

CORRECTIONS, PAROLE, AND PROBATION

CHAPTER 113

HOUSE BILL NO. 1530
(Lipsiea)

REPEAL OF JURY SERVICE EXEMPTIONS

AN ACT to repeal sections 12-46-23, 12-47-10, and 37-01-15 of the North Dakota Century Code, relating to exempting from jury service officers and employees of the state industrial school and penitentiary, and members of the national guard.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. REPEAL.) Sections 12-46-23, 12-47-10, and 37-01-15 of the North Dakota Century Code are hereby repealed.

Approved March 19, 1977

CHAPTER 114

SENATE BILL NO. 2342
(Strinden, Erdman, Hanson, Thane)

PRISON INDUSTRIES

AN ACT to amend and reenact sections 12-48-03.1 and 12-48-06 of the North Dakota Century Code, relating to the director of institutions establishing and engaging in new prison industries and the sale of prison products; and to repeal sections 12-48-12, 12-48-13, and 12-48-23 of the North Dakota Century Code, relating to the manufacture and sale of license plates and road signs, and employment of penitentiary inmates in book salvage.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 12-48-03.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-48-03.1. THE DIRECTOR OF INSTITUTIONS MAY ESTABLISH AND ENGAGE IN NEW PRISON INDUSTRIES.) The warden of the state penitentiary, under the direction and with the approval of the director of institutions, is authorized to establish, and engage in, such new prison industries as the director deems necessary, and which are of greatest benefit to and in the best interest of the state of North Dakota, the state penitentiary, the North Dakota state farm, and the inmates of the institutions. The warden, with the approval of the director of institutions, may also discontinue existing industries where such discontinuance is deemed necessary. The director and the warden shall make all rules and regulations and do all things necessary or incidental to the establishing and maintaining of such industries including the manufacture, sale, or distribution of the produce or products therefrom, and, so far as is compatible with the efficient operation of the industry, shall use the inmates and employees of the penitentiary as laborers in such industries. The director and warden shall also do all things necessary and incidental to the discontinuance of those industries no longer deemed necessary or of benefit. The director of institutions may authorize the sale of selected prison industry products to wholesale outlets. All other prison industry products shall be limited for sale to nonprofit, charitable, and tax-supported organizations, institutions, and agencies, and to municipal, county, state, or other governmental subdivisions and agencies. All governmental entities may purchase available products from the prison industries unless such purchase from the prison is impractical or prohibited by law. The warden shall keep a true and

accurate account of all receipts from the established industries and deposit the earnings in an account as provided by law.

SECTION 2. AMENDMENT.) Section 12-48-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-48-06. LABOR OF INMATES - SALE OF ARTICLES PRODUCED.) Inmate labor may be used by the state in carrying on farming operations, or in any industry established at the penitentiary, and the state may dispose of the products of such enterprises. Sales to visitors by inmates of articles made by them shall be permitted under such rules and regulations as may be established by the director of institutions.

SECTION 3. REPEAL.) Sections 12-48-12, 12-48-13, and 12-48-23 of the North Dakota Century Code are hereby repealed.

Approved April 6, 1977

CHAPTER 115

HOUSE BILL NO. 1060
(Legislative Council)
(Interim Committee on Judiciary "C")

PENITENTIARY INMATE FUNDS

AN ACT to amend and reenact section 12-48-15 of the North Dakota Century Code, relating to the disposition of moneys earned by a penitentiary inmate, allowing an inmate to deposit penitentiary earnings in a Bank of North Dakota interest account, and to deposit outside earnings in any bank or organization upon approval of the director of institutions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 12-48-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-48-15. DISPOSITION OF MONEYS EARNED - WARDEN TO KEEP ACCOUNT OF MONEY EARNED BY INMATES - INVESTMENT IN INTEREST-BEARING ACCOUNTS.)

1. The warden of the penitentiary shall keep an account for each inmate. Fifty percent of the earnings of each inmate shall be deposited to the credit of his account until he has accumulated in that account the sum of one hundred dollars from his earnings at the penitentiary, or such portion thereof as he has earned at the time of his release. All moneys in the inmate's account shall be paid to him in full at the time of his release.
2. The inmate may, in writing, authorize the warden or his designee to deposit any of his accumulated earnings from the prison industries, hobby, work release, or any other prison program in an interest-earning account in the Bank of North Dakota for the benefit of the inmate. The account shall be a two signature account requiring the inmate's signature and that of an authorized designated officer or employee of the state penitentiary for withdrawal.
3. Other inmate income or funds from sources outside of the penitentiary may be directly deposited or invested by the inmate in any bank or other organization, unless

sentencing stipulations, court orders, the inmate's competency, or other interests of the inmate require that the warden deposit such income or funds or a portion thereof in the above-noted Bank of North Dakota account for the inmate's benefit and protection. Before making such a deposit of funds or income from sources outside of the penitentiary for the inmate's benefit and protection, the warden must receive the approval of the director of institutions and provide a written letter of explanation to the inmate. Funds directly invested or deposited by an inmate into his independent account, even when assisted in doing so by an officer or employee of the penitentiary, shall in no way make the penitentiary or its officers or employees responsible or accountable for such inmate's investments and deposits.

4. The warden, through his staff, is responsible for guiding the inmate in making proper use of his funds to pay his obligations, and, if possible, to provide for his dependent relatives, or to provide himself with medical, surgical, or dental treatment or services not generally provided by the state. The one hundred dollar portion of each inmate's earnings required to be deposited and accumulated by this section shall not be available to the inmate until his release. The remainder of the inmate's earnings, including interest earned, shall be available to the inmate under the supervision and control of the warden and his designees.

Approved March 11, 1977

CHAPTER 116

HOUSE BILL NO. 1226
(Committee on Judiciary)
(At the request of the Pardon and Parole Board)

PARDONS AND PAROLES

AN ACT to amend and reenact sections 12-53-06, 12-53-07, 12-53-09, 12-53-10, 12-53-14, and 12-53-16 of the North Dakota Century Code, relating to the functions and procedures of the parole board; to amend and reenact sections 12-59-09 and 12-59-15 of the North Dakota Century Code, relating to parole applications and the hearing and parole board procedures following a breach of parole; and to repeal sections 12-53-08 and 12-59-19 of the North Dakota Century Code, relating to the parole board furnishing forms to the court clerk, and reports of the parole board.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 12-53-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-53-06. WHEN SENTENCE FOR FELONY SUSPENDED COURT MUST PLACE DEFENDANT ON PROBATION.) When a defendant has been found guilty of a felony for which the sentence may be suspended under this chapter, if the facts set forth in section 12-53-01 appear and the court shall suspend the sentence, the order suspending such sentence shall provide that the defendant shall be placed on probation upon such terms and conditions as the court may determine. The effect of the order suspending the sentence and placing the defendant on probation shall be to place said defendant under the supervision and management of the pardon board, subject to the rules and regulations established by the court.

SECTION 2. AMENDMENT.) Section 12-53-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-53-07. DUTY OF CLERK OF COURT WHEN FELONY SENTENCE IS SUSPENDED - RELEASE OF DEFENDANT - STATISTICAL DATA.) Whenever the court shall make its order that the sentence imposed upon a person convicted of a felony shall be suspended and such person placed on probation as provided in this chapter, it shall be the

immediate duty of the clerk of the court in which the judgment is entered to make full copies of the judgment of the court with the order for the suspension of the execution of the sentence thereunder and the reasons assigned by the court for such suspension, and to certify the same to the clerk of the pardon board. Upon the entry in the records of the court of an order for such suspension and probation, the defendant shall be released from custody as soon as the terms and conditions set by the court have been met properly and fully. It shall also be the duty of the clerk of court, upon the disposition of any criminal case, to transmit to the pardon board statistical data, in accordance with regulations issued by the board, regarding all defendants whether found guilty or discharged.

SECTION 3. AMENDMENT.) Section 12-53-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-53-09. SUPERVISION OF FELONS PLACED ON PROBATION.) Any person who has been convicted of a felony and whose sentence has been suspended in the manner provided in this chapter shall be subject to the supervision of the parole officer.

SECTION 4. AMENDMENT.) Section 12-53-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-53-10. ARREST OF PERSON UNDER SUSPENDED SENTENCE FOR BREACH OF PROBATION CONDITIONS.) Any person who has been placed upon probation under the provisions of this chapter after having been convicted of a felony and who has violated the conditions of his probation shall be subject to arrest upon the order of the court. When such person does not conduct himself in accordance with the rules and regulations or terms and conditions of his probation, any parole officer or peace officer may arrest such person without a warrant or other process. Upon such arrest and detention, the parole officer or peace officer shall immediately notify the court and shall submit to the court in writing a report showing in what manner the probationer has violated the conditions of his suspended sentence.

SECTION 5. AMENDMENT.) Section 12-53-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-53-14. DEFENDANT PLACED UNDER CONTROL OF PARDON BOARD - SPONSOR OF DEFENDANT.) In the event the court shall suspend the imposition of sentence of a defendant, the court shall place the defendant on probation during the period of suspension. During the period of probation the defendant shall be under the supervision of the pardon board, subject to the same rules and regulations as apply to persons sentenced to probation or placed on probation under suspended sentence as provided in this chapter. The pardon board shall assume and undertake the supervision of said probationer,

except that if the defendant was found guilty of a misdemeanor, the court by order may waive the supervision of the defendant by the pardon board, and direct that the defendant shall make his monthly reports to the state's attorney of the county in which the action is pending. The court may designate the clerk of district court, the sheriff, the state's attorney, or any other person to act as sponsor for the defendant. It shall be the duty of the sponsor to assist the probationer in making his monthly reports to the pardon board or to the state's attorney, to report any violations, and to counsel and direct said probationer whenever possible.

SECTION 6. AMENDMENT.) Section 12-53-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-53-16. PROBATIONER DEEMED ESCAPEE AND FUGITIVE FROM JUSTICE - WHEN.) If, after suspension of imposition of sentence, such probationer leaves the jurisdiction prior to the expiration of his probationary period without permission of the court or the pardon board, he shall be deemed an escapee and a fugitive from justice.

SECTION 7. AMENDMENT.) Section 12-59-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-59-09. CONTENTS OF APPLICATION FOR PAROLE.) An application for parole shall be in writing, addressed to the board, and shall be signed by the convict or some person in his behalf. It shall state concisely the ground upon which the parole is sought.

SECTION 8. AMENDMENT.) Section 12-59-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-59-15. BREACH OF PAROLE - HEARINGS - ORDER OF RECOMMITMENT.) Any person shall be deemed to be in the custody and under the control of the board while on parole, and shall be subject, at any time until the expiration of the term for which he or she was sentenced, if he or she violates the rules established by the parole board, to be taken into actual custody. The parolee shall be entitled to a preliminary hearing to determine if there is reasonable cause to believe the parolee has violated the parole conditions. If a hearing officer determines there is reasonable cause, the parolee shall be returned to the penitentiary for a hearing before the parole board within 60 days. When it shall appear to the board after a full hearing that a person out on parole has violated any of such rules or regulations, it may order that such person be taken into actual custody and recommitted to and confined in the penitentiary or state farm as provided in his sentence. The board shall enter any such order in the record of its proceedings. The warden shall receive and reimprison such

person in accordance with the terms of his original sentence.

Any preliminary hearing pursuant to this chapter may be before the chief parole officer, a deputy, or any other person authorized by the chief parole officer to hear cases of alleged parole or probation violation, except that no hearing officer shall be the person making the allegation of violation.

With respect to any hearing pursuant to this chapter, the parolee:

1. Shall have written notice of the nature and content of the allegations to be made, including notice that its purpose is to determine whether there is probable cause to believe that he has committed a violation that may lead to a revocation of parole.
2. Shall be permitted to advise with any persons whose assistance he reasonably desires, prior to the hearing.
3. Shall have the right to confront and examine any persons who have made allegations against him, unless the hearing officer determines that such confrontation would present a substantial present or subsequent danger of harm to such person or persons.
4. May admit, deny, or explain the violation alleged and may present proof, including affidavits and other evidence, in support of his contentions. A record of the proceedings shall be made and preserved.

SECTION 9. REPEAL.) Sections 12-53-08 and 12-59-19 of the North Dakota Century Code are hereby repealed.

Approved March 12, 1977

CHAPTER 117

HOUSE BILL NO. 1059
(Legislative Council)
(Interim Committee on Judiciary "C")

GOOD CONDUCT SENTENCE REDUCTION

AN ACT to provide good conduct and merit sentence reductions for penitentiary and state farm inmates; providing for retroactive effect; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. GOOD CONDUCT SENTENCE REDUCTION.) Offenders sentenced to the penitentiary or state farm shall be eligible to earn good conduct sentence reductions. Whenever two or more sentences have been imposed upon an offender, the aggregate of the several sentences shall be the basis for determining the rate of reduction. Sentences may be reduced at the following rates:

1. Five days per month on a sentence of more than three months but less than one year.
2. Six days per month on a sentence of one year or more but less than three years.
3. Seven days per month on a sentence of three years or more but less than five years.
4. Eight days per month on a sentence of five years or more but less than ten years.
5. Ten days per month on a sentence of ten years or more.

SECTION 2. BASIS FOR GOOD CONDUCT SENTENCE REDUCTION.) Compliance with institutional rules and cooperation in performing assigned jobs shall be the basis for good conduct sentence reduction in any given month. Jobs should be assigned according to the individual's talents and shall include both physical-menial and mental-creative forms of labor. Rules violation or the refusal to work shall result in forfeiture of good conduct sentence reduction for the month in which the infraction or infractions occur. Serious rules infractions, as defined by rule and regulation, may result in forfeiture of all sentence reductions earned from the date of sentence to and including the month in which such infraction or infractions occur. Forfeiture of good conduct sentence reductions for

more than one month must be approved by the director of institutions who may act on recommendations from the warden or initiate his own investigation into the particulars of a violation. Good conduct sentence reductions shall not be withheld for months subsequent to the month in which an infraction or infractions occur.

SECTION 3. MERITORIOUS CONDUCT SENTENCE REDUCTION.) In addition to sentence reductions under sections 1 and 2, offenders sentenced to the state penitentiary or state farm may be awarded lump sum meritorious conduct sentence reductions for outstanding performance or heroic acts at a rate not to exceed two days per month for those months already served. Such sentence reductions may be made only after written recommendation by a staff member who has witnessed or has knowledge of the performance or act followed by review and recommendations by a classification committee, recommendations by the warden, and approval by the director of institutions.

SECTION 4. BASIS FOR MERITORIOUS CONDUCT SENTENCE REDUCTION.) Meritorious conduct sentence reductions may be awarded for any of the following performances or acts:

1. Exceptional quantity and quality of work far beyond normal expectations for the job assignment.
2. Beneficial suggestions resulting in substantial savings to the state.
3. Acts of outstanding heroism.
4. Acts which protect the lives of employees or other inmates or the property of the institution.

Meritorious conduct sentence reductions shall be awarded on a lump sum basis resulting from separate recommendations and approvals. Such reductions may not be awarded on a continuing days-per-month basis beyond the month in which a reduction award is made. Such sentence reductions may not be granted for any month in which good conduct sentence reductions under sections 1 and 2 were withheld or forfeited.

SECTION 5. RETROACTIVITY.) The provisions of this Act shall be retroactive to July 1, 1975. Offenders sentenced since that date shall be eligible for good conduct and meritorious conduct sentence reductions for each month served pursuant to the conditions of this Act.

SECTION 6. EMERGENCY.) This Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved March 12, 1977

CHAPTER 118

SENATE BILL NO. 2226
(Committee on Judiciary)
(At the request of the Attorney General)

REPEAL OF REQUIREMENTS PRECEDENT TO PAROLE

AN ACT to repeal section 12-55-15 of the North Dakota Century Code, relating to the requirements of the board of pardons precedent to parole.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. REPEAL.) Section 12-55-15 of the North Dakota Century Code is hereby repealed.

Approved April 6, 1977

CHAPTER 119

HOUSE BILL NO. 1243
(Committee on Judiciary)
(At the request of the Attorney General)

CONFIDENTIALITY OF PARDON BOARD RECORDS

AN ACT to create and enact a new section to chapter 12-55 of the North Dakota Century Code, relating to confidentiality of pardon board records and disclosure to certain persons and under certain conditions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1.) A new section to chapter 12-55 of the North Dakota Century Code is hereby created and enacted to read as follows:

RECORDS PRIVILEGED - INSPECTION.) All medical reports, supervision history reports, board minutes, and all other records, reports, and minutes obtained in the discharge of official duty by any member or employee of the board of pardons, shall be privileged and shall not be disclosed directly or indirectly to anyone other than the board, a judge of the supreme or district court, committees of the legislative assembly, or others entitled by law to receive such information, except that the board of pardons or district court may, in its discretion, permit the inspection of any such reports, records, or minutes, or parts thereof, by the defendant or prisoner, his attorney, or other person having a proper interest therein.

Approved March 17, 1977