

**FIRST ENGROSSMENT
with Senate Amendments**

Sixty-first
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1238

Introduced by

Representatives Nelson, Hofstad, S. Meyer

Senators Lyson, Triplett

1 A BILL for an Act to create and enact a new section to chapter 12-44.1 of the North Dakota
2 Century Code, relating to the housing of out-of-state inmates by correctional facilities; to amend
3 and reenact section 12-44.1-02 of the North Dakota Century Code, relating to the housing of
4 out-of-state inmates by correctional facilities; and to declare an emergency.

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

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

8 **12-44.1-02. Establishing correctional facilities - Correctional facility contracts -**
9 **Regional corrections centers.**

- 10 1. For the confinement of lawfully committed persons, the governing body of a county
11 or city shall ~~do or shall participate in the doing of, one of the following:~~
- 12 ~~4.~~ a. ~~Establishing and maintaining~~ Establish and maintain a correctional facility at
13 county or city expense;:
- 14 ~~2.~~ b. ~~Contracting~~ Contract for correctional facility services and use of correctional
15 facilities with another county or city ~~maintaining that maintains~~ a correctional
16 facility or with the state or federal government;: or
- 17 ~~3.~~ c. ~~Establishing and maintaining~~ Establish and maintain, pursuant to chapter
18 54-40 or 54-40.3 and this chapter, a correctional facility in conjunction with
19 other counties and cities.
- 20 ~~4.~~ 2. ~~A county or city~~ Subject to the requirements of section 2 of this Act, the governing
21 body of a correctional facility may contract with a state or a regional correctional
22 center, county, or city of another state for:
- 23 ~~a.~~ The ~~the~~ confinement of lawfully committed state, county, or city inmates from
24 the other state;:or,

1 ~~b-~~ 3. The governing body of a correctional facility may contract with a state or a regional
2 correctional center, county, or city of another state for the confinement of lawfully
3 committed North Dakota inmates in a county, city, or regional correctional facility of
4 another state.

5 ~~5-~~ 4. ~~A city or county~~ The governing body of a correctional facility may contract with
6 another correctional facility in this state for correctional services for purposes of
7 safety, security, health and medical reasons, or for correctional facility
8 administration.

9 ~~6-~~ 5. ~~A city or county~~ The governing body of a correctional facility may contract for the
10 confinement of inmates lawfully sentenced by a tribal court.

11 ~~7-~~ 6. ~~A city or county~~ The governing body of a correctional facility may contract for
12 correctional facility services with a privately operated correctional facility.
13 Contracts with private agencies ~~providing~~ that provide correctional facility services
14 may be entered into for up to seven years.

15 **SECTION 2.** A new section to chapter 12-44.1 of the North Dakota Century Code is
16 created and enacted as follows:

17 **Contracts for out-of-state inmates - Requirements.** The governing body of a
18 correctional facility that contracts with another state or a regional correctional center, county, or
19 city of another state for the confinement of lawfully committed state, county, or city inmates
20 from the other state is subject to the following conditions:

21 1. Before a correctional facility may accept an out-of-state inmate, the governing
22 body of the correctional facility shall approve and sign the contract that authorizes
23 housing out-of-state inmates.

24 2. Before accepting an out-of-state inmate, the administrator of the correctional
25 facility shall review the out-of-state inmate's file and request a nationwide criminal
26 history background check. The administrator may not accept:

27 a. Any inmate with a history of escape or attempted escape from official
28 detention as defined under section 12.1-08-06 or under an equivalent federal
29 statute or statute of another state;

30 b. Any inmate with a history of institutional violence, including violence against
31 staff or other inmates;

- 1 c. Any inmate who has pled guilty to, or has been convicted of, a crime of
2 violence. For the purpose of this section, a crime of violence includes
3 kidnapping and any violation of any state or federal law when the inmate
4 knowingly or intentionally inflicted, attempted to inflict, or threatened serious
5 bodily injury, or death, or when the inmate was armed with a firearm,
6 dangerous weapon, or destructive device;
- 7 d. An inmate who has been convicted of aggravated assault involving
8 substantial or serious bodily injury, and the offense is a felony under the laws
9 of the sending state or under federal law, unless the administrator has
10 obtained the approval of the department of corrections and rehabilitation in
11 advance of the placement. The state of North Dakota and any officer or
12 employee of the department is immune from any civil liability for damages for
13 personal injury or property damage caused by an inmate placed in a
14 correctional facility under this subsection;
- 15 e. Any inmate who has pled guilty to, or has been convicted of, a sexual offense
16 in which the victim was a child under the age of fifteen years, or the inmate
17 compelled, or attempted to compel, the victim to submit by force or by threat
18 of imminent death, serious bodily injury, or kidnapping, or if in the course of
19 the offense, the inmate inflicted serious or substantial bodily injury on the
20 victim; or
- 21 f. Any inmate who has a documented affiliation as a member of a criminal street
22 gang as defined under section 12.1-06.2-01 or equivalent statute of another
23 state or under federal law.
- 24 3. Out-of-state inmates may not be permitted to leave the premises of the
25 correctional facility except to comply with a court order or to receive medical care.
- 26 4. The correctional facility may not house out-of-state inmates in the same cells with
27 inmates of the department of corrections and rehabilitation.
- 28 5. A contract under this section must include a requirement that if an out-of-state
29 inmate is charged with committing a crime while in the custody of the correctional
30 facility, the sending state shall take custody of the inmate upon the request of the
31 correctional facility and the written consent of the state's attorney of the county

- 1 where the correctional facility is located. If the sending state takes custody of the
2 inmate and the state's attorney requests the inmate be returned to this state for
3 prosecution, the correctional facility is responsible for the cost of returning the
4 inmate to this state for prosecution. If an out-of-state inmate is convicted and
5 sentenced to the legal and physical custody of the department of corrections and
6 rehabilitation for a crime committed while in the custody of the correctional facility,
7 the correctional facility shall reimburse the department for its costs to confine the
8 inmate until completion of the term of imprisonment.
- 9 6. The department of corrections and rehabilitation may not assume custody of an
10 out-of-state inmate placed in a correctional facility in this state under a contract
11 between the governing body of a correctional facility and a sending state except
12 under a lawful sentence and judgment of a district court of this state and after
13 notice to the sending state.
- 14 7. If the state or a political subdivision of this state incurs any cost in the investigation
15 or prosecution of an offense committed by an out-of-state inmate while in the
16 custody of a contracting correctional facility, the correctional facility shall reimburse
17 the state or political subdivision for the costs incurred.
- 18 8. A contract under this section must include a requirement that the sending state
19 shall notify the correctional facility of the expiration date of the out-of-state inmate's
20 imprisonment when the sending state transfers the out-of-state inmate to the
21 correctional facility and that the sending state shall retake the out-of-state inmate
22 before the expiration date of the out-of-state inmate's imprisonment.
- 23 9. For purposes of this section, "out-of-state inmate" means an individual who is
24 convicted of a crime in a state other than North Dakota; "sending state" means
25 another state and includes a city, county, or regional correctional center of another
26 state; and "correctional facility" means a facility subject to this chapter.
- 27 10. The correctional facility shall defend, indemnify, and hold harmless the state of
28 North Dakota, its agencies, officers, and employees from and against claims for
29 personal injury or property damage caused by an out-of-state inmate placed in a
30 correctional facility under this section.

31 **SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.