

June 2009

TITLE 12

Corrections, Parole, and Probation

Summary of Bills Enacted by 2009 Legislative Assembly

This memorandum summarizes 2009 legislation primarily affecting North Dakota Century Code Title 12. Bills primarily affecting other titles also affect this title, and relevant provisions of those bills are summarized in this memorandum.

The legislation relating to corrections, parole, and probation may be classified in these subject areas: correctional facilities, Department of Corrections and Rehabilitation, criminal history record checks, missing persons, and miscellaneous.

CORRECTIONAL FACILITIES

House Bill No. 1223 provides that for those offenders who are sentenced to a term of imprisonment in a county jail or regional correctional facility, the court may commit the offender to the legal and physical custody of the administrator of the jail or correctional facility. The bill provides that it is the responsibility of the administrator to determine whether the use of electronic home detention or global positioning system monitoring is appropriate for that offender.

House Bill No. 1237 provides that the administrator of a correctional facility may allow a qualified correctional officer to carry a weapon, including a firearm, during the transport of another governmental agency's prisoner if the correctional facility has a contract with the agency to transport the agency's prisoners and that contract requires the officer who does the transport to be armed. The bill requires the administrator of the correctional facility to adopt a policy that establishes the qualifications and training an officer must meet to carry a weapon. This bill became effective on April 22, 2009.

House Bill No. 1238 authorizes a governing body of a correctional facility to contract with a state or a regional correctional center, county, or city of another state for the confinement of lawfully committed state, county, or city inmates from the other state. The bill provides that there are certain inmates a correctional center may not accept, including an inmate with a history of escape or attempted escape from official detention; an inmate with a history of institutional violence against staff or other inmates; and an inmate who has been convicted of a crime of violence, including kidnapping, aggravated assault, and certain sexual offenses. This bill became effective on April 22, 2009.

Senate Bill No. 2114 makes it is a Class C felony for an inmate in a correctional facility to willfully manufacture, possess, or use a wireless electronic communication device in a correctional facility, except for law enforcement purposes. The bill also makes it a Class C felony for any person to willfully deliver a wireless electronic communication device to an inmate in a correctional facility or to any person for redelivery to an inmate in a correctional facility, or to allow an inmate to possess or use a wireless electronic communication device in a correctional facility, except for law enforcement purposes. The bill provides that an electronic communication device includes a cellular telephone, personal digital assistant, pager, mobile broadband card, Internet router, digital camera, two-way radio, modem, or any other electronic device capable of wireless transmission, reception, interception, or storage of data. This bill became effective on April 29, 2009.

DEPARTMENT OF CORRECTIONS AND REHABILITATION

House Bill No. 1089 removes references to the superintendent of the Youth Correctional Center. The bill provides that the director of the Division of Juvenile Services is the administrator of the Youth Correctional Center.

Senate Bill No. 2116 makes it a Class C felony for an inmate of the State Penitentiary to willfully manufacture, possess, or use a wireless electronic communication device in a correctional facility, except for law enforcement purposes. The bill also makes it a Class C felony for any person to willfully deliver a wireless electronic communication device to an inmate in the Penitentiary or to any person for redelivery to an inmate in the Penitentiary, or to allow an inmate to possess or use a wireless electronic communication device in the Penitentiary, except for law enforcement purposes. The bill provides that an electronic communication device includes a cellular telephone; personal digital assistant; pager; mobile broadband card; Internet router; digital camera; two-way radio; modem; or any other electronic device capable of wireless transmission, reception,

interception, or storage of data. The bill also provides that the medical, psychological, and treatment records of the Department of Corrections and Rehabilitation relating to individuals in the custody or under the supervision of the department may be disclosed for the purpose of conducting research and educational activities. This bill became effective on April 29, 2009.

Senate Bill No. 2122 replaces references to the duties and powers of the various divisions of the Department of Corrections and Rehabilitation with a reference to the duties and powers of the Department of Corrections and Rehabilitation.

Senate Bill No. 2134 replaces references to the authority of the warden, with respect to prison industries, with references to the authority of the director of the Department of Corrections and Rehabilitation. The bill also authorizes prison industries to sell commissary items and prison industries-made clothing to inmates.

CRIMINAL HISTORY RECORD CHECKS

House Bill No. 1084 authorizes the Tax Commissioner to request a criminal history record check for a final applicant for employment with the Tax Commissioner's office.

House Bill No. 1311 defines a criminal history record as the compilation of criminal history record information of a person reported to the Bureau of Criminal Investigation in accordance with Chapter 12-60. The bill also provides that the restrictions on the dissemination of criminal history record information do not prohibit the disclosure of a criminal history record by the requester or other persons after the dissemination of the record by the bureau to the requester.

Senate Bill No. 2152 authorizes the North Dakota Marriage and Family Therapist Licensure Board to request criminal history record checks for applicants, licensees, or investigations under Chapter 43-53.

Senate Bill No. 2162 authorizes the Department of Human Services to obtain a criminal history record check for employees of the department upon hiring, providers licensed by the department as foster care homes, and applicants and providers of early childhood services and the employees of those applicants and providers.

MISSING PERSONS

House Bill No. 1040 establishes a uniform procedure for locating and identifying missing persons and human remains. The bill also directs the Attorney General to develop a procedures manual relating to the investigation of missing person cases which is to be distributed to law enforcement agencies.

Senate Bill No. 2161 requires the Bureau of Criminal Investigation to establish and maintain a statewide file system for the purpose of allowing for an immediate law enforcement response to reports of lost, missing, or runaway children. Under the bill, the bureau is also required to implement a data exchange system; establish contacts and exchange information regarding lost, missing, or runaway children with the National Crime Information Center; and compile and maintain a historical data repository relating to lost, missing, or runaway children.

MISCELLANEOUS

House Bill No. 1127 provides that county and city officials have a duty to provide crime statistics to the Attorney General within 30 days of the Attorney General's request.

House Bill No. 1306 authorizes the Parole Board to participate in the 24/7 sobriety program as an intermediate sanction or condition of parole.

House Bill No. 1416 authorizes the Attorney General to issue an administrative subpoena that compels the recipient to provide records or information to an agent of the Bureau of Criminal Investigation in any criminal matter being investigated by the bureau.