

November 2005

NORTH DAKOTA CENTURY CODE CHAPTERS RELATING TO INMATE HOUSING

At the October 12, 2005, meeting of the Budget Committee on Government Services, the committee requested information regarding statutes that relate to housing state inmates. The following North Dakota Century Code (NDCC) chapters and sections relating to inmates and inmate housing are attached as appendices:

- Appendix A - Chapter 12-44.1 - Jails and Regional Correction Centers.
- Appendix B - Chapter 12-47 - The Penitentiary.
- Appendix C - Chapter 12-48 - Employment of Inmates of the Penitentiary.
- Appendix D - Chapter 12-48.1 - Work Release Programs.
- Appendix E - Chapter 54-23.3 - Department of Corrections and Rehabilitation.
- Appendix F - Section 12.1-32-02.
- Appendix G - Section 29-27-07.

NORTH DAKOTA CENTURY CODE CHAPTER 12-44.1 - JAILS AND REGIONAL CORRECTION CENTERS

North Dakota Century Code Section 12-44.1-06 identifies the different grades of correctional facilities. This section provides that the Department of Corrections and Rehabilitation shall inspect and grade correctional facilities as to the length of allowable inmate confinement based upon construction, size, and usage as follows:

- "Grade 1" means a correctional facility for confining inmates not more than one year;
- "Grade 2" means a correctional facility for confining inmates not more than 90 days; and
- "Grade 3" means a correctional facility for confining inmates not more than 96 hours.

This section also provides that the length of confinement of a prisoner may be temporarily increased on a case-by-case basis in Grades 1 and 2 correctional facilities upon the request of the administrator and the approval of the Department of Corrections and Rehabilitation.

North Dakota Century Code Section 12-44.1-06.3 relates to female inmates in Grade 1 correctional facilities. This section allows, notwithstanding Section 12-44.1-06, a Grade 1 correctional facility that has a contract with the Department of Corrections and Rehabilitation to confine female inmates who have been sentenced to the legal and physical custody of the Department of Corrections and Rehabilitation to confine the female inmate **for more than one year** in accordance with the terms of the contract.

North Dakota Century Code Section 12-44.1-08 relates to the confinement of state and federal inmates. This section allows Grade 1 correctional facilities to contract for the confinement of offenders in the custody of the Department of Corrections and Rehabilitation if sufficient room is not available at the Penitentiary for the purposes of safety, security, discipline, medical care, or when the Department of Corrections and Rehabilitation determines it may be in the best interests of the offender or the department.

North Dakota Century Code Section 12-44.1-09 relates to the housing of inmates. This section requires each correctional facility to adopt a classification system for inmates to provide for the security, safety, and order of the correctional facility and for the safety and security of the community. This section also requires that in Grades 1 and 2 correctional facilities and, where practicable, in Grade 3 correctional facilities, the following groups of inmates must 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, unless authorized to be housed together by the administrator for security, order, or rehabilitation.
4. Persons detained for hearing or trial or under sentence of imprisonment from persons otherwise detained by order of the court, unless authorized to be housed together by the administrator for security, order, or rehabilitation.
5. Inmates who may have special needs as determined by the correctional facility or whose behavior may present a serious threat to the safety or security of the correctional facility, the staff, the inmate, or other inmates.

If the correctional facility has adopted a classification system approved by the Department of Corrections and Rehabilitation, the correctional facility is not required to comply with subsections 3, 4, and 5 of NDCC Section 12-44.1-09.

North Dakota Century Code Section 12-44.1-24 relates to the correctional facility standards and inspections. This section provides that the Department of Corrections and Rehabilitation shall prescribe rules establishing minimum standards for the construction, operation, and maintenance of public or private correctional facilities; prescribe rules for the care and treatment of inmates; cause rules and regulations to be made available to inmates or be posted

in at least one conspicuous place in each correctional facility; and appoint a correctional facility inspector qualified by special experience, education, or training to inspect each correctional facility at least once each year to determine if the rules and regulations have been complied with. The inspection must include health and safety, fire and life safety, security, rehabilitation programs, recreation, treatment of persons confined, and personnel training.

North Dakota Century Code Section 12-44.1-26 allows for correctional facility variances. This section provides that a correctional facility shall comply with the requirements of the rules adopted by the Department of Corrections and Rehabilitation unless a variance has been granted by the department. The Department of Corrections and Rehabilitation may grant a variance if it is determined that compliance with the rule would cause extreme hardship as a result of circumstances which are unique to the correctional facility and the correctional facility will substantially comply with the policy of the rule during the time of variance from the rule. The Department of Corrections and Rehabilitation shall give written reasons for granting or denying a variance request. This section also provides that in previously existing correctional facilities where specific rules cannot be complied with because of alleged difficulty or undue hardship, exception to specific physical plant rules must 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 correctional facility is not seriously affected.

NORTH DAKOTA CENTURY CODE CHAPTER 12-47 - THE PENITENTIARY

North Dakota Century Code Section 12-47-17 relates to offenders committed to the Department of Corrections and Rehabilitation and the records that are to be kept. This section provides that the Department of Corrections and Rehabilitation shall receive any offender who has been convicted and committed to the legal and physical custody of the department when the offender has been delivered to the department with a copy of the judgment and sentence of the court ordering the commitment to the custody of the department.

North Dakota Century Code Section 12-47-18 provides that the director of the Department of Corrections and Rehabilitation shall be responsible for offenders committed to the legal and physical custody of the department. This section also provides that the director shall care for, govern, and make an effort to employ all offenders in conformity with their sentences and in the manner prescribed by law and the rules and regulations lawfully adopted for the conduct of the Penitentiary and the department.

North Dakota Century Code Section 12-47-18.1 provides for the transfer of persons between correctional facilities. This section provides that the director

of the Department of Corrections and Rehabilitation may transfer an offender to any facility under the department's control or contract to transfer an offender to another correctional facility for purposes of safety, security, discipline, medical care, or when the director determines it may be in the best interests of the public, the offender, or the department.

North Dakota Century Code Section 12-47-38 relates to the director of the Department of Corrections and Rehabilitation contracting for housing female inmates. This section provides that if there is no qualified state facility available, the director of the Department of Corrections and Rehabilitation shall contract with a county for the housing of female inmates in the county jail, to the extent space is available in the county jail. This section also provides that the county jail must be designed in a manner that can adequately segregate the female inmates from the male inmates, and any county with which the department contracts must have available and must provide the female inmates access to educational and vocational programs, chemical dependency treatment programs, mental health programs, medical services, and adequate recreational facilities.

NORTH DAKOTA CENTURY CODE CHAPTER 12-48 - EMPLOYMENT OF INMATES OF THE PENITENTIARY

North Dakota Century Code Section 12-48-01 allows the employment of offenders committed to the Department of Corrections and Rehabilitation and Section 12-48-02 provides for the director of the Department of Corrections and Rehabilitation to make the rules regarding the employment of offenders. Section 12-48-02 provides that the director of the department shall establish rules and regulations relating to the care, treatment, **employment**, and management of all offenders committed to the legal and physical custody of the department.

NORTH DAKOTA CENTURY CODE CHAPTER 12-48.1 - WORK RELEASE PROGRAMS

North Dakota Century Code Section 12-48.1-01 provides that the director of the Department of Corrections and Rehabilitation may provide certain services for offenders. This section provides that the director of the department may participate in programs in which offenders committed to the legal and physical custody of the department may be gainfully employed or participate in an educational or other rehabilitation program either in or outside facilities under the control of the department. This section also provides that the director may obtain or contract with separate facilities with minimum security for housing offenders granted release privileges, and in areas where facilities are not within reasonable proximity of the place of employment or training of an

offender with release privileges, the director may arrange for the housing of the offender in local confinement facilities.

**NORTH DAKOTA CENTURY
CODE CHAPTER 54-23.3 -
DEPARTMENT OF CORRECTIONS
AND REHABILITATION**

North Dakota Century Code Section 54-23.3-02 provides that the purpose of the Department of Corrections and Rehabilitation is to include providing for the care, custody, discipline, training, and treatment of persons committed to state correctional facilities and programs and to coordinate and provide a continuum of correctional services to both adult and juvenile clients.

North Dakota Century Code Section 54-23.3-04 identifies the powers and duties of the director of the Department of Corrections and Rehabilitation. Duties provided under this section include developing necessary programs and services for adult and juvenile offenders, within legislative appropriations, providing for their treatment and rehabilitation and recognizing their special needs; promoting the development of alternatives to conventional incarceration for those offenders who can be dealt with more effectively in less restrictive, community-based facilities and programs; and contracting for correctional services, and to provide such services, with the United States, Canada, other states, and any of their governmental subdivisions and agencies and with another agency or governmental unit in this state, or with any private or public correctional or treatment facility or agency.

**OTHER NORTH DAKOTA
CENTURY CODE SECTIONS**

North Dakota Century Code Section 12.1-32-02 allows sentencing alternatives, credit for time in custody, and diagnostic testing. This section provides

that a term of imprisonment, including intermittent imprisonment, is:

1. In a state correctional facility in accordance with Section 29-27-07, in a regional corrections center, or in a county jail if convicted of a felony or a Class A misdemeanor.
2. In a county jail or in a regional corrections center if convicted of a Class B misdemeanor.
3. In a facility or program deemed appropriate for the treatment of the individual offender, including available community-based programs.
4. In the case of persons convicted of an offense who are under 18 years of age at the time of sentencing, the court is limited to sentencing the minor defendant to a term of imprisonment in the custody of the Department of Corrections and Rehabilitation.

North Dakota Century Code Section 29-27-07 relates to the commitment of offenders to the Department of Corrections and Rehabilitation and the place of confinement. This section provides that if a judge of the district court imposes a term of imprisonment to a state correctional facility upon conviction of a felony or a Class A misdemeanor, the judge may not designate a state correctional facility in which the offender is to be confined but shall commit the offender to the legal and physical custody of the Department of Corrections and Rehabilitation. This section also provides that after assuming custody of the convicted person, the Department of Corrections and Rehabilitation may transfer the inmates from one correctional facility to another for the purposes of safety, security, discipline, medical care, or if the department determines it is in the best interest of the public, the inmate, or the department.

ATTACH:7

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. "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.
3. "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.
4. "Inmate" means any person, whether sentenced or unsentenced, who is detained or confined in a correctional facility.
5. "Jail" means a correctional facility, including a county or city jail or a regional corrections center.
6. "Juvenile detention center" means a publicly or privately established and maintained correctional facility for the detention of juveniles. The term does not include the North Dakota youth correctional center.
7. "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.
8. "Trained correctional facility staff" means correctional personnel who have completed a course of training approved by the department of corrections and rehabilitation.

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 and this chapter, a correctional facility in conjunction with other counties and cities.

A county or city may contract with a county or city of another state for the confinement of lawfully committed county or city inmates from that state in a North Dakota correctional facility or for the confinement of lawfully committed North Dakota inmates in a county or city correctional facility of such other state. 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. A city or county may contract for the confinement of inmates lawfully sentenced by a tribal court. 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.

12-44.1-03. Safety and sanitation.

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

12-44.1-04. Administration - Organization - Management. The administrator of each correctional facility shall:

1. Formulate an operations manual, available to all correctional facility staff, which delineates the written policies and procedures for operating and maintaining the correctional facility.
2. Review and update all policies and procedures in the operations manual at least annually.
3. Specify an administrator in the operations manual to whom all correctional facility staff are responsible. The operations manual shall include the administrator's duties, responsibilities, and authority for the management of the correctional facility staff, inmates, programs, and physical plant.
4. Ensure that correctional facility staff who work in direct and continuing contact with inmates receive correctional facility training as determined and approved by the department of corrections and rehabilitation.

12-44.1-05. Meal payments. An administrator or correctional facility 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 correctional facility. 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 correctional facility.

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.

12-44.1-06.1. Correctional facilities standards. Grade two and grade three correctional facilities do not need to provide outdoor recreation areas or exercise rooms separate from dayrooms. Correctional facilities may allow contact visitation subject to the safety, security, and administration requirements of the correctional facility.

12-44.1-06.2. Female inmates in grade one correctional facilities. Expired under S.L. 2003, ch. 666, § 11.

12-44.1-06.3. (Effective through June 30, 2007) Female inmates in grade one correctional facilities. Notwithstanding section 12-44.1-06, a grade one correctional facility that has a contract with the department of corrections and rehabilitation to confine female inmates who have been sentenced to the legal and physical custody of the department of corrections and rehabilitation may confine the female inmate for more than one year in accordance with the terms of the contract. A female inmate who has been sentenced to the legal and physical custody of the department of corrections and rehabilitation and who is confined in a grade one correctional facility under a contract with the department of corrections and rehabilitation has the same rights to sentence reduction for good and meritorious conduct and to pardon and parole as an inmate confined in a department of corrections and rehabilitation prisons division facility.

12-44.1-07. Who may be confined in correctional facilities. The following persons may be confined in a correctional facility:

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 or detained as authorized by law.

12-44.1-08. Confinement of state and federal inmates.

1. Grade one correctional facilities may contract for the confinement of offenders in the custody of the department of corrections and rehabilitation if sufficient room is not available at the penitentiary, for purposes of safety, security, discipline, medical care, or when the department of corrections and rehabilitation determines it may be in the best interests of the offender or the department of corrections and rehabilitation.
2. A correctional facility to which a person is sent or committed by legal process issued by or under the authority of the United States shall receive such person into custody for safe detention until discharged under federal law.
3. A correctional facility detaining or confining federal inmates is entitled to compensation in accordance with fee schedules established by the United States.
4. A grade one or grade two correctional facility may be used for the detention of a fugitive from justice in accordance with any act of Congress or the laws of another state. The correctional facility is entitled to reasonable compensation from the officer or jurisdiction regaining custody of the fugitive.

12-44.1-09. Housing of inmates. Each correctional facility shall adopt a classification system for inmates to provide for the security, safety, and order of the correctional facility and for the safety and security of the community. If the correctional facility has adopted a classification

system approved by the department of corrections and rehabilitation, the correctional facility is not required to comply with subsections 3, 4, and 5 of this section. In grade one and grade two correctional facilities and, where practicable, in grade three correctional facilities, the following groups of inmates must 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, unless authorized to be housed together by the administrator for security, order, or rehabilitation.
4. Persons detained for hearing or trial or under sentence of imprisonment from persons otherwise detained by order of the court, unless authorized to be housed together by the administrator for security, order, or rehabilitation.
5. Inmates who may have special needs as determined by the correctional facility or whose behavior may present a serious threat to the safety or security of the correctional facility, the staff, the inmate, or other inmates.

12-44.1-10. Detained witnesses and pretrial detainees. Detained witnesses and persons held in custody awaiting arraignment or trial may not be restricted in their activities to any extent greater than required to maintain order and security and to assure appearance at arraignment or trial. 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 correctional facility programs.

12-44.1-11. Commitment papers - Copies - Endorsement. When an inmate is confined by virtue of any process directed to the administrator and the process requires a return to the court from which it was issued, the administrator shall keep a copy of the process with the return made thereon. The copy, certified by the administrator, is prima facie evidence of the administrator's right to retain the inmate in custody. All instruments or copies by which an inmate is committed or released shall be endorsed and filed by the administrator. The file and its contents shall be delivered to the administrator's successor.

12-44.1-12. Inmate personal property. A written, itemized inventory of all personal property taken from an inmate at the time of admission shall be made by correctional facility staff. The 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 correctional facility, the correctional officer transporting the inmate shall sign the receipt. The releasing correctional facility shall maintain a copy of the property receipt for its files.

12-44.1-12.1. Establishment of inmate accounts - Withholding funds for inmate financial obligations - Health care costs - Payment of funds to inmate upon release.

1. The correctional facility administrator shall establish an inmate account for each inmate.
2. The correctional facility administrator may withdraw funds from an inmate's account to meet the inmate's legitimate financial obligations, including child support and restitution. The correctional facility administrator may withdraw funds from the inmate's account to pay for the inmate's medical, dental, and eye care costs while the inmate is incarcerated in the correctional facility. Before the funds may be withdrawn, the inmate must first receive written notice and be provided a hearing with the right to correctional facility staff assistance and the right to review by the

correctional facility administrator. No written notice or hearing is required if the withdrawal of funds is being made to meet the inmate's child support obligation.

3. A correctional facility administrator may collect fees from inmates to offset health care costs as follows:
 - a. For a medical visit, up to ten dollars per medical visit made at the request of an inmate.
 - b. For self-inflicted injuries, the total amount of medical costs incurred.
 - c. For necessary health care services, the correctional facility may seek reimbursement from the inmate up to the total amount of health care costs incurred. If the inmate has health insurance coverage, a medical or health care provider must file a claim for reimbursement from the health insurance coverage carrier. A correctional facility may not assess an inmate for any costs associated with an intake health care assessment and related testing or for an examination of an inmate made at the request of the facility.
 - d. For elective health care requested by an inmate and as allowed by correctional facility policy, the inmate is responsible for the amount of the costs incurred.
 - e. A correctional facility may not deny necessary and nonelective medical and health care to an inmate who does not have health insurance or does not have the ability to pay the costs of the medical or health care.
4. The correctional facility administrator shall pay an inmate all funds in the inmate's account when the inmate is discharged from the correctional facility or when the inmate is transferred to another correctional facility, less the inmate's outstanding obligations to the correctional facility.
5. This section does not limit or alter the provisions of chapter 14-09 relating to income withholding orders for child support.

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 staff to perform all functions relating to the security, control, custody, and supervision of inmates.
5. A correctional facility female staff member 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 correctional facility shall maintain a daily written record of information concerning inmates.

12-44.1-14. Inmate rights. Subject to reasonable safety, security, discipline, and correctional facility administration requirements, the administrator of each correctional facility shall:

1. Ensure inmates 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 available through the correctional facility.
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.

12-44.1-15. Searches. Searches of inmates may only be conducted:

1. Without undue or unnecessary force or indignity to the person searched.
2. When reasonably necessary to control contraband in the institution or to recover missing or stolen property.

12-44.1-16. Annoyance of inmate prohibited - Penalty. Repealed by S.L. 1997, ch. 113, § 29.

12-44.1-17. Inmate educational and counseling programs. A correctional facility may utilize the resources of the community to provide inmates with available educational, career and technical education, counseling, and work release opportunities. A correctional facility may, if possible, and subject to reasonable safety, security, discipline, and correctional facility administration requirements, provide opportunities for access to available religious, mental health, alcoholism, and addiction counseling by inmates desirous of such counseling.

12-44.1-18. Inmate work programs. A correctional facility may maintain a written inmate work assignment plan that provides for inmate employment, subject to the number of work opportunities available and the maintenance of reasonable safety, security, discipline, and correctional facility administration requirements. The inmate work plan may provide for inmate employment in correctional facility maintenance and operation, in public works projects, or in community service projects.

12-44.1-18.1. Inmate work release program. A correctional facility may provide for a work release program for inmates unless the court has ordered that an inmate may not receive work release. Work release projects may include public service and community service projects, and may utilize any particular skill or trade of participating inmates. The correctional facility shall take measures to maintain correctional facility security and safety and to protect the safety of the public.

12-44.1-18.2. Work release program - Room and board costs to be paid by inmate. Any inmate who participates in a work release program shall pay the correctional facility for the room and board costs incurred by the inmate while confined in the correctional facility, residential halfway house, or similar alternative facility. The administrator shall determine the amount of meal and lodging costs to be paid by the inmate. The amount to be paid by the inmate while confined in a correctional facility may not exceed fifteen dollars per day or the funds earned by the inmate, whichever is less. The amount to be paid by the inmate while placed in a residential

halfway house or similar alternative facility may not exceed the actual cost per day or the funds earned by the inmate, whichever is less.

12-44.1-19. Removal of inmate in emergency not an escape. If a correctional facility or any adjoining building shall be on fire or another emergency occurs, and the inmates may be exposed to danger, the correctional facility 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.

12-44.1-20. Punishment of inmate. A correctional facility shall adopt rules for safety, security, discipline, and correctional facility administration. If an inmate violates any of the rules of a correctional facility, the correctional facility may impose disciplinary sanctions in accordance with its rules.

12-44.1-21. Prohibited acts.

1. It is unlawful to deliver or administer any alcoholic beverage or 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.
2. A person detained in a correctional facility may not possess any controlled substance or alcoholic beverage unless the substance or beverage is prescribed in accordance with the prescription or orders of a licensed physician, and the approval, except in emergency circumstances, of the correctional facility administrator.
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.
4. A person who violates 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. 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.

12-44.1-22. Correctional facility register - Contents. Each administrator is responsible for a correctional facility register in which must be entered such inmate information on such forms as the department of corrections and rehabilitation shall prescribe by rule.

12-44.1-23. Jail report. Repealed by S.L. 1997, ch. 113, § 29.

12-44.1-24. Correctional facility standards - Inspections. The department of corrections and rehabilitation shall:

1. Prescribe rules establishing minimum standards for the construction, operation, and maintenance of public or private correctional facilities.
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 correctional facility.

4. Appoint a correctional facility inspector qualified by special experience, education, or training to inspect each correctional facility at least once each year to determine if the rules and regulations have been complied with. Inspection must include health and safety, fire and life safety, security, rehabilitation programs, recreation, treatment of persons confined, and personnel training.

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 correctional facility inspector 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 those respects in which a correctional facility does or does not comply with the required minimum standards and rules. The inspection report of noncompliance must 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 department of corrections and rehabilitation.
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 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 department of corrections and rehabilitation.
5. Within thirty days after receipt of a notice or order of immediate 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 department of corrections and rehabilitation.

12-44.1-26. Correctional facility variances.

1. A correctional facility shall comply with the requirements of the rules adopted by the department of corrections and rehabilitation unless a variance has been granted by the department of corrections and rehabilitation. 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 department of corrections and rehabilitation 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 correctional facility.
 - b. The correctional facility will substantially comply with the policy of the rule during the time of the variance from the rule.
3. The department of corrections and rehabilitation shall give written reasons for granting or denying a variance request.
4. In previously existing correctional facilities where specific rules cannot be complied with because of alleged difficulty or undue hardship, exception to specific physical plant rules must 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 correctional facility is not seriously affected.

12-44.1-27. Corrective action - Enforcement.

1. Upon receipt of an inspection report stating noncompliance, the administrator of a correctional facility shall promptly meet with the department of corrections and rehabilitation'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 correctional facility or the objectionable portion.
2. If the governing body of a correctional facility fails to initiate corrective action within ninety days after receipt of the inspection report and notice of noncompliance, or fails to close the correctional facility or objectionable portion, the director of the department of corrections and rehabilitation is authorized to petition the district court of the judicial district in which the correctional facility is located to order the initiation of corrective action or the closure of the correctional facility. The petition to the district court must include the inspection report regarding the correctional facility. The governing body shall have twenty days to respond to the petition and shall serve a copy of the response on the director of the department of corrections and rehabilitation by certified mail.
3. A hearing must be held on the petition of the department of corrections and rehabilitation before the district court. An order must 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 correctional facility.

12-44.1-28. Correctional facility files and records confidentiality.

1. The medical, psychological, and treatment records of an inmate are confidential and may not be disclosed directly or indirectly to any person, organization, or agency, except as provided in this section. A court may order the inspection of the records, or parts of the records, upon an application to the court and a showing that there is a proper and legitimate purpose for the inspection and the provision of written authorization from the inmate for the inspection. 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, medical, psychological, or treatment records may be inspected by or disclosed to the following persons, organizations, or agencies without prior authorization from the inmate or an order from the court:
 - a. A criminal justice agency as defined in subsection 4 of section 44-04-18.7.
 - b. A division, department, official, or employee of the department of corrections and rehabilitation.
 - c. A federal, state, regional, county, or municipal correctional facility receiving physical custody of an inmate from the original correctional facility.
 - d. A municipal or district court.
 - e. The department of human services, a public hospital or treatment facility, or a licensed private hospital or treatment facility.
2. a. A person, agency, or institution governed by statutory confidentiality requirements and receiving information or records under this section shall maintain the confidentiality requirements.

- b. Except as provided in subdivision a of this subsection, a person, organization, or agency receiving confidential records under subsection 1 may not redisclose the records and must maintain the confidentiality of the records.
3. The employment or work release status of an inmate is an open record.
4. Records with respect to inmate identification, charges, criminal convictions, bail information, and intake and projected release dates are open records.
5. Records with respect to a sentenced inmate's institutional discipline and conduct and protective management are exempt records as defined under section 44-04-17.1.
6. Institutional discipline and conduct and protective management records of all other inmates are confidential records and may only be disclosed as provided in subsection 1.

12-47-01. Penitentiary - Location - Purpose. The penitentiary located at the city of Bismarck in the county of Burleigh is the general penitentiary and prison of this state for the punishment and reformation of offenders against the laws of this state. The director of the department of corrections and rehabilitation may establish affiliated facilities at other locations throughout the state within the limits of legislative appropriations. The department shall confine, employ, and govern all offenders committed to the legal and physical custody of the department in the manner provided by law.

12-47-02. Jurisdiction over penitentiary and affiliated facilities. The penitentiary and the grounds and premises thereof, for the purpose of all judicial proceedings, is within and a part of the county of Burleigh, and the courts of that county have jurisdiction of all crimes or public offenses committed within the penitentiary. The jurisdiction of a crime or public offense committed within an affiliated facility of the penitentiary is in the county where the affiliated facility is located.

12-47-03. Who may serve process within penitentiary. Repealed by S.L. 1999, ch. 114, § 3.

12-47-04. Commitment to the legal and physical custody of the department of corrections and rehabilitation is at hard labor. In all cases in which a district court has committed an offender to the legal and physical custody of the department of corrections and rehabilitation it shall be at hard labor, whether or not so designated by the district court.

12-47-05. Officers of penitentiary. The officers of the penitentiary include a warden, who is its general superintendent; at least one deputy warden; and such other officers, agents, and employees as may be necessary. The director of the division of adult services, with the concurrence of the director of the department of corrections and rehabilitation, may appoint a warden for an affiliated facility of the penitentiary. A warden of an affiliated facility of the penitentiary is under the supervision and direction of the director of the division of adult services and has those powers and duties established by the director of the division of adult services which are consistent with this chapter, chapter 12-48, and chapter 12-48.1.

12-47-06. Appointment of officers. The director of the division of adult services with the concurrence of the director of the department of corrections and rehabilitation shall appoint the warden. The warden may be removed by the director of the division of adult services with the approval of the director of the department of corrections and rehabilitation for misconduct, neglect of duty, incompetency, or other proper cause showing an inability or refusal to properly perform the duties of the office. All other officers and employees must be appointed by the warden, subject to the approval of the director of the division of adult services. The warden shall show in the record of any officer or employee who is discharged by the warden the reason therefor.

12-47-07. Qualification of warden, officers, and employees. Repealed by S.L. 1999, ch. 114, § 3.

12-47-08. Salary of warden and other officers. The warden shall receive a salary to be fixed by the director of the division of adult services with the approval of the director of the department of corrections and rehabilitation within the limits of the legislative appropriation. All other officers and employees of the penitentiary shall receive salaries as determined by the warden and approved by the director of the division of adult services.

12-47-09. Officers to be furnished food supplies. Repealed by S.L. 1971, ch. 501, § 2.

12-47-10. Officers and employees exempt from jury duty. Repealed by S.L. 1977, ch. 113, § 1.

12-47-11. Powers and duties of warden. The warden, under the direction of the director of the department of corrections and rehabilitation, shall have the charge, custody, and control of the penitentiary and offenders committed to the legal and physical custody of the department and placed by the department at the penitentiary, together with all lands, buildings, furniture, tools, implements, stock, provisions, and every other species of property pertaining to the penitentiary or within the premises of the penitentiary. The warden shall superintend and be responsible for the policing of the penitentiary and the discipline of the offenders placed by the department at the penitentiary.

12-47-12. Warden to make rules. The warden, subject to the approval of the director of the department of corrections and rehabilitation, shall make rules not in conflict with the laws of this state and shall prescribe penalties for violation of the rules:

1. For the admission of visitors, but admission of visitors may not be limited to less than four days in each week, subject to the space limitations of the facility.
2. For the government of officers and employees of the penitentiary.
3. For the conduct of offenders imprisoned in the penitentiary.

A printed copy of the rules must be furnished to each offender imprisoned in the penitentiary at the time of admission and to each official or employee of the penitentiary at the time of hire. Two copies of the rules must be furnished to the state law library for the use of the state officials and the public. The rules must be explained to an offender who cannot read English.

12-47-13. Warden to keep records. The warden shall require that a daily record is kept of all transactions of the penitentiary. The warden shall require that records are kept for inmate discipline, inmate grievances, and staff discipline. The warden shall provide a report of the penitentiary to the director of the department of corrections and rehabilitation upon the request of the director.

12-47-14. Deputy warden - Duties. Whenever there is a vacancy in the office of warden or the warden is absent, all the duties of the warden shall devolve upon and be performed by the deputy wardens until the vacancy is filled or the warden returns.

12-47-15. Absence of warden and deputy wardens. When the warden and the deputy wardens are absent, the warden must designate a staff member to act as warden and must inform the director of the division of adult services, prior to each absence, who will act as warden.

12-47-16. Duties of employees - May not engage in procuring pardon. All officers and persons employed in and about the penitentiary shall perform such duties in the oversight and charge of the penitentiary, the use and care of the property belonging thereto, and the custody, discipline, government, and employment of the inmates as shall be required of them by the warden, in conformity to law and the rules and regulations of the penitentiary. No officer or employee shall be engaged directly or indirectly in procuring a pardon for any person confined therein. Any officer or employee violating the provisions of this section shall be removed immediately.

12-47-17. Offenders committed to department of corrections and rehabilitation - Records to be kept. The department of corrections and rehabilitation shall receive any offender who has been convicted and committed to the legal and physical custody of the department when the offender has been delivered to the department together with a copy of the judgment and sentence of the court ordering the commitment to the custody of the department. The warden, immediately upon the receipt of an offender assigned by the department to the penitentiary, shall enter in the record of the penitentiary, the name, age, sex, color, height, nationality, and every other fact, characteristic, and condition, natural or artificial, that in any way

may tend to aid in the identification of the offender. After an intake, evaluation, and classification process, the department shall assign the offender to the penitentiary, another correctional facility, or other placement.

12-47-18. Director has custody of inmates pursuant to terms of sentence. The director of the department of corrections and rehabilitation shall be responsible for offenders committed to the legal and physical custody of the department. The director shall retain, confine, and imprison each offender committed to the department until the expiration of the offender's sentence or until the offender is lawfully entitled to release. The director shall care for, govern, and make an effort to employ all offenders in conformity with their sentences and in the manner prescribed by law and the rules and regulations lawfully adopted for the conduct of the penitentiary and the department.

12-47-18.1. Transfer of persons between correctional facilities. The director of the department of corrections and rehabilitation may transfer an offender to any facility under the department's control or contract to transfer an offender to another correctional facility for purposes of safety, security, discipline, medical care, or when the director determines it may be in the best interests of the public, the offender, or the department.

12-47-19. Food of inmates. Repealed by S.L. 1999, ch. 114, § 3.

12-47-20. Beds and clothing of inmates. Repealed by S.L. 1999, ch. 114, § 3.

12-47-21. Alcoholic beverages and controlled substances prohibited - Physician's orders - Use of tobacco - Weapons and firearms - Penalty.

1. It is unlawful for any person to willfully:

- a. Manufacture or possess with intent to manufacture or deliver, a controlled substance, on or within any premises under the control of the department of corrections and rehabilitation or any of its divisions.
- b. Deliver a controlled substance to any inmate of the penitentiary, or to any other person for redelivery to an inmate of the penitentiary. This subsection does not apply to the possession, delivery, or administration of controlled substances by the penitentiary pharmacy or agent of the penitentiary pharmacy or in accordance with the orders or prescription of a licensed physician and the approval, except in emergency circumstances, of the warden. Any person who violates this subsection is guilty of a class A felony.

2. It is unlawful for a penitentiary inmate to possess any controlled substance except in accordance with the prescription or orders of a licensed physician. It is unlawful for a penitentiary inmate to possess alcohol or alcoholic beverages. It is unlawful for a penitentiary inmate to possess any tobacco except when the warden has authorized possession of tobacco for religious purposes or when on authorized release from the penitentiary. Any penitentiary 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. It is unlawful for any person to willfully deliver alcohol or alcoholic beverages to a penitentiary inmate. It is unlawful for any person to willfully deliver tobacco to an inmate except when the warden has authorized delivery of tobacco for religious purposes or when the inmate is on an authorized release from the penitentiary. Any person who violates this subsection by:

- a. Delivery of alcohol or alcoholic beverages to a penitentiary inmate is guilty of a class A misdemeanor.
 - b. Delivery of tobacco to a penitentiary inmate is guilty of a class B misdemeanor.
4. It is unlawful for any person other than a penitentiary inmate to willfully possess a controlled substance on or within any property under the control of the department of corrections and rehabilitation or any of its divisions except when the person is an authorized agent of the penitentiary pharmacy or except in accordance with the orders or prescription of a licensed physician. Any person who violates this subsection is guilty of a class B felony.
 5. It is unlawful for a penitentiary inmate to willfully procure, make, or possess any object, including a shard made of any material or any weapon, firearm, ammunition, or explosive material, intended to be used for an assault on another person or to damage property. Any penitentiary inmate 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 any person to deliver or provide to a penitentiary inmate any object intended to be used for an assault on another person or to damage penitentiary property. Any 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.

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. 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.

12-47-23. Warden to maintain discipline. All necessary means shall be used, under the direction of the warden, to maintain order in the penitentiary, enforce obedience, suppress insurrections, and prevent escapes.

12-47-24. Penitentiary inmates may be restrained. Whenever any inmate of the penitentiary offers or attempts to do any injury to any other person or property, either within the grounds or premises of the penitentiary or at any other place where said inmate may be, or whenever any inmate disobeys or resists any reasonable command of any officer or guard, any

officer or guard may use reasonable means to defend himself or another or to enforce the observance of discipline.

12-47-25. Punishment for infraction may be alleviated. Whenever any inmate who is being punished for any infraction of the rules and regulations of the penitentiary by being deprived of any of the ordinary privileges enjoyed by the other inmates, periodically or otherwise, conducts himself in a peaceful, obedient, and industrious manner, the warden may suspend the further infliction of such punishment during his good behavior.

12-47-26. Uniform kindly treatment of inmates. The warden and all officers of the penitentiary uniformly shall treat the inmates thereof with kindness, and the warden shall require of the officers and guards that, in the execution of their respective duties, they in all cases shall refrain from boisterous and unbecoming language in giving their orders and commands. No corporal or other painful or unusual punishment shall be inflicted upon the inmates of the penitentiary for violation of the rules and regulations thereof.

12-47-27. Transfer of penitentiary inmate to state hospital or other treatment facility - Evaluation procedure - Right to administrative hearing - Written order by warden. Repealed by S.L. 2003, ch. 97, § 1.

12-47-28. Copy of written order by warden delivered to superintendent of state hospital or other facility - Superintendent to receive inmate - Filing of receipt. Repealed by S.L. 2003, ch. 97, § 1.

12-47-29. Recovery of person transferred - Duty of superintendent or officer - Return or release - Allowance on discharge. Repealed by S.L. 2003, ch. 97, § 1.

12-47-30. Expense of transferring inmates to and from state hospital. Repealed by S.L. 1975, ch. 111, § 6.

12-47-31. Discharge of offenders - Clothing - Transportation. The department of corrections and rehabilitation shall provide an offender released from the department appropriate clothing and transportation to a point within the state, based upon need.

12-47-32. Cash payments - Office of management and budget may issue warrant. Repealed by S.L. 1999, ch. 114, § 3.

12-47-33. Warden may issue warrants of penitentiary. Repealed by S.L. 1989, ch. 156, § 54.

12-47-34. Escapes from director's custody - Director may offer reward for recapture - Payment of reward - Use of firearms.

1. The director of the department of corrections and rehabilitation shall adopt measures necessary for the detection and capture of offenders escaping from the custody of the department. If an offender in the custody of the department escapes, the director shall use all lawful means for the apprehension of the offender. The director may offer a reward not to exceed one thousand dollars and not less than one hundred dollars for information leading to apprehension of an offender who has escaped from the custody of the department.
2. The director may authorize correctional officers trained in the use of firearms:
 - a. To carry firearms when in the course of their duties on penitentiary premises.
 - b. To carry firearms, including keeping and carrying loaded firearms in motor vehicles, when transporting offenders in the custody of the department.

- c. To carry firearms, including keeping and carrying loaded firearms in motor vehicles, for the prevention of escapes or for the apprehension of offenders who have escaped from the custody of the department.
3. Sections 62.1-02-05, 62.1-02-10, and 62.1-03-01 do not apply to the possession and use of firearms by authorized and trained correctional officers acting in the course of their employment under this section.

12-47-35. Governor may contract for transfer to federal institution. Repealed by S.L. 1987, ch. 634, § 2.

12-47-36. Records exempt - Confidential - Exceptions.

1. The case history records of the department of corrections and rehabilitation or its divisions or departments relating to persons in the custody or under the supervision and management of the division of adult services of the department of corrections and rehabilitation are exempt records as defined in section 44-04-17.1. Upon application to the district court, with service of the application on the department of corrections and rehabilitation and opportunity for the department to submit a written response, the court may order the inspection of a case history record unless there is a showing by the department of corrections and rehabilitation that a proper and legitimate reason exists for denying inspection of the case history record. If the court issues an order allowing inspection, the court shall allow the department of corrections and rehabilitation to remove all identifying information that may create a risk of harm to property or to any person. As used in this section, "case history record" means any record of a person in the custody or under the supervision and management of the division of adult services of the department of corrections and rehabilitation except for medical, psychological, and treatment records and legal files. The term includes inmate disciplinary proceedings, administrative and disciplinary segregation placements, institutional and criminal investigation reports, supervision histories, job placements, education programs, inmate financial accounts under section 12-48-15, and protective management cases.
2. The medical, psychological, and treatment records of the department of corrections and rehabilitation or its divisions or departments relating to persons in the custody or under the supervision and management of the division of adult services of the department of corrections and rehabilitation are confidential, and may not be disclosed directly or indirectly to any person, organization, or agency, except as otherwise provided in this section. A district court may order the inspection of medical, psychological, and treatment records, or parts of those records, upon application to the court and a showing that there is a proper and legitimate purpose for the inspection of the records, with service of the application on the department of corrections and rehabilitation and opportunity for the department of corrections and rehabilitation to submit a written response.
3. Notwithstanding any other provisions of law relating to privilege or confidentiality, except for the confidentiality requirements of federal drug and alcohol treatment and rehabilitation laws, the following persons, organizations, or agencies without prior application to the court may inspect case history, medical, psychological, or treatment records:
 - a. The governor;
 - b. The pardon advisory board, if the governor has appointed a pardon advisory board;
 - c. The parole board;

- d. Any division, department, official, or employee of the department of corrections and rehabilitation;
 - e. Another state receiving a parolee or probationer under the provisions of chapter 12-65;
 - f. A federal, state, regional, or county correctional facility receiving physical custody of a person under the legal custody of the department of corrections and rehabilitation;
 - g. The employees in the office of the attorney general and investigators, consultants, or experts retained by the state;
 - h. The risk management division of the office of management and budget for the purpose of investigating and defending actions or claims under chapter 32-12.2;
 - i. The district court of the county where the judgment of conviction was entered;
 - j. A state or federal court where a person in the custody or under the supervision and management of the adult services division of the department of corrections and rehabilitation has commenced litigation and the records are relevant to the litigation;
 - k. A criminal justice agency as defined in section 44-04-18.7; or
 - l. The United States social security administration and veterans administration.
4. Records with respect to the person's identity, location, legal files except records under court seal, criminal convictions, or projected date of release, except for the records of a person who is under protective management, are open records.
 5. Medical, psychological, or treatment records may be disclosed without prior application to the court to a public hospital or treatment facility, the department of human services, or to a licensed private medical or treatment facility, when necessary for the evaluation, treatment, or care of a person who is or who has been in the custody of, or is or who has been under the supervision and management of, the adult services division of the department of corrections and rehabilitation.
 6. A criminal defendant's presentence investigation report, together with any attachment or addendum, is subject to rule 32 of the North Dakota Rules of Criminal Procedure and any amendments made thereto.
 7. The parole board may permit the inspection of a person's preparole report, or parts of the report, prepared for the parole board.
 8. Any person, organization, or agency receiving exempt or confidential records under this section shall maintain the closed or confidential nature of the records and may not redisclose the records.
 9. The department of corrections and rehabilitation shall maintain the confidentiality of witness protection program records and legal files under seal.

12-47-37. Transporting of prisoners. A prisoner who has been charged with, pled guilty to, or been convicted of a class A or class AA felony in this state may not be transported except by employees of the department of corrections and rehabilitation or by law enforcement officers or correctional officers employed by a governmental agency. For purposes of this section, "governmental agency" means an agency or department of this state or of any political

subdivision of this state, of another state or of a political subdivision of another state, or of the United States.

12-47-38. Director to contract for housing female inmates. If there is no qualified state facility available, the director of the department of corrections and rehabilitation shall contract with a county for the housing of female inmates in the county jail, to the extent space is available in the county jail. The county jail must be designed in a manner that can adequately segregate the female inmates from the male inmates. Any county with which the department contracts must have available and must provide the female inmates access to educational and vocational programs, chemical dependency treatment programs, mental health programs, medical services, and adequate recreational facilities.

CHAPTER 12-48
EMPLOYMENT OF INMATES OF THE PENITENTIARY

12-48-01. Employment of offenders. All offenders committed to the department of corrections and rehabilitation may be employed for the benefit of the state to the extent employment is available.

12-48-02. Director of the department of corrections and rehabilitation to make rules regarding employment of offenders. The director of the department of corrections and rehabilitation shall establish rules and regulations relating to the care, treatment, employment, and management of all offenders committed to the legal and physical custody of the department.

12-48-03. Manner of employing offenders. The director of the department of corrections and rehabilitation and the warden of the penitentiary shall attempt to employ all offenders committed to the legal and physical custody of the department in maintaining the penitentiary and penitentiary grounds, 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. The department may employ offenders in work projects for county and local governmental agencies and subdivisions. The department shall employ offenders when practicable in the work to which they are best adapted and in 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. The department may employ offenders outside the yard of the penitentiary in cultivating and improving any ground belonging to the department. The department must be held responsible for the escape of any offender notwithstanding that such employment is outside the penitentiary if the escape is made possible through the negligence of the department.

12-48-03.1. The director of the department of corrections and rehabilitation may establish and engage in new prison industries. The warden of the state penitentiary, under the direction and with the approval of the director of the department of corrections and rehabilitation, is authorized to establish and engage in such new prison industries as the director deems necessary and which are of greatest benefit to and in the best interest of the state of North Dakota, the department, and offenders committed to the legal and physical custody of the department. The warden, with the approval of the director, may also discontinue industries when necessary. The director and the warden shall make all rules and regulations and do all things necessary or incidental to the establishing and maintaining of prison industries including the manufacture, sale, or distribution of prison industries produce or products, and, so far as is compatible with the efficient operation of the industry, shall use offenders committed to the department as laborers in such industries. The director and warden shall also do all things necessary and incidental to the discontinuance of those industries no longer necessary or beneficial to the department. Except as provided in subsections 1, 2, and 3, the director may authorize the sale of selected prison industry products to wholesale and retail outlets. All other prison industry products must be limited for sale to nonprofit, charitable, and tax-supported organizations, institutions, and agencies and to municipal, county, state, or other governmental subdivisions and agencies. All governmental entities may purchase available products from the prison industries unless such purchase from the prison industries is impractical or prohibited by law. The department shall keep a true and accurate account of all receipts from the established industries and deposit the earnings in an account as provided by law. Sales of prison industry products are subject to the following:

1. All hardwood, fiberresin, upholstered, and metal art work products made in the prison by roughrider industries, or other factory that manufactures the above products, may be purchased directly by state agencies and political subdivisions for use in government-owned or rented buildings and by nonprofit organizations, excluding trade associations, fraternal organizations, co-ops, and health insurance companies. All other prison-made hardwood, fiberresin, upholstered, and metal art work products

may be sold only through wholesale or retail outlets that possess a valid sales tax permit or through export firms for sale to international markets.

2. Hardwood, fiberesin, upholstered, and metal art work products manufactured by roughrider industries, or other factory that manufactures the above products, and purchased by state agencies, nonprofit organizations, and political subdivisions may not be disposed of or leave the premises of the state agency, nonprofit organization, and political subdivision for a period of ten years from the date of the original purchase without written authorization from the director of the department of corrections and rehabilitation.
3. Subsections 1 and 2 do not prevent the sale of prison-made hardwood, fiberesin, upholstered, or metal art work products to any state institution or facility operated by the director of the office of management and budget or by the director of the department of corrections and rehabilitation.

12-48-03.2. Prison industry authorized to trade, barter, and exchange merchandise, equipment, and services. Prison industry is authorized to trade, barter, and exchange merchandise, equipment, and services with any state agency if such is in the best interest of the prison industry and approved by the warden and the director of the department of corrections and rehabilitation.

12-48-03.3. Roughrider industries' operating fund - Bank of North Dakota. Roughrider industries may establish its own operating fund in the Bank of North Dakota. Interest earned on the roughrider industries' operating fund shall be deposited in the state general fund. Roughrider industries may use its own manufacturing accounting system and must report annually its revenues and expenditures to the office of management and budget for the purpose of its financial statements being included in the state's comprehensive audited financial statements.

12-48-04. Inmates may be employed in improving roads and streets. Repealed by S.L. 1989, ch. 156, § 54.

12-48-05. Conditions for employing inmates outside of the penitentiary. Repealed by S.L. 1989, ch. 156, § 54.

12-48-06. Labor of inmates - Sale of articles produced. Inmate labor may be used by the state in carrying on farming and ranching operations, or in any industry established at the penitentiary, and the state may dispose of the products of the farming and ranching enterprises. The industry products may be disposed as provided in section 12-48-03.1. Sales to visitors and the general public by inmates of articles made by them in hobby shall be permitted under such rules and regulations as may be established by the warden.

12-48-06.1. Prison industry advisory committee. There is hereby established a prison industry advisory committee which consists of the director of the department of corrections and rehabilitation and seven members, three of whom are representatives of industries similar to those within the prison. Prior to July 1, 1991, the governor shall appoint two board members for a term of one year, two for a term of two years, two for a term of three years, and one for a term of four years. Thereafter appointments must be for four-year terms. Members may not serve more than two consecutive terms. Meetings of the committee must be called by the chairperson, who must be elected from within the membership. The appointed members must be paid mileage and expenses by the prison industry as authorized for state officials and employees.

12-48-07. Tools and equipment. The warden, under the direction of the director of the department of corrections and rehabilitation, shall procure the machinery, tools, and equipment necessary to carry on and conduct the work and industries of the penitentiary. Procurement must be made by the warden according to chapter 54-44.4 and rules adopted under that chapter.

12-48-08. Penitentiary tannery. Repealed by S.L. 1965, ch. 108, § 1.

§ 1. **12-48-09. Manufacture of coffins at the penitentiary.** Repealed by S.L. 1965, ch. 108,

12-48-10. Marking of coffins. Repealed by S.L. 1965, ch. 108, § 1.

§ 1. **12-48-11. Sale of coffins - Price - Use of proceeds.** Repealed by S.L. 1965, ch. 108,

12-48-12. Manufacture and sale of license plates and road signs. Repealed by S.L. 1977, ch. 114, § 3.

12-48-13. Use of receipts from sale of license plates and road signs. Repealed by S.L. 1977, ch. 114, § 3.

12-48-14. Compensation of offenders. Offenders who work at the penitentiary or in its prison industries shall receive compensation in an amount to be determined by the warden and approved by the director of the department of corrections and rehabilitation within the limits of legislative appropriations for that purpose. The warden shall assign work to each offender and shall pay the offender based on the amount of work the offender performs, up to the maximum compensation determined by the warden. If an offender has worked in excess of ten hours per day, the offender shall receive such additional compensation as the warden may allow. All offenders working in prison industries may receive pay based upon actual production of salable items as determined by the warden, to be paid out of funds the legislative assembly appropriates.

12-48-15. Disposition of moneys earned - Warden to keep account of money earned by inmates - Investment in interest-bearing accounts.

1. The warden of the penitentiary shall keep an account for each inmate. Not more than fifty percent of an inmate's penitentiary earnings, as provided by penitentiary rules, must be withheld from an inmate and deposited in a separate account for the inmate and may not be made available to the inmate until the inmate's release from the penitentiary, except as authorized by the warden. The remainder of an inmate's earnings must be made available to the inmate on a regular basis.
2. Inmates may, in writing, authorize the warden or designee to deposit any of their accumulated earnings from the prison industries, hobby, work release, or any other prison program in an interest-earning account in the Bank of North Dakota for the benefit of the inmate. The account must be a two-signature account requiring the inmate's signature and that of an authorized designated officer or employee of the state penitentiary for withdrawal.
3. The warden may directly deposit an inmate's funds from sources outside of the penitentiary in any bank or account the inmate may designate. If a court order does not allow an inmate to designate a bank or account other than a Bank of North Dakota account or if it is necessary for the benefit and protection of the inmate, the warden, upon written explanation to the inmate, shall deposit an inmate's funds from sources outside the penitentiary into a Bank of North Dakota account. The department of corrections and rehabilitation and its divisions, departments, officers, and employees may not be held responsible or liable for any inmate income or funds deposited into a bank or account designated by an inmate.
4. The warden is responsible for guiding inmates in making proper use of their funds to pay their obligations, including the payment of any administration fee, court-appointed counsel fees, court-ordered restitution, support for dependent relatives, or to provide for their own medical, surgical, eye care, or dental treatment or services not generally provided by the state. The warden may withdraw funds from an inmate's penitentiary account or Bank of North Dakota two-signature account, without the inmate's signature, to meet the inmate's legitimate financial obligations. Before the funds may be withdrawn, the inmate must first receive

written notice and be provided a penitentiary administrative hearing with the right to penitentiary staff assistance and the right to appeal to the director of the department of corrections and rehabilitation. An inmate is not entitled to prior written notice, administrative hearing, or right to an appeal to the department of corrections and rehabilitation when funds are to be withdrawn for payment of a court-ordered obligation, including child support, provided the inmate has had notice and an opportunity to be heard in the court proceedings.

5. The warden may pay an inmate all funds in the inmate's account, less the inmate's outstanding obligations to the penitentiary, when the inmate is transferred to a county jail or regional correctional center or placed in community corrections confinement. The warden shall pay an inmate all funds in the inmate's account less the inmate's outstanding obligations to the penitentiary when the inmate is transferred to a correctional facility outside of this state, released on parole, or discharged from the penitentiary.

12-48-16. Disposition of earnings of inmate with dependents. Repealed by S.L. 1975, ch. 111, § 6.

12-48-17. Disposition of earnings of inmate with dependents when more than fifty dollars in temporary aid account. Repealed by S.L. 1975, ch. 111, § 6.

12-48-18. Disposition of earnings of inmate who has no dependent relatives. Repealed by S.L. 1975, ch. 111, § 6.

12-48-19. Disposition of earnings of inmate who has no dependent relatives when more than fifty dollars in temporary aid account. Repealed by S.L. 1975, ch. 111, § 6.

12-48-20. Disposition of earnings of prisoner who escapes or violates parole. The money in a prisoner's penitentiary or Bank of North Dakota two-signature account or any property belonging to a prisoner who escapes or violates the prisoner's parole shall be forfeited and used to pay the expense of the prisoner's apprehension and capture. Any of the prisoner's funds or property that is not required to pay for the prisoner's apprehension and return to the penitentiary may be transferred by the warden into the penitentiary inmate betterment fund.

12-48-21. Disposition of unclaimed money. Any money which has been earned by any inmate and credited to his account shall be transferred to the general fund in the state treasury if such money is not claimed within one year after the inmate earning it has been released from the penitentiary unless the law makes other specific provision for its disposition.

12-48-22. Fines for misconduct of offender. The warden, with the approval of the director of the department of corrections and rehabilitation, shall institute and maintain a uniform system of fines and penalties to be deducted from the compensation credited to any offender for misconduct or refusal to perform the daily task assigned.

12-48-23. Employment of penitentiary inmates in book salvage - Receipts. Repealed by S.L. 1977, ch. 114, § 3.

12-48.1-01. Director may provide certain services for offenders. The director of the department of corrections and rehabilitation may participate in programs in which offenders committed to the legal and physical custody of the department may be gainfully employed or participate in an educational or other rehabilitation program either in or outside facilities under the control of the department. The director may obtain or contract with separate facilities with minimum security for housing offenders granted release privileges. In areas where facilities are not within reasonable proximity of the place of employment or training of an offender so released, the director may arrange for the housing of the offender in local confinement facilities.

12-48.1-02. Conditions of eligibility for release programs. An offender may be eligible for programs outside facilities under the control of the department of corrections and rehabilitation when the department determines the offender is not a high security risk, not likely to commit a crime of violence, and is likely to be rehabilitated by such program. An offender may apply to the director of the department for permission to participate in such programs. The director of the department may authorize participation in outside programs for an offender who has been committed to ten years or less to the legal and physical custody of the department. The parole board, with the approval of the director of the department, may authorize participation in outside programs for offenders who have been committed to the legal and physical custody of the department for more than ten years. The offender shall submit a signed application which must include a statement that the offender agrees to abide by all terms and conditions of the particular plan adopted for the offender, and must include such other information as the parole board or the director of the department may require. The parole board may approve, disapprove, or defer action on an application approved by the director of the department. The director of the department or the parole board may revoke approval of the application at any time after granting the application. The department shall prescribe rules of conduct and treatment for all offenders on release programs. The director of the department may grant short leaves, not to exceed seventy-two hours, to offenders who have been committed to the legal and physical custody of the department for ten years or less. The parole board, upon the approval of the director of the department, may grant short leaves, not to exceed seventy-two hours, to offenders committed to the legal and physical custody of the department for more than ten years. All rules adopted by the parole board and the director of the department relating to release programs and short leaves must conform, to the extent allowable by law, with executive order No. 11755 issued by the President of the United States.

12-48.1-03. Use of funds earned on work release. An offender shall use any funds earned in work release in the following order: support of dependents; for necessary expenses of the offender, including room and board costs of the institution; any administration fee and fine; and restitution if a part of the sentence. Any balance must be deposited in the offender's account to be paid to the offender in accordance with section 12-48-15.

12-48.1-04. Willful failure to return. Repealed by S.L. 1975, ch. 106, § 673.

CHAPTER 54-23.3
DEPARTMENT OF CORRECTIONS AND REHABILITATION

54-23.3-01. Department of corrections and rehabilitation - Creation - Duties - Programs. There is hereby created a department of corrections and rehabilitation that is responsible to the governor. The department is responsible for the direction and general administrative supervision, guidance, and planning of adult and juvenile correctional facilities and programs within the state. The department includes a division of adult services, a division of juvenile services, and such other divisions as are determined necessary for the effective and efficient operation of the department. Programs and facilities included in the department are the North Dakota state penitentiary or any of its affiliated facilities, parole and probation for adult offenders, North Dakota youth correctional center, community programs and services for juvenile offenders under the division of juvenile services, and any other programs developed by the department.

54-23.3-01.1. Definitions. As used in this chapter:

1. "Director" means the director of the department of corrections and rehabilitation. The director may designate officers of the department to assist in carrying out the director's duties.
2. "Inmate" means an offender who the district court has committed to the legal and physical custody of the department of corrections and rehabilitation and who is confined in the North Dakota state penitentiary or its affiliated facilities or is confined in another state's correctional facility, a federal correctional facility, a county correctional facility or regional corrections center, a private correctional facility, or has been placed in a community placement program, treatment facility, or transitional center by the department.
3. "Juvenile offender" means an offender who is supervised by an officer of the juvenile court or has been adjudicated unruly or delinquent by the juvenile court and placed in the custody of the division of juvenile services.
4. "Offender" means a person who has been committed to the legal and physical custody of the department of corrections and rehabilitation, or placed under the supervision and management of the department by a district court, by the parole board, or through the interstate compact for the supervision of adult offenders.
5. "Parolee" means an offender who has been placed under the supervision and management of the department of corrections and rehabilitation by the parole board or through the interstate compact for the supervision of adult offenders.
6. "Probationer" means an offender who has been placed under the supervision and management of the department of corrections and rehabilitation by a district court or through the interstate compact for the supervision of adult offenders.

54-23.3-02. Purpose. The purpose of the department of corrections and rehabilitation is:

1. To develop a statewide correctional philosophy that will provide direction, goals, and standards for corrections.
2. To provide for the care, custody, discipline, training, and treatment of persons committed to state correctional facilities and programs.
3. To coordinate and provide a continuum of correctional services to both adult and juvenile clients.

4. To promote and develop close communication and mutual understanding of corrections issues and concerns between the courts and the department.
5. To provide joint training of staff and career opportunities for corrections staff.
6. To work with local and state entities to develop alternatives to conventional incarceration for those offenders who can be dealt with more effectively in less restrictive, community-based facilities and programs.

54-23.3-03. Director - Appointment - Qualifications - Compensation. The chief administrative officer of the department is the director of the department of corrections and rehabilitation, who must be appointed by the governor. The position of director is not a classified position and the director shall serve at the pleasure of the governor. The person appointed as director must hold at least a bachelor's degree from an accredited college or university and must have held a management position in correctional or related work for at least five years. The governor shall set the salary of the director within the limits of legislative appropriations.

54-23.3-04. Director - Powers and duties. The director of the department of corrections and rehabilitation has the following powers and duties:

1. To manage and control all institutions and programs within the department and to administer and enforce the laws with which the department is charged.
2. To promote a unified criminal justice system and develop a statewide correctional philosophy in cooperation with the courts, law enforcement, and other entities in the criminal justice system.
3. To develop necessary programs and services for adult and juvenile offenders, within legislative appropriations, to provide for their treatment and rehabilitation and to recognize their special needs.
4. To develop, maintain, and revise as required a comprehensive master plan for the state's correctional system which must indicate the system's needs and resources.
5. To establish policies and procedures necessary to carry out the responsibilities of the department.
6. To organize the department into an adult services division, a juvenile services division, and such other divisions that will enable it to function most effectively and efficiently.
7. To exercise general supervisory and appointing authority over all department employees, subject to any applicable personnel laws and rules.
8. To employ and remove the director of the division of juvenile services, the director of the division of adult services, and other division directors and personnel who may be deemed necessary by the director of the department. Until the director of the department of corrections and rehabilitation has been granted the full-time equivalent positions within the department's budget for the division director positions, or when the positions are vacant, the responsibilities of these positions must be assumed by the director of the department of corrections and rehabilitation or by the director's designee.
9. To delegate authority to subordinates as necessary and appropriate, clearly delineating the delegated authority and limitations.
10. To promote the development of alternatives to conventional incarceration for those offenders who can be dealt with more effectively in less restrictive, community-based facilities and programs.

11. To contract for correctional services, and to provide such services, with the United States, Canada, other states, and any of their governmental subdivisions and agencies and with another agency or governmental unit in this state, or with any private or public correctional or treatment facility or agency. The director shall reimburse the entity at an amount based upon the services required for the housing and treatment of inmates. The director may also contract to provide services, without cost to the state, for persons held by any of the jurisdictions mentioned in this section. If a treaty is in effect between the United States and a foreign country for the transfer and exchange of offenders, the director of the department of corrections and rehabilitation, upon recommendation of the warden and the approval of the governor, may on behalf of the state under the terms of the treaty transfer or exchange offenders and take any action necessary for the state to participate in the treaty.
12. To lease land owned by the state under the jurisdiction of the department of corrections and rehabilitation. A lease by the director is not subject to the conditions of this subsection. The director may sell or exchange, with the governor's approval, selected portions of land owned by the state under the jurisdiction of the department of corrections and rehabilitation and may sell, trade, lease, or grant mining easements to extract and remove any resources found on, in, or under said department of corrections and rehabilitation lands, including clay, coal, oil, gas, gravel, sand, dirt, and sod, under the following conditions:
 - a. Any such sale, exchange, or transaction must allow for the submission of bids pursuant to a notice published in at least one official county newspaper. The sale, exchange, or transaction is exempt from the provisions of sections 54-01-05.2 and 54-01-05.5.
 - b. Any such sale, exchange, or transaction may not be made for less than the appraised value, and the state reserves the right to reject any and all bids.
 - c. The commissioner of university and school lands or the commissioner's designee shall provide technical assistance and advice to the director of the department of corrections and rehabilitation in any transaction.
 - d. All legal documents, papers, and instruments required by any transaction must be reviewed and approved as to form and legality by the attorney general.
 - e. Any of these transactions can be entered into on any terms and conditions permitted by law and approved by the governor.
 - f. All funds and proceeds realized from any of these transactions must be placed in an interest-bearing fund in the state treasury, designated as the North Dakota state penitentiary land fund to be used for the acquisition of additional land and facilities; to maintain, expand, or develop affiliated facilities; to relocate the Missouri River correctional center and the farming and ranching operations of the North Dakota state penitentiary; or for penitentiary renovation.
13. To provide meals at a fair value or without a charge to officers and employees of the department as required by their job assignments.
14. To accept property forfeited or seized in accordance with law.
15. To collect costs and fees from persons on correctional supervision for the supervision services, control devices, and programs as implemented by the department to assist in making community corrections an effective alternative to incarceration. A person on active supervision is presumed able to pay assessed fees unless the director, giving due consideration to the fiscal obligations and resources of the probationer, determines otherwise. A person with the ability to pay

assessed fees who refuses to pay must be returned to the court for a judicial determination. In addition to any other remedies allowed by law, the department may enforce and collect any unpaid supervision costs and fees imposed as a condition of parole, probation, or under a program implemented under this section in a civil judgment entered by a district court of this state and may employ licensed collection agencies to enforce and collect any unpaid supervision costs and fees.

16. To collect the costs of any presentence investigation and report incurred under subsection 11 of section 12.1-32-02, giving due consideration to the financial obligations and resources of the defendant.

54-23.3-05. Appointment and removal of officers. The director of the department of corrections and rehabilitation with the approval of the governor may appoint a director of the division of juvenile services, a director of the division of adult services, and other division directors and personnel as deemed necessary for the effective and efficient operation of the department. The director of the division of juvenile services, the director of the division of adult services, and other division directors who may be appointed shall meet qualifications as established for the classified service. The division directors may be removed by the director of the department, with the approval of the governor, for misconduct, neglect of duty, incompetency, or other cause showing an inability or refusal to properly perform the duties of their office. All other officers and employees of each division must be appointed and removed by the director of the division, subject to the approval of the director of the department of corrections and rehabilitation. All officers and employees of the department of corrections and rehabilitation are subject to the provisions of the state personnel policies.

54-23.3-06. Salaries of division directors and other officers. The director of the department of corrections and rehabilitation shall determine the salary of each division director within the limits of legislative appropriations and within the salary range of the classified position as established by North Dakota human resource management services for the position. All other officers and employees shall receive salaries determined by their division director and approved by the director of the department.

54-23.3-07. Confidentiality of selected information pertaining to department of corrections and rehabilitation employees. Repealed by S.L. 1995, ch. 428, § 3.

54-23.3-08. Authority to lease land under the jurisdiction of the department. The department of corrections and rehabilitation may lease land under the jurisdiction of the department for the purpose of the construction and operation of a prerelease center. Subsection 12 of section 54-23.3-04 does not apply to the lease authorized by this section. The lease expires when the leased property is no longer used for a prerelease center, when the lease operator breaches any material part of the lease, or twenty years after the date of the lease, whichever occurs first, and all rights, title, and interest in any buildings, fixtures, and improvements vest and remain with the state.

54-23.3-09. Reports regarding new programs. Notwithstanding the powers granted under section 54-23.3-04, the director of the department of corrections and rehabilitation may not authorize any new program to serve adult or juvenile offenders, including programs that provide alternatives to conventional incarceration and programs operated on a contract basis, if the program is anticipated to cost in excess of one hundred thousand dollars during the biennium in which the program is implemented or any subsequent biennium without first reporting to the legislative assembly or, if the legislative assembly is not in session, the budget section of the legislative council.

12.1-32-02. Sentencing alternatives - Credit for time in custody – Diagnostic testing.

1. Every person convicted of an offense who is sentenced by the court must be sentenced to one or a combination of the following alternatives, unless the sentencing alternatives are otherwise specifically provided in the statute defining the offense or sentencing is deferred under subsection 4:
 - a. Payment of the reasonable costs of the person's prosecution.
 - b. Probation.
 - c. A term of imprisonment, including intermittent imprisonment:
 - (1) In a state correctional facility in accordance with section 29-27-07, in a regional corrections center, or in a county jail, if convicted of a felony or a class A misdemeanor.
 - (2) In a county jail or in a regional corrections center, if convicted of a class B misdemeanor.
 - (3) In a facility or program deemed appropriate for the treatment of the individual offender, including available community-based programs.
 - (4) In the case of persons convicted of an offense who are under eighteen years of age at the time of sentencing, the court is limited to sentencing the minor defendant to a term of imprisonment in the custody of the department of corrections and rehabilitation.
 - d. A fine.
 - e. Restitution for damages resulting from the commission of the offense.
 - f. Restoration of damaged property or other appropriate work detail.
 - g. Commitment to an appropriate licensed public or private institution for treatment of alcoholism, drug addiction, or mental disease or defect.
 - h. Commitment to a sexual offender treatment program.

Except as provided by section 12.1-32-06.1, sentences imposed under this subsection may not exceed in duration the maximum sentences of imprisonment provided by section 12.1-32-01, section 12.1-32-09, or as provided specifically in statute defining an offense. This subsection does not permit the unconditional discharge of an offender following conviction. A sentence under subdivision e or f must be imposed in the manner provided in section 12.1-32-08.

2. Credit against any sentence to a term of imprisonment must be given by the court to a defendant for all time spent in custody as a result of the criminal charge for which the sentence was imposed or as a result of the conduct on which such charge was based. "Time spent in custody" includes time spent in custody in a jail or mental institution for the offense charged, whether that time is spent prior to trial, during trial, pending sentence, or pending appeal.
3. A court may suspend the execution of all or a part of the sentence imposed. The court shall place the defendant on probation during the term of suspension.

4. A court, upon application or its own motion, may defer imposition of sentence. The court must place the defendant on probation during the period of deferment. An order deferring imposition of sentence is reviewable upon appeal from a verdict or judgment. In any subsequent prosecution, for any other offense, the prior conviction for which imposition of sentence is deferred may be pleaded and proved, and has the same effect as if probation had not been granted or the information or indictment dismissed under section 12.1-32-07.1.
5. A court may, prior to imposition of sentence, order the convicted offender committed to an appropriate licensed public or private institution for diagnostic testing for such period of time as may be necessary, but not to exceed thirty days. The court may, by subsequent order, extend the period of commitment for not to exceed thirty additional days. The court may also order such diagnostic testing without ordering commitment to an institution. Validity of a sentence must not be challenged on the ground that diagnostic testing was not performed pursuant to this subsection.
6. All sentences imposed must be accompanied by a written statement by the court setting forth the reasons for imposing the particular sentence. The statement must become part of the record of the case.
7. If an offender is sentenced to a term of imprisonment, that term of imprisonment commences at the time of sentencing, unless, upon motion of the defendant, the court orders the term to commence at some other time.
8. Unless otherwise specifically authorized in the statute defining the offense, a court may not include a minimum term of imprisonment as part of its sentence.
9. Except as provided in section 62.1-02-01, a person who is convicted of a felony and sentenced to imprisonment for not more than one year is deemed to have been convicted of a misdemeanor. However, if an order is entered revoking a probation imposed as a part of the sentence, the person is deemed to have been convicted of a felony. This subsection does not apply to a person convicted of violating subdivision a, b, or c of subsection 1 of section 19-03.1-23.
10. A court shall order a defendant to pay fifty dollars to the department of corrections and rehabilitation at the time a presentence investigation is initiated to partially defray the costs incurred by the department for the preparation of the presentence report. The court may also order that any additional costs incurred by the department relating to the presentence investigation and report be paid by the defendant at a rate of payment up to the full costs of conducting the investigation and preparing the report as established by the department.
11. Before sentencing a defendant on a felony charge under section 12.1-20-03, 12.1-20-03.1, 12.1-20-11, 12.1-27.2-02, 12.1-27.2-03, 12.1-27.2-04, or 12.1-27.2-05, a court shall order the department of corrections and rehabilitation to conduct a presentence investigation and to prepare a presentence report. A presentence investigation for a charge under section 12.1-20-03 must include a risk assessment. A court may order the inclusion of a risk assessment in any presentence investigation. In all felony or class A misdemeanor offenses, in which force, as defined in section 12.1-01-04, or threat of force is an element of the offense or in violation of section 12.1-22-02, or an attempt to commit the offenses, a court, unless a presentence investigation has been ordered, must receive a criminal record report before the sentencing of the defendant. Unless otherwise ordered by the court, the criminal record report must be conducted by the department of corrections and rehabilitation after consulting with the prosecuting attorney regarding the defendant's criminal record. The criminal record report must be in writing, filed with the court before sentencing, and made a part of the court's record of the sentencing proceeding.

**29-27-07. Commitment of offenders to department of corrections and rehabilitation -
Place of confinement.**

1. If a judge of the district court imposes a term of imprisonment to a state correctional facility upon conviction of a felony or a class A misdemeanor, the judge may not designate a state correctional facility in which the offender is to be confined but shall commit the offender to the legal and physical custody of the department of corrections and rehabilitation.
2. After assuming custody of the convicted person, the department of corrections and rehabilitation may transfer the inmate from one correctional facility to another for the purposes of safety, security, discipline, medical care, or if the department determines it is in the best interest of the public, the inmate, or the department.