

CORRECTIONS, PAROLE, AND PROBATION

CHAPTER 119

HOUSE BILL NO. 1238

(Representatives Carlisle, Froseth, Huether, Skarphol)

WORK RELEASE PROGRAM COSTS

AN ACT to create and enact a new section to chapter 12-44.1 of the North Dakota Century Code, relating to room and board costs for jail inmates on a work release program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 12-44.1 of the North Dakota Century Code is created and enacted as follows:

Work release program - Room and board costs to be paid by inmate. Any inmate who participates in a work release program shall pay the governing body of the jail or regional correction center for the room and board costs incurred by the inmate while confined in the jail or regional correction center. The jail administrator shall determine the amount of meal and lodging costs to be paid by the inmate. The amount may not exceed ten dollars per day or the funds earned by the inmate, whichever is less.

Approved March 21, 1995

Filed March 21, 1995

CHAPTER 120

HOUSE BILL NO. 1027

(Legislative Council)

(Interim Budget Committee on Government Finance)

(Representatives Hausauer, Howard, Boucher)

(Senators Nalewaja, Streibel, Tomac)

YOUTH CORRECTIONAL FACILITY NAME CHANGE

AN ACT to provide for the sentencing of offenders to the custody of the department of corrections and rehabilitation and to rename the state industrial school the North Dakota youth correctional center; to create and enact a new subsection to section 1-01-49 and a new section to chapter 12-47 of the North Dakota Century Code, relating to the definition of penitentiary and the authority of the warden; to amend and reenact sections 11-15-25, 12-46-01, 12-46-13, 12-46-15, 12-46-17, 12-46-18, 12-47-11, 12-47-12, 12-47-17, 12-47-21, 12-48-01, 12-55-31, 12-59-16, 12.1-32-02, 19-03.1-23, subsection 5 of section 27-20-31, section 27-20-32, subsection 2 of section 27-20-36, subsection 2 of section 27-20-37, and section 44-04-04 of the North Dakota Century Code, relating to commitment of offenders to custody of the department of corrections and rehabilitation; and to repeal chapter 12-51 of the North Dakota Century Code, relating to the Missouri River correctional center.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Commitment of offenders to department of corrections and rehabilitation - Place of confinement.

1. If a judge of the district court imposes a term of imprisonment to a state correctional facility upon conviction of a felony or a class A misdemeanor, the judge may not designate a state correctional facility in which the offender is to be confined but shall commit the offender to the legal and physical custody of the department of corrections and rehabilitation.
2. After assuming custody of the convicted person, the department of corrections and rehabilitation may transfer the inmate from one correctional facility to another for the purposes of diagnosis and study, treatment, and rehabilitation, as best fits the needs of the inmate and for the protection and welfare of the community and the inmate.

⁵⁹ SECTION 2. A new subsection to section 1-01-49 of the North Dakota Century Code is created and enacted as follows:

"Penitentiary" includes any affiliated facilities.

⁵⁹ Section 1-01-49 was also amended by section 1 of Senate Bill No. 2344, chapter 55, and section 1 of Senate Bill No. 2343, chapter 103.

SECTION 3. AMENDMENT. Section 11-15-25 of the North Dakota Century Code is amended and reenacted as follows:

11-15-25. Fees for transporting persons committed to penitentiary custody of department of corrections and rehabilitation or state hospital. A sheriff or his ~~the~~ sheriff's deputy shall receive for transporting persons committed to the penitentiary custody of the department of corrections and rehabilitation or to the state hospital the mileage prescribed in this chapter. The sheriff or his deputy; ~~however,~~ shall utilize the least expensive method of transportation, and the mileage allowed ~~shall~~ must be based only upon the use of ~~such~~ the least expensive method of transportation and ~~shall~~ may be paid only after the filing with the county auditor of an itemized statement verified by affidavit showing the mileage traveled, the manner in which traveled, the days traveled, and the purpose of the travel and showing that the method of travel was the least expensive method of transportation. ~~Such~~ The county auditor shall submit the statement and affidavit ~~shall be submitted~~ to the board of county commissioners ~~and such claims shall be.~~ The county auditor may not pay the claim until the claim is approved by such the board ~~before the same shall be allowed or paid.~~

SECTION 4. AMENDMENT. Section 12-46-01 of the North Dakota Century Code is amended and reenacted as follows:

12-46-01. ~~Industrial school~~ Youth correctional center - Location - Purpose - Name. The North Dakota ~~industrial school~~ shall youth correctional center must be located at the city of Mandan in the county of Morton; ~~and shall be.~~ The North Dakota youth correctional center is the general reform and ~~industrial school~~ correctional facility of the state for the detention, instruction, and reformation of juveniles of both sexes who are committed to it according to law.

SECTION 5. AMENDMENT. Section 12-46-13 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-46-13. Who may be sent to ~~state industrial school~~ North Dakota youth correctional center - Court procedure. Whenever a person under the age of eighteen years is found guilty in any district court of a crime or public offense; ~~the court may in its discretion order the person be first committed and subsequently placed in the custody of the department of corrections and rehabilitation, the department may transfer the person to the state industrial school~~ North Dakota youth correctional center; however, the ~~court~~ department shall ~~order that the person be first committed transfer that person to the state industrial school~~ North Dakota youth correctional center if the person is under sixteen years of age. A person so committed ~~attaining~~ who attains the age of eighteen years must be transferred to a penal institution or detention facility to serve the balance of the person's sentence. A person so committed who attains the age of sixteen years may be transferred after the person has been given an administrative hearing to determine if the safety of other residents or the general public justifies the transfer. A person sentenced under this section has all the rights to sentence reduction for good and meritorious conduct and all the pardon and parole rights of an adult sentenced to imprisonment in a penal institution.

SECTION 6. AMENDMENT. Section 12-46-15 of the North Dakota Century Code is amended and reenacted as follows:

12-46-15. Contents of order of commitment. Every order of commitment to ~~the North Dakota industrial school~~ the custody of the division of juvenile services grants full authority for treatment and transfer of any student to the administrators

of the ~~industrial school~~ North Dakota youth correctional center as provided by law, however, every order of commitment ~~shall~~ must specify the date, as near as may be ascertained by the juvenile court, at which the accused will attain majority. The date so ascertained and specified ~~shall be~~ is conclusive for all purposes connected with the ~~North Dakota industrial school~~ youth correctional center. The committing judge shall make available to the ~~North Dakota industrial school~~ division all pertinent data, reports, evaluations, and documents in the court's possession with respect to the child at the time of commitment or immediately thereafter.

SECTION 7. AMENDMENT. Section 12-46-17 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-46-17. Incurrable student returned to sheriff - Original proceedings continued. If any person who has been convicted of a felony and is committed to the custody of the division of juvenile services and transferred to the North Dakota ~~industrial school~~ shall be youth correctional center is or ~~become~~ becomes incurrable and manifestly or persistently dangerous to the good order, government, and welfare of ~~such school~~ the center or the ~~its~~ its students thereof, the director of the division of juvenile services must ~~shall~~ order ~~such~~ the person returned and delivered to the sheriff of the county from which ~~he was~~ committed, and the proceedings against ~~such~~ the person thereafter must be resumed and continued as though no order or warrant of commitment to the ~~North Dakota industrial school~~ had been made.

SECTION 8. AMENDMENT. Section 12-46-18 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-46-18. Employment and compensation of persons committed. Every person committed to the custody of the division of juvenile services and transferred to the ~~state industrial school~~ North Dakota youth correctional center or its auxiliary facilities may receive a stipend as determined by the superintendent, and approved by the director of the division of juvenile services, within the limits of appropriations made by the legislative assembly for such purpose.

SECTION 9. AMENDMENT. Section 12-47-11 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-47-11. Powers and duties of warden. The warden, under the direction of the director of the division of adult services, shall have the charge, custody, and control of the penitentiary and the persons ~~committed thereto~~ imprisoned in the penitentiary, together with all lands, buildings, furniture, tools, implements, stock, provisions, and every other species of property pertaining ~~thereto~~ to the penitentiary or within the premises thereof, ~~excluding the crime bureau building officer's quarters, and control, maintenance, and management of said crime bureau building which must solely be under the direction of the director of the department of corrections and rehabilitation of the penitentiary.~~ The warden shall superintend and be responsible for the policing of the penitentiary and the discipline of the inmates.

SECTION 10. AMENDMENT. Section 12-47-12 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-47-12. Warden to make rules ~~and regulations~~. The warden, subject to the approval of the director of the division of adult services, shall make rules ~~and regulations~~ not in conflict with the laws of this state and shall prescribe penalties for the violation ~~thereof~~ of the rules:

1. For the admission of visitors, but admission of visitors may not be limited to less than four days in each week.
2. For the government of officers and employees of the penitentiary.
3. For the conduct of ~~prisoners committed to~~ persons imprisoned in the state penitentiary.

A printed copy of the rules ~~and regulations~~ must be furnished to each person ~~committed to imprisoned in~~ the penitentiary at the time of admission and to each official or employee ~~thereof of the penitentiary~~ at the time of hire. Two copies of ~~such the~~ rules must be furnished to the state law library for the use of the state officials and the public. ~~Such The~~ rules must be explained to a prisoner who cannot read English.

SECTION 11. AMENDMENT. Section 12-47-17 of the North Dakota Century Code is amended and reenacted as follows:

12-47-17. Warden to receive persons ~~sentenced to penitentiary committed to department of corrections and rehabilitation~~ - Records to be kept. The warden shall receive any person who has been convicted ~~and sentenced, committed to the custody of the department of corrections and rehabilitation, and assigned to the penitentiary when such that~~ person has been delivered to ~~him~~ the warden together with a copy of the judgment and sentence of the court ordering the ~~imprisonment commitment to the custody of the department.~~ The warden, immediately upon the receipt of any person ~~committed assigned by the department~~ to the penitentiary, shall enter in a book kept by ~~him~~ the warden for that purpose, and as an official record of the penitentiary, the name, age, sex, color, height, nationality, and every other fact, characteristic, and condition, natural or artificial, that in any way may tend to aid in the identification of ~~such the~~ person. After an intake, evaluation, and classification process, the warden shall assign the inmate to a correctional facility or other placement.

SECTION 12. AMENDMENT. Section 12-47-21 of the North Dakota Century Code is amended and reenacted as follows:

12-47-21. Alcoholic beverages and controlled substances prohibited - Physician's orders - Use of tobacco - Penalty.

1. ~~No alcoholic beverages or controlled substances shall be brought into the penitentiary or upon the grounds thereof, nor be delivered to an inmate thereof, except by the direction in writing of the penitentiary physician noted in his medical records. It is unlawful for any person to deliver or administer, whether or not for a consideration, any alcoholic beverage or controlled substance to any inmate of the penitentiary, or to any other person for redelivery to an inmate of the penitentiary. This subsection does not apply to the delivery or administration of controlled substances or alcoholic beverages in accordance with the orders or prescription of a duly licensed physician and the approval, except in emergency circumstances, of the warden.~~
2. ~~No inmate shall possess any controlled substance or alcoholic beverage, unless it has been prescribed by the penitentiary physician and noted in his medical records. No penitentiary inmate may possess any controlled substance or alcoholic beverage unless the substance or beverage was~~

delivered to the inmate or was possessed in accordance with the prescription or orders of a licensed physician.

3. No alcoholic beverages or other articles of indulgence shall be allowed any inmate except by order of the physician, such order to be in writing and for a definite and limited period. The warden may make a moderate allowance of tea, coffee, or tobacco to inmates as a reward for industry and good behavior. Any person, other than an official or employee of the penitentiary, who violates subsection 1 by delivering or administering a controlled substance is guilty of a class B felony. Any official or employee of the penitentiary who violates subsection 1 by delivering or administering a controlled substance is guilty of a class A felony. Any person who violates subsection 1 by delivering alcoholic beverages is guilty of a class A misdemeanor.
4. Any person, other than an official or employee of the penitentiary or state hospital, violating the provisions of subsection 1 by bringing in or delivering a controlled substance shall be guilty of a class B felony. Any official or employee of the penitentiary or state hospital who violates subsection 1 by bringing in or delivering a controlled substance is guilty of a class A felony. Any person otherwise violating the provisions of subsection 1 shall be guilty of a class A misdemeanor. Any inmate violating the provisions of subsection 2 shall be guilty of a class B felony, and any sentence of imprisonment imposed shall run consecutively to any sentence which the offender may currently be serving. Any person who violates subsection 2 by possessing a controlled substance is guilty of a class B felony. Any person who violates subsection 2 by possessing alcoholic beverages is guilty of a class A misdemeanor.
5. As used in this section, "controlled substance" is as defined in subsection 4 6 of section 19-03.1-01, and includes counterfeit substances as defined in subsection 5 7 of section 19-03.1-01; "penitentiary" includes those portions of the physical structures of the Jamestown state hospital which are used to house prisoners; and "inmate" means a person incarcerated in the penitentiary or the Jamestown state hospital.

SECTION 13. A new section to chapter 12-47 of the North Dakota Century Code is created and enacted as follows:

Transfer of persons between state correctional facilities. When the warden determines that for purposes of safety of other inmates or the general public or for discipline or medical care or when in the best interest of the inmate or the facility in which the inmate is housed, the warden may transfer the inmate to any facility under the warden's control.

SECTION 14. AMENDMENT. Section 12-48-01 of the North Dakota Century Code is amended and reenacted as follows:

12-48-01. Employment of inmates. All persons sentenced to imprisonment in committed to the penitentiary and committed thereto shall department of corrections and rehabilitation may be regularly employed for the benefit of the state to the extent employment is available.

SECTION 15. AMENDMENT. Section 12-55-31 of the North Dakota Century Code is amended and reenacted as follows:

12-55-31. Duty of court reporter and clerk regarding official statements of judge and state's attorney. The court reporter, at the ~~dictation~~ direction of the judge presiding at the trial or sentencing of a person convicted of a felony, or of the state's attorney presenting the case, shall write the official statements of the judge and state's attorney described in section 12-55-30. The clerk of court with whom ~~such~~ the statements are filed shall cause copies ~~thereof~~ of the statements to be attached to the commitment, if the prisoner is committed to the penitentiary custody of the department of corrections and rehabilitation, or to the order suspending the sentence and placing the prisoner on probation, if the sentence is suspended. ~~Such~~ The copies ~~shall~~ must be transmitted to the penitentiary with the commitment or order suspending sentence as the case may be.

SECTION 16. AMENDMENT. Section 12-59-16 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-59-16. Execution of order of recommitment - Fees and payment thereof. The officer executing an order for the recommitment of a prisoner to the penitentiary or the Missouri River correctional center custody of the department of corrections and rehabilitation shall endorse a return ~~of his doings thereon on the order~~, and shall deliver the execution, a copy of the order of recommitment, and ~~his~~ the return to the warden, with the person named therein. The warden shall deliver to ~~such~~ the officer a certificate acknowledging the receipt of the person, the certified copy of the order, and the return; ~~and such certificate shall be retained by the~~. The officer making the return shall retain the certificate. The fees of an officer for executing such an order ~~shall be~~ are the same as are prescribed for the commitment of a person to the penitentiary or the Missouri River correctional center custody of the department under a sentence of the court, but in no case ~~shall such~~ may the fees exceed the sum of one hundred dollars.

⁶⁰ SECTION 17. AMENDMENT. Section 12.1-32-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12.1-32-02. Sentencing alternatives - Credit for time in custody - Diagnostic testing.

1. Every person convicted of an offense who is sentenced by the court must be sentenced to one or a combination of the following alternatives, unless the sentencing alternatives are otherwise specifically provided in the statute defining the offense or sentencing is deferred under subsection 4:
 - a. Payment of the reasonable costs of the person's prosecution.
 - b. Probation.
 - c. A term of imprisonment, including intermittent imprisonment:
 - (1) In a state correctional facility in accordance with section 1 of this Act, in a regional corrections center, or in a county jail, or in the Missouri River correctional center in accordance

⁶⁰ Section 12.1-32-02 was also amended by section 3 of House Bill No. 1218, chapter 136, and section 5 of Senate Bill No. 2264, chapter 124.

with section 12-51-07, if convicted of a felony or a class A misdemeanor.

- (2) In a county jail or in a regional corrections center, if convicted of a class B misdemeanor.
 - (3) In a facility or program deemed appropriate for the treatment of the individual offender, including available community-based programs.
- d. A fine.
 - e. Restitution for damages resulting from the commission of the offense.
 - f. Restoration of damaged property, or other appropriate work detail.
 - g. Commitment to an appropriate licensed public or private institution for treatment of alcoholism, drug addiction, or mental disease or defect.

Except as provided by section 12.1-32-06.1, sentences imposed under this subsection may not exceed in duration the maximum sentences of imprisonment provided by section 12.1-32-01, section 12.1-32-09, or as provided specifically in a statute defining an offense. This subsection ~~must does not be construed as not permitting~~ permit the unconditional discharge of an offender following conviction. A sentence under subdivision e or f must be imposed in the manner provided in section 12.1-32-08.

- 2. Credit against any sentence to a term of imprisonment must be given by the court to a defendant for all time spent in custody as a result of the criminal charge for which the sentence was imposed, or as a result of the conduct on which such charge was based. "Time spent in custody" includes time spent in custody in a jail or mental institution for the offense charged, whether that time is spent prior to trial, during trial, pending sentence, or pending appeal.
- 3. A court may suspend the execution of all or a part of the sentence imposed. The court shall place the defendant on probation during the term of suspension.
- 4. A court, upon application or its own motion, may defer imposition of sentence. The court must place the defendant on probation during the period of deferment. An order deferring imposition of sentence is reviewable upon appeal from a verdict or judgment. In any subsequent prosecution, for any other offense, the prior conviction for which imposition of sentence is deferred may be pleaded and proved, and has the same effect as if probation had not been granted or the information or indictment dismissed under section 12.1-32-07.1.
- 5. A court may, prior to imposition of sentence, order the convicted offender committed to an appropriate licensed public or private institution for diagnostic testing for such period of time as may be necessary, but not to exceed thirty days. The court may, by subsequent order, extend the period of commitment for not to exceed thirty

additional days. The court may also order such diagnostic testing without ordering commitment to an institution. Validity of a sentence must not be challenged on the ground that diagnostic testing was not performed pursuant to this subsection.

6. All sentences imposed must be accompanied by a written statement by the court setting forth the reasons for imposing the particular sentence. The statement must become part of the record of the case.
7. If an offender is sentenced to a term of imprisonment, that term of imprisonment commences at the time of sentencing, unless, upon motion of the defendant, the court orders the term to commence at some other time.
8. Unless otherwise specifically authorized in the statute defining the offense, a court may not include a minimum term of imprisonment as part of its sentence.
9. ~~A court may commit a female offender to the state penitentiary or other suitable facility under the same minimum security restrictions and with the same privileges as Missouri River correctional center inmates when the sentence imposed is more than thirty days but not more than one year.~~
- ~~10.~~ A person who is convicted of a felony and sentenced to imprisonment for not more than one year is deemed to have been convicted of a misdemeanor upon successful completion of the term of imprisonment and any term of probation imposed as part of the sentence. This subsection does not apply to a person convicted of violating subdivision b or c of subsection 1 of section 19-03.1-23.
- ~~11.~~ 10. A court shall order a defendant to pay fifty dollars to the department of corrections and rehabilitation at the time a presentence investigation is initiated to partially defray the costs incurred by the department for the preparation of the presentence report. The court may also order that any additional costs incurred by the department relating to the presentence investigation and report be paid by the defendant at a rate of payment up to the full costs of conducting the investigation and preparing the report as established by the department.
- ~~12.~~ 11. Before sentencing a defendant on a felony charge under section 12.1-20-03, 12.1-20-11, 12.1-27.2-02, 12.1-27.2-03, 12.1-27.2-04, or 12.1-27.2-05, a court shall order the department of corrections and rehabilitation to conduct a presentence investigation and to prepare a presentence report.

SECTION 18. AMENDMENT. Section 19-03.1-23 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

19-03.1-23. Prohibited acts A - Mandatory terms of imprisonment and fines - Unclassified offenses - Penalties.

1. Except as authorized by this chapter, it is unlawful for any person to willfully, as defined in section 12.1-02-02, manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance, but any person who violates section 12-46-24; or 12-47-21; ~~or 12-51-11~~ may

not be prosecuted under this subsection. Any person who violates this subsection with respect to:

- a. A controlled substance classified in schedule I or II which is a narcotic drug, is guilty of a class A felony and must be sentenced:
 - (1) For a first offense, to imprisonment for at least a year and a day.
 - (2) For a second offense, to imprisonment for at least five years.
 - (3) For a third or subsequent offense, to imprisonment for twenty years.

 - b. Any other controlled substance classified in schedule I, II, or III, is guilty of a class B felony, except that any person who delivers one hundred pounds [45.36 kilograms] or more of marijuana is guilty of a class A felony. Except for a person who manufactures, delivers, or possesses with the intent to manufacture or deliver marijuana, any person found guilty under this subdivision must be sentenced:
 - (1) For a first offense, to imprisonment for at least eight months.
 - (2) For a second offense, to imprisonment for at least three years.
 - (3) For a third or subsequent offense, to imprisonment for ten years.

 - c. A substance classified in schedule IV, is guilty of a class C felony and must be sentenced:
 - (1) For a second offense, to imprisonment for at least six months.
 - (2) For a third offense, to imprisonment for at least one year.
 - (3) For a fourth or subsequent offense, to imprisonment for five years.

 - d. A substance classified in schedule V, is guilty of a class A misdemeanor.
2. Except as authorized by this chapter, it is unlawful for any person to willfully, as defined in section 12.1-02-02, create, deliver, or possess with intent to deliver, a counterfeit substance, but any person who violates section 12-46-24; or 12-47-21; ~~or 12-51-11~~ may not be prosecuted under this subsection. Any person who violates this subsection with respect to:
- a. A counterfeit substance classified in schedule I or II which is a narcotic drug, is guilty of a class A felony.
 - b. Any other counterfeit substance classified in schedule I, II, or III, is guilty of a class B felony.
 - c. A counterfeit substance classified in schedule IV, is guilty of a class C felony.

- d. A counterfeit substance classified in schedule V, is guilty of a class A misdemeanor.
3. In addition to any other penalty imposed under this section, a person who violates this chapter, except a person who ~~manufacturers~~ manufactures, delivers, or possesses with the intent to manufacture or deliver marijuana, is subject to, and the court shall impose, the following penalties to run consecutively to any other sentence imposed:
 - a. Any person, eighteen years of age or older, who violates this section by willfully manufacturing, delivering, or possessing with intent to manufacture or deliver a controlled substance in or on, or within one thousand feet [300.48 meters] of the real property comprising a public or private elementary or secondary school or a public vocational school is subject to a four-year term of imprisonment. For a second or subsequent offense, the sentencing term required to be imposed must be eight years.
 - b. If the defendant was at least twenty-one years of age at the time of the offense, and delivered a controlled substance to a person under the age of eighteen, the defendant must be sentenced to imprisonment for at least four years. For a second or subsequent offense, the defendant must be sentenced to imprisonment for at least eight years. It is not a defense that the defendant did not know the age of a person protected under this subdivision.
 4. A person at least twenty-one years of age who solicits, induces, intimidates, employs, hires, or uses a person under eighteen years of age to unlawfully transport, carry, sell, give away, prepare for sale, or peddle any controlled substance except marijuana is guilty of a class B felony and must be sentenced:
 - a. For the first offense, to imprisonment for at least four years.
 - b. For a second or subsequent offense, to imprisonment for at least five years.
 - c. It is not a defense to a violation of this subsection that the defendant did not know the age of a person protected under this subsection.
 5. A violation of this chapter or a law of another state or the federal government which is equivalent to an offense under this chapter committed while the offender was an adult and which resulted in a plea or finding of guilt must be considered a prior offense under subsections 1, 3, and 4. The prior offense must be alleged in the complaint, information, or indictment.
 6. It is unlawful for any person to willfully, as defined in section 12.1-02-02, possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, or except as otherwise authorized by this chapter, but any person who violates section 12-46-24; or 12-47-21; ~~or 12-51-11~~ may not be prosecuted under this subsection. Except as provided in this subsection, any person who violates this subsection is guilty of a class C felony. If the person is in or

on, or within one thousand feet [300.48 meters] of the real property comprising a public or private elementary or secondary school or a public vocational school, the person is guilty of a class B felony. Any person who violates this subsection regarding possession of one-half ounce [14.175 grams] to one ounce [28.35 grams] of marijuana, is guilty of a class A misdemeanor. Any person, except a person operating a motor vehicle, who violates this subsection regarding possession of less than one-half ounce [14.175 grams] of marijuana is guilty of a class B misdemeanor. Any person who violates this subsection regarding possession of less than one-half ounce [14.175 grams] of marijuana while operating a motor vehicle is guilty of a class A misdemeanor.

7. A person who violates this chapter must undergo a drug addiction evaluation by an appropriate licensed addiction treatment program. The evaluation must indicate the prospects for rehabilitation and whether addiction treatment is required. The evaluation must be submitted to the court for consideration when imposing punishment for a violation of this chapter.
8. Notwithstanding section 19-03.1-30, whenever a person pleads guilty or is found guilty of a first offense regarding possession of one ounce [28.35 grams] or less of marijuana and a judgment of guilt is entered, a court, upon motion, shall expunge that conviction from the record if the person is not subsequently convicted within two years of a further violation of this chapter and has not been convicted of any other criminal offense.

⁶¹ **SECTION 19. AMENDMENT.** Subsection 5 of section 27-20-31 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. Committing the child to the ~~state industrial school~~ division of juvenile services or to ~~a~~ another state department to which commitment of delinquent or unruly children may be made. When necessary, the commitment order may provide that the child initially be placed in a secure facility.

SECTION 20. AMENDMENT. Section 27-20-32 of the North Dakota Century Code is amended and reenacted as follows:

27-20-32. Disposition of unruly child. If the child is found to be unruly, the court may make any disposition authorized for a delinquent child except commitment to the ~~state industrial school~~ a secure facility. If after making the disposition the court finds upon a further hearing that the child is not amenable to treatment or rehabilitation under the disposition made, it may make a disposition otherwise authorized by section 27-20-31.

SECTION 21. AMENDMENT. Subsection 2 of section 27-20-36 of the North Dakota Century Code is amended and reenacted as follows:

⁶¹ Section 27-20-31 was also amended by section 14 of Senate Bill No. 2264, chapter 124.

2. An order of disposition committing a delinquent or unruly child to the ~~state industrial school~~ division of juvenile services continues in force for two years, excluding any period of time the child is on parole from ~~the an~~ institution, or until the child is sooner discharged by ~~the an~~ institution. The court which made the order may extend its duration for additional two-year periods subject to like discharge, if:
 - a. A hearing is held upon motion of the ~~institution~~ division, or on the court's own motion, prior to the expiration of the order;
 - b. Reasonable notice of the hearing and an opportunity to be heard are given to the child and the parent, guardian, or other custodian; and
 - c. The court finds that the extension is necessary for the treatment or rehabilitation of the child.

SECTION 22. AMENDMENT. Subsection 2 of section 27-20-37 of the North Dakota Century Code is amended and reenacted as follows:

2. Except ~~an order committing a delinquent or unruly child to the state industrial school~~, an order terminating parental rights, or an order of dismissal, an order of the court may also be changed, modified, or vacated on the ground that changed circumstances so require in the best interest of the child. An order terminating parental rights and the parent and child relationship may be vacated by the court upon motion of the parent if the child is not on placement for adoption and the person having custody of the child consents in writing to the vacation of the decree. An order granting probation to a child found to be delinquent or unruly may be revoked on the ground that the conditions of probation have not been observed.

SECTION 23. AMENDMENT. Section 44-04-04 of the North Dakota Century Code is amended and reenacted as follows:

44-04-04. Aliens convicted of felony or adjudged mentally ill. Whenever any person convicted of a felony or adjudged mentally ill is committed to the ~~penitentiary, the North Dakota industrial school~~ custody of the department of corrections and rehabilitation, a county jail, or to any other state or county institution ~~which that~~ is supported wholly or in part by public funds, the warden, superintendent, sheriff, or other officer in charge of ~~such state or county institution~~ shall inquire immediately into the nationality of ~~such that~~ person, and, if it appears that ~~such that~~ person is an alien, immediately shall notify the United States immigration officer in charge of the district in which ~~such penitentiary, industrial school, jail, or other institution~~ that person is located, of the date of and the reason for ~~such the~~ commitment, the length of time for which the alien was committed, the country of which ~~he the alien~~ is a citizen, and the date on, and the port at, which ~~he the alien~~ last entered the United States.

SECTION 24. REPEAL. Chapter 12-51 of the North Dakota Century Code is repealed.

* **SECTION 25. STATUTORY REFERENCES RELATING TO THE YOUTH CORRECTIONAL CENTER.** The legislative council may replace references to the industrial school with appropriate references to the youth correctional center in the sections of law listed in this section, consistent with usages

contained in this Act. References inserted may be adjusted to suit the context and grammar of the sections and must be inserted so as to harmonize existing law with regard to the name change provided by this Act. The sections of the North Dakota Century Code to which the authority of this section applies are sections 4-05.1-14, 12-45-01, 12-45-03, 12-45-06, 12-46-01, 12-46-02, 12-46-03, 12-46-09, 12-46-10.1, 12-46-11, 12-46-12, 12-46-13, 12-46-14, 12-46-15, 12-46-16, 12-46-17, 12-46-18, 12-46-19, 12-46-22, 12-46-24, 12-46-25, 12-52-02, 12-52-03, 12-52-04, 12-52-05, 12-52-07, 12.1-32-13, 14-10-17, 15-06-01, 15-10-18.1, 15-39.1-04, 15-59-05.1, 18-08-12, 20.1-03-04, 27-21-02, 27-21-03, 27-21-11, 44-04-04, 50-06-05.1, 54-14-03.2, 54-23-22, and 54-23.3-01.

SECTION 26. MEASURES ENACTED BY THE FIFTY-FOURTH LEGISLATIVE ASSEMBLY RELATING TO THE YOUTH CORRECTIONAL FACILITY. The legislative council may insert appropriate references in any measure enacted by the fifty-fourth legislative assembly which refers to the terms "North Dakota industrial school" or "state industrial school" consistent with usages contained in this Act. References inserted may be adjusted to suit context and grammar of the sections and must be inserted so as to harmonize the legislative measure with regard to the name changes provided by this Act.

Approved April 7, 1995

Filed April 7, 1995

* SECTION 25 was affected as follows:

Section 4-05.1-14 was repealed by section 44 of Senate Bill No. 2070, chapter 54.

Section 12-45-01 was also amended by section 5 of Senate Bill No. 2482, chapter 114.

Section 15-39.1-04 was also amended by section 1 of Senate Bill No. 2170, chapter 191; section 5 of Senate Bill No. 2491, chapter 186; and section 10 of Senate Bill No. 2012, chapter 34.

Section 15-59-05.1 was also amended by section 10 of Senate Bill No. 2012, chapter 34.

Section 20.1-03-04 was also amended by section 2 of House Bill No. 1058, chapter 243, and section 10 of Senate Bill No. 2012, chapter 34.

Section 50-06-05.1 was also amended by section 3 of House Bill No. 1074, chapter 457; section 1 of Senate Bill No. 2216, chapter 460; sections 10 and 14 of Senate Bill No. 2012, chapter 34; and section 6 of Senate Bill No. 2439, chapter 461.

Section 54-14-03.2 was also amended by section 10 of Senate Bill No. 2012, chapter 34.

CHAPTER 121

HOUSE BILL NO. 1082

(Representative Rydell)

(Senator O'Connell)

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

INMATE PENITENTIARY ACCOUNTS

AN ACT to create and enact a new subsection to section 12-59-15 of the North Dakota Century Code, relating to the breach of parole; and to amend and reenact subsection 4 of section 12-48-15, section 12-48-20, and subdivision b of subsection 3 of section 12.1-08-06 of the North Dakota Century Code, relating to disposition of moneys earned by inmates and definitions relating to escape.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 12-48-15 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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 dependent relatives or to provide for their own medical, surgical, 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.

SECTION 2. AMENDMENT. Section 12-48-20 of the North Dakota Century Code is amended and reenacted as follows:

12-48-20. Disposition of earnings of prisoner who escapes or violates parole. The money to the credit of any in a prisoner's penitentiary or Bank of North Dakota two-signature account or any property belonging to a prisoner who escapes or violates his the prisoner's parole shall be forfeited and used to pay the expense of his the prisoner's apprehension and capture. If the escaped prisoner or parole violator is not apprehended and captured within one year from the date of his escape, the money to his credit shall be forfeited and turned into the credit of the prisoners' general benefit fund. If the escaped prisoner or parole violator is apprehended and captured at any time after the expiration of one year, the money to

his credit which has been transferred to the prisoners' general benefit fund shall revert from this fund to pay for the expense of his apprehension and capture. Any of the prisoner's funds or property that is not required to pay for the prisoner's apprehension and return to the penitentiary may be transferred by the warden into the penitentiary inmate betterment fund.

SECTION 3. A new subsection to section 12-59-15 of the 1993 Supplement to the North Dakota Century Code is created and enacted as follows:

When the board determines the parolee has violated subsection 2, the board may order the parolee to pay the costs of being returned to the board. Moneys recovered under this subsection must be remitted to the department of corrections and rehabilitation.

SECTION 4. AMENDMENT. Subdivision b of subsection 3 of section 12.1-08-06 of the North Dakota Century Code is amended and reenacted as follows:

- b. "Official detention" means arrest, custody following surrender in lieu of arrest, detention in any facility for custody of persons under charge or conviction of an offense or alleged or found to be delinquent, detention under a law authorizing civil commitment in lieu of criminal proceedings or authorizing such detention while criminal proceedings are held in abeyance, detention for extradition, or custody for purposes incident to the foregoing, including transportation, medical diagnosis or treatment, court appearances, work, and recreation, or being absent without permission from any release granted while under custody of a sentence such as work or education release, community confinement, or other temporary leaves from a correctional or placement facility, but "official detention" does not include supervision on probation or parole or constraint incidental to release.

Approved April 7, 1995
Filed April 7, 1995

CHAPTER 122**HOUSE BILL NO. 1140**

(Representative Kretschmar)

(Senator W. Stenehjem)

(At the request of the Department of Corrections and
Rehabilitation)**PARDON DEFINED**

AN ACT to create and enact a new section to chapter 12-55 of the North Dakota Century Code, relating to the definition of pardon.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Pardon - Definition. A pardon is the removal of punishment or custody imposed upon a person for the commission of an offense. A pardon does not remove the fact of that person's conviction or plea or finding of guilt for the offense unless specifically stated in the certificate of pardon.

Approved March 6, 1995

Filed March 6, 1995

CHAPTER 123

SENATE BILL NO. 2263

(Senators W. Stenehjem, Tallackson, Traynor)
(Representatives Hagle, Kelsch, Mahoney)

FINGERPRINT AUTOMATED IDENTIFICATION SYSTEM

AN ACT to create and enact a new section to chapter 12-60 of the North Dakota Century Code, relating to an automated fingerprint identification system by the bureau of criminal investigation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 12-60 of the North Dakota Century Code is created and enacted as follows:

Automated fingerprint identification system. The bureau may establish and maintain an automated fingerprint identification system for this state. The bureau may cooperate with other states for the operation of a regional automated fingerprint identification system.

Approved March 21, 1995

Filed March 23, 1995