropriation S.B. 2016	\$102,181,130

SECTION 2. LAND BOARD DISTRIBUTIONS. The estimated income line item in subdivision 2 of section 1 of this Act includes \$502,823 from permanent funds managed for the benefit of the youth correctional center by the board of university and school lands.

SECTION 3. AUTHORITY TO LEASE LAND UNDER THE JURISDICTION OF THE DEPARTMENT. The department of corrections and rehabilitation may lease land under the jurisdiction of the department for the purpose of the construction and operation of a prerelease center. Subsection 12 of section 54-23.3-04 does not apply to the lease authorized by this section. The lease expires when the leased property is no longer used for a prerelease center, when the lease operator breaches any material part of the lease, or twenty years after the date of the lease, whichever occurs first, and all rights, title, and interest in any buildings, fixtures, and improvements vest and remain with the state.

SECTION 4. DEPARTMENT OF CORRECTIONS AND REHABILITATION - LEGISLATIVE COUNCIL STUDY AND REPORTS. During the 2001-02 interim, the legislative council shall consider studying wages paid to inmates sentenced to the state correctional system and the various deductions from those wages, including methods used to determine rates of pay; actual wages paid to inmates; deductions from inmate wages; and the effect deductions for incarceration costs, facility operation costs, and capital improvement costs have on inmate payments for child support and restitution. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-eighth legislative assembly.

SECTION 5. DEPARTMENT OF CORRECTIONS AND REHABILITATION - FACILITY AND OPERATIONS - LEGISLATIVE COUNCIL STUDY. The legislative council shall study, during the 2001-02 interim, the facilities and operations of the department of corrections and rehabilitation and report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-eighth legislative assembly. The study must include the use of consultant services as determined by the legislative council. The study must include the following:

1. An analysis and evaluation of all facilities currently used by the department of corrections and rehabilitation and all facilities currently used by the state hospital which may at some time be used by the department, including:
 - a. The age, condition, and adequacy of each facility.
 - b. The operational efficiency of each facility, including utility costs and staffing needs.
 - c. Modifications, if any, required to allow the department to meet the various needs of adult offenders.
2. An analysis and evaluation of future facility needs, including:
 - a. The types of facilities needed to serve adult offenders.
 - b. The most appropriate location for the department's various facilities, considering:
 - (1) The operational inefficiencies of maintaining multiple facilities.
 - (2) The administrative benefits of having multiple facilities in which to place offenders.
 - (3) The availability of education, treatment, and work programs for inmates.
3. An analysis and evaluation of the staffing needs of the department, including:

- a. Current staff utilization and needs at each facility.
- b. Availability of potential employees in each region in which the department operates or may operate a correctional facility.
4. An analysis and evaluation of the anticipated need for additional prison beds, considering the following:
 - a. The impact of changes in sentencing laws.
 - b. The impact of programs that provide alternatives to conventional incarceration.
 - c. Trends in occurrence and types of crime committed in the state.
 - d. The utilization and availability of existing and proposed county or regional correctional facilities.
 - e. The utilization and availability of existing and proposed private correctional facilities.
5. A cost-benefit analysis of the department's current and proposed programs, considering:
 - a. The effect on recidivism.
 - b. The necessity and effectiveness of providing rehabilitation and treatment services.
 - c. The availability of rehabilitation and treatment services which could be provided by entities or agencies other than the department, including regional human service centers.

SECTION 6. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$200,000, or so much of the sum as may be necessary, to the legislative council for the biennium beginning July 1, 2001, and ending June 30, 2003, for the purpose of contracting with a consultant to conduct the study as provided in section 5 of this Act.

SECTION 7. FEDERAL FUNDING REDUCTIONS - BUDGET SECTION APPROVAL. If, during the biennium beginning July 1, 2001, and ending June 30, 2003, the federal government reduces funding below the level anticipated by the fifty-seventh legislative assembly for any programs administered by the department of corrections and rehabilitation, the department may not supplant the federal funds with general or special fund moneys without first obtaining the approval of the budget section of the legislative council. The department's budget request for the biennium beginning July 1, 2003, and ending June 30, 2005, must identify any programs for which general or special fund appropriation authority is requested to replace federal funds previously available for the program.

SECTION 8. OPERATION OF "PRERELEASE" AND "DUI OFFENDER TREATMENT" PROGRAMS - REPORT TO THE FIFTY-EIGHTH LEGISLATIVE ASSEMBLY. During the biennium beginning July 1, 2001, and ending June 30, 2003, the department of corrections and rehabilitation shall monitor the operation of the programs known as the "prerelease center" and the "DUI offender treatment center" authorized by the fifty-seventh legislative assembly. The department shall present a report to the appropriations committees of the fifty-eighth legislative assembly regarding the operation of the programs, including the impact of the programs on recidivism rates; the cost-effectiveness of the programs; the success of the programs; the ability to collect fees, if any, from the participating inmates; and a comparison of the costs and benefits of the "prerelease center" and the "DUI offender treatment center" to other forms of treatment or incarceration.

SECTION 9. LEGISLATIVE INTENT - FUNDING FOR DRUG COURT PROGRAM. It is the intent of the fifty-seventh legislative assembly that the department of corrections and rehabilitation seek federal funding to support the drug court program during the biennium beginning July 1, 2001, and ending June 30, 2003. If federal funds do not become available to the department to support the

program, special funds derived from other income of the department may be used to fund the program. If federal funds become available during the biennium, the department must use the federal funds, and any required matching funds to be provided from special funds, to fund the program for the remainder of the biennium before funds from any other source are used for this purpose. Special fund moneys not used for the drug court program pursuant to this section must be used in place of general fund moneys appropriated by the fifty-seventh legislative assembly for other programs operated by the department.

SECTION 10. AMENDMENT. Section 12-59-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-59-02. Meetings - Compensation - Rules. The governor shall appoint a member of the parole board to be chairman. The chairman of the parole board shall designate three members of the parole board for each meeting of the parole board. Meetings of the parole board must be held in accordance with rules established by the parole board and must be held as often as required to properly conduct the business of the board, but in any event not less than six times per year. The parole board may only take action upon the concurrence of at least two members who participated in the same meeting. The final decision of at least two parole board members who participated in the same parole board meeting constitutes the decision of the parole board. Members are entitled to be compensated at the rate of ~~sixty-two~~ seventy-five dollars and ~~fifty cents~~ per day for each day actually and necessarily spent in the performance of their duties as board members plus the same mileage and expenses as are authorized for state officials and employees. The director of the division of parole and probation, or the director's designee, is the clerk for the parole board.

SECTION 11. AMENDMENT. Subsection 1 of section 12.1-32-08 of the North Dakota Century Code is amended and reenacted as follows:

1. ~~Prior to~~ Before imposing restitution or reparation as a sentence or condition of probation, the court shall hold a hearing on the matter with notice to the prosecuting attorney and to the defendant as to the nature and amount thereof. The court, when sentencing a person adjudged guilty of criminal activities ~~which~~ that have resulted in pecuniary damages, in addition to any other sentence it may impose, shall order that the defendant make restitution to the victim or other recipient as determined by the court, unless the court states on the record, based upon the criteria in this subsection, the reason it does not order restitution or orders only partial restitution. In determining whether to order restitution, the court shall take into account:
 - a. The reasonable damages sustained by the victim or victims of the criminal offense, which damages ~~must be~~ are limited to those directly related to the criminal offense and expenses actually incurred as a direct result of the defendant's criminal action. This can include an amount equal to the cost of necessary and related professional services and devices relating to physical, psychiatric, and psychological care. The defendant may be required as part of the sentence imposed by the court to pay the prescribed treatment costs for a victim of a sexual offense as defined in chapters 12.1-20 and 12.1-27.2.
 - b. The ability of the defendant to restore the fruits of the criminal action or to pay monetary reparations, or to otherwise take action to restore the victim's property.
 - c. The likelihood that attaching a condition relating to restitution or reparation will serve a valid rehabilitational purpose in the case of the particular offender considered.

The court shall fix the amount of restitution or reparation, which may not exceed an amount the defendant can or will be able to pay, and shall fix the manner of performance of any condition or conditions of probation established pursuant to this subsection. The court ~~may~~ shall order restitution be paid to the division of ~~parole and probation~~ adult services for any benefits ~~if the division has paid or may pay under chapter 54-23.4~~ unless the court, on the record, directs otherwise. Any payments made pursuant to ~~such~~ the order must be deducted from damages awarded in a civil action arising from the same incident. An order

that a defendant make restitution or reparation as a sentence or condition of probation may, unless the court directs otherwise, be filed, transcribed, and enforced by the person entitled to the restitution or reparation or by the division of adult services in the same manner as civil judgments rendered by the courts of this state may be enforced.

SECTION 12. A new section to chapter 54-23.3 of the North Dakota Century Code is created and enacted as follows:

Reports regarding new programs. Notwithstanding the powers granted under section 54-23.3-04, the director of the department of corrections and rehabilitation may not authorize any new program to serve adult or juvenile offenders, including programs that provide alternatives to conventional incarceration and programs operated on a contract basis, if the program is anticipated to cost in excess of one hundred thousand dollars during the biennium in which the program is implemented or any subsequent biennium without first reporting to the legislative assembly or, if the legislative assembly is not in session, the budget section of the legislative council.

SECTION 13. AMENDMENT. Subsection 2 of section 54-23.4-12 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. ~~Prior to~~ Before bringing an action to recover damages related to criminally injurious conduct for which compensation is claimed or awarded, the claimant shall give the division written notice of the proposed action. If a claimant brings an action for the recovery of damages related to criminally injurious conduct for which compensation is claimed or awarded, the division is subrogated to the rights of the claimant up to the total amount the division has paid. When there has been a recovery of damages, the costs of the action, to be paid by the division from the recovery, exclusive of attorney's fees, must be prorated and adjusted on the percentage of the total subrogation interest of the division recovered to the total recovery. If there is a recovery, the division shall pay attorney's fees to the claimant's attorney from the recovery in the amount of twenty-five percent of the subrogation interest recovered. For purposes of this section, recovery includes proceeds paid pursuant to a settlement, confession of judgment, or judgment of a court. The division may intervene in the action to recover compensation awarded. The division has a lien on a recovery to the extent it has paid compensation. The division is not liable for costs or attorney's fees when the claimant has not provided the division prior written notice of the commencement of an action. If a claimant does not bring an action for damages within six months from the date the division awarded benefits, the division may bring an action or claim for relief in the division's name and may retain as the division's subrogation interest the full amount the division has paid in compensation and benefits to a claimant. The division may bring an action within two years from the date the division first awarded benefits, notwithstanding any other statute of limitation. This section does not limit the claimant's right to bring an action to recover for other damages.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-seventh Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2016.

Senate Vote: Yeas 45 Nays 0 Absent 4

House Vote: Yeas 88 Nays 1 Absent 9

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2001.

Approved at _____ M. on _____, 2001.

Governor

Filed in this office this _____ day of _____, 2001,

at _____ o'clock _____ M.

Secretary of State