

# CORRECTIONS, PAROLE, AND PROBATION

## CHAPTER 116

### HOUSE BILL NO. 1473

(Representatives S. Olson, Bellew, Henderson, Hoverson, Prichard, Steiner,  
VanWinkle)  
(Senator Paulson)

AN ACT to create and enact a new section to chapter 12-44.1, a new section to chapter 12-46, a new section to chapter 12-47, and a new section to chapter 15-10 of the North Dakota Century Code, relating to the use of restrooms, locker rooms, and shower rooms in a dormitory or living facility controlled by the state board of higher education, a correctional facility, the North Dakota youth correctional center, and the penitentiary exclusively for males and females.

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

**SECTION 1.** A new section to chapter 12-44.1 of the North Dakota Century Code is created and enacted as follows:

**Restrooms and shower rooms exclusively for males or exclusively for females.**

1. In a correctional facility, a restroom or shower room accessible by multiple inmates at the same time must be designated for use exclusively for males or exclusively for females.
2. In a correctional facility, a restroom or shower room designated for one sex may be used only by members of that sex.
3. An administrator or correctional facility staff member shall provide a reasonable accommodation for an inmate, including a transgender or gender-nonconforming inmate, as deemed appropriate by the administrator.

**SECTION 2.** A new section to chapter 12-46 of the North Dakota Century Code is created and enacted as follows:

**Restrooms and shower rooms exclusively for males or exclusively for females.**

1. At the North Dakota youth correctional center, a restroom or shower room accessible by multiple inmates at the same time must be designated for use exclusively for males or exclusively for females.
2. At the North Dakota youth correctional center, a restroom or shower room designated for one sex may be used only by members of that sex.

3. An administrator, an officer, or an employee shall provide a reasonable accommodation for a child placed at the North Dakota youth correctional center, including a transgender or gender-nonconforming child, as deemed appropriate by the administrator.

**SECTION 3.** A new section to chapter 12-47 of the North Dakota Century Code is created and enacted as follows:

**Restrooms and shower rooms exclusively for males or exclusively for females.**

1. At the penitentiary, a restroom or shower room accessible by multiple inmates at the same time must be designated for use exclusively for males or exclusively for females.
2. At the penitentiary, a restroom or shower room designated for one sex may be used only by members of that sex.
3. The warden, a deputy warden, an officer, or an agent shall provide a reasonable accommodation for an inmate, including a transgender or gender-nonconforming inmate, as deemed appropriate by the warden.

**SECTION 4.** A new section to chapter 15-10 of the North Dakota Century Code is created and enacted as follows:

**Restrooms and shower rooms exclusively for males or exclusively for females.**

1. In a dormitory or living facility controlled by an institution under the control of the state board of higher education, a restroom or shower room accessible by multiple residents at the same time must be designated for use exclusively for males or exclusively for females.
2. In a dormitory or living facility controlled by an institution under the control of the state board of higher education, a restroom or shower room designated for one sex may be used only by members of that sex.
3. This section applies to a dormitory or a dormitory floor in which residents are segregated by sex or gender.
4. A dormitory administrator or dormitory staff member shall provide a reasonable accommodation for a resident, including a transgender or gender-nonconforming resident, as deemed appropriate by the director of residence life. This section does not prohibit a dormitory administrator or dormitory staff member from entering a restroom or shower room designated for the opposite sex in the course of official employment duties.

Approved April 25, 2023

Filed April 26, 2023

## CHAPTER 117

### HOUSE BILL NO. 1264

(Representatives Klemin, Cory, Hanson, Karls, Roers Jones)  
(Senators Braunberger, Dever, Dwyer, Elkin, Larson)

AN ACT to amend and reenact section 12-44.1-01 and subsection 3 of section 12-44.1-07.1 of the North Dakota Century Code, relating to jail and regional correctional center definitions and alternatives to physical custody of individuals; and to provide a penalty.

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

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

##### **12-44.1-01. Definitions.**

As used in this chapter:

1. "Administrator" means the sheriff, chief of police, administrator, superintendent, director, or other individual serving as the chief executive officer of a correctional facility.
2. "Adult lockup" means a secure temporary-hold nonresidential facility that does not hold individuals overnight and includes a facility with cuffing rails or cuffing benches.
3. "Correctional facility" means a city or county jail or detention center, regional corrections center, or juvenile detention center for the detention or confinement of persons in accordance with law. The use of the term does not imply and may not be used to require the provision of services including treatment, counseling, career and technical education, or other educational services, except as may otherwise be required or provided for under this chapter.
4. "Correctional facility staff" means correctional personnel with titles such as jailer, deputy, counselor, correctional officer, or any other title, whose duties include the ongoing supervision of inmates in a correctional facility.
5. "Court holding facility" means a secure facility, other than an adult correctional facility or adult lockup, used to temporarily detain individuals before or after a detention hearing or other court proceedings, and is not used to detain individuals overnight.
6. "Individual justice planning" means a process to identify, accommodate, and develop appropriate consequences for behaviors caused by or related to an individual's mental or cognitive impairment.
7. "Inmate" means any individual, whether sentenced or unsentenced, who is detained or confined in a correctional facility. The term does not include an individual who is under the supervision of the correctional facility and is

supervised under home detention, electronic monitoring, or a similar program that does not involve physical detention or confinement in the facility.

- ~~7-8.~~ "Jail" means a correctional facility, including a county or city jail or a regional corrections center.
- ~~8-9.~~ "Juvenile detention center" means a publicly maintained correctional facility for the detention of juveniles. The term does not include the North Dakota youth correctional center.
- ~~9-10.~~ "Regional corrections center" means a correctional facility established and maintained by more than one county or city, or a combination of counties and cities, for the confinement of inmates.
- ~~10-11.~~ "Trained correctional facility staff" means correctional personnel who have completed a course of training approved by the peace officer standards and training board.

**SECTION 2. AMENDMENT.** Subsection 3 of section 12-44.1-07.1 of the North Dakota Century Code is amended and reenacted as follows:

3. The inmate population plan must include alternatives to physical custody of individuals under charge or conviction of an offense. Potential alternatives to physical custody include:
  - a. Placement in a community setting;
  - b. Work release;
  - c. Home detention;
  - d. Electronic home detention;
  - e. Global positioning system monitoring;
  - f. Medical, psychiatric, and drug and alcohol treatment;
  - g. Employment;
  - h. Pretrial risk assessment; ~~and~~
  - i. Pretrial supervision; and
  - j. Participation in the individual justice planning process.

Approved March 30, 2023

Filed April 3, 2023

## CHAPTER 118

### SENATE BILL NO. 2105

(Judiciary Committee)

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

AN ACT to amend and reenact subsection 8 of section 12-47-21 of the North Dakota Century Code, relating to use of wireless electronic communications devices at the department of corrections and rehabilitation; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Subsection 8 of section 12-47-21 of the North Dakota Century Code is amended and reenacted as follows:

8. a. It is unlawful for a penitentiary inmate to willfully manufacture, possess, or use a wireless electronic communications device on or within any premises under the control of the department of corrections and rehabilitation or any of its divisions except for law enforcement purposes as authorized by the department of corrections and rehabilitation.
- b. It is unlawful for any person to willfully deliver, or possess with intent to deliver, a wireless electronic communications device to a penitentiary inmate or to any person for redelivery to a penitentiary inmate, or to allow a penitentiary inmate to possess or use a wireless electronic communications device, on or within any premises under the control of the department of corrections and rehabilitation or any of its divisions except for law enforcement purposes as authorized by the department of corrections and rehabilitation.
- c. A violation of this subsection is a class C felony.

Approved March 27, 2023

Filed March 28, 2023

## CHAPTER 119

### SENATE BILL NO. 2091

(Judiciary Committee)

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

AN ACT to create and enact a new subsection to section 12-47-36 of the North Dakota Century Code, relating to exceptions to confidential records.

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

**SECTION 1.** A new subsection to section 12-47-36 of the North Dakota Century Code is created and enacted as follows:

Notwithstanding any other provision of law relating to privilege or confidentiality, except for the confidentiality requirements of federal drug and alcohol treatment and rehabilitation laws, if the department of corrections and rehabilitation approves, the following individuals, organizations, or agencies without prior application to the court may inspect case history, medical, psychological, or treatment records:

- a. The emergency contact or next of kin of an adult in custody who has a serious or terminal medical condition;
- b. The guardian, conservator, or an individual with a medical power of attorney of an adult in custody or adult under supervision;
- c. If an adult in custody or former adult in custody provides written authorization, an individual, organization, or entity assisting the adult in custody or former adult in custody with social services, housing, behavioral health or medical services, employment, education, child care, or transportation; and
- d. The court.

Approved March 27, 2023

Filed March 28, 2023

## CHAPTER 120

### SENATE BILL NO. 2076

(Energy and Natural Resources Committee)  
(At the request of the Department of Environmental Quality)

AN ACT to amend and reenact subdivision vv of subsection 2 of section 12-60-24 and section 23.1-01-11.1 of the North Dakota Century Code, relating to environmental compliance background reviews of applicants for a radioactive materials license or solid waste permit.

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

<sup>80</sup> **SECTION 1. AMENDMENT.** Subdivision vv of subsection 2 of section 12-60-24 of the North Dakota Century Code is amended and reenacted as follows:

- vv. The department of environmental quality for a final applicant for a job opening ~~or~~ a current employee with the department; ~~an individual being investigated by the department;~~ or, when requested by the department, an applicant for a radioactive materials license under chapter 23.1-03 or a solid waste permit under chapter 23.1-08 as provided in section 23.1-01-11.1.

**SECTION 2. AMENDMENT.** Section 23.1-01-11.1 of the North Dakota Century Code is amended and reenacted as follows:

#### 23.1-01-11.1. Criminal history background checks.

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1. As part of an environmental compliance background review, the department may require an applicant for a radioactive materials license under chapter 23.1-03 or a solid waste permit under chapter 23.1-08 to complete a ~~state~~statewide and nationwide criminal history record check as provided in section 12-60-24. If the applicant is not an individual, the department may require an individual responsible for the applicant to complete a state and a nationwide criminal history record check as provided in section 12-60-24. The applicant ~~or~~ responsible individual shall submit personal information and fingerprints with the application necessary to complete the ~~state~~statewide and nationwide criminal history background record check in the manner provided in subsection 1 of section 12-60-24. All costs associated with the ~~state~~statewide and nationwide criminal history record check are the responsibility of the applicant.
2. For purposes of this section, an "applicant" means the person applying for the license or permit, and includes:

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<sup>80</sup> Section 12-60-24 was also amended by section 1 of House Bill No. 1191, chapter 447, section 1 of Senate Bill No. 2051, chapter 274, and section 1 of Senate Bill No. 2102, chapter 214.

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- a. Each entity as defined in subsection 7 of section 10-01.1-02 that is, or is proposed to be:
- (1) A partner in a partnership as defined in subsection 19 of section 45-13-01;
  - (2) An entity holding ten percent or more of the applicant's debt;
  - (3) An entity holding ten percent or more of the applicant's equity; or
  - (4) The parent of a corporation as defined in subsection 46 of section 10-19.1-01.
- b. Each individual who has, or is proposed to have, any of the following relationships with the applicant:
- (1) A board member as defined in subsection 8 of section 10-19.1-01;
  - (2) A partner in a partnership as defined in subsection 19 of section 45-13-01;
  - (3) An officer as defined in section 10-15-29 or 10-19.1-52;
  - (4) A radiation safety officer as defined in North Dakota Administrative Code subsection 34 of section 33.1-10-01-04;
  - (5) A holder of ten percent or more of the applicant's debt; or
  - (6) A holder of ten percent or more of the applicant's equity.
3. The department may deny an application for the issuance, renewal, transfer, or major modification of a license or permit based on its environmental compliance background review.
- a. Reasons for denial include:
- (1) The applicant has intentionally misrepresented or concealed any material fact in a statement required under this section;
  - (2) The applicant has been convicted of a felony or pleaded guilty or nolo contendere to a felony involving the laws of any state or the federal government within five years preceding the application;
  - (3) The applicant has been adjudicated in contempt of an order of any court enforcing the laws of this state or any other state or the federal government within five years preceding the application; or
  - (4) The applicant has repeatedly violated any state or federal environmental protection laws.
- b. The department also shall consider the relevance of the offense to the business to which the license or permit is issued, the nature and seriousness of the offense, the circumstances under which the offense occurred, the date of the offense, and the ownership and management structure in place at the time of the offense.

Approved April 4, 2023

Filed April 5, 2023

## CHAPTER 121

### HOUSE BILL NO. 1203

(Representatives Porter, Heinert, Karls)  
(Senators Dever, Kannianen, Larson)

AN ACT to create and enact a new subdivision to subsection 2 of section 12-63-04 of the North Dakota Century Code, relating to powers of the peace officer standards and training board; and to amend and reenact section 12-63-01 and subsection 1 of section 12-63-02.3 of the North Dakota Century Code, relating to reserve peace officer licenses.

#### 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.**

As used in this chapter:

1. "Board" means the peace officer standards and training board.
2. "Part-time peace officer license" means a license issued to an individual authorized by law or appointed by a criminal justice agency of this state on a salaried or nonsalaried basis to enforce the law and to conduct or engage in investigations of violations of the law for no more than an average of twenty hours per week, not including time spent on call when no call to active duty is received, calculated on an annual basis.
3. "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.
4. "Reserve peace officer license" means a license issued to an individual authorized by law or appointed by a criminal justice agency of this state on a salaried or nonsalaried basis to enforce the law and to conduct or engage in investigations of violations of the law within the scope of the reserve peace officer's training.

**SECTION 2. AMENDMENT.** Subsection 1 of section 12-63-02.3 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise provided in this section, all provisions of this chapter apply to licensed reserve peace officers ~~and a licensed reserve peace officer has the same authority as a licensed peace officer.~~

**SECTION 3.** A new subdivision to subsection 2 of section 12-63-04 of the North Dakota Century Code is created and enacted as follows:

Expend funds to sponsor training for instruction of licensees, including up to fifty thousand dollars annually from fees collected by the board.

Approved March 22, 2023

Filed March 23, 2023