

**FIRST ENGROSSMENT
with Conference Committee Amendments**

ENGROSSED SENATE BILL NO. 2016

Introduced by

Appropriations Committee

(At the request of the Governor)

1 A BILL for an Act to provide an appropriation for defraying the expenses of the department of
2 corrections and rehabilitation; to provide for line item transfers; to provide legislative intent; to
3 provide for budget section authorization of the construction of a women's unit; to provide for a
4 legislative council study; to create and enact a new section to chapter 54-23.3 of the North
5 Dakota Century Code, relating to the establishment of new programs by the director of the
6 department of corrections and rehabilitation; and to amend and reenact section 12-59-02,
7 subsection 1 of section 12.1-32-08, and subsection 2 of section 54-23.4-12 of the North Dakota
8 Century Code, relating to compensation of parole board members, indigent defense costs and
9 expenses, and crime victims compensation subrogation.

10 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

11 **SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the
12 funds as may be necessary, are appropriated out of any moneys in the general fund in the state
13 treasury, not otherwise appropriated, and from special funds derived from federal funds and
14 other income, to the department of corrections and rehabilitation for the purpose of defraying
15 the expenses of its various divisions, for the biennium beginning July 1, 2001, and ending
16 June 30, 2003, as follows:

17 Subdivision 1.

18	CENTRAL OFFICE	
19	Salaries and wages	\$1,155,357
20	Operating expenses	171,447
21	Equipment	<u>65,750</u>
22	Total all funds	\$1,392,554
23	Less estimated income	<u>11,160</u>
24	Total general fund appropriation	\$1,381,394

Fifty-seventh
Legislative Assembly

1 Subdivision 2.

2 JUVENILE SERVICES

3	Salaries and wages	\$10,647,498
4	Operating expenses	4,917,407
5	Equipment	148,700
6	Capital improvements	707,747
7	Grants	<u>4,413,877</u>
8	Total all funds	\$20,835,229
9	Less estimated income	<u>7,825,075</u>
10	Total general fund appropriation	\$13,010,154

11 Subdivision 3.

12 ADULT SERVICES

13	Victims services	\$3,423,566
14	Institutional offender services	3,863,128
15	Community offender services	11,353,870
16	Support services	25,258,666
17	Program services	3,732,331
18	Security and safety	24,163,872
19	Roughrider industries	<u>10,842,290</u>
20	Total all funds	\$82,637,723
21	Less estimated income	<u>18,696,864</u>
22	Total general fund appropriation	\$63,940,859
23	Grand total general fund appropriation	\$78,532,407
24	Grand total special fund appropriation	\$26,533,099
25	Grand total all funds appropriation	\$105,065,506

26 **SECTION 2. LAND BOARD DISTRIBUTIONS.** The estimated income line item in
27 subdivision 2 of section 1 of this Act includes \$502,823 from permanent funds managed for the
28 benefit of the youth correctional center by the board of university and school lands.

29 **SECTION 3. AUTHORITY TO LEASE LAND UNDER THE JURISDICTION OF THE**
30 **DEPARTMENT.** The department of corrections and rehabilitation may lease land under the
31 jurisdiction of the department for the purpose of the construction and operation of a prerelease

1 center. Subsection 12 of section 54-23.3-04 does not apply to the lease authorized by this
2 section. The lease expires when the leased property is no longer used for a prerelease center,
3 when the lease operator breaches any material part of the lease, or twenty years after the date
4 of the lease, whichever occurs first, and all rights, title, and interest in any buildings, fixtures,
5 and improvements vest and remain with the state.

6 **SECTION 4. DEPARTMENT OF CORRECTIONS AND REHABILITATION -**
7 **LEGISLATIVE COUNCIL STUDY AND REPORTS.** During the 2001-02 interim, the legislative
8 council shall consider studying wages paid to inmates sentenced to the state correctional
9 system and the various deductions from those wages, including methods used to determine
10 rates of pay; actual wages paid to inmates; deductions from inmate wages; and the effect
11 deductions for incarceration costs, facility operation costs, and capital improvement costs have
12 on inmate payments for child support and restitution. The legislative council shall report its
13 findings and recommendations, together with any legislation required to implement the
14 recommendations, to the fifty-eighth legislative assembly.

15 **SECTION 5. DEPARTMENT OF CORRECTIONS AND REHABILITATION -**
16 **FACILITY AND OPERATIONS - LEGISLATIVE COUNCIL STUDY.** The legislative council
17 shall study, during the 2001-02 interim, the facilities and operations of the department of
18 corrections and rehabilitation. The study must include the use of consultant services as
19 determined by the legislative council. The study must include the following:

- 20 1. An analysis and evaluation of all facilities currently used by the department of
21 corrections and rehabilitation and all facilities currently used by the state hospital
22 which may at some time be used by the department, including:
- 23 a. The age, condition, and adequacy of each facility.
 - 24 b. The operational efficiency of each facility, including utility costs and staffing
25 needs.
 - 26 c. Modifications, if any, required to allow the department to meet the various
27 needs of adult offenders.
- 28 2. An analysis and evaluation of future facility needs, including:
- 29 a. The types of facilities needed to serve adult offenders.
 - 30 b. The most appropriate location for the department's various facilities,
31 considering:

- 1 (1) The operational inefficiencies of maintaining multiple facilities.
- 2 (2) The administrative benefits of having multiple facilities in which to place
- 3 offenders.
- 4 (3) The availability of education, treatment, and work programs for
- 5 inmates.
- 6 3. An analysis and evaluation of the staffing needs of the department, including:
- 7 a. Current staff utilization and needs at each facility.
- 8 b. Availability of potential employees in each region in which the department
- 9 operates or may operate a correctional facility.
- 10 4. An analysis and evaluation of the anticipated need for additional prison beds,
- 11 considering the following:
- 12 a. The impact of changes in sentencing laws.
- 13 b. The impact of programs that provide alternatives to conventional
- 14 incarceration.
- 15 c. Trends in occurrence and types of crime committed in the state.
- 16 d. The utilization and availability of existing and proposed county or regional
- 17 correctional facilities.
- 18 e. The utilization and availability of existing and proposed private correctional
- 19 facilities.
- 20 5. A cost-benefit analysis of the department's current and proposed programs,
- 21 considering:
- 22 a. The effect on recidivism.
- 23 b. The necessity and effectiveness of providing rehabilitation and treatment
- 24 services.
- 25 c. The availability of rehabilitation and treatment services which could be
- 26 provided by entities or agencies other than the department, including regional
- 27 human service centers.

28 **SECTION 6. APPROPRIATION.** There is appropriated out of any moneys in the
29 general fund in the state treasury, not otherwise appropriated, the sum of \$200,000, or so much
30 of the sum as may be necessary, to the legislative council for the biennium beginning July 1,

1 2001, and ending June 30, 2003, for the purpose of contracting with a consultant to conduct the
2 study as provided in section 5 of this Act.

3 **SECTION 7. DEPARTMENT OF CORRECTIONS AND REHABILITATION -**
4 **WOMEN'S UNIT CONSTRUCTION - LEGISLATIVE COUNCIL STUDY - BUDGET SECTION**

5 **AUTHORIZATION.** The total funds appropriation contained in subdivision 3 of section 1 of this
6 Act includes \$2,450,000 from the general fund and \$1,400,000 from other funds for the
7 construction of a women's unit for housing adult female offenders sentenced to the department
8 of corrections and rehabilitation. The amounts appropriated for the construction of a women's
9 unit may be spent if:

- 10 1. The legislative council conducts the study as provided in section 5 of this Act;
- 11 2. The committee conducting the study recommends construction of a women's unit
12 after considering the following:
 - 13 a. The need to construct the women's unit based on:
 - 14 (1) The anticipated trends in male and female inmate populations;
 - 15 (2) The anticipated impact of programs that provide alternatives to
16 conventional incarceration;
 - 17 (3) The availability and cost-effectiveness of prison beds available to the
18 department on a contract basis in county, regional, or private
19 correctional facilities; and
 - 20 (4) Future capital construction needs of the department; and
 - 21 b. The most feasible and desirable location of the women's unit based on:
 - 22 (1) The availability of educational, treatment, work, and other programs;
 - 23 (2) The availability of qualified staff to operate the women's unit and
24 provide services to inmates; and
 - 25 (3) Future capital construction needs of the department; and
- 26 3. The budget section of the legislative council authorizes the department to spend
27 funds appropriated by the fifty-seventh legislative assembly for this purpose.

28 **SECTION 8. FEDERAL FUNDING REDUCTIONS - BUDGET SECTION APPROVAL.**

29 If, during the biennium beginning July 1, 2001, and ending June 30, 2003, the federal
30 government reduces funding below the level anticipated by the fifty-seventh legislative
31 assembly for any programs administered by the department of corrections and rehabilitation,

1 the department may not supplant the federal funds with general or special fund moneys without
2 first obtaining the approval of the budget section of the legislative council. The department's
3 budget request for the biennium beginning July 1, 2003, and ending June 30, 2005, must
4 identify any programs for which general or special fund appropriation authority is requested to
5 replace federal funds previously available for the program.

6 **SECTION 9. OPERATION OF "PRERELEASE" AND "DUI OFFENDER**
7 **TREATMENT" PROGRAMS - REPORT TO THE FIFTY-EIGHTH LEGISLATIVE ASSEMBLY.**

8 During the biennium beginning July 1, 2001, and ending June 30, 2003, the department of
9 corrections and rehabilitation shall monitor the operation of the programs known as the
10 "prerelease center" and the "DUI offender treatment center" authorized by the fifty-seventh
11 legislative assembly. The department shall present a report to the appropriations committees
12 of the fifty-eighth legislative assembly regarding the operation of the programs, including the
13 impact of the programs on recidivism rates; the cost-effectiveness of the programs; the success
14 of the programs; the ability to collect fees, if any, from the participating inmates; and a
15 comparison of the costs and benefits of the "prerelease center" and the "DUI offender treatment
16 center" to other forms of treatment or incarceration.

17 **SECTION 10. LEGISLATIVE INTENT - FUNDING FOR DRUG COURT PROGRAM.** It

18 is the intent of the fifty-seventh legislative assembly that the department of corrections and
19 rehabilitation seek federal funding to support the drug court program during the biennium
20 beginning July 1, 2001, and ending June 30, 2003. If federal funds do not become available to
21 the department to support the program, special funds derived from other income of the
22 department may be used to fund the program. If federal funds become available during the
23 biennium, the department must use the federal funds, and any required matching funds to be
24 provided from special funds, to fund the program for the remainder of the biennium before
25 funds from any other source are used for this purpose. Special fund moneys not used for the
26 drug court program pursuant to this section must be used in place of general fund moneys
27 appropriated by the fifty-seventh legislative assembly for other programs operated by the
28 department.

29 **SECTION 11. AMENDMENT.** Section 12-59-02 of the 1999 Supplement to the North
30 Dakota Century Code is amended and reenacted as follows:

1 **12-59-02. Meetings - Compensation - Rules.** The governor shall appoint a member
2 of the parole board to be chairman. The chairman of the parole board shall designate three
3 members of the parole board for each meeting of the parole board. Meetings of the parole
4 board must be held in accordance with rules established by the parole board and must be held
5 as often as required to properly conduct the business of the board, but in any event not less
6 than six times per year. The parole board may only take action upon the concurrence of at
7 least two members who participated in the same meeting. The final decision of at least two
8 parole board members who participated in the same parole board meeting constitutes the
9 decision of the parole board. Members are entitled to be compensated at the rate of ~~sixty-two~~
10 seventy-five dollars ~~and fifty cents~~ per day for each day actually and necessarily spent in the
11 performance of their duties as board members plus the same mileage and expenses as are
12 authorized for state officials and employees. The director of the division of parole and
13 probation, or the director's designee, is the clerk for the parole board.

14 **SECTION 12. AMENDMENT.** Subsection 1 of section 12.1-32-08 of the North Dakota
15 Century Code is amended and reenacted as follows:

- 16 1. ~~Prior to~~ Before imposing restitution or reparation as a sentence or condition of
17 probation, the court shall hold a hearing on the matter with notice to the
18 prosecuting attorney and to the defendant as to the nature and amount thereof.
19 The court, when sentencing a person adjudged guilty of criminal activities ~~which~~
20 that have resulted in pecuniary damages, in addition to any other sentence it may
21 impose, shall order that the defendant make restitution to the victim or other
22 recipient as determined by the court, unless the court states on the record, based
23 upon the criteria in this subsection, the reason it does not order restitution or
24 orders only partial restitution. In determining whether to order restitution, the court
25 shall take into account:
- 26 a. The reasonable damages sustained by the victim or victims of the criminal
27 offense, which damages ~~must be~~ are limited to those directly related to the
28 criminal offense and expenses actually incurred as a direct result of the
29 defendant's criminal action. This can include an amount equal to the cost of
30 necessary and related professional services and devices relating to physical,
31 psychiatric, and psychological care. The defendant may be required as part

- 1 of the sentence imposed by the court to pay the prescribed treatment costs
2 for a victim of a sexual offense as defined in chapters 12.1-20 and 12.1-27.2.
- 3 b. The ability of the defendant to restore the fruits of the criminal action or to pay
4 monetary reparations, or to otherwise take action to restore the victim's
5 property.
- 6 c. The likelihood that attaching a condition relating to restitution or reparation will
7 serve a valid rehabilitational purpose in the case of the particular offender
8 considered.

9 The court shall fix the amount of restitution or reparation, which may not exceed an
10 amount the defendant can or will be able to pay, and shall fix the manner of
11 performance of any condition or conditions of probation established pursuant to
12 this subsection. The court ~~may~~ shall order restitution be paid to the division of
13 ~~parole and probation~~ adult services for any benefits ~~the division~~ the division has paid or may
14 pay under chapter 54-23.4 unless the court, on the record, directs otherwise. Any
15 payments made pursuant to ~~such~~ the order must be deducted from damages
16 awarded in a civil action arising from the same incident. An order that a defendant
17 make restitution or reparation as a sentence or condition of probation may, unless
18 the court directs otherwise, be filed, transcribed, and enforced by the person
19 entitled to the restitution or reparation or by the division of adult services in the
20 same manner as civil judgments rendered by the courts of this state may be
21 enforced.

22 **SECTION 13.** A new section to chapter 54-23.3 of the North Dakota Century Code is
23 created and enacted as follows:

24 **Reports regarding new programs.** Notwithstanding the powers granted under section
25 54-23.3-04, the director of the department of corrections and rehabilitation may not authorize
26 any new program to serve adult or juvenile offenders, including programs that provide
27 alternatives to conventional incarceration and programs operated on a contract basis, if the
28 program is anticipated to cost in excess of one hundred thousand dollars during the biennium in
29 which the program is implemented or any subsequent biennium without first reporting to the
30 legislative assembly or, if the legislative assembly is not in session, the budget section of the
31 legislative council.

1 **SECTION 14. AMENDMENT.** Subsection 2 of section 54-23.4-12 of the 1999
2 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3 2. ~~Prior to~~ Before bringing an action to recover damages related to criminally injurious
4 conduct for which compensation is claimed or awarded, the claimant shall give the
5 division written notice of the proposed action. If a claimant brings an action for the
6 recovery of damages related to criminally injurious conduct for which
7 compensation is claimed or awarded, the division is subrogated to the rights of the
8 claimant up to the total amount the division has paid. When there has been a
9 recovery of damages, the costs of the action, to be paid by the division from the
10 recovery, exclusive of attorney's fees, must be prorated and adjusted on the
11 percentage of the total subrogation interest of the division recovered to the total
12 recovery. If there is a recovery, the division shall pay attorney's fees to the
13 claimant's attorney from the recovery in the amount of twenty-five percent of the
14 subrogation interest recovered. For purposes of this section, recovery includes
15 proceeds paid pursuant to a settlement, confession of judgment, or judgment of a
16 court. The division may intervene in the action to recover compensation awarded.
17 The division has a lien on a recovery to the extent it has paid compensation. The
18 division is not liable for costs or attorney's fees when the claimant has not provided
19 the division prior written notice of the commencement of an action. If a claimant
20 does not bring an action for damages within six months from the date the division
21 awarded benefits, the division may bring an action or claim for relief in the
22 division's name and may retain as the division's subrogation interest the full
23 amount the division has paid in compensation and benefits to a claimant. The
24 division may bring an action within two years from the date the division first
25 awarded benefits, notwithstanding any other statute of limitation. This section
26 does not limit the claimant's right to bring an action to recover for other damages.