

CORRECTIONS, PAROLE, AND PROBATION

CHAPTER 112

HOUSE BILL NO. 1304

(Representatives L. Thoreson, B. Thoreson, Nottestad, Ekstrom)
(Senator Lee)

INMATE PLACEMENT AND PROGRAMS

AN ACT to amend and reenact sections 12-44.1-09, 12-44.1-18.2, and subsection 4 of section 39-08-01 of the North Dakota Century Code, relating to inmate placement and programs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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. Each correctional facility shall adopt a classification system for inmates to provide for the security, safety, and order of the correctional facility and for the safety and security of the community. If the correctional facility has adopted a classification system approved by the department of corrections and rehabilitation, the correctional facility is not required to comply with subsections 3, 4, and 5 of this section. In grade one and grade two correctional facilities and, where practicable, in grade three 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 administrator for security, order, or rehabilitation.
4. Persons detained for hearing or trial or under sentence of imprisonment from persons otherwise detained by order of the court, unless authorized to be housed together by the administrator for security, order, or rehabilitation.
5. 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.

SECTION 2. AMENDMENT. Section 12-44.1-18.2 of 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 correctional facility for the room and board costs incurred by the inmate while confined in the correctional facility, residential halfway house, or similar alternative facility. The administrator shall determine the amount of meal and lodging costs to be paid by the inmate. The amount to be paid by the inmate while confined in a correctional facility may not exceed ~~ten~~ fifteen dollars per day or the funds earned by the inmate, whichever is less. The amount to be paid by the inmate while placed in a residential halfway house or similar alternative facility may not exceed the actual cost per day or the funds earned by the inmate, whichever is less.

¹⁰⁰ **SECTION 3. AMENDMENT.** Subsection 4 of section 39-08-01 of the North Dakota Century Code is amended and reenacted as follows:

4. A person convicted of violating this section, or an equivalent ordinance, must be sentenced in accordance with this subsection.
 - a. For a first offense, the sentence must include both a fine of at least two hundred fifty dollars and an order for addiction evaluation by an appropriate licensed addiction treatment program.
 - b. For a second offense within five years, the sentence must include at least four days' imprisonment or placement in a minimum security facility, of which forty-eight hours must be served consecutively, or ten days' community service; a fine of at least five hundred dollars; and an order for addiction evaluation by an appropriate licensed addiction treatment program.
 - c. For a third offense within five years, the sentence must include at least sixty days' imprisonment or placement in a minimum security facility, of which forty-eight hours must be served consecutively; a fine of one thousand dollars; and an order for addiction evaluation by an appropriate licensed addiction treatment program.
 - d. For a fourth or subsequent offense within seven years, the sentence must include one hundred eighty days' imprisonment or placement in a minimum security facility, of which forty-eight hours must be served consecutively and a fine of one thousand dollars.
 - e. The execution or imposition of sentence under this section may not be suspended or deferred under subsection 3 or 4 of section 12.1-32-02 except that a fine or a sentence of imprisonment or placement in a minimum security facility may be suspended in any of the following instances:
 - (1) Upon conviction of being in actual physical control of a motor vehicle in violation of this section or equivalent ordinance.

¹⁰⁰ Section 39-08-01 was also amended by section 1 of House Bill No. 1131, chapter 346.

- (2) If the defendant is under age eighteen when convicted except that if the defendant has, within the preceding five years, previously been convicted of violating section 39-08-01 or equivalent ordinance, the sentence must include at least forty-eight consecutive hours imprisonment or placement in a minimum security facility or at least ten days of community service. The execution of the sentence may not be suspended nor the imposition of sentence deferred under subsection 3 or 4 of section 12.1-32-02.
- f. For purposes of this section, conviction of an offense under a law or ordinance of another state which is equivalent to this section must be considered a prior offense if such offense was committed within the time limitations specified in this subsection.
- g. If the penalty mandated by this section includes imprisonment or placement upon conviction of a violation of this section or equivalent ordinance, and if an addiction evaluation has indicated that the defendant needs treatment, the court may order the defendant to undergo treatment at an appropriate licensed addiction treatment program and the time spent by the defendant in the treatment must be credited as a portion of a sentence of imprisonment or placement under this section.

Approved April 9, 1999
Filed April 9, 1999

CHAPTER 113

SENATE BILL NO. 2360

(Senators Wardner, Krebsbach)
(Representatives D. Johnson, Klein)

STATE OFFICER BOND REQUIREMENT ELIMINATED

AN ACT to amend and reenact sections 12-46-05, 12-47-07, 15-02-01, 15-02-04, 18-01-01, 20.1-02-06, 20.1-02-08, 25-01-04, 27-03-02, 37-15-07, 37-18-07, subsection 3 of section 37-18.1-03, sections 39-03-06, 44-03-01, 49-01-03, 54-11-07, 54-23.3-04, 54-44-03, subsection 2 of section 54-52-04, sections 55-02-01.1, 61-03-02, 65-02-02, and 65-04-30 of the North Dakota Century Code, relating to bonds required of state officers; and to repeal sections 6-01-12, 15-12-06, 20.1-02-12, 27-04-02, 44-01-13, 54-06-11, 54-09-06, 54-10-03, 54-11-14, 54-18-08, and 57-01-01 of the North Dakota Century Code, relating to bonds required of state officers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-46-05 of the North Dakota Century Code is amended and reenacted as follows:

12-46-05. Oath and bond of superintendent. The superintendent, before entering upon the duties of ~~his~~ the office, 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 must be filed and retained in the office of the state treasurer.

SECTION 2. AMENDMENT. Section 12-47-07 of the North Dakota Century Code is amended and reenacted as follows:

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 must 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~~ the appointment, shall take and subscribe the same oath, which shall must be filed with and retained by the warden.

SECTION 3. AMENDMENT. Section 15-02-01 of the North Dakota Century Code is amended and reenacted as follows:

15-02-01. Commissioner of university and school lands - Appointment - Oath and bond. The board of university and school lands shall appoint a commissioner of university and school lands. All of the official acts of the commissioner are subject to the approval and supervision of the board. Before entering upon ~~his~~ the duties of the commissioner, the commissioner shall take the oath prescribed for civil officers and shall furnish a bond in the penal sum of ten thousand dollars.

SECTION 4. AMENDMENT. Section 15-02-04 of the North Dakota Century Code is amended and reenacted as follows:

15-02-04. Deputy commissioner - Appointment - Oath - Bond. The commissioner, with the consent of the board, may appoint a deputy. Before entering upon any ~~of his~~ duties the deputy shall take and subscribe the oath of office required by law for civil officers ~~and shall furnish to the state a bond in the penal sum of five thousand dollars.~~

SECTION 5. AMENDMENT. Section 18-01-01 of the North Dakota Century Code is amended and reenacted as follows:

18-01-01. Appointment of fire marshal - Appointment and salaries of deputies and assistants - Bonds - Budget. The attorney general shall appoint the state fire marshal and supervise the operation of the state fire marshal department. The state fire marshal shall manage the fire marshal department and shall perform the duties imposed on the state fire marshal by ~~the provisions of~~ this chapter.

The state fire marshal shall appoint such deputies and other employees as the state fire marshal deems necessary to carry out ~~the provisions of~~ this chapter within the limits of legislative appropriations ~~therefor~~.

Before entering upon their duties, the state fire marshal and each deputy appointed under this section shall ~~give a bond to the state of North Dakota in the penal sum of five thousand dollars, conditioned for the faithful discharge of their duties and shall take and subscribe the constitutional oath of office and file the same oath~~ in the office of the secretary of state.

The fire marshal department must be operated in conjunction with the bureau of criminal investigation. The budget for the fire marshal department must be submitted as part of the attorney general's budget.

SECTION 6. AMENDMENT. Section 20.1-02-06 of the North Dakota Century Code is amended and reenacted as follows:

20.1-02-06. Deputy director - Appointment, removal, oath, ~~bond~~, reports. The director shall appoint, and may remove at pleasure, a deputy director who is under the director's direct control and supervision. The deputy, within ten days after the date of that person's appointment, shall take and file the oath prescribed for civil officers ~~and furnish a bond in the penal sum of five thousand dollars. The bond must conform to and must be filed in accordance with the provisions of law applicable to the bonds of state officers.~~ The oath must be filed in the office of the secretary of state. The deputy director shall make monthly and annual reports to the director in the manner required by the director.

SECTION 7. AMENDMENT. Section 20.1-02-08 of the North Dakota Century Code is amended and reenacted as follows:

20.1-02-08. ~~Bond and oath~~ Oath of chief game warden. The chief game warden, within ten days of appointment, shall take the oath prescribed for civil officers and file it with the secretary of state. ~~The chief game warden shall furnish a bond in the penal sum of five thousand dollars.~~

SECTION 8. AMENDMENT. Section 25-01-04 of the North Dakota Century Code is amended and reenacted as follows:

25-01-04. Superintendent of each institution to qualify. The superintendent of each of the institutions mentioned in this chapter, before entering upon the duties of office, shall take the oath prescribed for civil officers ~~and shall furnish a bond in~~

such sum as may be fixed by the supervising officer which must conform to the provisions of law applicable to the bonds of state officers and employees. Each such bond must be filed by the supervising officer in the office of the secretary of state.

SECTION 9. AMENDMENT. Section 27-03-02 of the North Dakota Century Code is amended and reenacted as follows:

27-03-02. Clerk of supreme court - Oath and bond - Deputy. The clerk of the supreme court, before entering upon ~~his~~ the clerk's duties, shall qualify by taking the oath prescribed for civil officers ~~and by giving an official bond in the penal sum of three thousand dollars.~~ Such The clerk may appoint a deputy who shall take and subscribe the oath prescribed for civil officers and file the same in the supreme court. The clerk is responsible for the acts of ~~his~~ the deputy.

SECTION 10. AMENDMENT. Section 37-15-07 of the North Dakota Century Code is amended and reenacted as follows:

37-15-07. Commandant of veterans' home - Appointment - Qualifications - Term - Salary - Bond. The appointment, qualifications, term of office, and salary of the commandant of the veterans' home must be as prescribed in section 37-18.1-03. ~~The commandant must be bonded through the state bonding fund in the amount as determined by the administrative committee on veterans' affairs, except that the amount of the bond must be at least five thousand dollars.~~

SECTION 11. AMENDMENT. Section 37-18-07 of the North Dakota Century Code is amended and reenacted as follows:

37-18-07. Commissioner - Appointment - Qualifications - Term - Salary - Bond. The appointment, qualifications, term of office, and salary of the commissioner must be as prescribed in section 37-18.1-03. ~~The commissioner must be bonded through the state bonding fund in the amount as determined by the administrative committee on veterans' affairs, provided that such bond must be in a minimum amount of five thousand dollars.~~ ~~He~~ must be allowed such amounts for travel, clerkhire, and expenses as may be prescribed from time to time by legislative appropriations.

SECTION 12. AMENDMENT. Subsection 3 of section 37-18.1-03 of the North Dakota Century Code is amended and reenacted as follows:

3. The committee shall appoint the commandant of the veterans' home and the commissioner of the department of veterans' affairs. Individuals appointed to these positions must be bona fide residents of the state, and must qualify as a veteran as defined in section 37-01-40. Their terms of office are for two years, commencing on July 1, 1971, and on every second anniversary thereof. The committee shall determine the salaries paid to the commandant of the veterans' home and the commissioner of the department of veterans' affairs within the limits of legislative appropriation. ~~Both officers must be bonded through the state bonding fund in the sum of five thousand dollars.~~ The commandant of the veterans' home and the commissioner of veterans' affairs shall serve as the executive secretary for their respective subcommittees. The commandant and the commissioner have no vote in the affairs of the subcommittees.

SECTION 13. AMENDMENT. Section 39-03-06 of the North Dakota Century Code is amended and reenacted as follows:

39-03-06. Oath and bond required of superintendent, assistant superintendent, and patrolmen. The superintendent, assistant superintendent, and each patrolman, before entering upon the performance of the person's duties, shall take and file the oath prescribed by law for state officers and ~~must be bonded in the state bonding fund for the sum of two thousand dollars.~~

¹⁰¹ **SECTION 14. AMENDMENT.** Section 44-03-01 of the North Dakota Century Code is amended and reenacted as follows:

44-03-01. Deputies may be appointed by certain officers. The secretary of state, state auditor, state treasurer, superintendent of public instruction, commissioner of insurance, commissioner of agriculture, commissioner of labor, district assessor, and city assessor each may appoint a deputy ~~for whose acts as such he shall be responsible. Each officer required to give a bond may require a bond from any deputy appointed by him. Any such bond must be in the penal sum of not more than half the penal sum of the appointing officer's own bond and may be retained by the officer for his own protection. Such~~ The appointment must be in writing and is revocable in writing at the pleasure of the principal, and ~~such the~~ the appointment and revocation must be filed as the ~~bond and~~ oath of the principal ~~are~~ is filed.

SECTION 15. AMENDMENT. Section 49-01-03 of the North Dakota Century Code is amended and reenacted as follows:

49-01-03. Oath and bond of public service commissioners. Each commissioner before entering upon the duties of ~~his~~ the office shall take the oath required of civil officers and ~~shall be bonded in the sum of ten thousand dollars as other state officers are bonded.~~

SECTION 16. AMENDMENT. Section 54-11-07 of the North Dakota Century Code is amended and reenacted as follows:

54-11-07. Suspension of treasurer by governor - Appointment. When a certificate is made to the governor by the state auditor under ~~the provisions of the preceding~~ section 54-11-06, the governor, with the state auditor and the commissioner of banking and financial institutions, ~~thereupon~~ shall examine the books, papers, and all matters connected with the office of the state treasurer so suspended. If it appears to the governor, state auditor, and commissioner of banking and financial institutions on ~~such~~ examination that the state treasurer has embezzled or converted to ~~his~~ the treasurer's own use the public moneys, or has been negligent in keeping ~~his~~ the books, or in taking care of public moneys, the governor on the certificate of the state auditor and the commissioner of banking and financial institutions to that effect may remove the state treasurer and appoint another person to fill the place of the suspended state treasurer. The person so appointed shall ~~execute an official bond and~~ enter upon the office of state treasurer as provided by law. The governor shall report ~~all his acts done in removing the~~ removal of the state treasurer to the next succeeding legislative assembly. The state treasurer so appointed shall hold ~~his~~ office until the suspended state treasurer is reinstated or ~~his~~ a successor is elected and qualified.

¹⁰¹ Section 44-03-01 was also amended by section 32 of Senate Bill No. 2013, chapter 35.

SECTION 17. AMENDMENT. Section 54-23.3-04 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-23.3-04. Director - Powers and duties. The director of the department of corrections and rehabilitation has the following powers and duties:

1. To manage and control all institutions and programs within the department and to administer and enforce the laws with which the department is charged.
2. To promote a unified criminal justice system and develop a statewide correctional philosophy in cooperation with the courts, law enforcement, and other entities in the criminal justice system.
3. To develop necessary programs and services for adult and juvenile offenders, within legislative appropriations, to provide for their treatment and rehabilitation and to recognize their special needs.
4. To develop, maintain, and revise as required a comprehensive master plan for the state's correctional system which must indicate the system's needs and resources.
5. To establish policies and procedures necessary to carry out the responsibilities of the department.
6. To organize the department into an adult services division, a juvenile services division, and such other divisions that will enable it to function most effectively and efficiently.
7. To exercise general supervisory and appointing authority over all department employees, subject to any applicable personnel laws and rules.
8. To employ and remove the director of the division of juvenile services, the director of the division of adult services, and other division directors and personnel who may be deemed necessary by the director of the department. Until the director of the department of corrections and rehabilitation has been granted the full-time equivalent positions within the department's budget for the division director positions, or when the positions are vacant, the responsibilities of these positions must be assumed by the director of the department of corrections and rehabilitation or by the director's designee.
9. To delegate authority to subordinates as necessary and appropriate, clearly delineating the delegated authority and limitations.
10. To promote the development of alternatives to conventional incarceration for those offenders who can be dealt with more effectively in less restrictive, community-based facilities and programs.
11. ~~To furnish a bond as approved by the governor and to require bonds from department employees who may be charged with the custody or control of any money or property belonging to the state, and who are not otherwise required by law to give a bond. The bonds must conform to the provisions of law applicable to the bonds of state officers and~~

~~employees. Each such bond must be filed in the office of the secretary of state.~~

- ~~42.~~ To contract for correctional services, and to provide such services, with the United States, Canada, other states, and any of their governmental subdivisions and agencies and with another agency or governmental unit in this state, or with any private or public correctional or treatment facility or agency. The director shall reimburse the entity at an amount based upon the services required for the housing and treatment of inmates. The director may also contract to provide services, without cost to the state, for persons held by any of the jurisdictions mentioned in this section. If a treaty is in effect between the United States and a foreign country for the transfer and exchange of offenders, the director of the department of corrections and rehabilitation, upon recommendation of the warden and the approval of the governor, may on behalf of the state under the terms of the treaty transfer or exchange offenders and take any action necessary for the state to participate in the treaty.
- ~~43.~~ 12. To sell, lease, or exchange, with the governor's approval, selected portions of land owned by the state under the jurisdiction of the department of corrections and rehabilitation and to sell, trade, lease, or grant mining easements to extract and remove any resources found on, in, or under said department of corrections and rehabilitation lands including clay, coal, oil, gas, gravel, sand, dirt, and sod, under the following conditions and provisions:
- a. Any such sale, exchange, or transaction must allow for the submission of bids pursuant to a notice published in at least one official county newspaper. The sale, exchange, or transaction is exempt from the provisions of sections 54-01-05.2 and 54-01-05.5.
 - b. Any such sale, exchange, or transaction may not be made for less than the appraised value, and the state reserves the right to reject any and all bids.
 - c. The commissioner of university and school lands or the commissioner's designee shall provide technical assistance and advice to the director of the department of corrections and rehabilitation in any transaction.
 - d. All legal documents, papers, and instruments required by any transaction must be reviewed and approved as to form and legality by the attorney general.
 - e. Any of these transactions can be entered into on any terms and conditions permitted by law and approved by the governor.
 - f. All funds and proceeds realized from any of these transactions must be placed in an interest-bearing fund in the state treasury, designated as the North Dakota state penitentiary land fund to be used for the acquisition of additional land and facilities; to maintain, expand, or develop affiliated facilities; to relocate the Missouri River correctional center and the farming and ranching operations of the North Dakota state penitentiary; or for penitentiary renovation.

44. 13. To provide meals at a fair value or without a charge to officers and employees of the department as required by their job assignments.
45. 14. To accept property forfeited or seized in accordance with law.
46. 15. To collect costs and fees from persons on correctional supervision for the supervision services, control devices, and programs as implemented by the department to assist in making community corrections an effective alternative to incarceration. A person on active supervision is presumed able to pay assessed fees unless the director, giving due consideration to the fiscal obligations and resources of the probationer, determines otherwise. A person with the ability to pay assessed fees who refuses to pay must be returned to the court for a judicial determination.
47. 16. To collect the costs of any presentence investigation and report incurred under subsection 11 of section 12.1-32-02, giving due consideration to the financial obligations and resources of the defendant.

SECTION 18. AMENDMENT. Section 54-44-03 of the North Dakota Century Code is amended and reenacted as follows:

54-44-03. Director of the office of management and budget. There must be a director of the office of management and budget who must be appointed by and serve at the will of the governor. The salary of the director must be set by the governor within the limits of the amount appropriated for salaries by the legislative assembly, and the director and other employees of the office must be reimbursed for expenses incurred in carrying out the duties of their office at the same rate and in the same manner as other state officials. The director is empowered to adopt rules, not inconsistent with law or rules established by the governor, for the administration of the office of management and budget, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of the records, documents, and property pertaining thereto. ~~He~~ The director is empowered to set up such divisions or other internal organization within the office that ~~he shall deem~~ the director determines necessary in order to efficiently carry out the duties, powers, and responsibilities of the office.

~~The director of the office of management and budget shall execute an official bond in the sum of one hundred thousand dollars.~~

SECTION 19. AMENDMENT. Subsection 2 of section 54-52-04 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. The board shall appoint an executive director to serve at its discretion. The executive director shall ~~be bonded by the state bonding fund in the amount required by the board and shall~~ perform such duties as assigned by the board.

SECTION 20. AMENDMENT. Section 55-02-01.1 of the North Dakota Century Code is amended and reenacted as follows:

55-02-01.1. Term of office - Vacancy - Salary and expenses - Bond. The superintendent shall serve at the pleasure of the state historical board and until his a successor is appointed and qualified. In case of vacancy by death, removal, resignation, or any other cause, the board shall fill the vacancy by appointment. The salary must be determined by the board within the limits of legislative

appropriation and the superintendent is entitled to compensation for his expenses incurred while in the discharge of his official duties, paid in the same manner and amounts as other state officials are paid, from funds available to the board. ~~Before entering upon his duties, the superintendent shall furnish a bond in the penal sum of ten thousand dollars.~~

SECTION 21. AMENDMENT. Section 61-03-02 of the North Dakota Century Code is amended and reenacted as follows:

61-03-02. Oath and bond of state engineer. Before entering upon the duties of office, the state engineer shall take the oath prescribed for civil officers ~~and shall furnish a bond in the penal sum of five thousand dollars, which shall conform to the provisions of law applicable to the bonds of state officers.~~

SECTION 22. AMENDMENT. Section 65-02-02 of the North Dakota Century Code is amended and reenacted as follows:

65-02-02. Oath of office - Bond. Before commencing to perform the duties of director of the bureau, the director shall file an oath of office in the usual form ~~and must be bonded by the state bonding fund in the sum of five thousand dollars for the faithful discharge of the director's duties and the proper accounting for all moneys received by the director.~~

SECTION 23. AMENDMENT. Section 65-04-30 of the North Dakota Century Code is amended and reenacted as follows:

65-04-30. State treasurer is custodian of fund - Deposit - Disbursement on vouchers - Additional bond of treasurer. The state treasurer ~~shall be~~ is the custodian of the fund and all payments of awards of the bureau ~~therefrom~~ for disbursements other than travel and administrative expenses ~~shall~~ must be paid by the state treasurer upon warrant-checks authorized and prepared by the bureau. Warrants drawn upon the fund and paid by the state treasurer ~~shall~~ must be returned to the bureau and ~~shall~~ must be kept in the files ~~thereof~~ of the bureau. The bureau shall submit to the office of management and budget once each month a monthly financial statement showing the receipts, disbursements, investments, and status of the fund. The treasurer may deposit any portion of the fund not needed for immediate use in the manner and subject to the requirements prescribed by law for the deposit by ~~such~~ the treasurer of state funds. Any interest earned by any portion of the fund which is deposited by the state treasurer under ~~the provisions of this section~~ shall must be collected by the state treasurer and placed to the credit of the fund. ~~The state treasurer shall give a separate and additional bond in such amount as may be fixed by the governor conditioned for the faithful performance of the state treasurer's duties as custodian of the fund.~~

¹⁰² **SECTION 24. REPEAL.** Sections 6-01-12, 15-12-06, 20.1-02-12, 27-04-02,

¹⁰² Section 54-10-03 was amended by section 13 of Senate Bill No. 2130, chapter 106.

44-01-13, 54-06-11, 54-09-06, 54-10-03, 54-11-14, 54-18-08, and 57-01-01 of the North Dakota Century Code are repealed.

Approved March 5, 1999

Filed March 5, 1999

CHAPTER 114

SENATE BILL NO. 2133

(Judiciary Committee)

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

PENITENTIARY CONTRABAND AND ESCAPES

AN ACT to amend and reenact sections 12-47-21 and 12-47-34 of the North Dakota Century Code, relating to contraband at the penitentiary and escapes from the penitentiary; and to repeal sections 12-47-03, 12-47-07, 12-47-19, 12-47-20, and 12-47-32 of the North Dakota Century Code, relating to service of process at the penitentiary, oath and bond of the warden, inmates' food, beds, and clothing at the penitentiary, and warrants for cash payments to inmates at the penitentiary.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-47-21 of the North Dakota Century Code is amended and reenacted as follows:

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

1. It is unlawful for any person to ~~deliver or administer, whether or not for a consideration, any alcoholic beverage or~~ willfully:
 - a. Manufacture or possess with intent to manufacture or deliver, a controlled substance, on or within any premises under the control of the department of corrections and rehabilitation or any of its divisions.
 - b. Deliver a controlled substance to any inmate of the penitentiary, or to any other person for redelivery to an inmate of the penitentiary. This subsection does not apply to the possession, delivery, or administration of controlled substances or alcoholic beverages by the penitentiary pharmacy or agent of the penitentiary pharmacy or in accordance with the orders or prescription of a duly licensed physician and the approval, except in emergency circumstances, of the warden. Any person who violates this subsection is guilty of a class A felony.
2. ~~No~~ It is unlawful for a penitentiary inmate may to possess any controlled substance or alcoholic beverage unless the substance or beverage was delivered to the inmate or was possessed except in accordance with the prescription or orders of a licensed physician. It is unlawful for a penitentiary inmate to possess alcohol or alcoholic beverages. It is unlawful for a penitentiary inmate to possess any tobacco except when the warden has authorized possession of tobacco for religious purposes or when on authorized release from the penitentiary. Any penitentiary inmate who violates this subsection with respect to:
 - a. Possession of a controlled substance is guilty of a class B felony.

- b. Possession of alcohol or alcoholic beverages is guilty of a class A misdemeanor.
 - c. Possession of tobacco is guilty of a class B misdemeanor.
 3. Any person, other than an official or employee of the penitentiary, who violates subsection 4 by delivering or administering a controlled substance is guilty of a class B felony. Any official or employee of the penitentiary who violates subsection 4 by delivering or administering a controlled substance is guilty of a class A felony. It is unlawful for any person to willfully deliver alcohol or alcoholic beverages to a penitentiary inmate. It is unlawful for any person to willfully deliver tobacco to an inmate except when the warden has authorized delivery of tobacco for religious purposes or when the inmate is on an authorized release from the penitentiary. Any person who violates this subsection 4 by delivering:
 - a. Delivery of alcohol or alcoholic beverages to a penitentiary inmate is guilty of a class A misdemeanor.
 - b. Delivery of tobacco to a penitentiary inmate is guilty of a class B misdemeanor.
 4. It is unlawful for any person other than a penitentiary inmate to willfully possess a controlled substance on or within any property under the control of the department of corrections and rehabilitation or any of its divisions except when the person is an authorized agent of the penitentiary pharmacy or except in accordance with the orders or prescription of a licensed physician. Any person who violates this subsection 2 by possessing a controlled substance is guilty of a class B felony. Any person who violates subsection 2 by possessing alcoholic beverages is guilty of a class A misdemeanor.
 5. It is unlawful for a penitentiary inmate to willfully procure, make, or possess any object, including a shard made of any material or any weapon, firearm, ammunition, or explosive material, intended to be used for an assault on another person or to damage property. Any penitentiary inmate who violates this subsection with respect to:
 - a. A shard or weapon that is not a dangerous weapon or firearm as defined in section 62.1-01-01 is guilty of a class B felony.
 - b. Ammunition, a knife of any length, a weapon that is a dangerous weapon or firearm as defined in section 62.1-01-01, or explosive material is guilty of a class A felony.
 6. It is unlawful for any person to deliver or provide to a penitentiary inmate any object intended to be used for an assault on another person or to damage penitentiary property. Any person who violates this subsection with respect to:
 - a. A shard or weapon that is not a dangerous weapon or firearm as defined in section 62.1-01-01 is guilty of a class B felony.

- b. Ammunition, a knife of any length, a weapon that is a dangerous weapon or firearm as defined in section 62.1-01-01 or is an explosive or destructive device is guilty of a class A felony.
- 7. As used in this section, "controlled substance" is as defined in subsection 6 of section 19-03.1-01 and includes counterfeit substances as defined in subsection 7 of section 19-03.1-01. As used in this section, "willfully" is as defined in section 12.1-02-02. As used in this section, "alcohol" and "alcoholic beverage" are as defined in section 5-01-01. As used in this section, "tobacco" means any form of tobacco, including cigarettes, cigars, snuff, or tobacco in any form in which it may be used for smoking or chewing.

SECTION 2. AMENDMENT. Section 12-47-34 of 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 - Use of firearms.

- 1. The warden, with the approval of the director of the department of corrections and rehabilitation, may adopt measures necessary for the detection and capture of offenders escaping from the custody of the warden or the department of corrections and rehabilitation. If an offender in the custody of the warden or the department of corrections and rehabilitation escapes, the warden may use all lawful means for the apprehension of the offender. The warden may offer a reward not to exceed one thousand dollars and not less than one hundred dollars for information leading to apprehension of an offender who has escaped from the custody of the warden or the department of corrections and rehabilitation.
- 2. The warden may authorize correctional officers trained in the use of firearms:
 - a. To carry firearms when in the course of their duties on penitentiary premises.
 - b. To carry firearms, including keeping and carrying loaded firearms in motor vehicles, when transporting offenders in the custody of the warden or the department of corrections and rehabilitation.
 - c. To carry firearms, including keeping and carrying loaded firearms in motor vehicles, for the prevention of escapes or for the apprehension of offenders who have escaped from the custody of the warden or the department of corrections and rehabilitation.
- 3. Sections 62.1-02-05, 62.1-02-10, and 62.1-03-01 do not apply to the possession and use of firearms by authorized and trained correctional officers acting in the course of their employment under this section.

SECTION 3. REPEAL. Sections 12-47-03, 12-47-07, 12-47-19, 12-47-20, and 12-47-32 of the North Dakota Century Code are repealed.

CHAPTER 115

SENATE BILL NO. 2249

(Senators W. Stenehjem, Lyson)
(Representatives Hawken, Nottestad)

SENTENCE REDUCTION FOR GOOD CONDUCT

AN ACT to amend and reenact section 12-54.1-01 of the North Dakota Century Code, relating to sentence reduction for good or meritorious conduct.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-54.1-01 of the North Dakota Century Code is amended and reenacted as follows:

12-54.1-01. Performance-based sentence reduction.

1. Except as provided under section 12.1-32-09.1, offenders sentenced to the penitentiary or any of its affiliated facilities are eligible to earn sentence reductions based upon performance criteria established through penitentiary rules. Performance criteria includes participation in court-ordered or staff-recommended treatment and education programs and good work performance. While incarcerated in the penitentiary or any of its affiliated facilities, an inmate may earn five days good time per month except for any sentence where the incarceration time is six months or less.

2. The presiding judge of a judicial district in which a correctional facility is located, after consultation with the other judges in the district, may authorize the facility administrator to provide for sentence reductions based upon performance criteria established through the administrator. The criteria must be substantially similar to the performance criteria established by the penitentiary. Except as provided under section 12.1-32-09.1, offenders sentenced to the facility are eligible to earn sentence reductions based upon the performance criteria. While incarcerated in a correctional facility, an inmate may earn five days good time per month except for any sentence where the incarceration time is thirty days or less.

Approved March 15, 1999

Filed March 16, 1999

CHAPTER 116**SENATE BILL NO. 2185**

(Senators Watne, Lyson, W. Stenehjem)

**OUT-OF-STATE SUPERVISION COMPACT
VIOLATIONS**

AN ACT to create and enact a new section to chapter 12-56 of the North Dakota Century Code, relating to the violation by parolees and probationers of the interstate compact for out-of-state supervision; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 12-56 of the North Dakota Century Code is created and enacted as follows:

Violation of compact - Penalty. An individual who is on parole or probation in another state, who is present in this state without the permission of the officer of this state designated under subsection 5 of section 12-56-01, and who does not leave this state within seven days after being notified in writing by a law enforcement officer that the individual may not remain in this state without the permission of the designated officer is guilty of a class C felony. Within twenty-four hours after a law enforcement officer has notified an individual that the individual may not remain within the state without the permission of the designated officer, the law enforcement officer shall report the notification to the designated officer. An individual who is on parole or probation in another state may not remain in this state without the permission of the officer of this state designated under subsection 5 of section 12-56-01. In a prosecution for an offense under this section, an individual's good-faith belief that the individual received permission to be present in this state is an affirmative defense if the individual acted in reasonable reliance upon the written statements of an authorized officer of this state or the state in which the individual is on parole or probation. This defense is not available to a person who remains present in this state after being notified in writing by the designated officer of this state that the individual does not have permission to be present.

Approved April 7, 1999

Filed April 8, 1999

CHAPTER 117

SENATE BILL NO. 2087

(Judiciary Committee)

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

PAROLE BOARD MEMBERSHIP, MEETINGS, AND COMPENSATION

AN ACT to amend and reenact sections 12-59-01, 12-59-02, subsection 2 of section 12-59-15, and subsection 17 of section 12.1-34-02 of the North Dakota Century Code, relating to membership, meetings, and compensation of the parole board, parole revocation proceedings, and fair treatment standards for victims and witnesses of crimes; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-59-01 of the North Dakota Century Code is amended and reenacted as follows:

12-59-01. State parole board - Membership. The state parole board ~~shall consist~~ consists of ~~three~~ six members, who ~~shall~~ must be qualified electors of the state, appointed by the governor for terms of three years, arranged so that the term of ~~one member shall~~ two members must expire on December thirty-first of each year. One of the members ~~shall~~ must be a person experienced in law enforcement, which may include experience as a prosecuting attorney, one ~~shall~~ must be a licensed attorney, and ~~one shall~~ four must be a ~~person~~ persons qualified by special experience, education, or training. ~~Members shall be removable by the~~ The governor may only remove a member of the parole board for disability, inefficiency, neglect of duty, or malfeasance in office.

SECTION 2. AMENDMENT. Section 12-59-02 of the North Dakota Century Code is amended and reenacted as follows:

12-59-02. Meetings - Compensation - Rules. The ~~board~~ governor shall ~~organize by selecting a~~ appoint a member of the parole board to be chairman. The chairman of the parole board shall designate three members of the parole board for each meeting of the parole board. Meetings of the parole board must be held in accordance with rules established by the parole board and must be held as often as required to properly conduct the business of the board, but in any event not less than six times per year. The parole board may only take action upon the concurrence of at least two members who participated in the same meeting. The final decision of at least two parole board members who participated in the same parole board meeting constitutes the decision of the parole board. Members are entitled to be compensated at the rate of sixty-two dollars and fifty cents 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~~ is the clerk for the parole board.

SECTION 3. AMENDMENT. Subsection 2 of section 12-59-15 of the North Dakota Century Code is amended and reenacted as follows:

2. 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~~ parole board issues a final order under this section. The parolee is entitled to credit for time spent in physical custody from the time of arrest until the time the parole board issues a final order.

SECTION 4. AMENDMENT. Subsection 17 of section 12.1-34-02 of the North Dakota Century Code is amended and reenacted as follows:

17. Participation in parole board and pardon decision. Victims may submit a written statement for consideration by the parole board, the governor, or the pardon advisory board, if one has been appointed, prior to the parole board, 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, the governor, or the pardon advisory board personally appear and address the parole board, the governor, or the pardon advisory board. ~~Notice~~ If the offender will make a personal appearance, notice must be given by the parole board or pardon 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 the governor makes a decision but in any event before the parolee's or pardoned prisoner's release from custody.

SECTION 5. EMERGENCY. Sections 1 and 2 of this Act are declared to be an emergency measure.

Approved March 18, 1999
Filed March 19, 1999

CHAPTER 118**SENATE BILL NO. 2058**
(Senators Watne, Krebsbach)
(Representatives Delmore, Wentz)**CRIMINAL HISTORY RECORD CHECK FEE**

AN ACT to amend and reenact section 12-60-16.9 of the North Dakota Century Code, relating to the fee for a criminal history record check.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-60-16.9 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-60-16.9. Criminal history record information - Fee for record check. The bureau shall impose a fee of twenty dollars for a each record check conducted. The bureau shall waive the fee for a noncriminal any criminal justice agency that is not also a or court, and shall impose a fee of three dollars for each record check for a nonprofit organization that is organized and operated in this state exclusively for charitable purposes for the exclusive benefit of minors.

Approved April 1, 1999
Filed April 2, 1999

CHAPTER 119**SENATE BILL NO. 2298**

(Senator Nething)

**PEACE OFFICER STANDARDS, TRAINING, AND
LICENSING**

AN ACT to amend and reenact section 12-63-01, subsection 2 of section 12-63-12, and section 12-63-14 of the North Dakota Century Code, relating to peace officer standards, training, and licensing.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-63-01 of the North Dakota Century Code is amended and reenacted as follows:

12-63-01. Definitions. In sections 12-63-01 through 12-63-14, unless the context or subject matter otherwise requires:

1. "Board" means the peace officer standards and training board.
2. "Director" means the director of the division.
3. "Division" means the ~~criminal justice training and statistics division~~ training section of the bureau of criminal investigation.
4. "Peace officer" means a public servant authorized by law or by government agency or branch to enforce the law and to conduct or engage in investigations of violations of the law.

SECTION 2. AMENDMENT. Subsection 2 of section 12-63-12 of the North Dakota Century Code is amended and reenacted as follows:

2. Denial, refusal to renew, suspension, revocation, or imposition of probationary condition on a license may be ordered by the board after a hearing in a manner provided by rules adopted by the board. An application for reinstatement may be made to the board one year from the date of the refusal to renew or the revocation of the license. The board may accept or reject an application for reinstatement and may hold a hearing to consider the reinstatement. In the case of a denial of an application, the applicant may not reapply for a period of one year from the date of the order of denial.

SECTION 3. AMENDMENT. Section 12-63-14 of the North Dakota Century Code is amended and reenacted as follows:

12-63-14. Penalty. ~~Violation of sections 12-63-01 through 12-63-14~~ Any person who willfully violates this chapter is guilty of a class B misdemeanor.

Approved March 18, 1999

Filed March 19, 1999