

HOUSE BILL NO. 1116

Introduced by

Judiciary Committee

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

1 A BILL for an Act to amend and reenact sections 12-44.1-02, 12-44.1-06, 12-44.1-13,
2 12-44.1-21, and 12-44.1-25 of the North Dakota Century Code, relating to correctional facilities;
3 to repeal section 12-44.1-27 of the North Dakota Century Code, relating to corrective action and
4 enforcement for correctional facilities; and to provide a penalty.

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

6 **SECTION 1. AMENDMENT.** Section 12-44.1-02 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **12-44.1-02. Establishing correctional facilities - Correctional facility contracts -**

9 **Regional corrections centers.** For the confinement of lawfully committed persons, the
10 governing body of a county or city shall do or shall participate in the doing of, one of the
11 following:

- 12 1. Establishing and maintaining a correctional facility at county or city expense.
- 13 2. Contracting for correctional facility services and use of correctional facilities with
14 another county or city maintaining a correctional facility or with the state or federal
15 government.
- 16 3. Establishing and maintaining, pursuant to chapter 54-40 or 54-40.3 and this
17 chapter, a correctional facility in conjunction with other counties and cities.
- 18 4. A county or city may contract with a county or city of another state for ~~the~~:
 - 19 a. The confinement of lawfully committed county or city inmates from ~~that the~~
20 other state in a North Dakota correctional facility, subject to subsection 8; or
21 ~~for the~~
 - 22 b. The confinement of lawfully committed North Dakota inmates in a county or,
23 city, or regional correctional facility of ~~such other~~ another state.

- 1 5. A city or county may contract with another correctional facility in this state for
2 correctional services for purposes of safety, security, health and medical reasons,
3 or for correctional facility administration.
- 4 6. A city or county may contract for the confinement of inmates lawfully sentenced by
5 a tribal court.
- 6 7. A city or county may contract for correctional facility services with a privately
7 operated correctional facility. Contracts with private agencies providing
8 correctional facility services may be entered into for up to seven years.
- 9 8. A city, county, or regional corrections center may not contract with another state to
10 detain an offender charged with, convicted of, or who has pled guilty or
11 nolo contendere to, a felony in a court of competent jurisdiction in the other state,
12 without the prior written approval of the director of the department of corrections
13 and rehabilitation.

14 **SECTION 2. AMENDMENT.** Section 12-44.1-06 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **12-44.1-06. Grades of correctional facilities.**

- 17 1. The department of corrections and rehabilitation shall, following inspection
18 pursuant to section 12-44.1-24, grade correctional facilities as to length of
19 allowable inmate confinement based upon construction, size, and usage, as
20 follows:
- 21 a. "Grade one" means a correctional facility for confining inmates not more than
22 one year.
- 23 b. "Grade two" means a correctional facility for confining inmates not more than
24 ninety days.
- 25 c. "Grade three" means a correctional facility for confining inmates not more
26 than ninety-six hours.
- 27 2. The length of confinement of a prisoner may be temporarily increased on a
28 case-by-case basis in grade one and grade two correctional facilities upon the
29 request of the administrator and the approval of the department of corrections and
30 rehabilitation.

- 1 3. The department of corrections and rehabilitation may authorize a correctional
2 facility to regularly confine inmates for more than one year if the correctional facility
3 meets criteria established by the department, including:
4 a. A classification system approved by the department.
5 b. Education programs, including vocational education and a general
6 equivalency diploma program.
7 c. Treatment programs, including licensed alcohol or drug addiction counseling.
8 d. Inmate work programs, including prison industries work programs.
9 e. An infirmary and onsite medical and pharmacy services.
10 f. Indoor and outdoor recreation.

11 **SECTION 3. AMENDMENT.** Section 12-44.1-13 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **12-44.1-13. Supervision of inmates.**

- 14 1. Inmates shall be supervised on a twenty-four-hour basis by trained correctional
15 facility staff.
16 2. Correctional facility staff shall be located in ~~such~~ proximity to inmate living areas to
17 permit the staff to hear and respond promptly to calls for help.
18 3. Each correctional facility shall provide for the personal observation of inmates on
19 an irregular but frequent schedule.
20 4. Each correctional facility shall maintain sufficient staff to perform all functions
21 relating to the intake and booking, security, control, custody, and supervision of
22 inmates.
23 5. A correctional facility female staff member shall be ~~available on duty~~ at all times
24 ~~during which~~ when a female inmate is confined in the correctional facility.
25 6. Inmates shall be prohibited from supervising, controlling, or exerting any authority
26 over other inmates.
27 7. The correctional facility shall maintain a daily written record of information
28 concerning inmates.

29 **SECTION 4. AMENDMENT.** Section 12-44.1-21 of the North Dakota Century Code is
30 amended and reenacted as follows:

31 **12-44.1-21. Prohibited acts.**

- 1 1. ~~It is unlawful to deliver or administer any alcoholic beverage or~~ for a person to
2 willfully:
- 3 a. Manufacture, or possess with intent to manufacture, a controlled substance to
4 a person detained in a correctional facility except for the delivery or
5 administration of controlled substances or alcoholic beverages in accordance
6 with the orders or prescription of a licensed physician and the approval,
7 except in emergency circumstances, of the correctional facility administrator.
- 8 b. Deliver, or possess with intent to deliver, a controlled substance in a
9 correctional facility. This subsection does not apply to the possession or
10 delivery of controlled substances in accordance with the orders or prescription
11 of a licensed physician and the approval, except in emergency circumstances,
12 of the correctional facility administrator.
- 13 c. A person who violates this subsection is guilty of a class A felony.
- 14 2. ~~A person~~ It is unlawful for an inmate detained in a correctional facility ~~may not to~~
15 possess any controlled substance ~~or alcoholic beverage unless the substance or~~
16 ~~beverage is prescribed~~ except in accordance with the prescription or orders of a
17 licensed physician, and the approval, except in emergency circumstances, of the
18 correctional facility administrator. It is unlawful for an inmate in a correctional
19 facility to possess alcohol or alcoholic beverages. If a correctional facility has
20 adopted a rule banning the possession of tobacco in a correctional facility, it is
21 unlawful for an inmate in a correctional facility to possess any tobacco except when
22 the correctional facility administrator has authorized possession of tobacco for
23 religious purposes or when on an authorized release from the correctional facility.
24 An inmate who violates this subsection with respect to:
- 25 a. Possession of a controlled substance is guilty of a class B felony.
- 26 b. Possession of alcohol or alcoholic beverages is guilty of a class A
27 misdemeanor.
- 28 c. Possession of tobacco is guilty of a class B misdemeanor.
- 29 3. ~~A person, other than an official or employee of the correctional facility, who violates~~
30 ~~subsection 1 by delivering or administering a controlled substance is guilty of a~~
31 ~~class B felony. An official or employee of the correctional facility who violates~~

- 1 ~~subsection 1 by delivering or administering a controlled substance is guilty of a~~
2 ~~class A felony. A person who violates subsection 1 by delivering alcoholic~~
3 ~~beverages is guilty of a class A misdemeanor. It is unlawful for a person to willfully~~
4 ~~deliver alcohol or alcoholic beverages to an inmate in a correctional facility. It is~~
5 ~~unlawful for a person to willfully deliver tobacco to an inmate in a correctional~~
6 ~~facility that has adopted a rule banning the possession of tobacco except when the~~
7 ~~correctional facility administrator has authorized possession of tobacco for religious~~
8 ~~purposes or when the inmate is on an authorized release from the correctional~~
9 ~~facility. A person who violates this subsection by:~~
10 a. Delivery of alcohol or alcoholic beverages to an inmate in a correctional
11 facility is guilty of a class A misdemeanor.
12 b. Delivery of tobacco to an inmate in a correctional facility is guilty of a class B
13 misdemeanor.
- 14 4. It is unlawful for a person who is not an inmate to willfully possess a controlled
15 substance in a correctional facility except in accordance with the orders or
16 prescription of a licensed physician. A person who violates this subsection ~~2~~ by
17 ~~possessing a controlled substance is guilty of a class B felony. A person who~~
18 ~~violates subsection 2 by possessing alcoholic beverages is guilty of a class A~~
19 ~~misdemeanor.~~
- 20 5. It is unlawful for an inmate in a correctional facility to willfully procure, make, or
21 possess an object, including a shard made of any material or a weapon, firearm,
22 ammunition, or explosive material, intended to be used for an assault on another
23 person or to damage property. An inmate in a correctional facility who violates this
24 subsection with respect to:
25 a. A shard or weapon that is not a dangerous weapon or firearm as defined in
26 section 62.1-01-01 is guilty of a class B felony.
27 b. Ammunition, a knife of any length, a weapon that is a dangerous weapon or
28 firearm as defined in section 62.1-01-01, or explosive material is guilty of a
29 class A felony.

- 1 6. It is unlawful for a person to deliver or provide to an inmate in a correctional facility
2 an object intended to be used for an assault on another person or to damage
3 property. A person who violates this subsection with respect to:
4 a. A shard or weapon that is not a dangerous weapon or firearm as defined in
5 section 62.1-01-01 is guilty of a class B felony.
6 b. Ammunition, a knife of any length, a weapon that is a dangerous weapon or
7 firearm as defined in section 62.1-01-01, or is an explosive or destructive
8 device is guilty of a class A felony.
9 7. As used in this section, "controlled substance" is as defined in subsection 6 of
10 section 19-03.1-01 and includes counterfeit substances as defined in subsection 7
11 of section 19-03.1-01. As used in this section, "willfully" is as defined in section
12 12.1-02-02. As used in this section, "alcohol" and "alcoholic beverage" are as
13 defined in section 5-01-01. As used in this section, "tobacco" means any form of
14 tobacco, including cigarettes, cigars, snuff, or tobacco in any form in which it may
15 be used for smoking or chewing.

16 **SECTION 5. AMENDMENT.** Section 12-44.1-25 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **12-44.1-25. Inspection report - Notice of noncompliance - Hearing.**

- 19 1. ~~A written report of each inspection pursuant to section 12-44.1-24 shall be made~~
20 ~~by the~~ The correctional facility inspector shall submit a written inspection report to
21 the administrator of the correctional facility and the director of the department of
22 corrections and rehabilitation within thirty days following each inspection.
23 2. ~~Copies of the report must be sent by the correctional facility inspector to the~~
24 ~~administrator responsible for the correctional facility and must also be submitted to~~
25 ~~the department of corrections and rehabilitation for review.~~
26 3. ~~The inspection report must specify these respects in which~~ when a correctional
27 facility does or does not comply with the, or is in violation of, required
28 minimum standards and, applicable state or federal law, or the department of
29 corrections and rehabilitation rules for correctional facilities. ~~The inspection report~~
30 ~~of noncompliance must~~ If a correctional facility is in violation of any required
31 minimum standards, applicable state or federal law, or department of corrections

- 1 and rehabilitation rules for correctional facilities, the director of the department of
2 corrections and rehabilitation may issue an order of noncompliance. The director
3 shall identify the violation and required corrective measures in the order of
4 noncompliance and specify the time limits within which such standards or rules are
5 ~~to be met, with consideration being given to~~ the correctional facility shall correct the
6 violations. The director shall consider the magnitude or seriousness of the
7 ~~deficiencies~~ violations and their potential effects on the health and safety of
8 inmates, staff, law enforcement, and the public, the cost of correction, and other
9 information ~~deemed relevant by the department of corrections and rehabilitation~~
10 director considers relevant in establishing the time period for the correctional
11 facility to correct the violations. If the director determines that the violations are
12 limited and minor, the director may issue a letter of noncompliance to the
13 correctional facility and identify the violations and required corrective measures
14 and the correctional facility shall immediately correct the violations.
- 15 3. The director of the department of corrections and rehabilitation may assess the
16 department's actual costs for inspection and monitoring the correctional facility
17 upon issue of an order of noncompliance to the correctional facility.
- 18 4. ~~Where the nature and extent of deficiencies are such that an immediate order of~~
19 ~~full or partial closure is deemed necessary by the department of corrections and~~
20 ~~rehabilitation to preserve~~ If a correctional facility fails to complete required
21 corrective action within the time specified in the order of noncompliance, the
22 director of the department of corrections and rehabilitation may issue an order for
23 full, partial, or temporary closure of the correctional facility. If the director
24 determines that the extent of the noncompliance presents a danger to the health
25 and safety of inmates, staff, law enforcement, visitors, or the public, the period of
26 ~~time for correction may be dispensed with and~~ director may issue an order of
27 immediate full ~~or~~, partial, or temporary closure may be issued by the department of
28 ~~corrections and rehabilitation~~ without a prior order of noncompliance.
- 29 5. Within thirty days after receipt of a notice or order of immediate full, partial, or
30 temporary closure, the administrator of a correctional facility may request a review
31 of the determination by the department of corrections and rehabilitation pursuant to

1 chapter 28-32. The review must be heard not more than forty-five days following
2 the request, unless the period is extended ~~by the~~ at the request of the correctional
3 facility. The department of corrections and rehabilitation may direct the
4 correctional facility to pay to the department the reasonable and actual costs
5 incurred by the department for any investigation and proceedings under this
6 section.

7 **SECTION 6. REPEAL.** Section 12-44.1-27 of the North Dakota Century Code is
8 repealed.