CORRECTIONS, PAROLE, AND PROBATION

CHAPTER 108

SENATE BILL NO. 2148

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

CORRECTIONS ADMINISTRATION

AN ACT to create and enact a new section to chapter 54-23.3 of the North Dakota Century Code, relating to definitions under the department of corrections and rehabilitation governing laws; and to amend and reenact sections 12-46-13, 12-47-01, 12-47-04, 12-47-11, 12-47-12, 12-47-13, 12-47-17, 12-47-18, 12-47-18.1, 12-47-31, 12-47-34, 12-48-01, 12-48-02, 12-48-03, 12-48-03.1, 12-48-07, 12-48-14, 12-48-22, 12-48.1-01, 12-48.1-02, and 12-48.1-03, subsection 1 of section 12-54.1-01, and sections 12-54.1-03 and 29-27-05 of the North Dakota Century Code, relating to placements at the North Dakota youth correctional center, the North Dakota state penitentiary, prison employment and prison industries, training and work release programs, performance-based sentence reduction, meritorious sentence reduction, and transfer of offenders to the department of corrections and rehabilitation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-46-13 of the North Dakota Century Code is amended and reenacted as follows:

12-46-13. Who may be sent to North Dakota youth correctional center - Court procedure. Whenever a ~~person~~ district court finds an offender under ~~the age of~~ eighteen years ~~is found~~ of age guilty ~~in any district court~~ of a crime ~~or public offense and subsequently placed in~~ and commits the offender to the custody of the department of corrections and rehabilitation, the department may transfer the ~~person~~ offender to the North Dakota youth correctional center; however, the department shall first transfer ~~that person~~ the offender to the North Dakota youth correctional center if the ~~person~~ offender is under sixteen years of age. ~~A person so committed who attains the age of eighteen years must be transferred to a penal institution or detention facility to serve the balance of the person's sentence. A person so committed who attains the age of sixteen years may be transferred~~ The department may transfer an offender who is between sixteen years of age and eighteen years of age to an adult correctional facility after the ~~person has been~~ department has given the offender an administrative hearing to determine if the interests of the department, the safety of other residents, or the interests of the general public justifies the transfer. ~~A person sentenced~~ The department may allow an offender who is between eighteen years of age and twenty years of age to remain at the North Dakota youth correctional center if the department determines that it is in the best interests of the department and the offender and it is not contrary to safety interests of the other residents or the general public. The department shall transfer an offender who has attained twenty years of age to an adult correctional facility. An

offender placed by the department at the North Dakota youth correctional center under this section has all the rights to sentence reduction for good and meritorious conduct and all the pardon and parole rights of an adult ~~sentenced to imprisonment in a penal institution~~ committed to the legal and physical custody of the department.

SECTION 2. AMENDMENT. Section 12-47-01 of the North Dakota Century Code is amended and reenacted as follows:

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 ~~in which all offenders who are sentenced to imprisonment therein must be confined securely and employed and governed in the manner provided by law~~. 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.

SECTION 3. AMENDMENT. Section 12-47-04 of the North Dakota Century Code is amended and reenacted as follows:

12-47-04. ~~Imprisonment in penitentiary~~ Commitment to the legal and custody of the department of corrections and rehabilitation is at hard labor. In all cases in which a ~~person is sentenced to imprisonment in the penitentiary,~~ 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 ~~jury or~~ district court.

SECTION 4. AMENDMENT. Section 12-47-11 of the North Dakota Century Code is amended and reenacted as follows:

12-47-11. Powers and duties of warden. The warden, under the direction of the director of the ~~division of adult services~~ department of corrections and rehabilitation, shall have the charge, custody, and control of the penitentiary and ~~the persons imprisoned in~~ 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 ~~inmates~~ offenders placed by the department at the penitentiary.

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

12-47-12. Warden to make rules. The warden, subject to the approval of the director of the ~~division of adult services~~ 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 ~~persons~~ offenders imprisoned in the penitentiary.

A printed copy of the rules must be furnished to each ~~person~~ 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 ~~a prisoner~~ an offender who cannot read English.

SECTION 6. AMENDMENT. Section 12-47-13 of the North Dakota Century Code is amended and reenacted as follows:

12-47-13. Warden to keep records. The warden shall ~~keep a correct~~ require that a daily record is kept of all transactions of the ~~office and a correct account of all the warden's doings. The warden shall keep a daily journal of the proceedings of the penitentiary in which shall be noted all infractions of the rules and regulations thereof by any officer or employee and shall enter in such journal a memorandum of every complaint made by any inmate of cruel or unjust treatment by any officer or other person, or a want of proper clothing or food, and also any infraction of the rules and regulations of the penitentiary by any of the inmates, naming the inmate and specifying the offense and the punishment, if any, inflicted therefor, and said journal and memorandum must be laid before the director of the division of adult services upon request~~ 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.

SECTION 7. AMENDMENT. Section 12-47-17 of the North Dakota Century Code is amended and reenacted as follows:

12-47-17. ~~Warden to receive persons~~ Offenders committed to department of corrections and rehabilitation - Records to be kept. The ~~warden~~ department of corrections and rehabilitation shall receive any ~~person~~ offender who has been convicted~~,~~ and committed to the legal and physical custody of the department ~~of corrections and rehabilitation, and assigned to the penitentiary~~ when ~~that person~~ the offender has been delivered to the ~~warden~~ 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 ~~any person~~ an offender assigned by the department to the penitentiary, shall enter in ~~a book kept by the warden for that purpose, and as an official~~ 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 ~~person~~ offender. After an intake, evaluation, and classification process, the ~~warden~~ department shall assign the ~~inmate~~ offender to ~~a~~ the penitentiary, another correctional facility, or other placement.

SECTION 8. AMENDMENT. Section 12-47-18 of the North Dakota Century Code is amended and reenacted as follows:

12-47-18. ~~Warden~~ Director has custody of inmates pursuant to terms of sentence. The ~~warden shall have the charge and custody of all inmates of the penitentiary~~ director of the department of corrections and rehabilitation shall be responsible for offenders committed to the legal and physical custody of the department. The ~~warden~~ director shall retain, confine, and imprison each ~~person under sentence~~ offender committed to the ~~penitentiary~~ department until the expiration of the ~~inmate's term of~~ offender's sentence or until the ~~inmate otherwise~~ offender is lawfully entitled to release. The ~~warden~~ director shall care for, govern,

and make an effort to employ all ~~inmates~~ offenders in conformity with their ~~respective~~ sentences and in the manner prescribed by law and the rules and regulations lawfully adopted for the conduct of the penitentiary and the department.

SECTION 9. AMENDMENT. Section 12-47-18.1 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 10. AMENDMENT. Section 12-47-31 of the North Dakota Century Code is amended and reenacted as follows:

12-47-31. Discharge of ~~inmates~~ offenders - Clothing - Transportation. ~~Every person sentenced to the penitentiary, when discharged or released on parole, may be provided as determined by the warden, based upon need,~~ 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.

SECTION 11. AMENDMENT. Section 12-47-34 of the North Dakota Century Code is amended and reenacted as follows:

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

1. The ~~warden, with the approval of the~~ director of the department of corrections and rehabilitation~~, may~~ shall adopt measures necessary for the detection and capture of offenders escaping from the custody of the ~~warden or the~~ department ~~of corrections and rehabilitation~~. If an offender in the custody of the ~~warden or the~~ department ~~of corrections and rehabilitation~~ escapes, the ~~warden may~~ director shall use all lawful means for the apprehension of the offender. The ~~warden~~ 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 ~~warden or the~~ department ~~of corrections and rehabilitation~~.

2. The ~~warden~~ 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 ~~warden or the~~ department ~~of corrections and rehabilitation~~.

   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 ~~warden or the~~ department ~~of corrections and rehabilitation~~.

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.

SECTION 12. AMENDMENT. Section 12-48-01 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 13. AMENDMENT. Section 12-48-02 of the North Dakota Century Code is amended and reenacted as follows:

12-48-02. Director of the department of corrections and rehabilitation to make rules regarding employment of ~~inmates~~ 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 ~~prisoners, wherever they may be employed~~ offenders committed to the legal and physical custody of the department.

SECTION 14. AMENDMENT. Section 12-48-03 of the North Dakota Century Code is amended and reenacted as follows:

12-48-03. Manner of employing ~~inmates~~ offenders. The director of the department of corrections and rehabilitation and the warden of the penitentiary shall attempt to employ all ~~inmates of the penitentiary~~ offenders committed to the legal and physical custody of the department in maintaining the penitentiary and ~~the~~ penitentiary grounds ~~thereof~~, in carrying on the work of the industries established at the penitentiary or at other state institutions, in doing any work necessary to be done in the erection, repair, or improvement of any of the state buildings, including the executive mansion, and the grounds of such buildings, or in the construction and improvement of the public highways of the state. ~~Inmates may also be employed~~ The department may employ offenders in work projects for county and local governmental agencies and subdivisions. The ~~prisoners must be employed, insofar as~~ 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. ~~Inmates may be employed~~ The department may employ offenders outside the yard of the penitentiary in cultivating and improving any ground belonging ~~thereto~~ to the department. The ~~warden~~ department must be held responsible for the escape of any ~~inmate~~ offender notwithstanding that such employment is outside the penitentiary if the escape is made possible through the ~~warden's~~ negligence ~~or the negligence of the warden's subordinates~~ of the department.

SECTION 15. AMENDMENT. Section 12-48-03.1 of the North Dakota Century Code is amended and reenacted as follows:

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 ~~state penitentiary, the Missouri River correctional center, and the inmates of the institutions~~

department, and offenders committed to the legal and physical custody of the department. The warden, with the approval of the director, may also discontinue ~~existing~~ industries ~~where such discontinuance is deemed~~ 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 ~~such~~ prison industries including the manufacture, sale, or distribution of ~~the~~ prison industries produce or products ~~therefrom~~, and, so far as is compatible with the efficient operation of the industry, shall use ~~the inmates and employees of the penitentiary~~ 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 ~~deemed~~ necessary or ~~of benefit~~ 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 ~~warden~~ 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, fiberesin, 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, fiberesin, 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.

SECTION 16. AMENDMENT. Section 12-48-07 of the North Dakota Century Code is amended and reenacted as follows:

12-48-07. Tools and equipment. The warden, under the direction of the director of the ~~division of adult services~~ 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.

SECTION 17. AMENDMENT. Section 12-48-14 of the North Dakota Century Code is amended and reenacted as follows:

12-48-14. Compensation of ~~inmates~~ offenders. ~~Prisoners engaged in carrying on the~~ Offenders who work ~~of~~ at the penitentiary ~~and~~ 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 ~~a reasonable daily task to be performed by each prisoner, and the compensation of the prisoner must be determined by the amount of work the prisoner performs on such task. All prisoners faithfully performing the daily task assigned shall receive~~ 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~~, and whenever it becomes necessary in carrying on this work for a prisoner to labor~~. If an offender has worked in excess of ten hours per day, the ~~prisoner~~ offender shall receive such additional compensation as ~~is allowed by~~ the warden may allow. All ~~prisoners~~ offenders working ~~at the penitentiary~~ in prison industries may receive pay based upon actual production of salable items as determined by the warden, to be paid out of ~~such~~ funds ~~as may be appropriated by~~ the legislative assembly appropriates.

SECTION 18. AMENDMENT. Section 12-48-22 of the North Dakota Century Code is amended and reenacted as follows:

12-48-22. Fines for misconduct of ~~prisoner~~ 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 ~~prisoner~~ offender for misconduct or refusal to perform the daily task assigned ~~him~~.

SECTION 19. AMENDMENT. Section 12-48.1-01 of the North Dakota Century Code is amended and reenacted as follows:

12-48.1-01. Director may provide certain services for ~~inmates~~ offenders. The director of the department of corrections and rehabilitation may participate in programs ~~under~~ in which ~~inmates sentenced to the penitentiary or the Missouri River correctional center~~ 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 ~~the institution~~ facilities under the control of the department. The director may obtain or contract with separate facilities with minimum security for ~~the~~ housing ~~of inmates~~ offenders granted release privileges. In areas where facilities are not within reasonable proximity of the place of employment or training of an ~~inmate~~ offender so released, the director may arrange for the housing of the ~~inmate~~ offender in local confinement facilities.

SECTION 20. AMENDMENT. Section 12-48.1-02 of the North Dakota Century Code is amended and reenacted as follows:

12-48.1-02. Conditions of eligibility for release programs. An ~~inmate is~~ offender may be eligible for programs outside ~~the institution~~ facilities under the control of the department of corrections and rehabilitation when the ~~warden~~ department determines the ~~inmate~~ 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 ~~inmate may make application to the warden~~ offender may apply to the director of the department for permission to participate in such programs. The ~~warden, with the approval of the~~ director of the department ~~of corrections and rehabilitation,~~ may

authorize participation in outside programs for an ~~inmate~~ offender who has been ~~sentenced~~ committed to ten years or less to the ~~state penitentiary or the Missouri River correctional center. In sentences of more than ten years, the~~ legal and physical custody of the department. The parole board, ~~after approval by the warden~~ 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 ~~inmate~~ offender agrees to abide by all terms and conditions of the particular plan adopted for ~~him~~ the offender, and must ~~state the name and address of the proposed employer, if any, and must contain~~ 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 ~~warden~~ director of the department. ~~The plan must be signed by the inmate prior to participation in the program. Approval may be revoked for any reason by the warden~~ The director of the department or the parole board may revoke approval of the application at any time after ~~being granted~~ granting the application. The ~~parole board and warden~~ department shall prescribe rules of conduct and treatment for all ~~inmates~~ offenders on release programs. ~~Short leaves, not to exceed seventy-two hours, may be granted, by the warden, with the approval of the director of the department of corrections and rehabilitation, to inmates with sentences of ten years or less and by the parole board, with the warden's approval to inmates with sentences of more than ten years and upon recommendation by the warden, to all inmates of the penitentiary or the Missouri River correctional center inmates who have been on work or education release programs for at least thirty days.~~ 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 ~~warden~~ 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.

SECTION 21. AMENDMENT. Section 12-48.1-03 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 22. AMENDMENT. Subsection 1 of section 12-54.1-01 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as provided under section 12.1-32-09.1, offenders ~~sentenced to the penitentiary or any of its affiliated facilities~~ committed to the legal and physical custody of the department of corrections and rehabilitation are eligible to earn sentence reductions based upon performance criteria established through department and penitentiary rules. Performance criteria includes participation in court-ordered or staff-recommended treatment and education programs and good work

performance. ~~While incarcerated in the penitentiary or any of its affiliated facilities, an inmate may earn five days good time per month except~~ The department may credit an offender committed to the legal and physical custody of the department who is eligible for sentence reduction five days good time per month for each month of the sentence imposed. The department may not credit an offender with any sentence reduction for time spent in custody prior to sentence and commitment, for time under supervised probation, or for any sentence where the incarceration time is six months or less.

SECTION 23. AMENDMENT. Section 12-54.1-03 of the North Dakota Century Code is amended and reenacted as follows:

12-54.1-03. Meritorious conduct sentence reduction. Except as provided under section 12.1-32-09.1, offenders ~~sentenced to the state penitentiary or any of its affiliated facilities may be awarded~~ committed to the legal and physical custody of the department of corrections and rehabilitation may receive a lump sum or a monthly rate of meritorious conduct sentence reduction for outstanding performance or heroic acts or as a special control and security measure, as provided by penitentiary and department rules and upon written recommendation of a ~~penitentiary~~ department multidisciplinary team~~, lump sum or a monthly rate of meritorious conduct sentence reductions for outstanding performance or heroic acts or as a special control and security measure. Such~~. Meritorious sentence reductions are in addition to sentence reductions under section 12-54.1-01 and may be made only after a written recommendation is made by the warden and approved by the director of the department ~~of corrections and rehabilitation~~. Any sentence reduction for special control or security measures may not exceed two days good time per month per ~~inmate~~ offender.

SECTION 24. AMENDMENT. Section 29-27-05 of the North Dakota Century Code is amended and reenacted as follows:

29-27-05. Judgment of imprisonment in ~~penitentiary~~ department of corrections and rehabilitation. If the judgment is for ~~imprisonment in the penitentiary~~ commitment to the legal and physical custody of the department of corrections and rehabilitation, the sheriff of the county, upon receipt of a certified copy thereof, shall take and deliver the defendant to the ~~warden of the penitentiary. He~~ correctional facility designated by the department. The sheriff also shall deliver to the ~~warden or other proper officer~~ department a certified copy of the judgment and take from ~~such warden or other proper officer~~ the department a receipt for the defendant, and make return thereof to the court.

SECTION 25. A new section to chapter 54-23.3 of the North Dakota Century Code is created and enacted as follows:

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.

Approved March 7, 2005
Filed March 8, 2005

CHAPTER 109

SENATE BILL NO. 2125

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

PAROLE EXPIRATION DATES

AN ACT to create and enact a new section to chapter 12-59 of the North Dakota Century Code, relating to establishment and modification of parole expiration dates.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 12-59 of the North Dakota Century Code is created and enacted as follows:

Establishment and modification of parole expiration dates. The parole board shall establish parole expiration dates in all parole cases. The parole board may not establish an initial parole expiration date that is earlier than the expiration date of the parolee's court-imposed sentence, less sentence reduction received under chapter 12-54.1. The length of the period of parole may not be extended more than five years for a felony and two years for a misdemeanor beyond the date that the court-imposed sentence would have otherwise expired had parole not been granted. The parole board may allow a parolee to earn performance-based parole reduction at the rate of up to five days per month in accordance with performance criteria established by the parole board. The board may terminate a parolee's supervision at any time earlier than the established date of release from parole if the parole board determines that early termination of supervision is warranted and termination of supervision is in the interest of justice. The parole board may not terminate supervision for a parolee who has a life sentence with opportunity for parole earlier than five years from the established date of release on parole.

Approved April 6, 2005
Filed April 6, 2005

CHAPTER 110

HOUSE BILL NO. 1484

(Representatives S. Kelsh, Delmore, Maragos, Zaiser)
(Senators Nelson, Syverson)

CRIMINAL HISTORY RECORD INFORMATION

AN ACT to create and enact section 12-60-16.11 of the North Dakota Century Code, relating to obtaining criminal history record information; and to amend and reenact section 12-60-16.6 of the North Dakota Century Code, relating to the dissemination of criminal history record information.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[89] **SECTION 1. AMENDMENT.** Section 12-60-16.6 of the North Dakota Century Code is amended and reenacted as follows:

12-60-16.6. Criminal history record information - Dissemination to parties not described in section 12-60-16.5. Only the bureau may disseminate criminal history record information to parties not described in section 12-60-16.5. The dissemination may be made only if all the following requirements are met:

1. The information has not been purged or sealed.

2. The information is of a conviction, including a conviction for violating section 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-06.1, or 12.1-20-11 notwithstanding any disposition following a deferred imposition of sentence; or the information is of a reportable event occurring within ~~one year~~ three years preceding the request.

3. The request is written and contains:

   a. The name of the requester.

   b. The name of the record subject.

   c. At least two items of information used by the bureau to retrieve criminal history records, including:

      (1) The fingerprints of the record subject.

      (2) The state identification number assigned to the record subject by the bureau.

      (3) The social security number of the record subject.

      (4) The date of birth of the record subject.

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[89] Section 12-60-16.6 was also amended by section 2 of Senate Bill No. 2248, chapter 111.

(5) A specific reportable event identified by date and either agency or court.

4. The identifying information supporting a request for a criminal history record does not match the record of more than one individual.

SECTION 2. Section 12-60-16.11 of the North Dakota Century Code is created and enacted as follows:

12-60-16.11. Criminal history record information - Required action. Any person offering criminal background checks for compensation, for the purpose of screening applicants seeking a position in which the applicant is responsible for providing care for a vulnerable adult, shall utilize the bureau of criminal investigation statewide criminal history database in addition to any other compiled information. The entity shall pay any applicable fees set forth in section 12-60-16.9.

Approved April 12, 2005
Filed April 13, 2005

CHAPTER 111

SENATE BILL NO. 2248

(Senators Christmann, Andrist, Lindaas)
(Representatives Haas, L. Meier, Skarphol)

CRIMINAL HISTORY RECORD CHECKS

AN ACT to amend and reenact subsection 1 of section 4-41-02, sections 12-60-16.6, 12-60-16.9, 12-60-24, and 15.1-13-14, subsection 1 of section 15.1-13-20, section 15.1-13-23, subsection 4 of section 43-17-07.1, and sections 43-30-06, 50-11.1-06.2, and 54-59-20 of the North Dakota Century Code, relating to criminal history record checks; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 4-41-02 of the North Dakota Century Code is amended and reenacted as follows:

1. Any person desiring to grow industrial hemp for commercial purposes shall apply to the agriculture commissioner for a license on a form prescribed by the commissioner. The application for a license must include the name and address of the applicant and the legal description of the land area to be used ~~for the production of~~ to produce industrial hemp. Except for employees of the agricultural experiment station or the North Dakota state university extension service involved in research and extension related activities, the commissioner shall require each applicant for initial licensure to ~~file a set of the applicant's fingerprints, taken by a law enforcement officer, and any other information necessary to complete~~ submit to a statewide and nationwide criminal history check ~~with the bureau of criminal investigation for state processing and with the federal bureau of investigation for federal processing~~. The nationwide criminal history check must be conducted in the manner provided in section 12-60-24. All costs associated with the background check are the responsibility of the applicant. Criminal history records provided to the commissioner under this section are confidential. The commissioner may use the records only in determining an applicant's eligibility for licensure. Any person with a prior criminal conviction is not eligible for licensure. If the applicant has completed the application process to the satisfaction of the commissioner, the commissioner shall issue the license, which is valid for a period of one year. Any person licensed under this section is presumed to be growing industrial hemp for commercial purposes.

[90] **SECTION 2. AMENDMENT.** Section 12-60-16.6 of the North Dakota Century Code is amended and reenacted as follows:

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[90] Section 12-60-16.6 was also amended by section 1 of House Bill No. 1484, chapter 110.

12-60-16.6. Criminal history record information - Dissemination to parties not described in section 12-60-16.5. Only the bureau may disseminate criminal history record information to parties not described in section 12-60-16.5. The dissemination may be made only if all the following requirements are met:

1. The information has not been purged or sealed.

2. The information is of a conviction, including a conviction for violating section 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-06.1, or 12.1-20-11 notwithstanding any disposition following a deferred imposition of sentence; or the information is of a reportable event occurring within one year preceding the request.

3. The request is written and contains:

   a. The name of the requester.

   b. The name of the record subject.

   c. At least two items of information used by the bureau to retrieve criminal history records, including:

      (1) The fingerprints of the record subject.

      (2) The state identification number assigned to the record subject by the bureau.

      (3) The social security number of the record subject.

      (4) The date of birth of the record subject.

      (5) A specific reportable event identified by date and either agency or court.

4. The identifying information supporting a request for a criminal history record does not match the record of more than one individual.

In order to confirm a record match, the bureau may contact the requester to collect additional information if a request contains an item of information that appears to be inaccurate or incomplete.

SECTION 3. AMENDMENT. Section 12-60-16.9 of the North Dakota Century Code is amended and reenacted as follows:

12-60-16.9. Criminal history record information - Fee for record check. The bureau shall impose a fee of ~~thirty~~ fifteen dollars for each state record check. The bureau shall ~~waive the fee for any criminal justice agency or court, and shall~~ impose a fee of ~~three~~ five dollars for each record check for a nonprofit organization that is organized and operated in this state exclusively for charitable purposes for the exclusive benefit of minors. The bureau shall impose a fee of five dollars for each record check conducted on a volunteer providing services for a nonprofit organization that is organized and operated in this state exclusively for charitable purposes for the exclusive benefit of vulnerable elderly adults. The bureau shall impose a fee of fifteen dollars for processing fingerprints necessary for each nationwide criminal history record check. The bureau shall waive the fees for any criminal justice agency or court.

SECTION 4. AMENDMENT. Section 12-60-24 of the North Dakota Century Code is amended and reenacted as follows:

12-60-24. ~~City or county fingerprinting~~ - Criminal history record checks. ~~The governing body of a city by ordinance or a county by ordinance or resolution may require each applicant for a specified occupation with the city or county to provide two sets of fingerprints.~~

1. a. The agencies and entities named in subsection 2 shall require each applicant, employee, or petitioner for adoption to consent to a statewide and nationwide criminal history record check for the purpose of determining suitability or fitness for a permit, license, employment, or adoption.

   b. Each applicant, employee, or petitioner for adoption subject to a criminal history check shall provide to the requesting agency or entity written consent to conduct the check, two sets of fingerprints from a law enforcement agency or other local agency authorized to take fingerprints, any other identifying information requested, and a statement indicating whether the applicant or employee has ever been convicted of a crime.

   c. The ~~city or county may~~ agency or entity shall submit these fingerprints to the bureau of criminal investigation for nationwide criminal history record information that includes resubmission of the fingerprints by the bureau of criminal investigation to the federal bureau of investigation. ~~Federal~~ Except if otherwise provided by law, federal bureau of investigation criminal history record information obtained by ~~a city or county~~ an agency or entity is confidential. For a request for nationwide criminal history record information made ~~by the city or county~~ under this section, the bureau of criminal investigation is the sole source to receive the fingerprint submissions and responses from the federal bureau of investigation. A person who takes fingerprints under this section may charge a reasonable fee to offset the cost of fingerprinting. ~~The~~ Unless otherwise provided by law, the bureau of criminal investigation may charge appropriate fees for criminal history information.

2. The bureau of criminal investigation shall provide to each agency or entity listed in this subsection who has requested a statewide and nationwide criminal history record check, the response of the federal bureau of investigation and any statewide criminal history record information that may lawfully be made available under this chapter:

   a. The governing body of a city or a county, by ordinance or resolution, for each applicant for a specified occupation with the city or county.

   b. The agriculture commissioner for each applicant for a license to grow industrial hemp under section 4-41-02.

   c. The education standards and practices board for initial and reciprocal teacher licenses under sections 15.1-13-14 and 15.1-13-20 and school guidance and counseling services under section 15.1-13-23.

d. The medical examiners board for licenses or disciplinary investigations under section 43-17-07.1, except that criminal history record checks need not be made unless required by the board.

e. The private investigative and security board for licenses or registrations under section 43-30-06.

f. The human services department for foster care licenses under section 50-11-06.8, appointments of legal guardians under section 50-11.3-01, and petitions for adoptions under section 50-12-03.2, except that the criminal history record investigation must be conducted in accordance with those sections.

g. The human services department for carecheck registrations under section 50-11.1-06.2.

h. The chief information officer of the information technology department for certain employees under section 54-59-20.

i. A public peace officer training school that has been approved by the peace officer standards and training board for enrollees in the school. The school may only disclose the criminal history record information as authorized by law. The school shall pay the costs for securing the fingerprints, any criminal history record information made available under this chapter, and for the nationwide criminal history background check. This subdivision does not apply to the highway patrol law enforcement training center and enrollees who have a limited license under section 12-63-09.

j. The North Dakota public employees retirement board for individuals first employed by the public employees retirement board after July 31, 2005, who have unescorted physical access to the office or any security-sensitive area of the office as designated by the executive director.

k. The executive director of the retirement and investment office for individuals first employed by the retirement and investment office after July 31, 2005, who have unescorted physical access to the office or any security-sensitive area of the office as designated by the executive director.

l. The Bank of North Dakota for each applicant for a specified occupation with the Bank as designated by the president.

m. Job service North Dakota for each applicant for a specified occupation with job service as designated by the executive director.

n. The department of health for employees assigned duties related to bioterrorism and homeland security issues as designated by the state health officer; a nurse aide seeking to have a finding of neglect removed from the nurse aide registry; or an individual being investigated by the department of health who holds a license, certificate, or registration in a health-related field.

SECTION 5. AMENDMENT. Section 15.1-13-14 of the North Dakota Century Code is amended and reenacted as follows:

15.1-13-14. Initial licensure of teachers - ~~Background~~ Criminal history record check. The board shall check, or cause to be checked, the ~~background~~ criminal history record of each applicant for initial licensure as a teacher in accordance with section 12-60-24. ~~The board shall require each applicant for licensure to file a complete set of the applicant's fingerprints, taken by a law enforcement officer or a properly trained designee of a law enforcement officer, and all other information necessary to complete a statewide and nationwide criminal history check with the bureau of criminal investigation for state processing and filing with the federal bureau of investigation for federal processing.~~ All costs associated with the background check and with obtaining and processing the fingerprints are the responsibility of the applicant. Criminal history records provided to the board pursuant to this section are confidential and closed to the public and may only be used by the board for determining an applicant's eligibility for licensure and obtaining documentation to support a denial of licensure.

SECTION 6. AMENDMENT. Subsection 1 of section 15.1-13-20 of the North Dakota Century Code is amended and reenacted as follows:

1. The board shall grant an interim reciprocal teaching license in accordance with sections 15.1-18-02 and 15.1-18-03 to an individual who holds a regular teaching license or certificate from another state, provided:

   a. The individual's licensure or certification is based upon a minimum of a bachelor's degree with a major that meets the issuing state's requirements in elementary education, middle-level education, or a content area taught at a public high school;

   b. The individual's licensure or certification is based upon the completion of a professional education sequence from a state-approved teacher education program and includes supervised student teaching;

   c. The individual submits to a ~~background~~ criminal history record check as required of initial applicants by this chapter;

   d. The ~~background~~ criminal history record check reveals nothing for which a North Dakota applicant would be denied initial licensure; and

   e. The individual submits a plan for meeting all requirements necessary to become a licensed teacher in this state.

SECTION 7. AMENDMENT. Section 15.1-13-23 of the North Dakota Century Code is amended and reenacted as follows:

15.1-13-23. School guidance and counseling services - Providers. Notwithstanding any other law, guidance and counseling services at the elementary and secondary school level may be provided by a person holding a graduate degree in counseling from a state-approved school counseling program, with coursework and an internship in school counseling, as required for all counselors by the superintendent of public instruction, provided the person has a North Dakota teaching license or will obtain one within seven years from the date of first

employment under this section. The board shall ~~adopt rules relating to the background check of a~~ conduct a criminal history record check in accordance with section 12-60-24 on each person hired under this section. All costs associated with a background check are the responsibility of the person being hired. The board shall monitor a person hired under this section to ensure that the person annually completes at least one-seventh of the total credits required for that person to obtain a teaching license, as determined at the time of employment under this section.

SECTION 8. AMENDMENT. Subsection 4 of section 43-17-07.1 of the North Dakota Century Code is amended and reenacted as follows:

4. Require information on an applicant's or licensee's fitness, qualifications, and previous professional record and performance from recognized data sources, including the federation of state medical boards action data bank, other data repositories, licensing and disciplinary authorities of other jurisdictions, professional education and training institutions, liability insurers, health care institutions, and law enforcement agencies be reported to the board. The board or its investigative panels may require an applicant for licensure or a licensee who is the subject of a disciplinary investigation to ~~file a complete set of the applicant's or licensee's fingerprints taken by a law enforcement officer or a properly trained designee of a law enforcement officer and all other information necessary to complete~~ submit to a statewide and nationwide criminal history record check ~~with the bureau of criminal investigation for state processing and filing with the federal bureau of investigation for federal processing~~. The nationwide criminal history record check must be conducted in the manner provided by section 12-60-24. All costs associated with the ~~background~~ criminal history record check ~~and with obtaining and processing the fingerprints~~ are the responsibility of the licensee or applicant.

SECTION 9. AMENDMENT. Section 43-30-06 of the North Dakota Century Code is amended and reenacted as follows:

43-30-06. License and registration applications. Every person who desires to obtain a license or registration shall apply to the board on applications prepared and furnished by the board. Each application must include the information required by the board and must be accompanied by the required fee. As a requirement of receiving a license or registration, the board shall require each applicant to ~~file with the board a complete set of the applicant's fingerprints and all other information necessary to complete~~ submit to a state and nationwide criminal history record check ~~with the bureau of criminal investigation for state processing and filing with the federal bureau of investigation for federal processing~~. The nationwide criminal history check must be conducted in the manner provided in section 12-60-24. All costs associated with the ~~background~~ criminal history record check ~~and with obtaining and processing the fingerprints~~ are the responsibility of the applicant. Criminal history records provided to the board pursuant to this section are confidential and closed to the public and may be used by the board for the sole purpose of determining an applicant's eligibility for licensure and obtaining documentation to support a denial of licensure. A criminal history record check is not required under this section if an applicant for registration has previously been the subject of a state and nationwide criminal history check, has held a registration issued by the board within the sixty days immediately preceding the application, and is applying for a new registration due solely to a change in employment. A nationwide criminal history check is not required under this section if an applicant for licensure or registration provides to the board the results of a nationwide criminal

history check performed by the federal bureau of investigation at the request of another state and if the nationwide criminal history check was performed within the sixty days immediately preceding the date of the application. A state criminal history check is not required under this section if an applicant for registration provides to the board the results of a state ~~background~~ criminal history record check performed by the state in which the applicant currently resides and if the state ~~background~~ criminal history record check was performed within the sixty days immediately preceding the date of the application.

SECTION 10. AMENDMENT. Section 50-11.1-06.2 of the North Dakota Century Code is amended and reenacted as follows:

50-11.1-06.2. Carecheck registry - Child care providers - Background investigations - Fees. Placement in the carecheck registry is voluntary. To apply for placement in the carecheck registry, an in-home provider, a family child care home exempt from licensure, or a licensed early childhood services provider shall obtain two sets of that person's own fingerprints from a law enforcement agency or other local agency authorized to take fingerprints and shall request the agency to submit the fingerprints and a completed fingerprint card for each set to the division of children and family services of the department or to any division as determined appropriate by the department. If the division has no record of a determination of services required for child abuse or neglect, the division shall submit ~~one set of~~ the fingerprints to the ~~federal bureau of investigation and one set to the~~ bureau of criminal investigation to determine if there is any criminal history record information regarding the applicant for carecheck in accordance with section 12-60-24. The results of the investigations must be forwarded to the division of children and family services of the department or to any other division as determined appropriate by the department. The applicant for placement in the carecheck registry, after satisfying requirements imposed by the department, must be placed in the carecheck registry if no relevant criminal history record information is found and no report of a determination of services required for child abuse or neglect filed pursuant to section 50-25.1-05.2 is found which would disqualify the person. The division may charge the applicant a fee not to exceed thirty dollars for the purpose of processing the application. The division is not subject to the fee imposed under section 12-60-16.9 when requesting criminal history record information from the bureau of criminal investigation. The division, within one hundred eighty days after July 1, 1991, shall provide, through a toll-free telephone line maintained by the department, a means to allow interested parents or guardians, employment agencies, or child care referral groups to determine if a person has met the requirements for placement in the carecheck registry. The division shall undertake a public awareness effort to explain the existence and purpose of the carecheck toll-free telephone line. An agency that takes fingerprints as provided under this section may charge a reasonable fee to offset the costs of the fingerprinting.

SECTION 11. AMENDMENT. Section 54-59-20 of the North Dakota Century Code is amended and reenacted as follows:

54-59-20. Employees of the department - Security background information. The chief information officer shall require as a condition of employment with the department that individuals who have unescorted physical access to the facilities or other security sensitive areas of the department designated by the chief information officer ~~be fingerprinted. The chief information officer shall ensure that the fingerprints are submitted to the bureau of criminal investigation and the federal bureau of investigation for verification of the identity of the individuals and to obtain records of criminal arrests and convictions~~ submit to a criminal history record check in accordance with section 12-60-24.

SECTION 12. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 30, 2005
Filed March 31, 2005

CHAPTER 112

HOUSE BILL NO. 1192

(Representative Drovdal)
(Senator Lyson)

PEACE OFFICER AUTHORITY

AN ACT to create and enact a new section to chapter 12-63 of the North Dakota Century Code, relating to part-time peace officer authority, licensing, standards, and training; and to amend and reenact section 12-63-01 of the North Dakota Century Code, relating to the definition of peace officer.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-63-01 of the North Dakota Century Code is amended and reenacted as follows:

12-63-01. Definitions. As used in this chapter:

1. "Board" means the peace officer standards and training board.

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

3. "Peace officer" means a public servant authorized by law or by government agency or branch to enforce the law and to conduct or engage in investigations of violations of the law.

SECTION 2. A new section to chapter 12-63 of the North Dakota Century Code is created and enacted as follows:

Part-time peace officer license.

1. Except as provided in this section, all provisions of this chapter apply to part-time peace officer licenses. Except as limited by this section, a part-time licensed peace officer of this state has the authority of a licensed peace officer of this state.

2. The board shall issue a part-time license to any individual appointed by a criminal justice agency who meets the requirements of this chapter and the rules of the board for a part-time peace officer license.

3. A criminal justice agency may appoint part-time licensed peace officers to supplement and assist licensed peace officers. A criminal justice agency may not appoint a part-time licensed peace officer unless the part-time licensed peace officer acts under the direct or indirect supervision of a licensed peace officer designated by the criminal justice agency.

4. A part-time licensed peace officer may not exercise peace officer duties, including the exercise of arrest authority, when off duty.

5. Unless the part-time licensed peace officer has a valid North Dakota concealed weapons license, a part-time licensed peace officer may not carry a duty weapon or concealed weapon when off duty.

6. The board shall establish criteria for part-time licenses, including training curriculum, examination requirements, weapon training and certification, licensing requirements, and continuing education requirements.

7. The board shall adopt rules to implement part-time peace officer licenses and shall establish by rule fees for application for examination, initial licensing, renewal and late renewal, and reinstatement of part-time peace officer licenses.

Approved March 4, 2005
Filed March 4, 2005