

Fifty-fifth  
Legislative Assembly  
of North Dakota

## ENGROSSED SENATE BILL NO. 2108

Introduced by

Senator C. Nelson

Representative DeKrey

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

1 A BILL for an Act to amend and reenact sections 12-47-01, 12-47-02, 12-47-18.1, 12-47-34,  
2 12-47-36, 12-48-15, and subsection 2 of section 29-27-07 of the North Dakota Century Code,  
3 relating to penitentiary facilities and to inmate transfers, escapes, records, and moneys; and to  
4 repeal section 32-22-36 of the North Dakota Century Code, relating to writs for transfer of  
5 prisoners.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 **SECTION 1. AMENDMENT.** Section 12-47-01 of the North Dakota Century Code is  
8 amended and reenacted as follows:

9 **12-47-01. Penitentiary - Location - Purpose.** The penitentiary located at the city of  
10 Bismarck in the county of Burleigh ~~shall be~~ is the general penitentiary and prison of this state  
11 for the punishment and reformation of offenders against the laws of this state in which all  
12 offenders who are sentenced to imprisonment therein ~~shall~~ must be confined securely and  
13 employed and governed in the manner provided by law. The director of the department of  
14 corrections and rehabilitation may establish affiliated facilities at other locations throughout the  
15 state within the limits of legislative appropriations.

16 **SECTION 2. AMENDMENT.** Section 12-47-02 of the North Dakota Century Code is  
17 amended and reenacted as follows:

18 **12-47-02. ~~Within jurisdiction of Burleigh County~~ Jurisdiction over penitentiary**  
19 **and affiliated facilities.** The penitentiary and the grounds and premises thereof, for the  
20 purpose of all judicial proceedings, ~~shall be deemed to be~~ is within and a part of the county of  
21 Burleigh, and the courts of ~~said that county shall~~ shall have jurisdiction of all crimes or public  
22 offenses committed within the ~~same~~ penitentiary. The jurisdiction of a crime or public offense  
23 committed within an affiliated facility of the penitentiary is in the county where the affiliated  
24 facility is located.

1           **SECTION 3. AMENDMENT.** Section 12-47-18.1 of the 1995 Supplement to the North  
2 Dakota Century Code is amended and reenacted as follows:

3           **12-47-18.1. Transfer of persons between state correctional facilities.** ~~When the~~  
4 ~~warden determines that for purposes of safety of other inmates or the general public or for~~  
5 ~~discipline or medical care or when in the best interest of the inmate or the facility in which the~~  
6 ~~inmate is housed, the~~ The warden may transfer the inmate an offender to any facility under the  
7 warden's control or contract to transfer an offender to another correctional facility for purposes  
8 of safety, security, discipline, medical care, or when the warden determines it may be in the  
9 best interests of the public, the offender, or the penitentiary.

10          **SECTION 4. AMENDMENT.** Section 12-47-34 of the 1995 Supplement to the North  
11 Dakota Century Code is amended and reenacted as follows:

12          **12-47-34. Escapes from warden's custody - Warden may offer reward for**  
13 **recapture - Payment of reward.** The warden, with the approval of the director of the  
14 department of corrections and rehabilitation, may adopt ~~any measures deemed proper to aid in~~  
15 necessary for the detection and capture of persons offenders escaping from the custody of the  
16 warden or the department of corrections and rehabilitation. ~~When an inmate~~ If an offender in  
17 the custody of the warden or the department of corrections and rehabilitation escapes, the  
18 warden ~~shall~~ may use ~~every~~ all lawful means ~~at the warden's command~~ for the apprehension of  
19 ~~such person, and for that purpose~~ the offender. The warden may offer a reward ~~of~~ not to  
20 exceed one thousand dollars and not less than one hundred dollars for information leading to  
21 ~~such~~ apprehension of an offender who has escaped from the custody of the warden or the  
22 department of corrections and rehabilitation.

23          **SECTION 5. AMENDMENT.** Section 12-47-36 of the 1995 Supplement to the North  
24 Dakota Century Code is amended and reenacted as follows:

25          **12-47-36. ~~Certain penitentiary inmates' records~~ Records confidential.** ~~The clinical,~~  
26 ~~behavioral, treatment, medical, and social records and materials of a penitentiary inmate,~~  
27 ~~regardless of source, are confidential and privileged and may not be disclosed directly or~~  
28 ~~indirectly to the inmate or anyone other than the parole board, a public or private treatment~~  
29 ~~facility, a recognized law enforcement agency, and others entitled by law to receive such~~  
30 ~~information. A state or federal court may order the inspection of such confidential and~~  
31 ~~privileged records and materials, or parts thereof, by individuals or organizations having shown~~

1 ~~a proper legitimate purpose and reason to inspect such records and materials.~~ The medical,  
2 psychological, treatment, or social records of the department of corrections and rehabilitation or  
3 its divisions or departments relating to persons in the custody or under the supervision and  
4 management of the department of corrections and rehabilitation must be kept confidential and  
5 may not be disclosed directly or indirectly to any person, organization, or agency, except as  
6 otherwise provided in this section. A court may order the inspection of such records, or parts of  
7 such records, upon application to the court and a showing that there is a proper and legitimate  
8 purpose for the inspection of the records, with service of the application on the department of  
9 corrections and rehabilitation and opportunity for the department of corrections and  
10 rehabilitation to submit a written response. Notwithstanding any other provisions of law relating  
11 to privilege or confidentiality, records may be inspected by or disclosed to the following  
12 persons, organizations, or agencies without prior application to the court: the pardon advisory  
13 board; the parole board; any division, department, official, or employee of the department of  
14 corrections and rehabilitation; another state receiving a parolee or probationer under the  
15 provisions of chapter 12-56 or 12-56.1; a federal, state, regional, or county correctional facility  
16 receiving physical custody of a person under the legal custody of the department of corrections  
17 and rehabilitation; the employees in the office of the attorney general; the state's attorney and  
18 district court of the county where the judgment of conviction was entered; a state or federal  
19 court where a person in the custody or under the supervision of the department of corrections  
20 and rehabilitation has commenced litigation and the records are relevant to the litigation; or  
21 municipal, county, state, or federal law enforcement agencies. A criminal defendant's  
22 presentence investigation report, together with any attachment or addendum, is subject to  
23 rule 32 of the North Dakota Rules of Criminal Procedure and any amendments made thereto.  
24 The parole board may permit the inspection of a person's preparole report, or parts of the  
25 report, prepared for the parole board. The employment status of a person in the custody of or  
26 under the supervision and management of the department of corrections and rehabilitation may  
27 be disclosed to an agency or official charged with the enforcement of child support. Medical,  
28 psychological, or treatment records may be disclosed without prior application to the court to a  
29 public hospital or treatment facility, the department of human services, or to a licensed private  
30 medical or treatment facility, when necessary for the evaluation, treatment, or care of a person  
31 in the custody or under the supervision of the department of corrections and rehabilitation.

1           **SECTION 6. AMENDMENT.** Section 12-48-15 of the 1995 Supplement to the North  
2 Dakota Century Code is amended and reenacted as follows:

3           **12-48-15. Disposition of moneys earned - Warden to keep account of money**  
4 **earned by inmates - Investment in interest-bearing accounts.**

- 5           1. The warden of the penitentiary shall keep an account for each inmate. Not more  
6 than fifty percent of an inmate's penitentiary earnings, as provided by penitentiary  
7 rules, must be withheld from an inmate and deposited in a separate account for  
8 the inmate to accumulate a sum of money and may not be made available to the  
9 inmate until the inmate's release from the penitentiary, except as authorized by the  
10 warden. The remainder of an inmate's earnings must be ~~paid~~ made available to  
11 the inmate on a regular basis. ~~All moneys in the inmate's account must be paid to~~  
12 ~~the inmate in full when discharged.~~
- 13           2. Inmates may, in writing, authorize the warden or designee to deposit any of their  
14 accumulated earnings from the prison industries, hobby, work release, or any other  
15 prison program in an interest-earning account in the Bank of North Dakota for the  
16 benefit of the inmate. The account must be a two-signature account requiring the  
17 inmate's signature and that of an authorized designated officer or employee of the  
18 state penitentiary for withdrawal.
- 19           3. ~~Other inmate income or funds from sources outside of the penitentiary may be~~  
20 ~~directly deposited or invested by the inmate in any bank or other organization,~~  
21 ~~unless sentencing stipulations, court orders, the inmate's competency, or other~~  
22 ~~interests of the inmate require that the warden deposit such income or funds or a~~  
23 ~~portion thereof in the above noted Bank of North Dakota account for the inmate's~~  
24 ~~benefit and protection. Before making such a deposit of funds or income from~~  
25 ~~sources outside of the penitentiary for the inmate's benefit and protection, the~~  
26 ~~warden must receive the approval of the director of the division of adult services~~  
27 ~~and provide a written letter of explanation to the inmate. Funds directly invested or~~  
28 ~~deposited by inmates into their independent accounts, even when assisted in~~  
29 ~~doing so by an officer or employee of the penitentiary, shall in no way make the~~  
30 ~~penitentiary or its officers or employees responsible or accountable for such~~  
31 ~~inmate's investments and deposits.~~ The warden may directly deposit an inmate's

funds from sources outside of the penitentiary in any bank or account the inmate may designate. If a court order does not allow an inmate to designate a bank or account other than a Bank of North Dakota account or if it is necessary for the benefit and protection of the inmate, the warden, upon written explanation to the inmate, shall deposit an inmate's funds from sources outside the penitentiary into a Bank of North Dakota account. The department of corrections and rehabilitation and its divisions, departments, officers, and employees may not be held responsible or liable for any inmate income or funds deposited into a bank or account designated by an inmate.

4. ~~The warden, through the staff, is responsible for guiding inmates in making proper use of their funds to pay their obligations, including the payment of court costs, court-appointed counsel fees, and court-ordered restitution, and to provide for their support for dependent relatives, or to provide for their own medical, surgical, eye care, or dental treatment or services not generally provided by the state. The warden may withdraw funds from an inmate's penitentiary account or Bank of North Dakota two-signature account, without the inmate's signature, to meet the inmate's legitimate financial obligations. Before the funds may be withdrawn, the inmate must first receive written notice and be provided a penitentiary administrative hearing with the right to penitentiary staff assistance and the right to appeal to the director of the department of corrections and rehabilitation. The sum of money as provided by penitentiary rules from each inmate's earnings required to be deposited and accumulated by this section is not available to the inmate until discharge, unless authorized by the warden. The remainder of the inmate's earnings, including interest earned, is available to the inmate under the supervision and control of the warden or designee. An inmate is not entitled to prior written notice, administrative hearing, or right to an appeal to the department of corrections and rehabilitation when funds are to be withdrawn for payment of a court-ordered obligation, including child support, provided the inmate has had notice and an opportunity to be heard in the court proceedings.~~
5. The warden may pay an inmate all funds in the inmate's account, less the inmate's outstanding obligations to the penitentiary, when the inmate is transferred to a

1           county jail, regional correctional center, or placed in community corrections  
2           confinement. The warden shall pay an inmate all funds in the inmate's account  
3           less the inmate's outstanding obligations to the penitentiary, when the inmate is  
4           transferred to a correctional facility outside of this state, is released on parole, or  
5           the inmate is discharged from the penitentiary.

6           **SECTION 7. AMENDMENT.** Subsection 2 of section 29-27-07 of the 1995

7 Supplement to the North Dakota Century Code is amended and reenacted as follows:

8           2. After assuming custody of the convicted person, the department of corrections and  
9           rehabilitation may transfer the inmate from one correctional facility to another for  
10          the purposes of ~~diagnosis and study, treatment, and rehabilitation, as best fits the~~  
11          ~~needs of the inmate and for the protection and welfare of the community and the~~  
12          ~~inmate~~ safety, security, discipline, medical care, or if the department determines it  
13          is in the best interest of the public, the inmate, or the department.

14          **SECTION 8. REPEAL.** Section 32-22-36 of the North Dakota Century Code is

15 repealed.