

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

SENATE BILL NO. 2352

Introduced by

Senators Dever, Hogan, Magrum, Mathern

1 A BILL for an Act to create and enact a new subsection to section 54-23.3-04 of the North
2 Dakota Century Code, relating to authorization for children of inmates to reside at the Heart
3 River correctional center; ~~and to amend and reenact section 32-12.2-02 of the North Dakota~~
4 ~~Century Code, relating to limitation of liability for children residing at the Heart River correctional~~
5 ~~center.~~

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

7 ~~— **SECTION 1. AMENDMENT.** Section 32-12.2-02 of the North Dakota Century Code is~~
8 ~~amended and reenacted as follows:~~

9 ~~— **32-12.2-02. Liability of the state -- Limitations -- Statute of limitations. (Effective**~~
10 ~~**through July 31, 2027)**~~

11 ~~— 1. — The state may only be held liable for money damages for an injury proximately caused~~
12 ~~by the negligence or wrongful act or omission of a state employee acting within the~~
13 ~~employee's scope of employment under circumstances in which the employee would~~
14 ~~be personally liable to a claimant in accordance with the laws of this state, or an injury~~
15 ~~caused from some condition or use of tangible property under circumstances in which~~
16 ~~the state, if a private person, would be liable to the claimant. No claim may be brought~~
17 ~~against the state or a state employee acting within the employee's scope of~~
18 ~~employment except a claim authorized under this chapter or otherwise authorized by~~
19 ~~the legislative assembly. The enactment of a law, rule, or regulation to protect any~~

person's health, safety, property, or welfare does not create a duty of care on the part of the state, its employees, or its agents, if that duty would not otherwise exist.

~~2. The liability of the state under this chapter is limited to a total of three hundred seventy-five thousand dollars per person and one million dollars for any number of claims arising from any single occurrence. The state may not be held liable, or be ordered to indemnify a state employee held liable, for punitive or exemplary damages. Any amount of a judgment against the state in excess of the one million dollar limit imposed under this subsection may be paid only if the legislative assembly adopts an appropriation authorizing payment of all or a portion of that amount. A claimant may present proof of the judgment to the director of the office of management and budget who shall include within the proposed budget for the office of management and budget a request for payment for the portion of the judgment in excess of the limit under this section at the next regular session of the legislative assembly after the judgment is rendered. The liability limits under this subsection must be adjusted annually as follows:~~

~~a. On July 1, 2023, a total of four hundred six thousand two hundred and fifty dollars per person and one million six hundred twenty-five thousand dollars for any single occurrence.~~

~~b. On July 1, 2024, a total of four hundred thirty-seven thousand five hundred dollars per person and one million seven hundred fifty thousand dollars for any single occurrence.~~

~~c. On July 1, 2025, a total of four hundred sixty-eight thousand seven hundred fifty dollars per person and one million eight hundred seventy-five thousand dollars per occurrence.~~

~~d. On July 1, 2026, a total of five hundred thousand dollars per person and two million dollars per occurrence.~~

~~3. Neither the state nor a state employee may be held liable under this chapter for any of the following claims:~~

~~a. A claim based upon an act or omission of a state employee exercising due care in the execution of a valid or invalid statute or rule.~~

- ~~b. A claim based upon a decision to exercise or perform or a failure to exercise or perform a discretionary function or duty on the part of the state or its employees, regardless of whether the discretion involved is abused or whether the statute, order, rule, or resolution under which the discretionary function or duty is performed is valid or invalid. Discretionary acts include acts, errors, or omissions in the design of any public project but do not include the drafting of plans and specifications that are provided to a contractor to construct a public project.~~
- ~~c. A claim resulting from the decision to undertake or the refusal to undertake any legislative or quasi-legislative act, including the decision to adopt or the refusal to adopt any statute, order, rule, or resolution.~~
- ~~d. A claim resulting from a decision to undertake or a refusal to undertake any judicial or quasi-judicial act, including a decision to grant, to grant with conditions, to refuse to grant, or to revoke any license, permit, order, or other administrative approval or denial.~~
- ~~e. A claim relating to injury directly or indirectly caused by a person who is not employed by the state.~~
- ~~f. A claim relating to injury directly or indirectly caused by the performance or nonperformance of a public duty, including:~~
- ~~(1) Inspecting, licensing, approving, mitigating, warning, abating, or failing to so act regarding compliance with or the violation of any law, rule, regulation, or any condition affecting health or safety.~~
- ~~(2) Enforcing, monitoring, or failing to enforce or monitor conditions of sentencing, parole, probation, or juvenile supervision.~~
- ~~(3) Providing or failing to provide law enforcement services in the ordinary course of a state's law enforcement operations.~~
- ~~g. "Public duty" does not include action of the state or a state employee under circumstances in which a special relationship can be established between the state and the injured party. A special relationship is demonstrated if all of the following elements exist:~~
- ~~(1) Direct contact between the state and the injured party.~~

- 1 ~~_____ (2) An assumption by the state, by means of promises or actions, of an~~
2 ~~affirmative duty to act on behalf of the party who allegedly was injured.~~
- 3 ~~_____ (3) Knowledge on the part of the state that inaction of the state could lead to~~
4 ~~harm.~~
- 5 ~~_____ (4) The injured party's justifiable reliance on the state's affirmative undertaking,~~
6 ~~occurrence of the injury while the injured party was under the direct control~~
7 ~~of the state, or the state action increases the risk of harm.~~
- 8 ~~_____ h. A claim resulting from the assessment and collection of taxes.~~
- 9 ~~_____ i. A claim resulting from snow or ice conditions, water, or debris on a highway or on~~
10 ~~a public sidewalk that does not abut a state-owned building or parking lot, except~~
11 ~~when the condition is affirmatively caused by the negligent act of a state~~
12 ~~employee.~~
- 13 ~~_____ j. A claim resulting from any injury caused by a wild animal in its natural state.~~
- 14 ~~_____ k. A claim resulting from the condition of unimproved real property owned or leased~~
15 ~~by the state.~~
- 16 ~~_____ l. A claim resulting from the loss of benefits or compensation due under a program~~
17 ~~of public assistance.~~
- 18 ~~_____ m. A claim resulting from the reasonable care and treatment, or lack of care and~~
19 ~~treatment, of a person at a state institution where reasonable use of available~~
20 ~~appropriations has been made to provide care.~~
- 21 ~~_____ n. A claim resulting from damage to the property of a patientresident or inmate of a~~
22 ~~state institution.~~
- 23 ~~_____ o. A claim resulting from any injury to a resident or an inmate of a state institution if~~
24 ~~the injury is caused by another resident or inmate of that institution.~~
- 25 ~~_____ p. A claim resulting from environmental contamination, except to the extent that~~
26 ~~federal environmental law permits the claim.~~
- 27 ~~_____ q. A claim resulting from a natural disaster, an act of God, a military action, or an act~~
28 ~~or omission taken as part of a disaster relief effort.~~
- 29 ~~_____ r. A claim for damage to property owned by the state.~~
- 30 ~~_____ s. A claim for liability assumed under contract, except this exclusion does not apply~~
31 ~~to liability arising from a state employee's operation of a rental vehicle if the loss~~

is not covered by the state employee's personal insurance or by the vehicle rental company.

~~t. A claim resulting from an injury to a child residing at the Heart River correctional center, except when the injury is affirmatively caused by the negligent act of a state employee.~~

~~4. An action brought under this chapter must be commenced within the period provided in section 28-01-22.1.~~

~~5. This chapter does not create or allow any claim that does not exist at common law or has not otherwise been created by law as of April 22, 1995.~~

~~**Liability of the state - Limitations - Statute of limitations. (Effective after July 31, 2027)**~~

~~1. The state may only be held liable for money damages for an injury proximately caused by the negligence or wrongful act or omission of a state employee acting within the employee's scope of employment under circumstances in which the employee would be personally liable to a claimant in accordance with the laws of this state, or an injury caused from some condition or use of tangible property under circumstances in which the state, if a private person, would be liable to the claimant. No claim may be brought against the state or a state employee acting within the employee's scope of employment except a claim authorized under this chapter or otherwise authorized by the legislative assembly. The enactment of a law, rule, or regulation to protect any person's health, safety, property, or welfare does not create a duty of care on the part of the state, its employees, or its agents, if that duty would not otherwise exist.~~

~~2. The liability of the state under this chapter is limited to a total of two hundred fifty thousand dollars per person and one million dollars for any number of claims arising from any single occurrence. The state may not be held liable, or be ordered to indemnify a state employee held liable, for punitive or exemplary damages. Any amount of a judgment against the state in excess of the one million dollar limit imposed under this subsection may be paid only if the legislative assembly adopts an appropriation authorizing payment of all or a portion of that amount. A claimant may present proof of the judgment to the director of the office of management and budget who shall include within the proposed budget for the office of management and budget~~

1 a request for payment for the portion of the judgment in excess of the limit under this
2 section at the next regular session of the legislative assembly after the judgment is
3 rendered.

4 ~~3. Neither the state nor a state employee may be held liable under this chapter for any of~~
5 ~~the following claims:~~

6 ~~a. A claim based upon an act or omission of a state employee exercising due care~~
7 ~~in the execution of a valid or invalid statute or rule.~~

8 ~~b. A claim based upon a decision to exercise or perform or a failure to exercise or~~
9 ~~perform a discretionary function or duty on the part of the state or its employees,~~
10 ~~regardless of whether the discretion involved is abused or whether the statute,~~
11 ~~order, rule, or resolution under which the discretionary function or duty is~~
12 ~~performed is valid or invalid. Discretionary acts include acts, errors, or omissions~~
13 ~~in the design of any public project but do not include the drafting of plans and~~
14 ~~specifications that are provided to a contractor to construct a public project.~~

15 ~~c. A claim resulting from the decision to undertake or the refusal to undertake any~~
16 ~~legislative or quasi-legislative act, including the decision to adopt or the refusal to~~
17 ~~adopt any statute, order, rule, or resolution.~~

18 ~~d. A claim resulting from a decision to undertake or a refusal to undertake any~~
19 ~~judicial or quasi-judicial act, including a decision to grant, to grant with conditions,~~
20 ~~to refuse to grant, or to revoke any license, permit, order, or other administrative~~
21 ~~approval or denial.~~

22 ~~e. A claim relating to injury directly or indirectly caused by a person who is not~~
23 ~~employed by the state.~~

24 ~~f. A claim relating to injury directly or indirectly caused by the performance or~~
25 ~~nonperformance of a public duty, including:~~

26 ~~(1) Inspecting, licensing, approving, mitigating, warning, abating, or failing to so~~
27 ~~act regarding compliance with or the violation of any law, rule, regulation, or~~
28 ~~any condition affecting health or safety.~~

29 ~~(2) Enforcing, monitoring, or failing to enforce or monitor conditions of~~
30 ~~sentencing, parole, probation, or juvenile supervision.~~

~~(3) Providing or failing to provide law enforcement services in the ordinary course of a state's law enforcement operations.~~

~~g. "Public duty" does not include action of the state or a state employee under circumstances in which a special relationship can be established between the state and the injured party. A special relationship is demonstrated if all of the following elements exist:~~

~~(1) Direct contact between the state and the injured party.~~

~~(2) An assumption by the state, by means of promises or actions, of an affirmative duty to act on behalf of the party who allegedly was injured.~~

~~(3) Knowledge on the part of the state that inaction of the state could lead to harm.~~

~~(4) The injured party's justifiable reliance on the state's affirmative undertaking, occurrence of the injury while the injured party was under the direct control of the state, or the state action increases the risk of harm.~~

~~h. A claim resulting from the assessment and collection of taxes.~~

~~i. A claim resulting from snow or ice conditions, water, or debris on a highway or on a public sidewalk that does not abut a state-owned building or parking lot, except when the condition is affirmatively caused by the negligent act of a state employee.~~

~~j. A claim resulting from any injury caused by a wild animal in its natural state.~~

~~k. A claim resulting from the condition of unimproved real property owned or leased by the state.~~

~~l. A claim resulting from the loss of benefits or compensation due under a program of public assistance.~~

~~m. A claim resulting from the reasonable care and treatment, or lack of care and treatment, of a person at a state institution where reasonable use of available appropriations has been made to provide care.~~

~~n. A claim resulting from damage to the property of a patient resident or inmate of a state institution.~~

~~o. A claim resulting from any injury to a resident or an inmate of a state institution if the injury is caused by another resident or inmate of that institution.~~

~~p. A claim resulting from environmental contamination, except to the extent that
federal environmental law permits the claim.~~

~~q. A claim resulting from a natural disaster, an act of God, a military action, or an act
or omission taken as part of a disaster relief effort.~~

~~r. A claim for damage to property owned by the state.~~

~~s. A claim for liability assumed under contract, except this exclusion does not apply
to liability arising from a state employee's operation of a rental vehicle if the loss
is not covered by the state employee's personal insurance or by the vehicle rental
company.~~

~~t. A claim resulting from an injury to a child residing at the Heart River correctional
center, except when the injury is affirmatively caused by the negligent act of a
state employee.~~

~~4. An action brought under this chapter must be commenced within the period provided
in section 28-01-22.1.~~

~~5. This chapter does not create or allow any claim that does not exist at common law
or has not otherwise been created by law as of April 22, 1995.~~

SECTION 1. A new subsection to section 54-23.3-04 of the North Dakota Century Code is
created and enacted as follows:

To employ personnel and establish policies and procedures to authorize a child of a
female inmate to reside at the Heart River correctional center under the care and
general control of the female inmate if the child is eighteen months of age or younger.
The policies must include considerations of the residential safety of the child, the
length of time the child may reside within the facility, and treatment or other
penological interest.