

CORRECTIONS, PAROLE AND PROBATION

CHAPTER 172

HOUSE BILL NO. 1044
(Legislative Council)
(Interim Committee on Corrections and Penology)

JAILS

AN ACT to create and enact a new chapter to the North Dakota Century Code, relating to establishing jails, jail contracts, and regional corrections centers; definitions; grades of jail facilities; who may be confined in jail; confinement of state and federal inmates; housing of inmates; detained witnesses and pretrial detainees; commitment papers; jail registers; safety and sanitation; jail administration; organization and management; supervision of inmates; inmate rights; meal payments; inmate personal property; searches; punishment of inmates; prohibited acts; removal of inmates in emergencies; inmate work programs; annoyance of inmates; inmate educational and counseling programs; jail standards and inspections; jail variances; and corrective action and enforcement; to amend and reenact section 19-03.1-23 of the North Dakota Century Code, relating to penalties for unlawful manufacture, delivery, or possession of controlled substances; and to repeal chapter 12-44, and sections 12-61-05, 58-03-04, and 58-03-05 of the North Dakota Century Code, relating to county jails and workhouses; the law enforcement council recommending jail rules; a township's power to establish a jail; newspaper notice of a township jail; and to provide an effective date.

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

SECTION 1. ESTABLISHING JAILS - JAIL 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 jail at county or city expense.
2. Contracting for jail services and use of jail facilities with another county or city maintaining a jail, with a regional corrections center, or with the state or federal government.

3. Establishing and maintaining, pursuant to chapter 54-40 and this Act, a regional corrections center in conjunction with other counties and cities.

SECTION 2. DEFINITIONS.) As used in this chapter:

1. "City jail" means a confinement facility established and maintained by a city.
2. "County jail" means a confinement facility established and maintained by a county.
3. "Inmate" means any person, whether sentenced or unsentenced, who is confined in a jail, regional corrections center, or juvenile detention center.
4. "Jail" means a county or city jail or a regional corrections center.
5. "Jail administrator" means the sheriff, chief of police, administrator, superintendent, director, or other individual serving as the chief executive officer of a jail, regional corrections center, or juvenile detention center.
6. "Jail staff" means custodial personnel with titles such as jailer, deputy, counselor, correctional officer, or any other title, whose duties include the ongoing supervision of the inmates in a jail, regional corrections center, or juvenile detention center.
7. "Juvenile detention center" means a publicly or privately established and maintained facility for the confinement of juvenile inmates.
8. "Regional corrections center" means a facility established and maintained by more than one county or city, or a combination of counties and cities, for the confinement of their inmates, or a county or city facility contracting to confine the inmates of other counties and cities.

SECTION 3. GRADES OF JAIL FACILITIES.) The attorney general shall, following inspection pursuant to section 24 of this Act, grade jails as to length of allowable inmate confinement based upon construction, size, and usage, as follows:

1. "Grade one" means a jail for confining inmates not more than one year.
2. "Grade two" means a jail for confining inmates not more than thirty days.
3. "Grade three" means a jail for confining inmates not more than ninety hours.

SECTION 4. WHO MAY BE CONFINED IN JAIL.) The following persons may be confined in a jail:

1. Persons charged with offenses or ordered by a court to be detained for trial.
2. Persons committed by a court to confinement in order to secure their attendance as witnesses at the trial of any criminal cause.
3. Persons sentenced to imprisonment upon conviction of an offense, and any other person committed as authorized by law.

SECTION 5. CONFINEMENT OF STATE AND FEDERAL INMATES.)

1. Grade one jails may contract for the confinement of persons sentenced to imprisonment in the state penitentiary if sufficient room is not available at the penitentiary.
2. All jails, to which any person is sent or committed by legal process issued by or under the authority of the United States, shall receive such inmate into custody for safe detention until discharged under federal law.
3. The United States shall be charged, for the confinement of its inmates, the amount actually required and expended by the jail maintaining the federal inmates.
4. A jail administrator shall employ at least one jail staff member for the control of federal inmates when the number of federal inmates in custody is six or less. One additional jail staff member may be employed for each additional six federal inmates or fractional number thereof.
5. Whenever required to do so by any United States officer, a jail administrator or jail staff member shall make out under oath a list of federal inmates in custody, with the date of commitment, by whom committed, and for what offenses. Such list shall be transmitted to the United States district court judge of the district in which the jail is located.
6. Any grade one or grade two jail may be used for the safekeeping of a fugitive from justice in accordance with any Act of Congress. Such jail shall be entitled to reasonable compensation from the officer or jurisdiction regaining custody of the fugitive.

SECTION 6. HOUSING OF INMATES.) In grade one and grade two jails, and where practicable, in grade three jails, the following groups of inmates shall be housed separately from each other:

1. Female inmates from male inmates.
2. Juveniles from adults.
3. Persons detained for hearing or trial from inmates under sentence of imprisonment.
4. Persons detained for hearing or trial or under sentence of imprisonment from detained witnesses and other persons detained under civil commitment.
5. Mentally disturbed inmates and other inmates with special needs as determined by the jail administrator from the remainder of the jail population.
6. Special management inmates whose behavior presents a serious threat to the safety and security of the jail, the inmate, the staff, or the general inmate population from the remainder of the jail population.

SECTION 7. DETAINED WITNESSES AND PRETRIAL DETAINEES.) Detained witnesses and persons held in custody awaiting arraignment or trial shall not be restricted in their activities to any extent greater than required to assure their appearance at the arraignment or trial for which they are held, nor shall they be confined in any room or cell area where convicted offenders are actually imprisoned. Witnesses and pretrial detainees shall not be required to do labor other than keeping their living areas clean nor shall they be required to participate in jail programs.

SECTION 8. COMMITMENT PAPERS - COPIES - ENDORSEMENT.) When an inmate is confined by virtue of any process directed to the jail administrator and the process requires a return to the court from which it was issued, the jail administrator shall keep a copy of the process with the return made thereon. The copy, certified by the jail administrator, shall be prima facie evidence of his right to retain the inmate in custody. All such instruments or copies by which an inmate is committed or released shall be endorsed and filed by the jail administrator. The file and its contents shall be delivered to the jail administrator's successor.

SECTION 9. JAIL REGISTER - CONTENTS.) Each jail administrator shall be responsible for a jail register in which shall be entered such inmate information on such forms as the attorney general shall prescribe by rule.

SECTION 10. JAIL REPORT.) Each jail administrator shall make and file a quarterly report from the jail register with the attorney general. The attorney general shall consolidate the jail reports for public release.

SECTION 11. SAFETY AND SANITATION.)

1. Each jail shall comply with state and local fire, sanitation, safety, and health codes.
2. The governing body of a jail, to ensure adequate fire protection, shall install fire fighting equipment at appropriate locations throughout the jail.
3. Each jail shall have a smoke detection system approved by the state fire marshal and tested on a regular basis.
4. Designated exits shall permit prompt evacuation of inmates and jail staff in an emergency.

SECTION 12. ADMINISTRATION - ORGANIZATION - MANAGEMENT.) The governing body of each jail shall:

1. Formulate an operations manual, available to all jail staff, which delineates the written policies and procedures for operating and maintaining the jail.
2. Review and update all policies and procedures in the operations manual at least annually.
3. Specify a single jail administrator in the operations manual to whom all jail staff are responsible. The operations manual shall include the jail administrator's duties, responsibilities, and authority for the management of the jail staff, inmates, programs, and physical plant.
4. Ensure that all full-time jail staff who work in direct and continuing contact with inmates receive jail management training as determined and funded by the law enforcement council or such other training as approved by the law enforcement council.

SECTION 13. SUPERVISION OF INMATES.)

1. Inmates shall be supervised on a twenty-four-hour basis by trained jail staff.
2. Jail 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 jail shall provide for the personal observation of inmates on an irregular but frequent schedule.
4. Each jail shall maintain sufficient staff to perform all functions relating to the security, control, custody, and supervision of inmates.
5. A matron shall be available at all times during which a female inmate is confined.

6. Inmates shall be prohibited from supervising, controlling, or exerting any authority over other inmates.
7. The jail administrator shall maintain a daily written record of information concerning inmates as prescribed by rule.

SECTION 14. INMATE RIGHTS.) The governing body of each jail shall:

1. Ensure and facilitate the right of inmates to have confidential access to attorneys and their authorized representatives.
2. Ensure that inmates are not subjected to discrimination based on race, national origin, color, creed, sex, economic status, or political belief.
3. Ensure equal access by male and female inmates to programs and services.
4. Ensure access to mail, telephone use, and visitors.
5. Ensure that inmates are properly fed, clothed, and housed.
6. Ensure that inmates have adequate medical care.
7. Ensure that inmates may reasonably exercise their religious beliefs.

SECTION 15. MEAL PAYMENTS.) A jail administrator or jail staff member receiving lump sum monthly payments for providing inmate meals shall submit an itemized account of the meal expenses to the governing body of the jail. Any amount of the monthly payment in excess of the itemized account shall be returned to the general operating fund or be given as salary to the person providing the meals, as determined by the governing body of the jail.

SECTION 16. INMATE PERSONAL PROPERTY.) A written, itemized inventory of all personal property taken from an inmate at the time of admission shall be made by jail staff. Such property, including money and other valuables, shall be secured and the inmate given a receipt for all property to be held until the inmate's release unless the inmate requests a different disposition in writing. Upon release, the items of inmate personal property shall be compared with the inventory list, and the inmate shall sign a receipt for the property's return. If the inmate is released for transfer to another jail or correctional facility, the correctional officer transporting the inmate shall sign the receipt. The releasing jail shall maintain a copy of the property receipt for its files.

SECTION 17. SEARCHES.) Searches of inmates should:

1. Be conducted so as to avoid undue or unnecessary force, embarrassment, or indignity to the individual.
2. Be conducted no more frequently than reasonably necessary to control contraband in the institution or to recover missing or stolen property.

SECTION 18. PUNISHMENT OF INMATE.) A jail administrator or jail staff member having charge of an inmate under this Act may use only such means as are necessary to control inmate behavior. If an inmate confined in any jail is disorderly or willfully destroys jail property, the jail administrator may cause the inmate to be secured or kept in solitary confinement for not more than three days for any one offense.

SECTION 19. PROHIBITED ACTS.) A jail administrator or a member of the jail staff shall be guilty of a class A misdemeanor if he or she knowingly:

1. Places or keeps male and female inmates together in the same cell unless they are husband and wife.
2. Gives, sells, or delivers to any inmate, for any cause whatever, any alcoholic beverage unless prescribed by a physician. Any other person, other than a physician or person under the direction of a physician, who gives, sells, or delivers an alcoholic beverage to an inmate shall be guilty of a class A misdemeanor.
3. Uses corporal punishment against an inmate.
4. Uses physical force except as necessary for self-defense or control of inmates, protection of another person from imminent physical attack, or the prevention of riot or escape.

SECTION 20. REMOVAL OF INMATE IN EMERGENCY NOT AN ESCAPE.) If a jail or any adjoining building shall be on fire or another emergency occurs, and the inmates may be exposed to danger, the jail staff shall remove the inmates to a place of safety, and there confine them as long as necessary to avoid the danger. The removal and confinement shall not be deemed an escape of such inmates.

SECTION 21. INMATE WORK PROGRAMS.) The governing body of a grade one jail shall maintain a written inmate work assignment plan that provides for inmate employment, subject to the number of work opportunities available and the maintenance of jail security. The inmate work plan shall provide for inmate employment in jail maintenance and operation, in public works projects, and in various community projects.

SECTION 22. ANNOYANCE OF INMATE PROHIBITED - PENALTY.) The jail administrator or jail staff member in charge of an inmate shall use necessary and proper means to protect an inmate from insults and

annoyance by others and to prevent others from communicating with the inmate while the inmate is at labor or is going to and returning from labor. Any person persisting in insulting and annoying or communicating with an inmate, after being first commanded by the jail administrator or jail staff member to desist, shall be guilty of an infraction.

SECTION 23. INMATE EDUCATIONAL AND COUNSELING PROGRAMS.) The governing body of each grade one and grade two jail shall formulate a plan whereby the resources of the community are utilized to provide inmates with available educational, vocational, counseling and work release opportunities. Each jail administrator shall, if possible, provide opportunities for access to available religious, mental health, alcoholism and addiction counseling by inmates desirous of such counseling.

SECTION 24. JAIL STANDARDS - INSPECTIONS.) The attorney general shall:

1. Prescribe rules and regulations pursuant to chapter 28-32 establishing minimum standards for the construction, operation, and maintenance of public or private juvenile detention centers, county and city jails, and regional corrections centers.
2. Prescribe rules for the care and treatment of inmates.
3. Cause rules and regulations to be made available to inmates or be posted in at least one conspicuous place in each jail, juvenile detention center, or regional corrections center and in each cell or cellblock where they may be read by inmates.
4. Appoint a jail inspector qualified by special experience, education, or training to inspect each jail, juvenile detention center, and regional corrections center at least once each year to determine if the rules and regulations have been complied with. Inspection shall include, but not be limited to, health and safety, fire and life safety, security, rehabilitation programs, recreation, treatment of persons confined, and personnel training.

SECTION 25. INSPECTION REPORT - NOTICE OF NONCOMPLIANCE - HEARING.)

1. A written report of each inspection pursuant to section 24 shall be made by the jail inspector within thirty days following each inspection.
2. Copies of the report shall be sent by the jail inspector to the governing body responsible for the jail, juvenile detention center, or regional corrections center and shall also be submitted to the attorney general for review.

3. The inspection report shall specify those respects in which a jail, juvenile detention center, or regional corrections center does or does not comply with the required minimum standards and rules. The inspection report of noncompliance shall specify the time limits within which such standards or rules are to be met, with consideration being given to the magnitude or seriousness of the deficiencies and their potential effects on the health and safety of inmates, the cost of correction, and other information deemed relevant by the attorney general.
4. Where the nature and extent of deficiencies are such that an immediate order of full or partial closure is deemed necessary by the attorney general to preserve the health and safety of inmates, the period of time for correction may be dispensed with and an order of immediate full or partial closure may be issued by the attorney general.
5. Within thirty days after receipt of a notice or order of immediate closure, the governing body of a jail, juvenile detention center, or regional corrections center may request a review of the determination by the attorney general pursuant to chapter 28-32. The review shall be heard not more than forty-five days following the request, unless the period is extended by the attorney general.

SECTION 26. JAIL VARIANCES.)

1. All jails, juvenile detention centers, and regional corrections centers shall comply with the requirements of the rules and regulations promulgated by the attorney general unless a variance has been granted by the attorney general. Any request for a variance must be in writing and must cite the rule in question, the reasons for requesting the variance, the period of time for the variance, and an explanation of how the policy of the rule will be served without strict compliance with the rule.
2. The attorney general may grant a variance if it is determined that:
 - a. Compliance with the rule would cause extreme hardship as a result of circumstances which are unique to the jail, juvenile detention center, or regional corrections center.
 - b. The jail, juvenile detention center, or regional corrections center can and will substantially comply with the policy of the rule during the time of the variance from the rule.
3. The attorney general shall give written reasons for granting or denying a variance request.

4. In previously existing jails, juvenile detention centers, or regional corrections centers where specific rules cannot be complied with because of alleged difficulty or undue hardship, exception to specific physical plant rules shall be made if the intent of the rule is met and security, supervision of prisoners, established programs, or the safe, healthful, or efficient operation of the jail, juvenile detention center, or regional corrections center is not seriously affected.

SECTION 27. CORRECTIVE ACTION - ENFORCEMENT.)

1. Upon receipt of an inspection report stating noncompliance, the governing body of a jail, juvenile detention center, or regional corrections center shall promptly meet with the attorney general's inspection personnel to consider the inspection report. The governing body shall then initiate appropriate corrective action within ninety days following receipt of the inspection report, or may voluntarily close the jail, juvenile detention center, or regional corrections center or the objectionable portion.
2. If the governing body of a jail, juvenile detention center, or regional corrections center fails to initiate corrective action within ninety days after receipt of the inspection report and notice of noncompliance, or fails to close the jail, juvenile detention center, or regional corrections center or objectionable portion, the attorney general is authorized to petition the district court of the judicial district in which the jail, juvenile detention center, or regional corrections center is located to order the initiation of corrective action or the closure of the jail, juvenile detention center, or regional corrections center. The petition to the district court shall include the inspection report regarding the jail, juvenile detention center, or regional corrections center. The governing body shall have twenty days to respond to the petition and shall serve a copy of the response on the attorney general by certified mail.
3. A hearing shall be held on the petition of the attorney general before the district court. An order shall be rendered by the district court which dismisses the petition, directs that corrective action be initiated in some form by the governing body, or directs the closure of the jail, juvenile detention center, or regional corrections center.

* SECTION 28. AMENDMENT.) Section 19-03.1-23 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-03.1-23. PROHIBITED ACTS A - PENALTIES.)

* NOTE: Section 19-03.1-23 was also amended by section 29 of House Bill No. 1073, chapter 187, and by section 4 of Senate Bill No. 2052, chapter 287.

1. Except as authorized by this chapter, it is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance, provided that any person whose conduct is in violation of sections ~~12-44-25~~, ~~12-44-28~~, 12-46-24, 12-47-21, or 12-51-11 shall not be prosecuted under this subsection. Any person who violates this subsection with respect to:
 - a. a A controlled substance classified in schedules I or II which is a narcotic drug, is guilty of a class A felony;
 - b. ~~any~~ Any other controlled substance classified in schedule I, II, or III, is guilty of a class B felony;
 - c. a A substance classified in schedule IV, is guilty of a class C felony;
 - d. a A substance classified in schedule V, is guilty of a class A misdemeanor.
2. Except as authorized by this chapter, it is unlawful for any person to create, deliver, or possess with intent to deliver, a counterfeit substance, provided that any person whose conduct is in violation of sections ~~12-44-25~~, ~~12-44-28~~, 12-46-24, 12-47-21, or 12-51-11 shall not be prosecuted under this subsection. Any person who violates this subsection with respect to:
 - a. a A counterfeit substance classified in schedule I or II which is a narcotic drug, is guilty of a class A felony;
 - b. ~~any~~ Any other counterfeit substance classified in schedules I, II, or III, is guilty of a class B felony;
 - c. a A counterfeit substance classified in schedule IV, is guilty of a class C felony;
 - d. a A counterfeit substance classified in schedule V, is guilty of a class A misdemeanor.
3. It is unlawful for any person to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by this chapter, provided that any person whose conduct is in violation of sections ~~12-44-25~~, ~~12-44-28~~, 12-46-24, 12-47-21, or 12-51-11 shall not be prosecuted under this subsection. Any person who violates this subsection is guilty of a class C felony; except that any person who

violates this subsection regarding possession of marijuana, shall be guilty of a class A misdemeanor.

SECTION 29. REPEAL.) Chapter 12-44 and sections 12-61-05 and 58-03-04 of the North Dakota Century Code, and section 58-03-05 of the 1977 Supplement to the North Dakota Century Code are hereby repealed.

SECTION 30. EFFECTIVE DATE.) The provisions of this Act shall become effective July 1, 1980.

Approved April 7, 1979

CHAPTER 173

SENATE BILL NO. 2051
 (Legislative Council)
 (Interim Committee on Corrections and Penology)

INDUSTRIAL SCHOOL AND PENITENTIARY CHANGES

AN ACT to amend and reenact sections 12-46-04, 12-47-05, 12-47-06, 12-47-15, 12-47-34, 12-48-03, 12-48-14, and 12-51-09 of the North Dakota Century Code, relating to the appointment and removal of state industrial school officers, the penitentiary officers, the appointment and term of penitentiary officers, the absence of the penitentiary warden and deputy wardens, escapes from the penitentiary, the manner of employing penitentiary inmates, compensation of penitentiary inmates, and the transfer of inmates between the state farm and the penitentiary; and to repeal chapter 12-49 of the North Dakota Century Code, relating to the penitentiary twine and cordage plant.

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

SECTION 1. AMENDMENT.) Section 12-46-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-46-04. APPOINTMENT AND REMOVAL OF OFFICERS - TERM OF OFFICE.) The director of institutions shall appoint the superintendent, and he shall hold his office for a term of ~~four~~ two years and until his successor is appointed and qualified, unless he is sooner removed by the director of institutions. He may be removed by the director of institutions for misconduct, neglect of duty, incompetency, or other proper cause showing his inability or refusal properly to perform the duties of his office, but such removal shall be had only after an opportunity is given to him to be heard before a board consisting of the governor, attorney general, and ~~director of institutions~~ state treasurer upon preferred written charges. Such removal when made, however, shall be final. All other officers and employees shall be appointed by the superintendent, subject to the approval of the director of institutions, and shall hold office at the pleasure of the superintendent. The superintendent shall show in the record of any officer or employee who is discharged by him the reason therefor.

SECTION 2. AMENDMENT.) Section 12-47-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-47-05. OFFICERS OF PENITENTIARY.) The officers of the penitentiary shall be: one warden, who shall be its general superintendent; at least one deputy warden, ~~who shall be chief turnkey, one bookkeeper, one, or in the discretion of the director of institutions and warden, two chaplains,~~ and such other officers, guards, overseers, agents, and employees as may be necessary. ~~The warden and deputy warden shall reside at the penitentiary.~~

SECTION 3. AMENDMENT.) Section 12-47-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-47-06. APPOINTMENT OF OFFICERS - TERM OF OFFICE.) The director of institutions shall appoint the warden, and he shall hold his office for a term of two years and until his successor is appointed and qualified, unless he is sooner removed by the director of institutions. He may be removed by the director of institutions for misconduct, neglect of duty, incompetency, or other proper cause showing his inability or refusal properly to perform the duties of his office, but such removal shall be had only after an opportunity is given to him to be heard before a board consisting of the governor, attorney general, and ~~director of institutions~~ state treasurer upon preferred written charges. Such removal when made, however, shall be final. All other officers and employees shall be appointed by the warden, subject to the approval of the director of institutions, and shall hold office at the pleasure of the warden. The warden shall show in the record of any officer or employee who is discharged by him the reason therefor.

SECTION 4. AMENDMENT.) Section 12-47-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-47-15. ABSENCE OF WARDEN AND DEPUTY WARDENS.) The warden and the deputy wardens shall not be absent from the penitentiary Mandan-Bismarck area at the same time except by permission of the director of institutions. When the warden and the deputy wardens are absent, the warden must designate in writing one of his staff members to act as warden, and must inform the director of institutions, in writing, of his choice prior to each absence.

SECTION 5. AMENDMENT.) Section 12-47-34 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-47-34. ESCAPES FROM PENITENTIARY WARDEN'S CUSTODY - WARDEN MAY OFFER REWARD FOR RECAPTURE - PAYMENT OF REWARD.) The warden, with the approval of the director of institutions, may adopt any measures he may deem proper to aid in the detection and capture of persons escaping from the penitentiary custody of the warden. When an inmate escapes, the warden shall use every means at his command for the apprehension of such person, and for that purpose he may offer a reward of not to exceed one hundred dollars and not less than twenty-five dollars for information leading to such

~~apprehension. If the escape was made possible by the negligence of the warden or any officer under him, the reward thus offered shall be paid by the warden, and the director of institutions is empowered to determine the liability of the warden for such reward, and his determination shall be final.~~

SECTION 6. AMENDMENT.) Section 12-48-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-48-03. MANNER OF EMPLOYING INMATES.) The director of institutions and the warden of the penitentiary shall employ all inmates of the penitentiary in maintaining the penitentiary and the grounds thereof, in carrying on the work of the industries established at the penitentiary or at other state institutions, in doing any work necessary to be done in the erection, repair, or improvement of any of the state buildings, including the executive mansion, and the grounds of such buildings, or in the construction and improvement of the public highways of the state. Inmates may also be employed in work projects for county and local governmental agencies and subdivisions. The prisoners shall be employed, insofar as practicable, on the work to which they are best adapted and on the work that will make it possible for them to acquire skill so that they will be able to earn a livelihood when they are paroled or discharged from the institution. Inmates may be employed outside of the yard of the penitentiary in cultivating and improving any ground belonging thereto. The warden shall be held responsible for the escape of any inmate notwithstanding that such employment is outside the penitentiary if the escape is made possible through the negligence of himself or any of his subordinates.

SECTION 7. AMENDMENT.) Section 12-48-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-48-14. COMPENSATION OF INMATES.) Prisoners engaged in carrying on the work of the penitentiary and its industries shall receive compensation in an amount to be determined by the director of institutions, ~~provided that compensation for labor, except in a prison industry, shall not exceed one dollar per day within the~~ limits of legislative appropriations for that purpose. The warden shall assign a reasonable daily task to be performed by each prisoner, and the compensation of the prisoner shall be determined by the amount of work he performs on such task. All prisoners faithfully performing the daily task assigned shall receive the maximum compensation determined by the director of institutions, and whenever it becomes necessary in carrying on this work for a prisoner to labor in excess of ten hours per day, he shall receive such additional compensation as is allowed by the director of institutions. ~~The compensation of all~~ All prisoners working at the penitentiary industries may receive pay based upon actual production of salable items as determined by the director of institutions, to be paid out of such funds as may be appropriated by the legislative assembly.

SECTION 8. AMENDMENT.) Section 12-51-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-51-09. DIRECTOR OF INSTITUTIONS MAY TRANSFER PERSONS FROM STATE FARM TO PENITENTIARY OR FROM PENITENTIARY TO STATE FARM.) When the director of institutions, either at the time of commitment or at any time thereafter, shall determine that for purposes of safety of other inmates or of the general public or for the purpose of discipline or medical care it is necessary or proper that any person committed to the state farm should be transferred to the state penitentiary, such transfer may be made for such period as the director may deem proper. Where a person who has been committed to the state farm conducts himself in such manner as to interfere with the operation of the farm, or with the welfare or safety of others, and where in the judgment of the director of institutions the best interests of such person or the best interests and welfare of other persons committed to the farm so require, the director may direct that such person be removed from the farm and placed in the penitentiary. The director also may direct that persons who have been sentenced to the penitentiary be transferred to the farm, when such action seems desirable and for the best interests of the person so transferred and in no manner detrimental to the welfare of other persons who have been committed to said farm. The director may cause persons committed to the said farm to be assigned for work incident to the operations of the penitentiary or of any other institutions institution or facility under the control of the said director.

SECTION 9. REPEAL.) Chapter 12-49 of the North Dakota Century Code is hereby repealed.

Approved March 8, 1979

CHAPTER 174

HOUSE BILL NO. 1145
 (Committee on State and Federal Government)
 (At the request of the Director of Institutions)

INDUSTRIAL SCHOOL STUDENTS

AN ACT to amend and reenact sections 12-46-15, 12-52-01, 27-21-01, 27-21-02, 27-21-05, 27-21-07, and 27-21-09 of the North Dakota Century Code, relating to granting full authority for treatment and transfer of students to administrators of the state industrial school; and to provide for public and private aftercare services for students of the state industrial school; change the terminology from public welfare to social service board, and board of administration to director of institutions; and grant the state youth authority the right to contract for services.

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

SECTION 1. AMENDMENT.) Section 12-46-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-46-15. CONTENTS OF ORDER OF COMMITMENT.) Every order of commitment to the North Dakota industrial school grants full authority for treatment and transfer of any student to the administrators of the industrial school as provided by law, however, every order of commitment shall specify the date, as near as may be ascertained by the juvenile court, at which the accused will attain majority. The date so ascertained and specified shall be conclusive for all purposes connected with the North Dakota industrial school. The committing judge shall cause--to--be--transmitted--to--the superintendent, with each person committed--to--the--North--Dakota industrial--school,--a--statement--of--the--nature--of--the--complaint--or charges,--the--person's--social--history,--and--all--records--of investigation--and--evaluation--concerning--such--person.---These statements--and--records--shall--be--sent--to--the--North--Dakota--industrial school make available to the North Dakota industrial school all pertinent data, reports, evaluations, and documents in their possession with respect to the child at the time of commitment or immediately thereafter.

SECTION 2. AMENDMENT.) Section 12-52-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-52-01. DIRECTOR OF INSTITUTIONS TO ADMINISTER AFTERCARE PROGRAM.) The director of institutions may provide an aftercare program and may contract with public and private agencies to provide aftercare services for persons committed to the state industrial school and may establish facilities in, and rules and regulations under, which such persons may receive aftercare.

SECTION 3. AMENDMENT.) Section 27-21-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-21-01. CREATION OF STATE YOUTH AUTHORITY - DIRECTOR.) A state youth authority is hereby created and established with such powers and duties as are prescribed by this chapter. The state youth authority shall be created within the ~~publie--welfare~~ social service board, and its chief administrative officer shall be the executive director of the ~~publie--welfare~~ social service board, or his designee.

SECTION 4. AMENDMENT.) Section 27-21-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-21-02. STATE YOUTH AUTHORITY - POWERS AND DUTIES.) The state youth authority shall be the administrative agency which shall take custody of delinquent and unruly children committed to its care by the juvenile courts. Upon committing a child to the custody of the state youth authority, the committing judge, the juvenile supervisor, law enforcement officers, and other public officials shall make available to the state youth authority all pertinent data in their possession with respect to the child. Upon taking custody of a child, the state youth authority shall process the child through such diagnostic testing and evaluation programs as may be necessary to determine his disposition in his best interest and in the best interest of the state. In doing so, the state youth authority may utilize the psychological, psychiatric, vocational, medical, and other diagnostic and testing services that are available, examine all the pertinent circumstances, and review the reasons for his commitment. Upon completion of the diagnostic testing and evaluation program, the state youth authority shall make disposition of the child as follows:

1. Place him in the custody of his parent, guardian, or in a foster home or suitable private institution licensed by the state for the care of children;
2. Place him in the custody of the state industrial school or in a vocational, training, or similar institution for children or young adults within this state; or
3. Place him in the custody of a vocational, training, or similar institution for children or young adults in another state in the event that adequate facilities for his treatment and rehabilitation are not available within this state and the committing judge concurs in the placement.

Subject to the authority of the committing court and the Uniform Juvenile Court Act, the state youth authority shall retain jurisdiction of the child until he reaches the age of eighteen years, and may change placement of the child at any time it appears to be in his best interest and in the best interest of the state, except when the child is placed in the custody, temporary or otherwise, of the state industrial school, in which case, any change of placement or custody is subject to the recommendation of the superintendent of the industrial school and the approval of the director of institutions.

SECTION 5. AMENDMENT.) Section 27-21-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-21-05. STATE YOUTH AUTHORITY TO REPORT TO COMMITTING JUDGE.) Within ten days after the completion of diagnostic testing and evaluation of a child, the director shall report the results thereof to the committing judge and the disposition made, if any, other than a temporary placement pursuant to section 27-21-03. The director shall review each placement every three months to determine whether a change in placement or program is necessary for the treatment or rehabilitation of the child, and shall report his findings and dispositions to the advisory board and the ~~public~~ welfare social service board.

SECTION 6. AMENDMENT.) Section 27-21-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-21-07. REPORT BY CUSTODIAN TO STATE YOUTH AUTHORITY.) Any person, agency, department, or vocational, training, or other institution, either within or without this state, that has received custody of a child under this chapter, other than temporary custody, shall:

1. Submit to the director, in such form as he may reasonably prescribe, a quarterly report of the progress of the child; and
2. Submit to the director, as required by him and in such form as he may reasonably prescribe, any interim report of the progress of the juvenile he deems necessary in the interest of the child.

Quarterly and interim reports shall be made available to the court, the advisory board, and the ~~public-welfare~~ social service board.

SECTION 7. AMENDMENT.) Section 27-21-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-21-09. COOPERATION WITH OTHER AGENCIES AND DEPARTMENTS OF THE STATE - RIGHT TO INSPECT FACILITIES OF STATE INSTITUTIONS - RIGHT TO EXAMINE CHILDREN.) The state youth authority shall cooperate with and receive the cooperation of the board of pardons, the ~~public-welfare~~ social service board, the ~~board-of-administration~~

director of institutions, the state parole board, the state department of health, and such other agencies and departments of the state as may be necessary to carry out the objectives of this chapter. The state youth authority may inspect at all reasonable times the facilities of those institutions within the state it is authorized to utilize under this chapter, and may examine any child it has placed in the custody of such institution, and may contract with public and private agencies to provide services for them or to retain from them required services to meet the purpose and objective of this chapter.

Approved March 10, 1979

CHAPTER 175

HOUSE BILL NO. 1045
(Legislative Council)
(Interim Committee on Corrections and Penology)

PENITENTIARY INMATE COMMUNICATION

AN ACT to amend and reenact section 12-47-22 of the North Dakota Century Code, relating to the confinement of and communication with penitentiary inmates and removing the prohibition against all communication between male and female inmates; and declaring an emergency.

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

SECTION 1. AMENDMENT.) Section 12-47-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-47-22. DISCIPLINE OF INMATES - CONFINEMENT IN CELLS - COMMUNICATION.) Inmates of the penitentiary shall be confined in separate cells at night whenever there are sufficient cells. ~~All communication between male and female inmates shall be prevented, and--no~~ No communication shall be allowed between inmates of the penitentiary and persons without the penitentiary except under the supervision prescribed by the rules and regulations of the penitentiary. No person, without the consent of the warden, shall bring into or carry out of the penitentiary any writing or information to or from an inmate.

SECTION 2. EMERGENCY.) This Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved February 8, 1979

CHAPTER 176

HOUSE BILL NO. 1248
(Committee on Judiciary)
(At the request of the Pardon Board)

PARDON BOARD EXECUTIVE SESSIONS

AN ACT to amend and reenact section 12-55-03 of the North Dakota Century Code, relating to executive meetings of the pardon board.

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

SECTION 1. AMENDMENT.) Section 12-55-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-55-03. BOARD MEETINGS - WHEN AND WHERE HELD - EXECUTIVE SESSIONS - INFORMATION TO BE RELEASED.) The board of pardons shall hold at least three regular meetings in each calendar year, and may hold such other special meetings at such times as it shall determine necessary for the proper performance of its official duties. The regular meetings shall be held on the fourth Monday of March, the second Monday of August, and the first Monday of December of each year at the penitentiary. All special and emergency meetings of the board shall be held in the executive chamber at the state capitol, or in such other place as may be ordered by the board.

The board may meet in executive session only for those portions of its meetings dealing with information specifically privileged by state or federal law. Notice shall be given to the press and the public of all of the board's meetings and the portions thereof that shall be open and closed. The board's secretary shall, within twenty-four hours of the conclusion of each board meeting, or sooner if possible, release information on the actions taken during the closed portions of the meeting. The information shall cover all applications and other matters, and shall include, but need not be limited to, the name of the applicant, the applicant's crime, the applicant's sentence and the date it was imposed, the date of the board's action, and the reasons for the board's actions.

Approved March 7, 1979