

CORRECTIONS, PAROLE, AND PROBATION

CHAPTER 113

SENATE BILL NO. 2127

(Senators Heitkamp, Thane)

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

CORRECTIONAL FACILITIES

AN ACT to amend and reenact sections 12-44.1-01, 12-44.1-02, 12-44.1-03, 12-44.1-04, 12-44.1-05, 12-44.1-06, 12-44.1-06.1, 12-44.1-07, 12-44.1-08, 12-44.1-09, 12-44.1-10, 12-44.1-11, 12-44.1-12, 12-44.1-13, 12-44.1-14, 12-44.1-15, 12-44.1-17, 12-44.1-18, 12-44.1-18.1, 12-44.1-18.2, 12-44.1-19, 12-44.1-20, 12-44.1-21, 12-44.1-22, 12-44.1-24, 12-44.1-25, 12-44.1-26, and 12-44.1-27, relating to correctional facilities; and to repeal sections 12-44.1-16 and 12-44.1-23, relating to jails and regional corrections centers; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-44.1-01 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-01. Definitions. As used in this chapter:

1. ~~"City jail" means a confinement facility established and maintained by a city.~~
2. ~~"County jail" means a confinement facility established and maintained by a county.~~ "Correctional facility" means a city or county jail or detention center, regional corrections center, or juvenile detention center for the detention or confinement of persons in accordance with law. The use of the term does not imply and may not be used to require the provision of services including treatment, counseling, vocational, or educational services, except as may otherwise be required or provided for under this chapter.
3. ~~2.~~ "Inmate" means any person, whether sentenced or unsentenced, who is detained or confined in a jail, regional corrections center, or juvenile detention center correctional facility.
4. ~~3.~~ "Jail" means a correctional facility, including a county or city jail or a regional corrections center.
5. ~~4.~~ "Jail administrator" "Administrator" means the sheriff, chief of police, administrator, superintendent, director, or other individual serving as the chief executive officer of a jail, regional corrections center, or juvenile detention center correctional facility.

- 6- 5. ~~"Jail~~ "Correctional facility staff" means ~~custodial~~ correctional personnel with titles such as jailer, deputy, counselor, correctional officer, or any other title, whose duties include the ongoing supervision of the inmates in a ~~jail, regional corrections center, or juvenile detention center~~ correctional facility.
- 7- 6. "Juvenile detention center" means a publicly or privately established and maintained correctional facility for the ~~confinement~~ detention of ~~juvenile inmates~~ juveniles. The term does not include the North Dakota youth correctional center.
- 8- 7. "Regional corrections center" means a correctional facility established and maintained by more than one county or city, or a combination of counties and cities, for the confinement of ~~their~~ inmates; ~~or a county or city facility contracting to confine the inmates of other counties and cities.~~
8. "Trained correctional facility staff" means correctional personnel who have completed a course of training approved by the department of corrections and rehabilitation.

SECTION 2. AMENDMENT. Section 12-44.1-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-44.1-02. Establishing ~~jails~~ correctional facilities - ~~Jail~~ Correctional facility contracts - ~~Regional corrections centers.~~ For the confinement of lawfully committed persons, the governing body of a county or city shall do or shall participate in the doing of, one of the following:

1. Establishing and maintaining a ~~jail~~ correctional facility at county or city expense.
2. Contracting for ~~jail~~ correctional facility services and use of ~~jail~~ correctional facilities with another county or city maintaining a ~~jail, with a regional corrections center,~~ correctional facility or with the state or federal government.
3. Establishing and maintaining, pursuant to chapter 54-40 and this chapter, a ~~regional corrections center~~ correctional facility in conjunction with other counties and cities.

A county or city may ~~additionally~~ contract with a county or city of another state for the confinement of lawfully committed county or city inmates from that state in a North Dakota ~~jail or juvenile detention center~~ correctional facility, or for the confinement of lawfully committed North Dakota inmates in a county or city correctional facility of such other state. A city or county may contract with another correctional facility in this state for correctional services for purposes of safety, security, health and medical reasons, or for correctional facility administration. A city or county may contract for the confinement of inmates lawfully sentenced by a tribal court. A city or county may contract for ~~adult jail services and juvenile detention~~ correctional facility services with a privately operated ~~jail facility or juvenile detention center~~ correctional facility. Contracts with private agencies providing ~~adult jail or juvenile detention~~ correctional facility services may be entered into for up to seven years.

SECTION 3. AMENDMENT. Section 12-44.1-03 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-03. Safety and sanitation.

1. Each ~~jail~~ correctional facility shall comply with state and local fire, sanitation, safety, and health codes.
2. The ~~governing body~~ administrator of a ~~jail~~ correctional facility, to ensure adequate fire protection, shall install firefighting equipment at appropriate locations throughout the ~~jail~~ correctional facility.
3. Each ~~jail~~ correctional facility shall have a smoke detection system approved by the state fire marshal and tested on a regular basis.
4. Designated exits ~~shall~~ must permit prompt evacuation of inmates and ~~jail~~ correctional facility staff in an emergency.

SECTION 4. AMENDMENT. Section 12-44.1-04 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-44.1-04. Administration - Organization - Management. The ~~governing body~~ administrator of each ~~jail~~ correctional facility shall:

1. Formulate an operations manual, available to all ~~jail~~ correctional facility staff, which delineates the written policies and procedures for operating and maintaining the ~~jail~~ correctional facility.
2. Review and update all policies and procedures in the operations manual at least annually.
3. Specify a ~~single jail~~ an administrator in the operations manual to whom all ~~jail~~ correctional facility staff are responsible. The operations manual shall include the ~~jail~~ administrator's duties, responsibilities, and authority for the management of the ~~jail~~ correctional facility staff, inmates, programs, and physical plant.
4. Ensure that ~~all full-time~~ all ~~jail~~ correctional facility staff who work in direct and continuing contact with inmates receive ~~jail management~~ correctional facility training as determined and ~~funded~~ approved by the department of corrections and rehabilitation ~~or such other training as approved by the department of corrections and rehabilitation.~~

SECTION 5. AMENDMENT. Section 12-44.1-05 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-05. Meal payments. ~~A jail~~ An administrator or ~~jail~~ correctional facility staff member receiving lump sum monthly payments for providing inmate meals shall submit an itemized account of the meal expenses to the governing body of the ~~jail~~ correctional facility. Any amount of the monthly payment in excess of the itemized account shall be returned to the general operating fund or be given as salary to the person providing the meals, as determined by the governing body of the ~~jail~~ correctional facility.

SECTION 6. AMENDMENT. Section 12-44.1-06 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-44.1-06. Grades of ~~jails~~ jail correctional facilities.

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

SECTION 7. AMENDMENT. Section 12-44.1-06.1 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-06.1. ~~Jail~~ Correctional facilities standards. Grade two and grade three ~~jails~~ correctional facilities do not need to provide outdoor recreation areas, ~~contact visitation areas~~, or exercise rooms separate from dayrooms. Correctional facilities may allow contact visitation subject to the safety, security, and administration requirements of the correctional facility.

SECTION 8. AMENDMENT. Section 12-44.1-07 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-07. Who may be confined in ~~jail~~ jail correctional facilities. The following persons may be confined in a ~~jail~~ correctional facility:

1. Persons charged with offenses or ordered by a court to be detained for trial.
2. Persons committed by a court to confinement in order to secure their attendance as witnesses at the trial of any criminal cause.
3. Persons sentenced to imprisonment upon conviction of an offense, and any other person committed or detained as authorized by law.

SECTION 9. AMENDMENT. Section 12-44.1-08 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-08. Confinement of state and federal inmates.

1. Grade one ~~jails~~ correctional facilities may contract for the confinement of persons sentenced to imprisonment in the state penitentiary offenders in the custody of the department of corrections and rehabilitation if sufficient room is not available at the penitentiary, for purposes of safety, security, discipline, medical care, or when the department of corrections

and rehabilitation determines it may be in the best interests of the offender or the department of corrections and rehabilitation.

2. ~~All jails;~~ A correctional facility to which ~~any a~~ a person is sent or committed by legal process issued by or under the authority of the United States; shall receive such ~~inmate~~ person into custody for safe detention until discharged under federal law.
3. ~~The United States shall be charged, for the confinement of its inmates, the amount actually required and expended by the jail maintaining the federal inmates.~~ A correctional facility detaining or confining federal inmates is entitled to compensation in accordance with fee schedules established by the United States.
4. ~~Repealed by S.L. 1985, ch. 169, § 3.~~
5. ~~Whenever required to do so by any United States officer, a jail administrator or jail staff member shall make out under oath a list of federal inmates in custody, with the date of commitment, by whom committed, and for what offenses. Such list shall be transmitted to the United States district court judge of the district in which the jail is located.~~
6. ~~Any~~ A grade one or grade two ~~jail~~ correctional facility may be used for the ~~safekeeping~~ detention of a fugitive from justice in accordance with any act of Congress or the laws of another state. ~~Such jail shall be~~ The correctional facility is entitled to reasonable compensation from the officer or jurisdiction regaining custody of the fugitive.

SECTION 10. AMENDMENT. Section 12-44.1-09 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-09. Housing of inmates. In grade one and grade two ~~jails~~ correctional facilities and, where practicable, in grade three ~~jails~~ correctional facilities, the following groups of inmates must be housed separately from each other:

1. Female inmates from male inmates.
2. Juveniles from adults.
3. Persons detained for hearing or trial from inmates under sentence of imprisonment, unless authorized to be housed together by the ~~jail~~ administrator for security, order, or rehabilitation.
4. Persons detained for hearing or trial or under sentence of imprisonment from ~~detained witnesses and other persons detained under civil commitment~~ persons otherwise detained by order of the court, unless authorized to be housed together by the ~~jail~~ administrator for security, order, or rehabilitation.
5. ~~Mentally disturbed inmates and other inmates with special needs as determined by the jail administrator from the remainder of the jail population, unless authorized to be housed together by the jail administrator for security, order, or rehabilitation.~~ Inmates who may have special needs as determined by the correctional facility or whose

behavior may present a serious threat to the safety or security of the correctional facility, the staff, the inmate, or other inmates.

6. ~~Special management inmates whose behavior presents a serious threat to the safety and security of the jail, the inmate, the staff, or the general inmate population from the remainder of the jail population.~~

SECTION 11. AMENDMENT. Section 12-44.1-10 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-10. Detained witnesses and pretrial detainees. Detained witnesses and persons held in custody awaiting arraignment or trial ~~shall~~ may not be restricted in their activities to any extent greater than required to maintain order and security and to assure appearance at arraignment or trial. Witnesses and pretrial detainees shall not be required to do labor other than keeping their living areas clean nor shall they be required to participate in ~~jail~~ correctional facility programs.

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

12-44.1-11. Commitment papers - Copies - Endorsement. When an inmate is confined by virtue of any process directed to the ~~jail~~ administrator and the process requires a return to the court from which it was issued, the ~~jail~~ administrator shall keep a copy of the process with the return made thereon. The copy, certified by the ~~jail~~ administrator, ~~shall be~~ is prima facie evidence of ~~his~~ the administrator's right to retain the inmate in custody. All ~~such~~ instruments or copies by which an inmate is committed or released shall be endorsed and filed by the ~~jail~~ administrator. The file and its contents shall be delivered to the ~~jail~~ administrator's successor.

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

12-44.1-12. Inmate personal property. A written, itemized inventory of all personal property taken from an inmate at the time of admission shall be made by ~~jail~~ correctional facility staff. ~~Such~~ The property, including money and other valuables, shall be secured and the inmate given a receipt for all property to be held until the inmate's release unless the inmate requests a different disposition in writing. Upon release, the items of inmate personal property shall be compared with the inventory list, and the inmate shall sign a receipt for the property's return. If the inmate is released for transfer to another ~~jail~~ or correctional facility, the correctional officer transporting the inmate shall sign the receipt. The releasing ~~jail~~ correctional facility shall maintain a copy of the property receipt for its files.

SECTION 14. AMENDMENT. Section 12-44.1-13 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-13. Supervision of inmates.

1. Inmates shall be supervised on a twenty-four-hour basis by trained ~~jail~~ correctional facility staff.
2. ~~Jail~~ Correctional facility staff shall be located in such proximity to inmate living areas to permit the staff to hear and respond promptly to calls for help.

3. Each ~~jail~~ correctional facility shall provide for the personal observation of inmates on an irregular but frequent schedule.
4. Each ~~jail~~ correctional facility shall maintain sufficient staff to perform all functions relating to the security, control, custody, and supervision of inmates.
5. A ~~matron~~ correctional facility female staff member shall be available at all times during which a female inmate is confined.
6. Inmates shall be prohibited from supervising, controlling, or exerting any authority over other inmates.
7. The ~~jail administrator~~ correctional facility shall maintain a daily written record of information concerning inmates ~~as prescribed by rule~~.

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

12-44.1-14. Inmate rights. ~~The governing body~~ Subject to reasonable safety, security, discipline, and correctional facility administration requirements, the administrator of each jail correctional facility shall:

1. Ensure ~~and facilitate the right of~~ inmates ~~to~~ have confidential access to attorneys and their authorized representatives.
2. Ensure that inmates are not subjected to discrimination based on race, national origin, color, creed, sex, economic status, or political belief.
3. Ensure equal access by male and female inmates to programs and services available through the correctional facility.
4. Ensure access to mail, telephone use, and visitors.
5. Ensure that inmates are properly fed, clothed, and housed.
6. Ensure that inmates have adequate medical care.
7. Ensure that inmates may reasonably exercise their religious beliefs.

SECTION 16. AMENDMENT. Section 12-44.1-15 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-15. Searches. Searches of inmates ~~should~~ may only be conducted:

1. ~~Be conducted so as to avoid~~ Without undue or unnecessary force; ~~embarrassment,~~ or indignity to the ~~individual~~ person searched.
2. ~~Be conducted no more frequently than~~ When reasonably necessary to control contraband in the institution or to recover missing or stolen property.

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

12-44.1-17. Inmate educational and counseling programs. ~~The governing body of each grade one and grade two jail shall formulate a plan whereby~~ A correctional facility may utilize the resources of the community are utilized to provide inmates with available educational, vocational, counseling, and work release opportunities. ~~Each jail administrator shall~~ A correctional facility may, if possible, and subject to reasonable safety, security, discipline, and correctional facility administration requirements, provide opportunities for access to available religious, mental health, alcoholism, and addiction counseling by inmates desirous of such counseling.

SECTION 18. AMENDMENT. Section 12-44.1-18 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-18. Inmate work programs. ~~The governing body of a grade one jail shall~~ A correctional facility may maintain a written inmate work assignment plan that provides for inmate employment, subject to the number of work opportunities available and the maintenance of jail security reasonable safety, security, discipline, and correctional facility administration requirements. ~~The inmate work plan shall~~ may provide for inmate employment in jail correctional facility maintenance and operation, in public works projects, and or in various community service projects.

SECTION 19. AMENDMENT. Section 12-44.1-18.1 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-18.1. Inmate work release program. ~~The governing body of a city or county, with the concurrence of affected parties, A correctional facility may provide for a work release program for inmates confined in a city or county penal institution unless the court has ordered that an inmate may not receive work release. Work release projects may include public service and community service projects, and may utilize any particular skill or trade of participating inmates. At the discretion of the judge with jurisdiction over a participating inmate, for every eight hours of work by a participating inmate, the inmate's period of confinement shall be reduced by two days. The governing body~~ correctional facility shall take measures to maintain jail security among participating inmates correctional facility security and safety and to protect the safety of the public.

SECTION 20. AMENDMENT. Section 12-44.1-18.2 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-44.1-18.2. 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~~ correctional facility for the room and board costs incurred by the inmate while confined in the ~~jail or regional correction~~ correctional facility. 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.

SECTION 21. AMENDMENT. Section 12-44.1-19 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-19. Removal of inmate in emergency not an escape. If a ~~jail~~ correctional facility or any adjoining building shall be on fire or another emergency occurs, and the inmates may be exposed to danger, the ~~jail~~ correctional facility staff shall remove the inmates to a place of safety, and there confine them as long as

necessary to avoid the danger. The removal and confinement shall not be deemed an escape of such inmates.

SECTION 22. AMENDMENT. Section 12-44.1-20 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-20. Punishment of inmate. ~~A jail administrator or jail staff member having charge of an inmate under this chapter may use only such means as are necessary to control inmate behavior. If an inmate confined in any jail is disorderly or willfully destroys jail property, the jail administrator may cause the inmate to be secured or kept in solitary confinement for not more than three days for any one offense. A correctional facility shall adopt rules for safety, security, discipline, and correctional facility administration. If an inmate violates any of the rules of a correctional facility, the correctional facility may impose disciplinary sanctions in accordance with its rules.~~

SECTION 23. AMENDMENT. Section 12-44.1-21 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-21. Prohibited acts. ~~A jail administrator or a member of the jail staff shall be guilty of a class A misdemeanor if he or she knowingly:~~

- ~~1. Places or keeps male and female inmates together in the same cell unless they are husband and wife. It is unlawful to deliver or administer any alcoholic beverage or controlled substance to a person detained in a correctional facility except for the delivery or administration of controlled substances or alcoholic beverages in accordance with the orders or prescription of a licensed physician and the approval, except in emergency circumstances, of the correctional facility administrator.~~
- ~~2. Gives, sells, or delivers to any inmate, for any cause whatever, any alcoholic beverage unless prescribed by a physician. Any other person, other than a physician or person under the direction of a physician, who gives, sells, or delivers an alcoholic beverage to an inmate shall be guilty of a class A misdemeanor. A person detained in a correctional facility may not possess any controlled substance or alcoholic beverage unless the substance or beverage is prescribed in accordance with the prescription or orders of a licensed physician, and the approval, except in emergency circumstances, of the correctional facility administrator.~~
- ~~3. Uses corporal punishment against an inmate. A person, other than an official or employee of the correctional facility, who violates subsection 1 by delivering or administering a controlled substance is guilty of a class B felony. An official or employee of the correctional facility who violates subsection 1 by delivering or administering a controlled substance is guilty of a class A felony. A person who violates subsection 1 by delivering alcoholic beverages is guilty of a class A misdemeanor.~~
- ~~4. Uses physical force except as necessary for self-defense or control of inmates, protection of another person from imminent physical attack, or the prevention of riot or escape. A person who violates subsection 2 by possessing a controlled substance is guilty of a class B felony. A 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 6 of section 19-03.1-01, and includes counterfeit substances as defined in subsection 7 of section 19-03.1-01.

SECTION 24. AMENDMENT. Section 12-44.1-22 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-44.1-22. Jail Correctional facility register - Contents. Each jail administrator is responsible for a jail correctional facility register in which must be entered such inmate information on such forms as the department of corrections and rehabilitation shall prescribe by rule.

SECTION 25. AMENDMENT. Section 12-44.1-24 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-44.1-24. Jail Correctional facility standards - Inspections. The department of corrections and rehabilitation shall:

1. Prescribe rules establishing minimum standards for the construction, operation, and maintenance of public or private juvenile detention centers, county and city jails, and regional corrections centers correctional facilities.
2. Prescribe rules for the care and treatment of inmates.
3. Cause rules and regulations to be made available to inmates or be posted in at least one conspicuous place in each jail, juvenile detention center, or regional corrections center and in each cell or cellblock where they may be read by inmates correctional facility.
4. Appoint a jail correctional facility inspector qualified by special experience, education, or training to inspect each jail, juvenile detention center, and regional corrections center correctional facility at least once each year to determine if the rules and regulations have been complied with. Inspection ~~shall~~ must include; ~~but not be limited to~~, health and safety, fire and life safety, security, rehabilitation programs, recreation, treatment of persons confined, and personnel training.

SECTION 26. AMENDMENT. Section 12-44.1-25 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

1. A written report of each inspection pursuant to section 12-44.1-24 shall be made by the jail correctional facility inspector within thirty days following each inspection.
2. Copies of the report must be sent by the jail correctional facility inspector to the governing body administrator responsible for the jail, juvenile detention center, or regional corrections center correctional facility and must also be submitted to the department of corrections and rehabilitation for review.
3. The inspection report must specify those respects in which a jail, juvenile detention center, or regional corrections center correctional facility does or does not comply with the required minimum standards and rules.

The inspection report of noncompliance must specify the time limits within which such standards or rules are to be met, with consideration being given to the magnitude or seriousness of the deficiencies and their potential effects on the health and safety of inmates, the cost of correction, and other information deemed relevant by the department of corrections and rehabilitation.

4. Where the nature and extent of deficiencies are such that an immediate order of full or partial closure is deemed necessary by the department of corrections and rehabilitation to preserve the health and safety of inmates, the period of time for correction may be dispensed with and an order of immediate full or partial closure may be issued by the department of corrections and rehabilitation.
5. Within thirty days after receipt of a notice or order of immediate closure, the ~~governing body administrator~~ administrator of a ~~jail, juvenile detention center, or regional corrections center~~ correctional facility may request a review of the determination by the department of corrections and rehabilitation pursuant to chapter 28-32. The review must be heard not more than forty-five days following the request, unless the period is extended by the department of corrections and rehabilitation.

SECTION 27. AMENDMENT. Section 12-44.1-26 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-44.1-26. ~~Jail~~ Correctional facility variances.

1. ~~All jails, juvenile detention centers, and regional corrections centers~~ A correctional facility shall comply with the requirements of the rules ~~and regulations promulgated~~ adopted by the department of corrections and rehabilitation unless a variance has been granted by the department of corrections and rehabilitation. Any request for a variance must be in writing and must cite the rule in question, the reasons for requesting the variance, the period of time for the variance, and an explanation of how the policy of the rule will be served without strict compliance with the rule.
2. The department of corrections and rehabilitation may grant a variance if it is determined that:
 - a. Compliance with the rule would cause extreme hardship as a result of circumstances which are unique to the ~~jail, juvenile detention center, or regional corrections center~~ correctional facility.
 - b. The ~~jail, juvenile detention center, or regional corrections center~~ correctional facility will substantially comply with the policy of the rule during the time of the variance from the rule.
3. The department of corrections and rehabilitation shall give written reasons for granting or denying a variance request.
4. In previously existing ~~jails, juvenile detention centers, or regional corrections centers~~ correctional facilities where specific rules cannot be complied with because of alleged difficulty or undue hardship, exception to specific physical plant rules must be made if the intent of the rule is met and security, supervision of prisoners, established programs, or the

safe, healthful, or efficient operation of the ~~jail, juvenile detention center, or regional corrections center~~ correctional facility is not seriously affected.

SECTION 28. AMENDMENT. Section 12-44.1-27 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-44.1-27. Corrective action - Enforcement.

1. Upon receipt of an inspection report stating noncompliance, the ~~governing body administrator~~ of a ~~jail, juvenile detention center, or regional corrections center~~ correctional facility shall promptly meet with the department of corrections and rehabilitation's inspection personnel to consider the inspection report. The governing body shall then initiate appropriate corrective action within ninety days following receipt of the inspection report, or may voluntarily close the ~~jail, juvenile detention center, or regional corrections center~~ correctional facility or the objectionable portion.
2. If the governing body of a ~~jail, juvenile detention center, or regional corrections center~~ correctional facility fails to initiate corrective action within ninety days after receipt of the inspection report and notice of noncompliance, or fails to close the ~~jail, juvenile detention center, or regional corrections center~~ correctional facility or objectionable portion, the director of the department of corrections and rehabilitation is authorized to petition the district court of the judicial district in which the ~~jail, juvenile detention center, or regional corrections center~~ correctional facility is located to order the initiation of corrective action or the closure of the ~~jail, juvenile detention center, or regional corrections center~~ correctional facility. The petition to the district court must include the inspection report regarding the ~~jail, juvenile detention center, or regional corrections center~~ correctional facility. The governing body shall have twenty days to respond to the petition and shall serve a copy of the response on the director of the department of corrections and rehabilitation by certified mail.
3. A hearing must be held on the petition of the department of corrections and rehabilitation before the district court. An order must be rendered by the district court which dismisses the petition, directs that corrective action be initiated in some form by the governing body, or directs the closure of the ~~jail, juvenile detention center, or regional corrections center~~ correctional facility.

SECTION 29. REPEAL. Sections 12-44.1-16 and 12-44.1-23 of the North Dakota Century Code are repealed.

Approved March 21, 1997
Filed March 21, 1997

CHAPTER 114

SENATE BILL NO. 2108

(Senator C. Nelson)

(Representative DeKrey)

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

PENITENTIARY FACILITIES AND INMATES

AN ACT to amend and reenact sections 12-47-01, 12-47-02, 12-47-18.1, 12-47-34, 12-47-36, 12-48-15, and subsection 2 of section 29-27-07 of the North Dakota Century Code, relating to penitentiary facilities and to inmate transfers, escapes, records, and moneys; and to repeal section 32-22-36 of the North Dakota Century Code, relating to writs for transfer of prisoners.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-47-01 of the North Dakota Century Code is amended and reenacted as follows:

12-47-01. Penitentiary - Location - Purpose. The penitentiary located at the city of Bismarck in the county of Burleigh ~~shall be~~ is the general penitentiary and prison of this state for the punishment and reformation of offenders against the laws of this state in which all offenders who are sentenced to imprisonment therein ~~shall~~ must be confined securely and employed and governed in the manner provided by law. 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.

SECTION 2. AMENDMENT. Section 12-47-02 of the North Dakota Century Code is amended and reenacted as follows:

12-47-02. ~~Within jurisdiction of Burleigh County~~ Jurisdiction over penitentiary and affiliated facilities. The penitentiary and the grounds and premises thereof, for the purpose of all judicial proceedings, ~~shall be deemed to be~~ is within and a part of the county of Burleigh, and the courts of ~~said~~ that county ~~shall~~ have jurisdiction of all crimes or public offenses committed within the ~~same~~ 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.

SECTION 3. AMENDMENT. Section 12-47-18.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-47-18.1. 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~~ The warden may transfer the inmate an offender to any facility under the warden's control or contract to transfer an offender to another correctional facility for purposes of safety, security, discipline, medical care, or when the warden determines it may be in the best interests of the public, the offender, or the penitentiary.

SECTION 4. AMENDMENT. Section 12-47-34 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-47-34. Escapes from warden's custody - Warden may offer reward for recapture - Payment of reward. The warden, with the approval of the director of the department of corrections and rehabilitation, may adopt ~~any~~ measures deemed proper to aid in necessary for the detection and capture of persons offenders escaping from the custody of the warden or the department of corrections and rehabilitation. ~~When an inmate~~ If an offender in the custody of the warden or the department of corrections and rehabilitation escapes, the warden shall ~~may~~ use every all lawful means at the warden's command for the apprehension of such person, and for that purpose the offender. The warden may offer a reward ~~of~~ not to exceed one thousand dollars and not less than one hundred dollars for information leading to ~~such~~ apprehension of an offender who has escaped from the custody of the warden or the department of corrections and rehabilitation.

SECTION 5. AMENDMENT. Section 12-47-36 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-47-36. Certain penitentiary inmates' records Records confidential. ~~The clinical, behavioral, treatment, medical, and social records and materials of a penitentiary inmate, regardless of source, are confidential and privileged and may not be disclosed directly or indirectly to the inmate or anyone other than the parole board, a public or private treatment facility, a recognized law enforcement agency, and others entitled by law to receive such information. A state or federal court may order the inspection of such confidential and privileged records and materials, or parts thereof, by individuals or organizations having shown a proper legitimate purpose and reason to inspect such records and materials. The medical, psychological, treatment, or social 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 department of corrections and rehabilitation must be kept confidential and may not be disclosed directly or indirectly to any person, organization, or agency, except as otherwise provided in this section. A court may order the inspection of such records, or parts of such 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. Notwithstanding any other provisions of law relating to privilege or confidentiality, records may be inspected by or disclosed to the following persons, organizations, or agencies without prior application to the court: the governor; the pardon advisory board, if the governor has appointed a pardon advisory board; the parole board; any division, department, official, or employee of the department of corrections and rehabilitation; another state receiving a parolee or probationer under the provisions of chapter 12-56 or 12-56.1; 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; the employees in the office of the attorney general and investigators, consultants, or experts retained by the state; 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; the state's attorney and district court of the county where the judgment of conviction was entered; a state or federal court where a person in the custody or under the supervision of the department of corrections and rehabilitation has commenced litigation and the records are relevant to the litigation; or municipal, county, state, or federal law enforcement agencies. 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. The parole board may permit the inspection of a person's preparole report, or parts of the report, prepared for the parole board. The employment status of a person in the custody of or under the~~

supervision and management of the department of corrections and rehabilitation may be disclosed to an agency or official charged with the enforcement of child support. Medical, psychological, or treatment records may be disclosed without prior application to the court to a public hospital or treatment facility, the department of human services, or to a licensed private medical or treatment facility, when necessary for the evaluation, treatment, or care of a person in the custody or under the supervision of the department of corrections and rehabilitation.

SECTION 6. AMENDMENT. Section 12-48-15 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-48-15. Disposition of moneys earned - Warden to keep account of money earned by inmates - Investment in interest-bearing accounts.

1. The warden of the penitentiary shall keep an account for each inmate. Not more than fifty percent of an inmate's penitentiary earnings, as provided by penitentiary rules, must be withheld from an inmate and deposited in a separate account for the inmate to accumulate a sum of money and may not be made available to the inmate until the inmate's release from the penitentiary, except as authorized by the warden. The remainder of an inmate's earnings must be paid made available to the inmate on a regular basis. ~~All moneys in the inmate's account must be paid to the inmate in full when discharged.~~
2. Inmates may, in writing, authorize the warden or designee to deposit any of their accumulated earnings from the prison industries, hobby, work release, or any other prison program in an interest-earning account in the Bank of North Dakota for the benefit of the inmate. The account must be a two-signature account requiring the inmate's signature and that of an authorized designated officer or employee of the state penitentiary for withdrawal.
3. ~~Other inmate income or funds from sources outside of the penitentiary may be directly deposited or invested by the inmate in any bank or other organization, unless sentencing stipulations, court orders, the inmate's competency, or other interests of the inmate require that the warden deposit such income or funds or a portion thereof in the above-noted Bank of North Dakota account for the inmate's benefit and protection. Before making such a deposit of funds or income from sources outside of the penitentiary for the inmate's benefit and protection, the warden must receive the approval of the director of the division of adult services and provide a written letter of explanation to the inmate. Funds directly invested or deposited by inmates into their independent accounts, even when assisted in doing so by an officer or employee of the penitentiary, shall in no way make the penitentiary or its officers or employees responsible or accountable for such inmate's investments and deposits. The warden may directly deposit an inmate's funds from sources outside of the penitentiary in any bank or account the inmate may designate. If a court order does not allow an inmate to designate a bank or account other than a Bank of North Dakota account or if it is necessary for the benefit and protection of the inmate, the warden, upon written explanation to the inmate, shall deposit an inmate's funds from sources outside the penitentiary into a Bank of North Dakota account. The department of corrections and rehabilitation and its divisions, departments, officers, and employees may not be held responsible or~~

liable for any inmate income or funds deposited into a bank or account designated by an inmate.

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 support for dependent relatives,~~ or to provide for their own medical, surgical, eye care, 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. An inmate is not entitled to prior written notice, administrative hearing, or right to an appeal to the department of corrections and rehabilitation when funds are to be withdrawn for payment of a court-ordered obligation, including child support, provided the inmate has had notice and an opportunity to be heard in the court proceedings.~~
5. The warden may pay an inmate all funds in the inmate's account, less the inmate's outstanding obligations to the penitentiary, when the inmate is transferred to a county jail, regional correctional center, or placed in community corrections confinement. The warden shall pay an inmate all funds in the inmate's account less the inmate's outstanding obligations to the penitentiary, when the inmate is transferred to a correctional facility outside of this state, is released on parole, or the inmate is discharged from the penitentiary.

SECTION 7. AMENDMENT. Subsection 2 of section 29-27-07 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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 safety,~~ security, discipline, medical care, or if the department determines it is in the best interest of the public, the inmate, or the department.

SECTION 8. REPEAL. Section 32-22-36 of the North Dakota Century Code is repealed.

Approved March 21, 1997
Filed March 21, 1997

CHAPTER 115

SENATE BILL NO. 2045

(Legislative Council)
(Judiciary Committee)
(Senators W. Stenehjem, Traynor)
(Representative Kretschmar)

PARDON ADVISORY BOARD

AN ACT to create and enact chapter 12-55.1 of the North Dakota Century Code, relating to the pardon advisory board and to pardons, conditional pardons, reprieves, and commutations; to amend and reenact subsection 5 of section 12-60-16.2, subsections 15 and 17 of section 12.1-34-02, subsection 4 of section 12.1-34-03, subsection 5 of section 27-20-52, subsection 1 of section 28-32-01, and subsection 1 of section 54-07-01.2 of the North Dakota Century Code, relating to the pardon advisory board and to membership of boards; and to repeal chapter 12-55 of the North Dakota Century Code, relating to pardons, reprieves, and commutations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 12-55.1 of the North Dakota Century Code is created and enacted as follows:

12-55.1-01. Definitions. In this title, unless the context otherwise requires:

1. "Commutation" means the change of the punishment to which a person is sentenced to a less severe punishment.
2. "Conditional pardon" means a pardon, commutation, reprieve, or remission of fine subject to terms and conditions established by the governor upon the recommendation of the pardon advisory board.
3. "Department" means the department of corrections and rehabilitation.
4. "Pardon" means 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 an offense unless specifically stated in the certificate of pardon.
5. "Remission of fine" means a release or partial release of a fine.
6. "Reprieve" means a temporary relief from or postponement of the execution of a criminal sentence.

12-55.1-02. Pardon advisory board - Membership. The governor may appoint a pardon advisory board to consist of five members including the attorney general and two members of the parole board. The governor shall appoint two persons who are residents and citizens of this state to the remaining two positions. The governor shall appoint a chairperson from within the membership of the pardon advisory board. The governor may dissolve the pardon advisory board at any time. The members appointed by the governor are entitled to be paid compensation and expenses at the same rate paid to members of the legislative assembly. The board

shall provide information and make recommendations to the governor concerning any matters before the governor under this chapter.

12-55.1-03. Pardon advisory board meetings - Rules. If the governor appoints a pardon advisory board, the pardon advisory board may adopt rules necessary to govern its proceedings, including the time and place of meetings of the board. The governor may call meetings of the pardon advisory board as the governor deems necessary to carry out the board's duties.

12-55.1-04. Governor may remit fines and grant commutations, pardons, and reprieves. The governor has the power to remit fines and grant commutations, reprieves, pardons, and conditional pardons after judgment of conviction. If the governor grants a conditional pardon, the pardon must state the terms and conditions of the pardon. The governor shall sign every commutation, reprieve, pardon, conditional pardon, or remission of fine granted by the governor. The recommendations of the pardon advisory board and the determination of the governor are not reviewable by any court.

12-55.1-05. Pardon clerk - Duties. The director of the division of parole and probation shall serve as the pardon clerk under this chapter. The pardon clerk shall:

1. Maintain a register of all applications filed for commutation, reprieve, pardon, conditional pardon, or remission of fine and shall maintain a complete and accurate record of all proceedings in connection with the applications, including all correspondence, documents, evidence, and appearances made in connection with the application.
2. Conduct investigations, employ psychologists, psychiatrists, or other specialists necessary for the determination of matters before the pardon advisory board or the governor under this chapter, and perform other duties in connection with matters under this chapter as may be requested by the pardon advisory board or the governor.
3. Maintain a record of every commutation, reprieve, pardon, conditional pardon, or remission of fine granted or refused, along with the reasons for each action.

12-55.1-06. Application for commutation, reprieve, pardon, conditional pardon, or remission of fine. An application for commutation, reprieve, pardon, conditional pardon, or remission of fine must be made with the pardon clerk on a form prescribed by the clerk and in accordance with any rules adopted under this chapter.

12-55.1-07. Notice of application. The pardon clerk shall provide written notice of an application for a commutation, reprieve, pardon, conditional pardon, or remission of fine to the district court and the state's attorneys in the county or counties where the judgment of conviction was entered against the applicant. The notice must include the name of the applicant, the date of entry and docket number of the criminal judgment, the crime or crimes stated in the criminal judgment, and the date and place for the meeting on the application.

12-55.1-08. Governor may reconsider action. If the governor has granted an application for a commutation, reprieve, conditional pardon, or remission of fine and the applicant is still in custody in any correctional facility, the governor may reconsider the decision any time before the applicant is released from the correctional facility. If an applicant is released from custody pursuant to a

conditional pardon and the applicant has violated any of the terms or conditions of the conditional pardon, the governor may revoke the conditional pardon in the same manner provided for violation of any of the terms or conditions of parole. In all other cases, the governor may reconsider a decision on an application if the reconsideration is made within thirty days from the date of the initial decision. A decision made on reconsideration may not be reviewed by any court.

12-55.1-09. Statements of judge and state's attorney. The judge and the state's attorney may make any recommendations that may be of assistance to the governor, pardon advisory board, or parole board in considering the person's case. The judge before whom any person has been convicted of a felony and the state's attorney of the county in which the crime was committed may file with the clerk of court separate official statements that may include:

1. The facts and circumstances constituting and surrounding the crime for which the person was convicted.
2. The age of the person.
3. All available information regarding the person before the commission of the crime for which the person was convicted.
4. All available information regarding the person's habits, associates, disposition, and reputation.
5. All facts and circumstances that may indicate whether the person is capable of becoming a law-abiding citizen.
6. The state's attorney's reasons for the recommended sentence and the court's reasons for the sentence imposed.

12-55.1-10. Duty of court reporter and clerk of court. The court reporter, at the direction of the judge or state's attorney, shall prepare the official statements of the judge and state's attorney. The clerk of court with whom the statements are filed shall attach a copy of the statements to the criminal judgment. The clerk shall provide to the department the criminal judgment with the attached copy of the official statements.

12-55.1-11. Records. The records of an applicant for commutation, reprieve, pardon, conditional pardon, or remission of fine are subject to section 12-47-36. The pardon clerk may permit the inspection of an application for a commutation, reprieve, pardon, conditional pardon, or remission of fine; the recommendations of the pardon advisory board, if any; and the decision of the governor, including any decision made after reconsideration or after proceedings for revocation.

SECTION 2. AMENDMENT. Subsection 5 of section 12-60-16.2 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. The North Dakota state penitentiary, ~~board of pardons~~ pardon clerk, parole board, and local correctional facility administrators shall furnish the bureau with all information concerning the receipt, escape, death, release, pardon, conditional pardon, reprieve, parole, commutation of sentence, granting of executive clemency, or discharge of an individual who has been sentenced to that agency's custody for any reportable offense which is required to be collected, maintained, or disseminated by

the bureau. In the case of an escape from custody or death while in custody, information concerning the receipt and escape or death; must also be furnished.

SECTION 3. AMENDMENT. Subsections 15 and 17 of section 12.1-34-02 of the 1995 Supplement to the North Dakota Century Code are amended and reenacted as follows:

15. Notice of final disposition and parole procedures. Victims and witnesses must be informed by the prosecuting attorney of the final disposition of any criminal case. The prosecuting attorney shall explain to the victim the parole process and pardon process and further advise the victim of the necessity of advising the custodial authority and the parole board and the pardon ~~board~~ clerk of the victim's address in order for the victim to receive further information under other provisions of this chapter.

17. Participation in parole board and pardon ~~board~~ decision. Victims may submit a written statement for consideration by the parole board ~~or, the governor, or the pardon advisory board, if one has been appointed,~~ or, the governor, or the pardon advisory board taking any action on a defendant's request for parole or pardon. Victims of violent crimes may at the discretion of the parole board ~~or, the governor, or the pardon advisory board~~ or, the governor, or the pardon advisory board personally appear and address the parole board ~~or, the governor, or the pardon advisory board~~ or, the governor, or the pardon advisory board. Notice must be given by the parole board or pardon ~~board~~ clerk informing the victim of the pending review and of the victim's rights under this section. The victim must be provided notice of the decision of the parole board or of the governor and the recommendations of the pardon advisory board, if any, and, if applicable, notice of the date of the prisoner's release on parole or the prisoner's pardon, conditional pardon, reprieve, commutation, or remission of fine. Notice must be given within a reasonable time after the parole board or ~~pardon board reaches its~~ the governor makes a decision but in any event ~~prior to~~ before the parolee's or pardoned prisoner's release from custody.

SECTION 4. AMENDMENT. Subsection 4 of section 12.1-34-03 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. To notify law enforcement authorities, prosecuting attorney, custodial authority, parole board, pardon ~~board~~ clerk, and court, where appropriate, of any change of address. The address information provided to these persons must be kept confidential.

¹ **SECTION 5. AMENDMENT.** Subsection 5 of section 27-20-52 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

¹ Section 27-20-52 was also amended by section 3 of Senate Bill No. 2209, chapter 138.

5. A court in which the child is convicted of a criminal offense for the purpose of a presentence report or other dispositional proceeding, or by officials of penal institutions and other penal facilities to which the child is committed, or by ~~a~~ the parole or board, the governor, or the pardon advisory board, if one has been appointed, in considering the child's parole or discharge or in exercising supervision over the child; and

² **SECTION 6. AMENDMENT.** Subsection 1 of section 28-32-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. "Administrative agency" or "agency" means each board, bureau, commission, department, or other administrative unit of the executive branch of state government, including one or more officers, or employees, or other persons directly or indirectly purporting to act on behalf or under authority of the agency. An administrative unit located within or subordinate to an administrative agency shall be treated as part of that agency to the extent it purports to exercise authority subject to this chapter. The term administrative agency does not include:
 - a. The office of management and budget except with respect to rules relating to the state building code as authorized or required under section 54-21.3-03, rules relating to the Model Energy Code as required under section 54-21.2-03, rules relating to the central personnel system as authorized under section 54-44.3-07, rules relating to state purchasing practices as required under section 54-44.4-04, rules relating to records management as authorized or required under chapter 54-46, and rules relating to the central microfilm unit as authorized under chapter 54-46.1.
 - b. The adjutant general with respect to the division of emergency management.
 - c. The council on the arts.
 - d. The state auditor.
 - e. The department of economic development and finance.
 - f. The dairy promotion commission.
 - g. The education factfinding commission.
 - h. The educational telecommunications council.
 - i. The board of equalization.

² Section 28-32-01 was also amended by section 1 of Senate Bill No. 2398, chapter 449; section 7 of Senate Bill No. 2033, chapter 182; section 8 of Senate Bill No. 2336, chapter 157; section 1 of House Bill No. 1042, chapter 278; section 1 of House Bill No. 1183, chapter 451; section 2 of House Bill No. 1158, chapter 277; and section 24 of Senate Bill No. 2046, chapter 51.

- j. The board of higher education.
- k. The Indian affairs commission.
- l. The industrial commission with respect to the activities of the Bank of North Dakota, the North Dakota housing finance agency, the North Dakota municipal bond bank, and the North Dakota mill and elevator association.
- m. The department of corrections and rehabilitation except with respect to the activities of the division of adult services under chapter 54-23.4.
- n. The ~~board of pardons~~ pardon advisory board.
- o. The parks and recreation department.
- p. The parole board.
- q. The superintendent of public instruction, except with respect to rules prescribed under section 15-21-07 and rules implementing chapter 15-22.
- r. The state fair association.
- s. The state department of health with respect to the state toxicologist.
- t. The board of university and school lands except with respect to activities under chapter 47-30.1.
- u. The administrative committee on veterans' affairs except with respect to rules relating to the supervision and government of the veterans' home and the implementation of programs or services provided by the veterans' home.
- v. The industrial commission with respect to the lignite research fund except as required under section 57-61-01.5.
- w. The secretary of state with respect to rules adopted for the presidential preference contest under section 16.1-11-02.2.

³ **SECTION 7. AMENDMENT.** Subsection 1 of section 54-07-01.2 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Notwithstanding sections 2-05-01, 4-18.1-04, 4-27-04, 6-01-03, 6-09-02.1, ~~42-55-04~~ 12-55.1-02, 12-59-01, 15-21-17, 15-38-17, 15-39.1-05, 15-65-02, 20.1-02-23, 23-01-02, 23-25-02, 36-01-01, 37-18.1-01, 50-06-05.6, 50-06.1-16, 54-34.3-10, 54-54-02, 55-01-01, 55-06-01, 61-02-04, and 61-28-03, all members of the following boards and commissions must,

³ Section 54-07-01.2 was also amended by section 3 of House Bill No. 1142, chapter 170.

subject to the limitations of this section, be considered to have resigned from such boards and commissions effective January first of the first year of each four-year term of the governor:

- a. The aeronautics commission.
- b. The milk marketing board.
- c. The dairy promotion commission.
- d. The state banking board.
- e. The state credit union board.
- f. The advisory board of directors to the Bank of North Dakota.
- g. The ~~board of pardons~~ pardon advisory board.
- h. The state parole board.
- i. The state board of public school education.
- j. The education standards and practices board and the administrator's professional practices board.
- k. The board of trustees for the teachers' fund for retirement.
- l. The educational telecommunications council.
- m. The state game and fish advisory board.
- n. The health council.
- o. The air pollution control advisory council.
- p. The board of animal health.
- q. The administrative committee on veterans' affairs.
- r. The committee on aging.
- s. The committee on employment of people with disabilities.
- t. The commission on the status of women.
- u. The North Dakota council on the arts.
- v. The state historical board.
- w. The Yellowstone-Missouri-Fort Union commission.
- x. The state water commission.
- y. The state water pollution control board.

SECTION 8. REPEAL. Chapter 12-55 of the North Dakota Century Code is repealed.

Approved April 1, 1997

Filed April 2, 1997

CHAPTER 116

SENATE BILL NO. 2128

(Senator Sand)

(Representative Carlisle)

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

PAROLE PROCEEDINGS AND REQUIREMENTS

AN ACT to amend and reenact sections 12-59-02, 12-59-04, 12-59-05, 12-59-07, 12-59-08, 12-59-09, 12-59-10, 12-59-15, and subsections 1 and 2 of section 12.1-33-02.1, relating to parole proceedings, records, requirements, and violations; and to repeal section 12-59-16, relating to execution of an order for recommitment of a prisoner.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁴ **SECTION 1. AMENDMENT.** Section 12-59-02 of the North Dakota Century Code is amended and reenacted as follows:

12-59-02. Meetings - Quorum - Compensation. The board shall organize by selecting a chairman. Meetings of the board ~~shall must~~ be held ~~at the state penitentiary on call of the chairman~~ as often as required to properly conduct the business of the board, but in any event not less than six times per year. ~~Two members shall constitute a quorum, and no action shall be taken without~~ The parole board may only take action upon the concurrence of at least two members. ~~Members shall be entitled to be compensated at the rate of thirty dollars same rate provided for members of the legislative council under section 54-35-10, per day for each day actually and necessarily spent in the performance of their duties as board members plus the same mileage and expenses as are authorized for state officials and employees. The director of the division of parole and probation, or the director's designee, shall be the clerk for the parole board.~~

SECTION 2. AMENDMENT. Section 12-59-04 of the North Dakota Century Code is amended and reenacted as follows:

12-59-04. Records ~~privileged confidential~~ - Inspection. ~~All presentence and department of corrections and rehabilitation records, including preparole reports, and the supervision history, obtained in the discharge of official duty by any member or employee of the parole board, shall be privileged and shall not be disclosed directly or indirectly to anyone other than the board, the judge, committees of the legislative assembly, or others entitled by law to receive such information, except that the board or court may, in its discretion, permit the inspection of the report or parts thereof by the defendant or prisoner or his attorney, or other person having a proper interest therein, whenever the best interest or welfare of a particular defendant or prisoner makes such action desirable or helpful or employee of a division or department of the department of corrections and rehabilitation, are confidential and may not be disclosed except in the manner provided under section 12-47-36. An~~

⁴ Section 12-59-02 was also amended by section 10 of Senate Bill No. 2052, chapter 432.

application for parole and the decision of the parole board on the application are open records.

SECTION 3. AMENDMENT. Section 12-59-05 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-59-05. Consideration by board - Guarantee. At a meeting to be determined by the parole board, within one year after a prisoner's admission to the penitentiary, or within six months after the prisoner's admission to the Missouri River correctional center, at such intervals thereafter as it may determine and by application pursuant to section 12-59-08, the board may deny or grant parole or continue consideration to another meeting. Applications for parole must be reviewed in accordance with the rules adopted by the parole board. The board shall consider all pertinent information regarding each prisoner applicant, including the circumstances of the offense, the presentence report, the previous applicant's family, educational, and social history and criminal record, the applicant's conduct, employment, and attitude in prison, and the reports of such physical and mental examinations as have been made participation in education and treatment programs while in the custody of the department of corrections and rehabilitation, and the applicant's medical and psychological records.

SECTION 4. AMENDMENT. Section 12-59-07 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-59-07. Requirements precedent to parole. No parole may be granted to any person confined in the penitentiary or the Missouri River correctional center unless the person has maintained a good record at the penitentiary or the Missouri River correctional center for a reasonable period prior to application for a parole and the board is convinced that the applicant will conform to all the rules and regulations adopted by said board. The parole board may grant an application for parole if the board is convinced the applicant will conform to the terms and conditions of parole the board or the division of parole and probation may establish for the applicant. The division of parole and probation may establish intermediate conditions of parole, including incarceration for a period of seventy-two hours and restitution, subject to the subsequent approval of the parole board.

SECTION 5. AMENDMENT. Section 12-59-08 of the North Dakota Century Code is amended and reenacted as follows:

12-59-08. Application for parole - Hearing - Emergency paroles. All applications for parole shall be filed with the clerk of the board. Applications may be heard at a meeting to be determined by the parole board, after the initial consideration guaranteed by section 12-59-05. An applicant for parole shall file an application with the division of parole and probation. The parole board may consider the application at a meeting scheduled by the chairman. The board may request an applicant to personally appear before the board before the board makes a decision on an application. The board may grant or deny parole, or grant a conditional parole, or continue its consideration to another meeting. In the event of an emergency application, the ex officio members of the board of pardons, acting as authorized by section 12-55-04, may, in accordance with section 12-55-19, application for emergency parole, two members of the parole board may grant such emergency parole, subject to terms and conditions of emergency parole that may be established by two members of the parole board or by the division of parole and probation. Thereafter the parolee shall be under the supervision and jurisdiction of the parole board. An applicant who receives parole remains in the legal custody of the department of corrections and rehabilitation until the expiration of the maximum

term or terms of imprisonment for which the applicant was sentenced, less any sentence reduction the applicant has received.

SECTION 6. AMENDMENT. Section 12-59-09 of the North Dakota Century Code is amended and reenacted as follows:

12-59-09. Contents of application for parole. An application for parole shall must be in writing, addressed to the ~~board~~ division of parole and probation, and ~~shall~~ must be signed by the ~~convict~~ applicant or some person in ~~his~~ the applicant's behalf. ~~It shall state concisely the ground upon which the parole is sought.~~

SECTION 7. AMENDMENT. Section 12-59-10 of the North Dakota Century Code is amended and reenacted as follows:

12-59-10. Notice of application for parole - ~~To whom and by whom given -~~ Service. Notice of an application for a parole and of the time and place of hearing the same shall be given by the clerk of the board to the judge and the state's attorney who participated in the trial of the applicant, and if the judge or state's attorney is no longer in office, notice also shall be given to his successor in office. Such notice shall set forth the name of the person making application, the crime of which he was convicted, the time and place of the conviction, the sentence imposed, the name of the judge who presided over the trial, and the name of the state's attorney who prosecuted the trial of the applicant. ~~Service of such notice shall be made by registered or certified mail. The division of parole and probation shall provide written notice of an application for parole to the district court and state's attorney's office in the county or counties where judgment of conviction was entered against the applicant. The notice must include the name of the applicant, the date of entry and docket number of the criminal judgment, the crime or crimes stated in the criminal judgment, and the date and place for the meeting on the application.~~

SECTION 8. AMENDMENT. Section 12-59-15 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-59-15. Breach of parole - Hearings - Order of recommitment.

1. When it is alleged that a parolee has violated ~~the conditions of the parole agreement, the chief parole officer~~ any of the terms or conditions of parole established by the parole board or by the division of parole and probation, the director of the division of parole and probation or the director's designee may issue a warrant for the arrest of the parolee.
2. ~~If an alleged violation is for failing to appear for any meeting required by the parolee's supervisory officer without just cause or for leaving the jurisdiction without permission, the parole board may suspend the running of the time period of parole until the parolee is in the custody of any law enforcement personnel in the state. Upon issuance of a warrant of arrest for a parole violation, the running of the time period of parole must be suspended until the parolee is in the custody of a law enforcement agency.~~
3. The parolee ~~shall be~~ is entitled to a preliminary hearing, as promptly as is convenient after the arrest and reasonably near the place of the alleged violation or arrest, to determine whether there is probable cause ~~or reasonable grounds to believe to find~~ that the parolee violated ~~the conditions of the parole agreement~~ any of the terms and conditions of

parole established by the board or by the division of parole and probation.

4. The preliminary hearing ~~shall~~ must be conducted before the ~~chief parole officer~~ director of the division of parole and probation or any other independent hearing officer authorized by the chief parole officer, but in no case shall it be conducted before anyone directly involved in the case director. The preliminary hearing must be conducted by a disinterested hearing officer not directly involved in the supervision of the parolee or by the person bringing the allegation of a parole violation.
5. If at the preliminary hearing the hearing officer determines that the parolee violated the conditions of the parole agreement by failing to appear for any meeting required by the parolee's supervisory officer without just cause or by leaving the jurisdiction without permission there is probable cause to find that the parolee has violated any of the terms and conditions of parole established by the board or by the division of parole and probation, the board may redetermine the time remaining in the period of parole to reflect any portion of the period during which the parolee was not under supervision or not in the custody of law enforcement personnel in the state.
6. If the hearing officer determines there is probable cause to find that the parolee has violated any of the terms and conditions of parole established by the board or by the division of parole and probation, the parolee must be returned to the ~~penitentiary or the Missouri River correctional center~~ physical custody of the department of corrections and rehabilitation, transferred to a county jail another correctional facility or the state hospital, or released from actual custody on the terms of the parole agreement pursuant to such terms and conditions as may be established by the parole board or the division of parole and probation, pending a final revocation hearing before the parole board. If the board determines, at the final revocation hearing, that the parolee has violated ~~the conditions of the parole agreement~~ any of the terms and conditions of parole established by the board or by the division of parole and probation, it may order that the parolee be recommitted to the ~~penitentiary or the Missouri River correctional center,~~ as provided in the ~~parolee's sentence, to serve in custody, in the penitentiary or the Missouri River correctional center,~~ physical custody of the department of corrections and rehabilitation to serve all or part of the remaining time of the sentence that has not been served in custody in the penitentiary or the Missouri River correctional center.
7. At any hearing pursuant to this section a record ~~shall~~ must be made and the parolee shall have:
 - a. Written notice of the purpose of the hearing and the alleged violations.
 - b. The opportunity to be heard in person and present witnesses and documentary evidence.
 - c. The opportunity to confront and cross-examine adverse witnesses, unless the hearing officer determines that ~~such~~ confrontation would create a risk of harm to the witness.

- d. A written statement as to the reasons for the decision.
8. When the board determines the parolee has ~~violated subsection 2~~ absconded from supervision, 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 9. AMENDMENT. Subsections 1 and 2 of section 12.1-33-02.1 of the North Dakota Century Code are amended and reenacted as follows:

1. A person ~~shall~~ may not be disqualified to practice, pursue, or engage in any occupation, trade, or profession for which a license, permit, certificate, or registration is required from any state agency, board, commission, or department solely because of prior conviction of an offense. However, a person may be denied a license, permit, certificate, or registration because of prior conviction of an offense if it is determined that such person has not been sufficiently rehabilitated, or that the offense has a direct bearing upon a person's ability to serve the public in the specific occupation, trade, or profession.
2. A state agency, board, commission, or department shall consider the following in determining sufficient rehabilitation:
 - a. The nature of the offense and whether it has a direct bearing upon the qualifications, functions, or duties of the specific occupation, trade, or profession.
 - b. Information pertaining to the degree of rehabilitation of the convicted person.
 - c. The time elapsed since the conviction or release. Completion of ~~probation or parole, or~~ a period of five years after final discharge or release from any term of probation, parole or other form of community corrections, or imprisonment, without subsequent conviction shall be deemed prima facie evidence of sufficient rehabilitation.

SECTION 10. REPEAL. Section 12-59-16 of the 1995 Supplement to the North Dakota Century Code is repealed.

Approved April 2, 1997
Filed April 3, 1997

CHAPTER 117**SENATE BILL NO. 2085**

(Judiciary Committee)

(At the request of the Attorney General)

**CRIMINAL HISTORY INFORMATION AND
REPORTABLE OFFENSES**

AN ACT to amend and reenact section 12-60-16.4 of the North Dakota Century Code, relating to criminal history record information and reportable offenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁵ **SECTION 1. AMENDMENT.** Section 12-60-16.4 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-60-16.4. Criminal history record information - Reportable offenses.

Criminal justice agencies shall report to the bureau reportable events for each felony and for each of the following offenses:

1. Class A and B misdemeanor offenses in sections 6-08-16 and 6-08-16.1.
2. Class A misdemeanor offenses included in title 12.1.
3. Class A and B misdemeanor offenses in chapters 19-03.1 and 19-03.2, and in ~~section~~ sections 12-47-21 and 20.1-01-18.
4. Class B misdemeanor offenses in sections 12.1-17-01, 12.1-20-12.1, 12.1-21-05, 12.1-21-06, 12.1-22-03, 12.1-23-05, and 12.1-29-03.
5. Class A misdemeanor offenses in chapter 14-07.1 and sections 43-15.1-02, 51-16.1-04, 53-06.1-16, and 53-06.1-16.1.
6. Class A misdemeanor offenses in title 62.1.
7. Municipal ordinance violations that are equivalent to misdemeanors listed in subsections 1 through 6.

Approved March 5, 1997

Filed March 6, 1997

⁵ Section 12-60-16.4 was also amended by section 1 of Senate Bill No. 2160, chapter 347, and section 1 of House Bill No. 1167, chapter 428.