CHAPTER 12-47
THE PENITENTIARY

12-47-01. Penitentiary - Location - Purpose.

The penitentiary located at the city of Bismarck in the county of Burleigh is the general penitentiary and prison of this state for the punishment and reformation of offenders against the laws of this state. The director of the department of corrections and rehabilitation may establish affiliated facilities at other locations throughout the state within the limits of legislative appropriations. The department shall confine, employ, and govern all offenders committed to the legal and physical custody of the department in the manner provided by law.

12-47-02. Jurisdiction over penitentiary and affiliated facilities.

The penitentiary and the grounds and premises thereof, for the purpose of all judicial proceedings, is within and a part of the county of Burleigh, and the courts of that county have jurisdiction of all crimes or public offenses committed within the penitentiary. The jurisdiction of a crime or public offense committed within an affiliated facility of the penitentiary is in the county where the affiliated facility is located.

12-47-03. Who may serve process within penitentiary.

Repealed by S.L. 1999, ch. 114, § 3.

12-47-04. Commitment to the legal and physical custody of the department of corrections and rehabilitation is at hard labor.

In all cases in which a district court has committed an offender to the legal and physical custody of the department of corrections and rehabilitation it shall be at hard labor, whether or not so designated by the district court.

12-47-05. Officers of penitentiary.

The officers of the penitentiary include a warden, who is its general superintendent; at least one deputy warden; and such other officers, agents, and employees as may be necessary. The director of the division of adult services, with the concurrence of the director of the department of corrections and rehabilitation, may appoint a warden for an affiliated facility of the penitentiary. A warden of an affiliated facility of the penitentiary is under the supervision and direction of the director of the division of adult services and has those powers and duties established by the director of the division of adult services which are consistent with this chapter, chapter 12-48, and chapter 12-48.1.

12-47-06. Appointment of officers.

The director of the department of corrections and rehabilitation shall appoint the warden. The warden may be removed by the director of the division of adult services with the approval of the director of the department of corrections and rehabilitation for misconduct, neglect of duty, incompetency, or other proper cause showing an inability or refusal to properly perform the duties of the office. All other officers and employees must be appointed by the director of the department of corrections and rehabilitation.

12-47-07. Qualification of warden, officers, and employees.

Repealed by S.L. 1999, ch. 114, § 3.

12-47-08. Salary of warden and other officers.

The warden shall receive a salary to be fixed by the director of the division of adult services with the approval of the director of the department of corrections and rehabilitation within the limits of the legislative appropriation. All other officers and employees of the penitentiary shall receive salaries as determined by the warden and approved by the director of the division of adult services.

12-47-09. Officers to be furnished food supplies.
Repealed by S.L. 1971, ch. 501, § 2.

12-47-10. Officers and employees exempt from jury duty.
Repealed by S.L. 1977, ch. 113, § 1.

12-47-11. Powers and duties of warden.
The warden, under the direction of the director of the department of corrections and rehabilitation, shall have the charge, custody, and control of the penitentiary and offenders committed to the legal and physical custody of the department and placed by the department at the penitentiary, together with all lands, buildings, furniture, tools, implements, stock, provisions, and every other species of property pertaining to the penitentiary or within the premises of the penitentiary. The warden shall superintend and be responsible for the policing of the penitentiary and the discipline of the offenders placed by the department at the penitentiary.

12-47-12. Warden to make rules.
The warden, subject to the approval of the director of the department of corrections and rehabilitation, shall make rules not in conflict with the laws of this state and shall prescribe penalties for violation of the rules:
1. For the admission of visitors.
2. For the government of officers and employees of the penitentiary.
3. For the conduct of offenders imprisoned in the penitentiary.

A printed copy of the rules must be furnished to each offender imprisoned in the penitentiary at the time of admission and to each official or employee of the penitentiary at the time of hire. Two copies of the rules must be furnished to the state law library for the use of the state officials and the public. The rules must be explained to an offender who cannot read English.

12-47-13. Warden to keep records.
The warden shall require that a daily record is kept of all transactions of the penitentiary. The warden shall require that records are kept for inmate discipline, inmate grievances, and staff discipline. The warden shall provide a report of the penitentiary to the director of the department of corrections and rehabilitation upon the request of the director.

12-47-14. Deputy warden - Duties.
Whenever there is a vacancy in the office of warden or the warden is absent, all the duties of the warden shall devolve upon and be performed by the deputy wardens until the vacancy is filled or the warden returns.

12-47-15. Absence of warden and deputy wardens.
When the warden and the deputy wardens are absent, the warden must designate a staff member to act as warden and must inform the director of the division of adult services, prior to each absence, who will act as warden.

12-47-16. Duties of employees - May not engage in procuring pardon.
All officers and persons employed in and about the penitentiary shall perform such duties in the oversight and charge of the penitentiary, the use and care of the property belonging thereto, and the custody, discipline, government, and employment of the inmates as shall be required of them by the warden, in conformity to law and the rules and regulations of the penitentiary. No officer or employee shall be engaged directly or indirectly in procuring a pardon for any person confined therein. Any officer or employee violating the provisions of this section shall be removed immediately.

12-47-17. Offenders committed to department of corrections and rehabilitation - Records to be kept.

The department of corrections and rehabilitation shall receive any offender who has been convicted and committed to the legal and physical custody of the department when the offender has been delivered to the department together with a copy of the judgment and sentence of the court ordering the commitment to the custody of the department. The warden, immediately upon the receipt of an offender assigned by the department to the penitentiary, shall enter in the 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 the offender. After an intake, evaluation, and classification process, the department shall assign the offender to the penitentiary, another correctional facility, or other placement.

12-47-18. Director has custody of inmates pursuant to terms of sentence.

The director of the department of corrections and rehabilitation shall be responsible for offenders committed to the legal and physical custody of the department. The director shall retain, confine, and imprison each offender committed to the department until the expiration of the offender's sentence or until the offender is lawfully entitled to release. The director shall care for, govern, and make an effort to employ all offenders in conformity with their sentences and in the manner prescribed by law and the rules and regulations lawfully adopted for the conduct of the penitentiary and the department.

12-47-18.1. Transfer of persons between correctional facilities.

The director of the department of corrections and rehabilitation may transfer an offender to any facility under the department's control or contract to transfer an offender to another correctional facility for purposes of safety, security, discipline, medical care, or when the director determines it may be in the best interests of the public, the offender, or the department.

12-47-19. Food of inmates.

Repealed by S.L. 1999, ch. 114, § 3.

12-47-20. Beds and clothing of inmates.

Repealed by S.L. 1999, ch. 114, § 3.

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

1. It is unlawful for any person to willfully:
   a. Manufacture or possess with intent to manufacture or deliver, a controlled substance, on or within any premises under the control of the department of corrections and rehabilitation or any of its divisions.
   b. Deliver a 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 possession, delivery, or administration of controlled substances by the penitentiary pharmacy or agent of the penitentiary pharmacy or in accordance with the orders or prescription of a licensed physician and the approval, except in emergency circumstances, of the warden. Any person who violates this subsection is guilty of a class A felony.
2. It is unlawful for a penitentiary inmate to possess any controlled substance except in accordance with the prescription or orders of a licensed physician. It is unlawful for a penitentiary inmate to possess alcohol or alcoholic beverages. It is unlawful for a penitentiary inmate to possess any tobacco except when the warden has authorized possession of tobacco for religious purposes or when on authorized release from the penitentiary. Any penitentiary inmate who violates this subsection with respect to:
   a. Possession of a controlled substance is guilty of a class B felony.
   b. Possession of alcohol or alcoholic beverages is guilty of a class A misdemeanor.

c. Possession of tobacco is guilty of a class B misdemeanor.

3. It is unlawful for any person to willfully deliver alcohol or alcoholic beverages to a penitentiary inmate. It is unlawful for any person to willfully deliver tobacco to an inmate except when the warden has authorized delivery of tobacco for religious purposes or when the inmate is on an authorized release from the penitentiary. Any person who violates this subsection by:
   a. Delivery of alcohol or alcoholic beverages to a penitentiary inmate is guilty of a class A misdemeanor.
   b. Delivery of tobacco to a penitentiary inmate is guilty of a class B misdemeanor.
4. It is unlawful for any person other than a penitentiary inmate to willfully possess a controlled substance on or within any property under the control of the department of corrections and rehabilitation or any of its divisions except when the person is an authorized agent of the penitentiary pharmacy or except in accordance with the orders or prescription of a licensed physician. Any person who violates this subsection is guilty of a class B felony.
5. It is unlawful for a penitentiary inmate to willfully procure, make, or possess any object, including a shard made of any material or any weapon, firearm, ammunition, or explosive material, intended to be used for an assault on another person or to damage property. Any penitentiary inmate who violates this subsection with respect to:
   a. A shard or weapon that is not a dangerous weapon or firearm as defined in section 62.1-01-01 is guilty of a class B felony.
   b. Ammunition, a knife of any length, a weapon that is a dangerous weapon or firearm as defined in section 62.1-01-01, or explosive material is guilty of a class A felony.
6. It is unlawful for any person to deliver or provide to a penitentiary inmate any object intended to be used for an assault on another person or to damage penitentiary property. Any person who violates this subsection with respect to:
   a. A shard or weapon that is not a dangerous weapon or firearm as defined in section 62.1-01-01 is guilty of a class B felony.
   b. Ammunition, a knife of any length, a weapon that is a dangerous weapon or firearm as defined in section 62.1-01-01 or is an explosive or destructive device is guilty of a class A felony.
7. As used in this section, "controlled substance" is as defined in section 19-03.1-01 and includes counterfeit substances as defined in section 19-03.1-01. As used in this section, "willfully" is as defined in section 12.1-02-02. As used in this section, "alcohol" and "alcoholic beverage" are as defined in section 5-01-01. As used in this section, "tobacco" means any form of tobacco, including cigarettes, cigars, snuff, or tobacco in any form in which it may be used for smoking or chewing. As used in this section, a wireless electronic communications device includes a cellular telephone, personal digital assistant, pager, mobile broadband card, internet router, digital camera, two-way radio, modem, or any other electronic device capable of wireless transmission, reception, interception, or storage of oral communications, text, electronic mail, video or photograph images, data signals, or radio communications, and also includes a component of a wireless electronic device, regardless whether the component itself is able to transmit, store, or receive oral communications, text, electronic mail, video or photograph images, data signals, or radio communications. A wireless electronic communications device does not include a medically prescribed device or any other device approved by the department.
8. a. It is unlawful for a penitentiary inmate to willfully manufacture, possess, or use a wireless electronic communications device on or within any premises under the control of the department of corrections and rehabilitation or any of its divisions except as authorized by the department of corrections and rehabilitation.
   b. It is unlawful for any person to willfully deliver, or possess with intent to deliver, a wireless electronic communications device to a penitentiary inmate or to any person for redelivery to a penitentiary inmate, or to allow a penitentiary inmate to possess or use a wireless electronic communications device, on or within any

premises under the control of the department of corrections and rehabilitation or any of its divisions except as authorized by the department of corrections and rehabilitation.

c. A violation of this subsection is a class C felony.

12-47-22. Discipline of inmates - Confinement in cells - Communication.

Inmates of the penitentiary shall be confined in separate cells at night whenever there are sufficient cells. No communication shall be allowed between inmates of the penitentiary and persons without the penitentiary except under the supervision prescribed by the rules and regulations of the penitentiary. No person, without the consent of the warden, shall bring into or carry out of the penitentiary any writing or information to or from an inmate.

12-47-23. Warden to maintain discipline.

All necessary means shall be used, under the direction of the warden, to maintain order in the penitentiary, enforce obedience, suppress insurrections, and prevent escapes.

12-47-24. Penitentiary inmates may be restrained.

Whenever any inmate of the penitentiary offers or attempts to do any injury to any other person or property, either within the grounds or premises of the penitentiary or at any other place where said inmate may be, or whenever any inmate disobeys or resists any reasonable command of any officer or guard, any officer or guard may use reasonable means to defend himself or another or to enforce the observance of discipline.

12-47-25. Punishment for infraction may be alleviated.

Whenever any inmate who is being punished for any infraction of the rules and regulations of the penitentiary by being deprived of any of the ordinary privileges enjoyed by the other inmates, periodically or otherwise, conducts himself in a peaceful, obedient, and industrious manner, the warden may suspend the further infliction of such punishment during his good behavior.

12-47-26. Uniform kindly treatment of inmates.

1. The warden and all officers of the penitentiary uniformly shall treat the inmates of the penitentiary with kindness, and the warden shall require of the officers and guards that, in the execution of the officers' and guards' respective duties, the officers and guards in all cases shall refrain from boisterous and unbecoming language in giving orders and commands. Corporal or other painful or unusual punishment may not be inflicted upon the inmates of the penitentiary for violation of the rules and regulations of the penitentiary.
2. A facility under the control of the department of corrections and rehabilitation may not:
   a. Substantially burden the exercise of religion by an offender in the custody of the facility unless the burden is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest;
   b. Treat religious conduct more restrictively than any comparable secular conduct unless the facility demonstrates the disparate treatment is necessary to further a compelling penological interest and is the least restrictive means of furthering that compelling penological interest; or
   c. Deny clergy access to an offender in the custody of the facility for the purpose of providing religious services unless the facility demonstrates the denial is necessary to further a compelling penological interest and is the least restrictive means of furthering that compelling penological interest.
3. An offender in the custody of a facility claiming to be aggrieved by a violation of subsection 2 may assert, after exhausting appropriate administrative remedies, that violation as a claim or defense in a judicial proceeding and, if the offender is the

prevailing party, may obtain appropriate relief, including costs and reasonable attorney's fees.

12-47-27. Transfer of penitentiary inmate to state hospital or other treatment facility - Evaluation procedure - Right to administrative hearing - Written order by warden.

Repealed by S.L. 2003, ch. 97, § 1.

12-47-28. Copy of written order by warden delivered to superintendent of state hospital or other facility - Superintendent to receive inmate - Filing of receipt.

Repealed by S.L. 2003, ch. 97, § 1.

12-47-29. Recovery of person transferred - Duty of superintendent or officer - Return or release - Allowance on discharge.

Repealed by S.L. 2003, ch. 97, § 1.

12-47-30. Expense of transferring inmates to and from state hospital.

Repealed by S.L. 1975, ch. 111, § 6.

12-47-31. Discharge of offenders.

1. The department of corrections and rehabilitation, in coordination with the department of transportation, shall facilitate a process for offenders applying for photo identification, including a driver's license, nondriver identification card, temporary driver's license, or temporary nondriver identification card.
2. The department of corrections and rehabilitation shall provide an offender released from the department appropriate clothing and transportation to a reasonable point as specified in the release plan, based upon need.
3. The department of corrections and rehabilitation, in cooperation with the department of health and human services, shall connect all eligible offenders to Medicaid assistance or other health and human services programs before the offender is released from the department.

12-47-32. Cash payments - Office of management and budget may issue warrant.

Repealed by S.L. 1999, ch. 114, § 3.

12-47-33. Warden may issue warrants of penitentiary.

Repealed by S.L. 1989, ch. 156, § 54.

12-47-34. Escapes from director's custody - Director may offer reward for recapture - Payment of reward - Use of firearms.

1. The director of the department of corrections and rehabilitation shall adopt measures necessary for the detection and capture of offenders escaping from the custody of the department. If an offender in the custody of the department escapes, the director shall use all lawful means for the apprehension of the offender. The director may offer a reward not to exceed one thousand dollars and not less than one hundred dollars for information leading to apprehension of an offender who has escaped from the custody of the department.
2. The director may authorize correctional officers trained in the use of firearms:
   a. To carry firearms when in the course of their duties on penitentiary premises.
   b. To carry firearms, including keeping and carrying loaded firearms in motor vehicles, when transporting offenders in the custody of the department.
   c. To carry firearms, including keeping and carrying loaded firearms in motor vehicles, for the prevention of escapes or for the apprehension of offenders who have escaped from the custody of the department.

3. Sections 62.1-02-05, 62.1-02-10, and 62.1-03-01 do not apply to the possession and use of firearms by authorized and trained correctional officers acting in the course of their employment under this section.

12-47-35. Governor may contract for transfer to federal institution.

Repealed by S.L. 1987, ch. 634, § 2.

12-47-36. Records exempt - Confidential - Exceptions.

1. The case history records of the department of corrections and rehabilitation or its divisions or departments relating to persons in the custody or under the supervision and management of the division of adult services of the department of corrections and rehabilitation are exempt records as defined in section 44-04-17.1. Upon application to the district court, with service of the application on the department of corrections and rehabilitation and opportunity for the department to submit a written response, the court may order the inspection of a case history record unless there is a showing by the department of corrections and rehabilitation that a proper and legitimate reason exists for denying inspection of the case history record. If the court issues an order allowing inspection, the court shall allow the department of corrections and rehabilitation to remove all identifying information that may create a risk of harm to property or to any person. As used in this section, "case history record" means any record of a person in the custody or under the supervision and management of the division of adult services of the department of corrections and rehabilitation except for medical, psychological, and treatment records and legal files. The term includes inmate disciplinary proceedings, administrative and disciplinary segregation placements, institutional and criminal investigation reports, supervision histories, job placements, education programs, inmate financial accounts under section 12-48-15, and protective management cases.
2. The medical, psychological, and treatment records of the department of corrections and rehabilitation or its divisions or departments relating to persons in the custody or under the supervision and management of the division of adult services of the department of corrections and rehabilitation are confidential, and may not be disclosed directly or indirectly to any person, organization, or agency, except as otherwise provided in this section. A district court may order the inspection of medical, psychological, and treatment records, or parts of those records, upon application to the court and a showing that there is a proper and legitimate purpose for the inspection of the records, with service of the application on the department of corrections and rehabilitation and opportunity for the department of corrections and rehabilitation to submit a written response.
3. Notwithstanding any other provisions of law relating to privilege or confidentiality, except for the confidentiality requirements of federal drug and alcohol treatment and rehabilitation laws, the following persons, organizations, or agencies without prior application to the court may inspect case history, medical, psychological, or treatment records:
   a. The governor;
   b. The pardon advisory board, if the governor has appointed a pardon advisory board;
   c. The parole board;
   d. Any division, department, official, or employee of the department of corrections and rehabilitation;
   e. Another state receiving a parolee or probationer under the provisions of chapter 12-65;
   f. A federal, state, regional, or county correctional facility receiving physical custody of a person under the legal custody of the department of corrections and rehabilitation;
   g. The employees in the office of the attorney general and investigators, consultants, or experts retained by the state;

h. The risk management division of the office of management and budget for the purpose of investigating and defending actions or claims under chapter 32-12.2;
i. The district court of the county where the judgment of conviction was entered;
j. A state or federal court where a person who is or was in the custody or under the supervision and management of the adult services division of the department of corrections and rehabilitation has commenced litigation and, the parties, their counsel, and representatives of the parties in proceedings, if the records are relevant to the litigation and the subject of the records has signed an authorization;
k. A criminal justice agency as defined in section 44-04-18.7;
l. The United States social security administration and veterans administration; or
m. A state, federal, or tribal agency that evaluates sex offenders for civil commitment or assesses sex offender risk level for registration.

4. Records with respect to the person's identity, location, legal files except records under court seal, criminal convictions, or projected date of release, except for the records of a person who is under protective management, are open records.
5. Medical, psychological, or treatment records may be disclosed without prior application to the court to a public hospital or treatment facility, the department of health and human services, a community behavioral health program, a vocational rehabilitation program, a transitional living facility, or a licensed private medical or treatment facility, when necessary for the evaluation, treatment, or care of a person who is or who has been in the custody of, or is or who has been under the supervision and management of, the adult services division of the department of corrections and rehabilitation.
6. A criminal defendant's presentence investigation report, together with any attachment or addendum, is subject to rule 32 of the North Dakota Rules of Criminal Procedure and any amendments made thereto.
7. The parole board may permit the inspection of a person's preparole report, or parts of the report, prepared for the parole board.
8. Any person, organization, or agency receiving exempt or confidential records under this section shall maintain the closed or confidential nature of the records and may not redisclose the records.
9. The department of corrections and rehabilitation shall maintain the confidentiality of witness protection program records and legal files under seal.
10. The medical, psychological, and treatment records of the department relating to persons in the custody or under the supervision and management of the division of adult services of the department of corrections and rehabilitation may be disclosed for the purpose of conducting research and educational activities. A person conducting research or educational activities may not redisclose identifying information received under this subsection.
11. Notwithstanding any other provision of law relating to privilege or confidentiality, except for the confidentiality requirements of federal drug and alcohol treatment and rehabilitation laws, if the department of corrections and rehabilitation approves, the following individuals, organizations, or agencies without prior application to the court may inspect case history, medical, psychological, or treatment records:
    a. The emergency contact or next of kin of an adult in custody who has a serious or terminal medical condition;
    b. The guardian, conservator, or an individual with a medical power of attorney of an adult in custody or adult under supervision;
    c. If an adult in custody or former adult in custody provides written authorization, an individual, organization, or entity assisting the adult in custody or former adult in custody with social services, housing, behavioral health or medical services, employment, education, child care, or transportation; and
    d. The court.

12-47-37. Transporting of prisoners.

A prisoner who has been charged with, pled guilty to, or been convicted of a class A or class AA felony in this state may not be transported except by employees of the department of corrections and rehabilitation or by law enforcement officers or correctional officers employed by a governmental agency. For purposes of this section, "governmental agency" means an agency or department of this state or of any political subdivision of this state, of another state or of a political subdivision of another state, or of the United States.

12-47-38. Director to contract for housing female inmates.

Repealed by S.L. 2009, ch. 118, § 4.

12-47-39. Definitions - Health care for chronically or terminally ill offenders - Notice to health care facility.

1. As used in this section:
   a. "Chronically ill" has the same meaning as in section 26.1-33.2-01.
   b. "Department" means the department of corrections and rehabilitation.
   c. "Health care facility" means an assisted living facility as defined in section 23-09-01, a basic care facility as defined in section 23-09.3-01, or a nursing home as defined in section 23-30-01, except that transitional care units and other long-term care beds owned or operated on the premises of acute care hospitals or critical care hospitals are not health care facilities for the purpose of this section.
   d. "Terminally ill" has the same meaning as in section 26.1-33.2-01.
2. If an offender is to be given an early release, pardon, or parole due to a chronic or terminal illness for admission as a resident of a health care facility due to the chronic or terminal illness, the department shall provide prior written notice to the administrator of the facility, stating:
   a. The offense for which the offender was convicted and a description of the actual offense;
   b. The offender's status with the department;
   c. That the information provided by the department regarding the offender may be provided to residents and employees of the facility by the administrator of the facility;
   d. The offender's health status and type of health care the offender requires;
   e. Any available risk assessment information regarding the offender's likelihood of reoffending; and
   f. The name of the party responsible for the payment for the services provided by the health care facility to the offender.

12-47-40. Restrooms and shower rooms exclusively for males or exclusively for females.

1. At the penitentiary, a restroom or shower room accessible by multiple inmates at the same time must be designated for use exclusively for males or exclusively for females.
2. At the penitentiary, a restroom or shower room designated for one sex may be used only by members of that sex.
3. The warden, a deputy warden, an officer, or an agent shall provide a reasonable accommodation for an inmate, including a transgender or gender-nonconforming inmate, as deemed appropriate by the warden.