

**Sixtieth Legislative Assembly of North Dakota  
In Regular Session Commencing Wednesday, January 3, 2007**

HOUSE BILL NO. 1116  
(Judiciary Committee)  
(At the request of the Department of Corrections and Rehabilitation)

AN ACT to amend and reenact sections 12-44.1-02, 12-44.1-06, 12-44.1-13, 12-44.1-21, and 12-44.1-25 of the North Dakota Century Code, relating to correctional facilities; to repeal section 12-44.1-27 of the North Dakota Century Code, relating to corrective action and enforcement for correctional facilities; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 12-44.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**12-44.1-02. Establishing correctional facilities - 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 correctional facility at county or city expense.
2. Contracting for correctional facility services and use of correctional facilities with another county or city maintaining a correctional facility or with the state or federal government.
3. Establishing and maintaining, pursuant to chapter 54-40 or 54-40.3 and this chapter, a correctional facility in conjunction with other counties and cities.
4. A county or city may contract with a county or city of another state for ~~the~~:
  - a. The confinement of lawfully committed county or city inmates from ~~that~~ the other state in a ~~North Dakota~~ correctional facility; or for the
  - b. The confinement of lawfully committed North Dakota inmates in a county ~~or~~, city, or regional correctional facility of ~~such other~~ another state.
5. 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.
6. A city or county may contract for the confinement of inmates lawfully sentenced by a tribal court.
7. A city or county may contract for correctional facility services with a privately operated correctional facility. Contracts with private agencies providing correctional facility services may be entered into for up to seven years.

**SECTION 2. AMENDMENT.** Section 12-44.1-06 of the North Dakota Century Code is amended and reenacted as follows:

**12-44.1-06. Grades of correctional facilities.**

1. The department of corrections and rehabilitation shall, following inspection pursuant to section 12-44.1-24, grade correctional facilities as to length of allowable inmate confinement based upon construction, size, and usage, as follows:

- a. "Grade one" means a correctional facility for confining inmates not more than one year.
  - b. "Grade two" means a correctional facility for confining inmates not more than ninety days.
  - c. "Grade three" means a 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 correctional facilities upon the request of the administrator and the approval of the department of corrections and rehabilitation.
  3. The department of corrections and rehabilitation, upon the request of the governing body of the correctional facility, may authorize a correctional facility to regularly confine inmates for more than one year if the correctional facility meets criteria established by the department, including:
    - a. A classification system approved by the department.
    - b. Education programs, including vocational education and a general equivalency diploma program.
    - c. Treatment programs, including licensed alcohol or drug addiction counseling.
    - d. Inmate work programs, including prison industries work programs.
    - e. An infirmary and onsite medical and pharmacy services.
    - f. Indoor and outdoor recreation.

**SECTION 3. 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 correctional facility staff.
2. 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 correctional facility shall provide for the personal observation of inmates on an irregular but frequent schedule.
4. Each correctional facility shall maintain sufficient law enforcement officers with correctional training or trained correctional facility staff to perform all functions relating to the intake and booking, security, control, custody, and supervision of inmates.
5. A correctional facility female staff member shall be available at all times ~~during which~~ when a female inmate is confined in the correctional facility.
6. Inmates shall be prohibited from supervising, controlling, or exerting any authority over other inmates.
7. The correctional facility shall maintain a daily written record of information concerning inmates.

**SECTION 4. AMENDMENT.** Section 12-44.1-21 of the North Dakota Century Code is amended and reenacted as follows:

**12-44.1-21. Prohibited acts.**

1. It is unlawful ~~to deliver or administer any alcoholic beverage or~~ for a person to willfully:
  - a. ~~Manufacture, or possess with intent to manufacture, a 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.~~
  - b. Deliver, or possess with intent to deliver, a controlled substance in a correctional facility. This subsection does not apply to the possession or delivery of controlled substances in accordance with the orders or prescription of a licensed physician and the approval, except in emergency circumstances, of the correctional facility administrator.
  - c. A person who violates this subsection is guilty of a class A felony.
2. ~~A person~~ It is unlawful for an inmate detained in a correctional facility may not to possess any controlled substance or alcoholic beverage unless the substance or beverage is prescribed except in accordance with the prescription or orders of a licensed physician, and the approval, except in emergency circumstances, of the correctional facility administrator. It is unlawful for an inmate in a correctional facility to possess alcohol or alcoholic beverages. If a correctional facility has adopted a rule banning the possession of tobacco in a correctional facility, it is unlawful for an inmate in a correctional facility to possess any tobacco except when the correctional facility administrator has authorized possession of tobacco for religious purposes or when on an authorized release from the correctional facility. An 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. ~~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. It is unlawful for a person to willfully deliver alcohol or alcoholic beverages to an inmate in a correctional facility. It is unlawful for a person to willfully deliver tobacco to an inmate in a correctional facility that has adopted a rule banning the possession of tobacco except when the correctional facility administrator has authorized possession of tobacco for religious purposes or when the inmate is on an authorized release from the correctional facility. A person who violates this subsection by:~~
  - a. Delivery of alcohol or alcoholic beverages to an inmate in a correctional facility is guilty of a class A misdemeanor.
  - b. Delivery of tobacco to an inmate in a correctional facility is guilty of a class B misdemeanor.
4. It is unlawful for a person who is not an inmate to willfully possess a controlled substance in a correctional facility except in accordance with the orders or prescription of a licensed physician. A person who violates this 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. It is unlawful for an inmate in a correctional facility to willfully procure, make, or possess an object, including a shard made of any material or a weapon, firearm, ammunition, or explosive material, intended to be used for an assault on another person or to damage property. An inmate in a correctional facility 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 a person to deliver or provide to an inmate in a correctional facility an object intended to be used for an assault on another person or to damage property. A 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 5. AMENDMENT.** Section 12-44.1-25 of 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~~ The correctional facility inspector shall submit a written inspection report to the administrator of the correctional facility and the director of the department of corrections and rehabilitation within thirty days following each inspection.
2. ~~Copies of the report must be sent by the correctional facility inspector to the administrator responsible for the correctional facility and must also be submitted to the department of corrections and rehabilitation for review.~~
3. ~~The inspection report must specify these respects in which~~ when a correctional facility does or does not comply complies with the, or is in violation of, required minimum standards and, applicable state or federal law, or the department of corrections and rehabilitation rules for correctional facilities. The inspection report of noncompliance must If a correctional facility is in violation of any required minimum standards, applicable state or federal law, or department of corrections and rehabilitation rules for correctional facilities, the director of the department of corrections and rehabilitation may issue an order of noncompliance. The director shall identify the violation and required corrective measures in the order of noncompliance and specify the time limits within which such standards or rules are to be met, with consideration being given to the correctional facility shall correct the violations. The director shall consider the magnitude or seriousness of the deficiencies violations and their potential effects on the health and safety of inmates, staff, law enforcement, and the public, the cost of correction, and other information deemed relevant by the department of corrections and rehabilitation director considers relevant in establishing the time period for the correctional facility to correct the violations. If the

director determines that the violations are limited and minor, the director may issue a letter of noncompliance to the correctional facility and identify the violations and required corrective measures and the correctional facility shall immediately correct the violations.

3. The director of the department of corrections and rehabilitation may assess the department's actual costs for inspection and monitoring the correctional facility upon issue of an order of noncompliance to the correctional facility.
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~~ If a correctional facility fails to complete required corrective action within the time specified in the order of noncompliance, the director of the department of corrections and rehabilitation may issue an order for full, partial, or temporary closure of the correctional facility. If the director determines that the extent of the noncompliance presents a danger to the health and safety of inmates, staff, law enforcement, visitors, or the public, the period of time for correction may be dispensed with and director may issue an order of immediate full or, partial, or temporary closure may be issued by the department of corrections and rehabilitation without a prior order of noncompliance.
5. ~~Within thirty days after receipt of a notice or order of immediate full, partial, or temporary closure, the administrator of a 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~~ at the request of the correctional facility. The department of corrections and rehabilitation may direct the correctional facility to pay to the department the reasonable and actual costs incurred by the department for any investigation and proceedings under this section.

**SECTION 6. REPEAL.** Section 12-44.1-27 of the North Dakota Century Code is repealed.

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Speaker of the House

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President of the Senate

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Chief Clerk of the House

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Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixtieth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1116.

House Vote:      Yeas    93      Nays    0      Absent    1

Senate Vote:    Yeas    44      Nays    0      Absent    3

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Chief Clerk of the House

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2007.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2007.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2007,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

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Secretary of State