

1999 SENATE JUDICIARY

SB 2133

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2133

Senate Judiciary Committee

Conference Committee

Hearing Date January 13, 1999

Tape Number	Side A	Side B	Meter #
1	x		910 - 4090
1-26-99 2		X	2470 - 3000
Committee Clerk Signature <i>Jackie Tollman</i>			

Minutes:

SB2133 relates to contraband at the penitentiary and escapes from the penitentiary.

SENATOR STENEHJEM opened the hearing on SB2133 at 10:00 A.M.

All were present.

TIM SCHUETZLE, Warden, Director of Corrections and Rehabilitation, testified in support of SB2133. Testimony attached.

KEN SORENSON, Assistant Attorney General, testified in support of SB2133. Testimony attached.

SENATOR STENEHJEM asked about page 3, It is unlawful for any person to deliver or provide to a penitentiary inmate any object that may be useful for an assault on another person or to damage penitentiary property. My question is where is the wording come from, I wonder if

perhaps it might be too vague. I can imagine that just about anything “might be” useful to assault someone or damage property. You have dangerous weapon defined.

KEN SORENSON responded that this language basically parallels the language of our escape statute.

SENATOR TRAYNOR asked if you presently prohibit smokeless tobacco.

TIM SCHUETZLE stated yes.

SENATOR STENEHJEM asked stated the bill draft provides an exception for tobacco use for religious purposes. What about alcohol for religious purposes?

TIM SCHUETZLE stated that they allow tobacco for services and are looking for other forms. We don't use wine for communion but we would allow the priest to bring wine in.

SENATOR STENEHJEM asked if maybe they would want to put this in their bill draft.

TIM SCHUETZLE stated that is a good point.

SENATOR TRAYNOR asked what they do now since they have no penalty for possession of a dangerous weapon.

TIM SCHUETZLE stated that have an in-house punishment. It is an in-house code, we call that a class A offense in our prison. That can be a 30 days in disciplinary detention.

SENATOR TRAYNOR asked if the bill passes what will happen.

TIM SCHUETZLE stated the exact same thing. We would punish them internally plus we would refer the incident over to the Burleigh County States Attorney for criminal prosecution.

SENATOR STENEHJEM stated that with the questions on addressing the alcohol question and the vagueness of “weapons that might be useful”. These need to be addressed in the bill draft.

SENATOR STENEHJEM CLOSED the hearing on SB2133.

Page 3
Senate Judiciary Committee
Bill/Resolution Number SB2133
Hearing Date January 13, 1999

Discussion on Amendments from Ken Sorenson.

SENATOR NELSON made a motion on AMENDMENTS, SENATOR WATNE seconded.

Motion carried.

SENATOR LYSON made a motion for DO PASS AS AMENDED, SENATOR NELSON seconded. Motion carried.

SENATOR NELSON will carry this bill.

5 - 0 - 1

Date: 1-27-99
Roll Call Vote #: 7

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2133

Senate Judiciary Committee

- Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Amendments

Motion Made By Nelson Seconded By Watne

Senators	Yes	No	Senators	Yes	No
Senator Wayne Stenehjem	X				
Senator Darlene Watne	X				
Senator Stanley Lyson	X				
Senator John Traynor	X				
Senator Dennis Bercier					
Senator Carolynn Nelson	X				

Total (Yes) 5 No 0

Absent 0

Floor Assignment _____

Date: 1-27-99
Roll Call Vote #: 2

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2133

Senate Judiciary Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do PASS AS Amended

Motion Made By Lyson Seconded By Nelson

Senators	Yes	No	Senators	Yes	No
Senator Wayne Stenehjem	X				
Senator Darlene Watne	X				
Senator Stanley Lyson	X				
Senator John Traynor	X				
Senator Dennis Bercier					
Senator Caroloyne Nelson	X				

Total (Yes) 5 No 0

Absent 1

Floor Assignment Nelson

REPORT OF STANDING COMMITTEE

SB 2133: Judiciary Committee (Sen. W. Stenehjem, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2133 was placed on the Sixth order on the calendar.

Page 3, line 5, replace "which may be useful" with "intended to be used"

Page 3, line 10, after the underscored comma insert "a knife of any length,"

Page 3, line 13, replace "that may be useful" with "intended to be used"

Page 3, line 17, replace "A" with "Ammunition, a knife of any length, a"

Renumber accordingly

1999 HOUSE JUDICIARY

SB 2133


1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. : 2133

House Judiciary Committee

Conference Committee

Hearing Date : March 1, 1999

Tape Number	Side A	Side B	Meter #
2	X		9.9
Committee Clerk Signature 			

Minutes:

TIM SCHUETZLE (Dept. of Corrections) Presented written testimony, a copy of which is attached.

KEN SORENSON (Asst. AG) Presented written testimony, a copy of which is attached.

COMMITTEE ACTION

REP. SVEEN moved that the committee recommend that the bill DO PASS. Rep. Mahoney seconded and the motion passed on a roll call vote with 15 ayes, 0 nays and 0 absent. Rep. Meyer was assigned to carry the bill on the floor.

Date: 3/1
Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2133

House JUDICIARY Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number 0

Action Taken Do Pass

Motion Made By Sw Seconded By Mah

Representatives	Yes	No	Representatives	Yes	No
REP. DEKREY	✓		REP. KELSH	✓	
REP. CLEARY	✓		REP. KLEMIN	✓	
REP. DELMORE	✓		REP. KOPPELMAN	✓	
REP. DISRUD	✓		REP. MAHONEY	✓	
REP. FAIRFIELD	✓		REP. MARAGOS	✓	
REP. GORDER	✓		REP. MEYER	✓	
REP. GUNTER	✓		REP. SVEEN	✓	
REP. HAWKEN	✓				

Total Yes 15 No 0

Absent 0

Floor Assignment Meyer

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
March 2, 1999 7:43 a.m.

Module No: HR-37-3827
Carrier: Meyer
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2133, as engrossed: **Judiciary Committee (Rep. DeKrey, Chairman)** recommends **DO PASS** (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2133 was placed on the Fourteenth order on the calendar.

1999 TESTIMONY

SB 2133



DEPARTMENT OF CORRECTIONS
AND REHABILITATION
PRISONS DIVISION

3303 East Main Street, Bismarck, ND 58501
Mailing Address: P.O. Box 5521
Bismarck, ND 58506-5521

Tim Schuetzle, Director
Prisons Division

SENATE BILL NO. 2133
Testimony to the Senate Judiciary Committee
10:00 am, January 13, 1999; Fort Lincoln Room

This bill combines many changes to NDCC chapter 12-47, the chapter of the Century Code that regulates the penitentiary. At the urging of the Governor's office we were asked to search the statutes for laws or language that are no longer applicable to our operations. This resulted in our request to repeal five sections from 12-47, and amend two sections dealing with the introduction of contraband to the prison facilities and the use of firearms by correctional staff in the course of their duties.

SECTION 1. Amendment to 12-47-21 for "Contraband"

Currently the law makes it a class B felony to deliver or administer a controlled substance as defined in 19-03.1-01.6 and 19-03.1-01.7 to any inmate of the penitentiary. It is also a class B felony for any person to possess a controlled substance on the prison property. It is a class A misdemeanor to deliver or administer to an inmate, or to be in possession, alcohol on the grounds of the prison facility. It is a class A felony for a penitentiary official or employee to deliver or administer a controlled substance.

We are asking to amend this section to change the inequities in sanctions between 12-47-21 and 19-03.1, the Uniform Controlled Substances Act. Presently if a person was found guilty of delivering a Schedule I or II controlled substance they would face a class A felony charge, and have a mandatory prison sentence. But if they delivered the same substance to an inmate at the prison they could only be charged with a class B felony. 80 to 85% of our inmates are diagnosed with a chemical addiction, and due to their drug-seeking behavior they pressure friends and relatives to smuggle drugs into the facility. I believe the sanctions for delivery to an inmate should be at least as severe as the sanctions for delivery to the general public.

We are also asking for penalties for people delivering tobacco products to inmates at our facilities, and for penalties for inmates that are found to be in possession of tobacco products. The prison ban on tobacco since October of 1997 has brought all of the positive benefits we expected, such as a decrease in cell fires, elimination of second-hand smoke, and a healthier population. However, we have also experienced some negative results in increased smuggling attempts and a black market for tobacco. We have caught a number of private citizens trying to smuggle tobacco into the facility through visits, and by throwing tobacco filled objects over the fences. Other than taking away their visiting privileges, there is no crime that can be used to charge these people. Hopefully, our request to make this a class B misdemeanor will serve as a deterrent for these visitors who contemplate bringing tobacco products to the inmates.

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James River Correctional Center
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Jamestown, ND 58402-3001
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Missouri River Correctional Center
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Rough Rider Industries
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Bismarck, ND 58506-5521
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Fax: 701-328-6164

Finally, we want to discourage outsiders from smuggling weapons into the prison, and make it a criminal offense for inmates to possess weapons. NDCC 12.1-08-09 provides punishment for the introduction of weapons into a correctional facility intended to aid in an escape, but does not cover delivery or possession of weapons to be used by inmates to assault other inmates or staff not related to escape. The safety of our staff and inmates must be a prime concern, and we have experienced a steady increase in the number of assaults on inmates corresponding to the rise in our population. In recent history there have been attempts to manufacture homemade knives and even a zip gun. This .22 caliber gun would have been very effective if the inmates could have received some ammunition as small as .22 shells. In the past year we received information that an inmate was trying to have a revolver and ammunition smuggled into the facility to use to assault a staff person. This proposed amendment would allow law enforcement to bring criminal charges on inmates who are in possession of, or visitors who illegally introduce, weapons to be used for assaulting others living or working in the prisons. There would be two levels of sanctions for this offense, dependent on the type of weapon delivered, as defined by NDCC 62.1-01-01.

<u>POSSESSION or DELIVERY OF CONTRABAND OFFENSE</u>	<u>CURRENT SANCTIONS</u>	<u>PROPOSED SANCTIONS</u>
Delivery of Controlled Substance	"B" Felony	"A" Felony
Delivery of Alcohol	"A" Misdemeanor	"A" Misdemeanor
Delivery of Tobacco	none	"B" Misdemeanor
Delivery of dangerous weapon (62.1-01-01)	none	"A" Felony
Delivery of non-dangerous weapon (62.1-01-01)	none	"B" Felony
Possession of Controlled Substance	"B" Felony	"B" Felony
Possession of Alcohol	"A" Misdemeanor	"A" Misdemeanor
Possession of Tobacco	none	"B" Misdemeanor
Possession of dangerous weapon (62.1-01-01)	none	"A" Felony
Possession of non-dangerous weapon (62.1-01-01)	none	"B" Felony

SECTION 2. Use of Firearms by Trained Correctional Officers

This would amend NDCC 12-47-34 to allow correctional officers to carry firearms while on duty to protect the perimeter of the prisons (towers), in the transport of prisoners outside the secure boundaries of the fences, and for the apprehension of prisoners that have escaped from custody. We presently have our officers go through the same training and annual qualification requirements that are in place for licensed peace officers, and authorize staff to use firearms in all of the three situations listed above. There is, however, a legal question as to whether we have the authority to do this, as very few correctional officers have licensed peace officer status, and therefore may not have the authority to carry firearms. This amendment would clarify the legislative intent, and allow us to continue to meet our goals of reducing escapes, protecting the public, and keeping our staff safe while performing their duties.

SECTION 3. Repealing outdated sections of Chapter 12-47.

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

This section which addresses serving process at the prison. Since it is a legislative statute relating to civil procedure, it is superceded by Rule 4 of the North Dakota Rules of Civil Procedure.

NDCC 12-47-07. Qualifications of warden, officers, and employees.

This law requires the warden and deputy wardens to take the oath prescribed for civil officers and to furnish a bond, and that these are to be filed and retained in the State Treasurer's office. The State Treasurer has my oath on file since 1994, but had not been receiving or keeping these for a number of years. They do not have a bond posted on file. The statute governing the posting of bonds for state officers, 44-01-06, was repealed in 1987, and the bonding requirement of this statute should also be repealed. In addition, I question the need for non-elected state employees to file an oath of office. NDCC 44-01-05 requires that "civil officers" take an oath of office, but according to the Secretary of State's office, they only receive and maintain oath's of office for elected officials. If it is the legislature's intent to continue to require an oath of office for the wardens and deputy wardens, then I would suggest a revision to all statutes that pertain to oath of office, and that they be filed and retained in one central location with state government.

NDCC 12-47-19. Food of inmates.

This law has been on the books since statehood, and states that the meals served inmates should "consist of wholesome coarse food, with such proportions of meats and vegetables as the warden shall deem best for the health of the inmates". Courts have ruled that this practice is guaranteed under the 8th amendment to the US Constitution, and is also governed by the American Correctional Association standards, and therefore is no longer necessary to have in the North Dakota statutes.

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

This law has been on the books since statehood and states that the "clothing and bedding of the inmates shall be of such quality and quantity as the warden may direct, regard being had to their health and comfort". Courts have ruled that this practice is guaranteed under the 8th amendment to the US Constitution, and is also governed by the American Correctional Association standards, and therefore is no longer necessary to have in the North Dakota statutes.

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

This law is apparently a vehicle for the state to provide cash as "gate money" for inmates leaving the prison, but due to changes in state law and prison policy it has not been necessary, or used, for at least twenty years. NDCC 12-48-15.1 provides for the prison administration to place up to 50% of an inmate's earnings into a separate account, not to be given to the inmate until their release. Our current practice is to withhold 25%, which is then used as their gate money to provide transportation and some funds for subsistence upon discharge. If an inmate does not have enough money in this account to pay for a bus ticket, it is purchased with funds appropriated in the prison's budget. Requests for clothing are met by utilizing the services of a second-hand clothing store. Having inmates save money for their release from prison from their earnings teaches responsibility and sends a better message than to just give them cash as they leave. This law should be repealed because we still get 2-3 requests each year from inmates for money, in addition to their release aid account, based on the wording of this law.

Fifty-sixth
Legislative Assembly
of North Dakota

SENATE BILL No. 2133

BEFORE THE SENATE JUDICIARY COMMITTEE
WAYNE STENEHJEM, CHAIRMAN

January 13, 1999

Mr. Chairman, Members of the Senate Judiciary Committee:

My name is Ken Sorenson, Assistant Attorney General, and I am submitting this written testimony on behalf of the Prisons Division of the North Dakota Department of Corrections and Rehabilitation.

Section 1 of SB 2133 provides a number of amendments to N.D.C.C. § 12-47-21, which is the Penitentiary's current contraband statute.

One of the current penalties under N.D.C.C. § 12-47-21 is less than what is found in N.D.C.C. § 19-03.1-23. For example, under § 12-47-21, it is a class B felony for any person other than officials and staff to deliver a controlled substance to an inmate. Under § 19-03.1-23(1), it is a class A felony. Also, the amendments make the delivery-type offenses a class A felony regardless of the schedule in which the controlled substance is classified. The amendments also do not distinguish between delivery by staff or by other persons. It is a class A felony across the board. The amendments still provide that it is a class B felony for possession of a controlled substance, regardless of the schedule. Unlike § 19-03.1-23 and subsequent statutes in the Uniform Controlled Substances Act, there are no mandatory sentences or penalty enhancement provisions provided under the amendments to § 12-47-21.

The Penitentiary has a fully stocked pharmacy and presently has a full-time and a part-time pharmacist. The amendments recognize that the Penitentiary has the authority to operate a pharmacy that contains various scheduled controlled substances and to dispense the controlled substances in accordance with a doctor's prescription.

The amendments delete out references to prescriptions or doctor's orders for alcoholic beverages. The Penitentiary does not allow any form of alcoholic beverages within the facility, including cough syrups and mouthwashes that have alcohol. The possession of alcohol by inmates could be devastating in a prison facility. Perhaps the classification of alcohol violations as an A misdemeanor is inadequate and should be increased to a C felony.

The Penitentiary and its affiliated facilities are smoke-free, as are many correctional facilities around the country. The Warden may allow tobacco for religious purposes, although it appears reasonable substitutes such as sage are acceptable. Going smoke-free is creating a black-market and prison disciplinary sanctions do not

provide sufficient deterrent, especially since they are not applicable to outsiders. Again, because of the problems tobacco is creating, perhaps the penalty for both delivery and possession should be greater than a B misdemeanor.

Section 1 also provides amendments prohibiting weapons. This part of the amendment is meant to compliment N.D.C.C. § 12.1-08-06, which relates to the possess of weapons useful for effecting an escape. The amendments to N.D.C.C. § 12-47-21 prohibit possession and delivery of weapons that may be useful for assaulting staff, visitors, other inmates, or for damaging property. The amendments use the term "shard", which basically means a broken fragment, and is also sometimes called a shank. The amendments incorporate the definition of "dangerous weapon" found in N.D.C.C. § 62.1-01-01, which provides:

"Dangerous weapon" includes any switchblade or gravity knife, machete, scimitar, stiletto, sword, dagger, or knife with a blade of five inches [12.7 centimeters] or more; any throwing star, nunchaku, or other martial arts weapon; any billy, blackjack, sap, bludgeon, cudgel, metal knuckles, or sand club; any slungshot; any bow and arrow, crossbow, or spear; any stun gun; any weapon that will expel, or is readily capable of expelling, a projectile by the action of a spring, compressed air, or compressed gas including any such weapon, loaded or unloaded, commonly referred to as a BB gun, air rifle, or CO sub2 gun; and any projector of a bomb or any object containing or capable of producing and emitting any noxious liquid, gas, or substance.

The penalties for weapons violations under the amendments are greater than the weapons penalties under N.D.C.C. § 12.1-08-06 and Title 62.1.

The amendments in Section 2 are to resolve an unsettled question, that is, whether correctional officers may carry firearms, including loaded and concealed firearms. While there are some correctional officers who are also licensed peace officers under the Peace Officers Standards and Training Board (P.O.S.T; see N.D.C.C. chapter 12-63); most correctional officers are not licensed peace officers. The amendments authorize DOCR correctional officers who are trained in firearms to carry firearms in three general circumstances, namely on penitentiary premises (e.g. officers in the towers), while transporting inmates, and relative to escapes.

Section 3 provides for repeal of five different sections of N.D.C.C. chapter 12-47.

N.D.C.C. § 12-47-03 relates to service of process at the Penitentiary. Since it is a legislative statute relating to civil procedure, it is superceded by Rule 4 of the North Dakota Rules of Civil Procedure.

N.D.C.C. § 12-47-07 is a statute that no one in current DOCR administration can provide any institutional history showing that anyone has ever complied with the statute. Therefore, the DOCR is asking for its repeal.

N.D.C.C. § 12-47-19 requires the Penitentiary to provide wholesome coarse food, including meat and vegetables, as the Warden determines is best for the inmates. It

is not necessary that there be any statutory requirement for the Warden to feed the inmates. It is required as a matter of constitutional law. Therefore, the DOCR is asking for its repeal.

N.D.C.C. § 12-47-20 directs the Warden to provide suitable beds and clothing. Again, it is not necessary that there be any statutory requirement for the Warden to provide inmates clothing and beds. It is required as a matter of constitutional law. Therefore, the DOCR is asking for its repeal.

N.D.C.C. § 12-47-32 is another statute that no one in the current DOCR administration can provide any institutional history showing why this statute exists. Inmate financial accounts are handled under N.D.C.C. chapter 12-48. Therefore, the DOCR is asking for its repeal.

January 13, 1999

Statutes **repealed** in **Section 3 of SB# 2133**

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

Statute text

All process to be served within the grounds or premises of the penitentiary, either upon persons confined therein or committed thereto, or upon persons or officers employed within the grounds or premises thereof, shall be served and returned by any authorized law enforcement officer or by the warden or his designee. All persons committed to the penitentiary, and all persons or officers in charge of or caring for any inmates or persons committed thereto, at any place, shall be deemed to be within the grounds and premises thereof.

History

Source: S.L. 1883 Sp., ch. 30, § 12; R.C. 1895, § 8514; R.C. 1899, § 8514; R.C. 1905, § 10324; C.L. 1913, § 11183; R.C. 1943, § 12-4703; S.L. 1983, ch. 160, § 1.

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

The warden and deputy wardens, before entering upon the duties of their offices, shall take the oath prescribed for civil officers and furnish a bond in the penal sum of ten thousand dollars, which shall conform to the provisions of law applicable to the bonds of state officers and employees. The bond and oath shall be filed and retained in the office of the state treasurer. Each of the other officers and employees of the penitentiary, before entering upon the duties of his appointment, shall take and subscribe the same oath, which shall be filed with and retained by the warden.

Source: S.L. 1883 Sp., ch. 30, § 19; R.C. 1895, §§ 8533, 8537; R.C. 1899, §§ 8533, 8537; R.C. 1905, §§ 10347, 10351; C.L. 1913, §§ 11206, 11210; R.C. 1943, § 12-4707.

Cross-References. Bond, see §§ 44-01-08 to 44-01-12.

Oath of civil officers, see § 44-01-05.

12-47-19. Food of inmates.

The daily sustenance of the inmates of the penitentiary not in the hospital shall consist of wholesome coarse food, with such proportions of meats and vegetables as the warden shall deem best for the health of the inmates.

Source: S.L. 1883 Sp., ch. 30, § 32; R.C. 1895, § 8548; R.C. 1899, § 8548; R.C. 1905, § 10362; C.L. 1913, § 11221; R.C. 1943, § 12-4719.

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

The clothing and bedding of the inmates shall be of such quality and quantity as the warden may direct, regard being had to their health and comfort.

Source: S.L. 1883 Sp., ch. 30, § 34; R.C. 1895, § 8549; R.C. 1899, § 8549; R.C. 1905, § 10363; C.L. 1913, § 11222; R.C. 1943, § 12-4720.

January 13, 1999

Statutes **repealed** in **Section 3 of SB# 2133**

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

The office of management and budget may issue a warrant on the state treasurer, payable to the penitentiary, for the payment of cash advanced to discharged inmates for transportation and temporary aid or for such items as it is necessary for the warden or the director of the department of corrections and rehabilitation to pay in cash. The warden shall file with the office of management and budget an affidavit stating that certain specific sums are necessary to pay cash advanced to discharged inmates for transportation and temporary aid or other incidental items.

Source: S.L. 1909, ch. 227, §§ 1, 2; C.L. 1913, §§ 11249, 11250; R.C. 1943, § 12-4732; S.L. 1989, ch. 156, § 24.

January 13, 1999

Re: Language used in **Section 1**, subsection 6 (Page 3). (SB 2133)

12.1-08-09. Introducing or possessing contraband useful for escape.

Statute text

1. A person is guilty of a class C felony if he unlawfully provides an inmate of an official detention facility with any tool, weapon, or other object which may be useful for escape. Such person is guilty of a class B felony if the object is a firearm, destructive device, or other dangerous weapon.
2. An inmate of an official detention facility is guilty of a class C felony if he unlawfully procures, makes, or otherwise provides himself with, or has in his possession, any tool, weapon, or other object which may be useful for escape. Such person is guilty of a class B felony if the object is a firearm, destructive device, or other dangerous weapon.
3. In this section:
 - a. "Official detention" has the meaning prescribed in subsection 3 of section 12.1-08-06.
 - b. "Unlawfully" means surreptitiously or contrary to a statute or regulation, rule, or order issued pursuant thereto.

History

Source: S.L. 1973, ch. 116, § 8.

Annotations

Cross-References. Criminal attempt, see § 12.1-06-01.



OFFICE OF ATTORNEY GENERAL
STATE OF NORTH DAKOTA

MEMORANDUM

Heidi Heitkamp
ATTORNEY GENERAL

TO: Senator Wayne Stenehjem, Chairman, Senate Judiciary
Committee;
Members, Senate Judiciary Committee

FROM: Ken Sorenson, Assistant Attorney General

DATE: January 18, 1999

SUBJECT: Proposed Amendments to SB 2133 Relating to the North
Dakota State Penitentiary

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State Capitol
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**Consumer Protection
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701-328-3404
800-472-2600
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701-328-3409 (TDD)
FAX 701-328-3535

Gaming Division
701-328-4848
FAX 701-328-3535

Licensing Section
701-328-2329
FAX 701-328-3535

CAPITOL COMPLEX
State Office Building
900 E. Boulevard Ave.
Bismarck, ND 58505-0041
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Civil Litigation
701-328-3640

Natural Resources
701-328-3640

Racing Commission
701-328-4290

**Bureau of Criminal
Investigation**
P.O. Box 1054
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800-472-2185
Toll Free in North Dakota
FAX 701-328-5510

Fire Marshal
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Bismarck, ND 58502-1054
701-328-5555
FAX 701-328-5510

Fargo Office
P.O. Box 2665
 Fargo, ND 58108-2665
701-239-7126
FAX 701-239-7129

Enclosed are proposed amendments to Section 2 of SB 2133. The committee was concerned that the phrases "which may be useful" and "that may be useful", may be somewhat vague since just about any object is potentially useful as a weapon and requested that I submit amendments to fix this. I felt that language requiring intent that the object be used for assault or destruction of property will best resolve the vagueness issue and so I propose the language "intended to be used"

After the hearing, it was discussed in this office that while under the dangerous weapon statute, a knife must be at least five inches in length to be classified as a dangerous weapon, a knife that might be slightly shorter could still be very dangerous in a prison environment, and so the words "knife of any length" are also included.

Also, the prohibition against delivery of weapons was also supposed to include the delivery of ammunition. That appears to have been inadvertently left out of the bill draft, and so that is also included as an amendment.

At the committee hearing on January 13, 1999, a question was asked whether an amendment may be necessary to allow wine at the Penitentiary for religious services. According to the information from the Chancery Office for the Diocese of Bismarck, Canon Law requires that the celebrant of the Catholic Mass use consecrated alcoholic wine while saying the Catholic Mass. However, while Canon Law requires the celebrant, who must be an ordained priest, to use consecrated alcoholic wine, Canon Law does not require that those in attendance at the Catholic Mass receive wine. The bill as it presently reads only prohibits delivery of alcoholic beverages to inmates and possession of alcoholic beverages by inmates, it does not prohibit use of consecrated alcoholic wine by an ordained priest as part of the mass. An ordained priest may still use consecrated alcoholic wine under the current language of SB 2133. The bill is not in conflict with Canon Law by prohibiting the priest

from delivering alcohol to inmates or by prohibiting inmates from possessing alcoholic beverages. Therefore, I do not think an amendment is necessary.

If the committee has any further questions or concerns, my direct extension is 8-4847. Thank you.

Fifty-sixth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO SENATE BILL NO. 2133

Page 3, line 5, replace “which may be useful” with “intended to be used”

Page 3, line 10, after “Ammunition,” insert “a knife of any length,”

Page 3, line 13, replace “that may be useful” with “intended to be used”

Page 3, line 17, replace “A” with “Ammunition, a knife of any length, a”

Fifty-sixth
Legislative Assembly
of North Dakota

SENATE BILL No. 2133

BEFORE THE HOUSE JUDICIARY COMMITTEE
DUANE DEKREY, CHAIRMAN

March 1, 1999

Mr. Chairman, Members of the House Judiciary Committee:

My name is Ken Sorenson, Assistant Attorney General, and I am submitting this written testimony on behalf of the Prisons Division of the North Dakota Department of Corrections and Rehabilitation.

Section 1 of SB 2133 provides a number of amendments to N.D.C.C. § 12-47-21, which is the Penitentiary's current contraband statute.

One of the current penalties under N.D.C.C. § 12-47-21 is less than what is found in N.D.C.C. § 19-03.1-23, one of the penalty sections of the Uniform Controlled Substances Act. For example, under the present provisions of N.D.C.C. § 12-47-21, it is a class B felony for any person other than officials and staff to deliver a controlled substance to an inmate. Under § 19-03.1-23(1), it is a class A felony. The amendments make the delivery-type offenses a class A felony regardless of the schedule in which the controlled substance is classified. The amendments also do not distinguish between delivery by staff or by other persons. The amendments provide that it will be a class A felony across the board for delivery of a controlled substance to an inmate, regardless who makes the delivery. It will continue to be a class B felony for any unauthorized possession of a controlled substance, regardless of the schedule under which the controlled substance has been placed. Unlike N.D.C.C. § 19-03.1-23 and subsequent statutes in the Uniform Controlled Substances Act, there are no mandatory minimum sentences or penalty enhancement provisions provided under the amendments to N.D.C.C. § 12-47-21.

The Penitentiary has a fully stocked pharmacy and presently has a full-time and a part-time pharmacist. The amendments make it clear that the Penitentiary has the authority to operate a pharmacy that contains various scheduled controlled substances and has the authority to dispense controlled substances in accordance with a doctor's prescription.

The amendments delete out references to prescriptions or doctor's orders for alcoholic beverages. The Penitentiary does not allow any form of alcoholic beverages within the facility, including cough syrups and mouthwashes that have alcohol. The possession of alcohol by inmates could be devastating in a prison facility. Perhaps the classification of alcohol violations will continue to be an A misdemeanor. The amendments incorporate the definition of "alcohol" and "alcoholic beverage" from N.D.C.C. § 5-01-01.

The Penitentiary and its affiliated facilities, the James River Correctional Center and the Missouri Correctional Center, are smoke-free, as are many correctional facilities around the country. The Warden may allow tobacco for religious purposes, although it appears reasonable substitutes such as sage are acceptable. Going smoke-free has led to an inmate black-market and prison disciplinary sanctions do not provide sufficient deterrent, especially since they are not applicable to outsiders. The Warden may allow tobacco for religious purposes, although it appears reasonable substitutes such as sage are acceptable.

Section 1 also provides amendments prohibiting weapons. This part of the amendment is meant to compliment N.D.C.C. § 12.1-08-06, which prohibits the possession of objects useful for effecting an escape. The amendments to N.D.C.C. § 12-47-21 will prohibit delivery to inmates, or possession by inmates, of objects that are intended for use in assaulting staff, visitors, other inmates, or for damaging property. The amendments use the term "shard", which generally means a broken fragment, and includes a sharp or pointed piece of wood, glass or metal, sometimes shaped into an object similar to a knife and which may be used just like a knife. These types of objects are oftentimes referred to by the slang word, "shank". The amendments incorporate the definition of "dangerous weapon" found in N.D.C.C. § 62.1-01-01, which provides:

"Dangerous weapon" includes any switchblade or gravity knife, machete, scimitar, stiletto, sword, dagger, or knife with a blade of five inches [12.7 centimeters] or more; any throwing star, nunchaku, or other martial arts weapon; any billy, blackjack, sap, bludgeon, cudgel, metal knuckles, or sand club; any slungshot; any bow and arrow, crossbow, or spear; any stun gun; any weapon that will expel, or is readily capable of expelling, a projectile by the action of a spring, compressed air, or compressed gas including any such weapon, loaded or unloaded, commonly referred to as a BB gun, air rifle, or CO sub2 gun; and any projector of a bomb or any object containing or capable of producing and emitting any noxious liquid, gas, or substance.

While the above statute requires a knife to have a blade of five inches or more to be a dangerous weapon, in consideration of the fact that a knife with a blade shorter than five inches is still dangerous when in the possession of an inmate, the amendments provide that for purposes of section 12-47-21, a knife of any length is a dangerous weapon. The penalties for weapons violations under the amendments are greater than the weapons penalties under N.D.C.C. § 12.1-08-06 and Title 62.1.

The amendments in Section 2 are to make it clear that correctional officers may carry firearms, including loaded and concealed firearms. While there are some correctional officers who are also licensed peace officers under the Peace Officers Standards and Training Board (P.O.S.T; see N.D.C.C. chapter 12-63); most correctional officers are not licensed peace officers. The amendments authorize DOCR correctional officers who are trained in firearms to carry firearms in three general circumstances, namely on penitentiary premises (e.g. officers in the towers), while transporting inmates, and relative to escapes.

Section 3 provides for repeal of five different sections of N.D.C.C. chapter 12-47. The Governor's Office had asked the DOCR to identify statutes that do not serve any present purpose. The DOCR has identified these five statutes as unnecessary for DOCR operations:

1. N.D.C.C. § 12-47-03 relates to service of civil process at the Penitentiary. This statute is a legislative statute purporting to govern a matter of civil procedure. The North Dakota Supreme Court has stated in a number of cases that court made procedural statutes supercede statutory procedural statutes. Rule 4 of the North Dakota Rules of Civil Procedure governs the manner of civil process and supercedes the provisions of N.D.C.C. § 12-47-03.

2. N.D.C.C. § 12-47-07 relates to requirements of a bond and oath of officers. No one in current DOCR administration can provide any institutional history showing that the statute is regularly and consistently followed. Therefore, the DOCR is asking for its repeal.

3. N.D.C.C. § 12-47-19 requires the Penitentiary to provide wholesome coarse food, including meat and vegetables, as the Warden determines is best for the inmates. It is not necessary that there be any statutory requirement for the Warden to feed the inmates. It is required as a matter of constitutional law. Therefore, the DOCR is asking for its repeal.

4. N.D.C.C. § 12-47-20 directs the Warden to provide suitable beds and clothing. Again, it is not necessary that there be any statutory requirement for the Warden to provide inmates clothing and beds. It is required as a matter of constitutional law that the Warden provide suitable beds and clothing for inmates. Inmates are allowed to bring their own clothes, and they generally do bring their own clothes. If an inmate cannot afford clothes, the Warden will issue clothes. Therefore, the DOCR is asking for its repeal.

5. N.D.C.C. § 12-47-32 relates to release or gate money for inmates. Again, no one in the current DOCR administration can provide any institutional history showing why this statute exists any longer. Inmate financial accounts are handled under N.D.C.C. chapter 12-48, which has replaced N.D.C.C. § 12-47-32. Therefore, the DOCR is asking for its repeal.