CORRECTIONS, PAROLE, AND PROBATION

CHAPTER 115

HOUSE BILL NO. 1238

(Representatives Nelson, Hofstad, S. Meyer)
(Senators Lyson, Triplett)

AN ACT to create and enact a new section to chapter 12-44.1 of the North Dakota Century Code, relating to the housing of out-of-state inmates by correctional facilities; to amend and reenact section 12-44.1-02 of the North Dakota Century Code, relating to the housing of out-of-state inmates by correctional facilities; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-44.1-02 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-02. Establishing correctional facilities - Correctional facility contracts - Regional corrections centers.

1. 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.~~ a. ~~Establishing and maintaining~~ Establish and maintain a correctional facility at county or city expense~~.~~;

~~2.~~ b. ~~Contracting~~ Contract for correctional facility services and use of correctional facilities with another county or city ~~maintaining~~ that maintains a correctional facility or with the state or federal government~~.~~; or

~~3.~~ c. ~~Establishing and maintaining~~ Establish and maintain, pursuant to chapter 54-40 or 54-40.3 and this chapter, a correctional facility in conjunction with other counties and cities.

~~4.~~ 2. ~~A county or city~~ Subject to the requirements of section 2 of this Act, the governing body of a correctional facility may contract with a state or a regional correctional center, county, or city of another state for~~:~~

~~a.~~ ~~The~~ the confinement of lawfully committed state, county, or city inmates from the other state~~; or~~.

~~b.~~ 3. The governing body of a correctional facility may contract with a state or a regional correctional center, county, or city of another state for the confinement of lawfully committed North Dakota inmates in a county, city, or regional correctional facility of another state.

~~5.~~ 4. ~~A city or county~~ The governing body of a correctional facility 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.

~~6.~~ 5. ~~A city or county~~ The governing body of a correctional facility may contract for the confinement of inmates lawfully sentenced by a tribal court.

~~7.~~ 6. ~~A city or county~~ The governing body of a correctional facility may contract for correctional facility services with a privately operated correctional facility. Contracts with private agencies ~~providing~~ that provide correctional facility services may be entered into for up to seven years.

SECTION 2. A new section to chapter 12-44.1 of the North Dakota Century Code is created and enacted as follows:

Contracts for out-of-state inmates - Requirements. The governing body of a correctional facility that contracts with another state or a regional correctional center, county, or city of another state for the confinement of lawfully committed state, county, or city inmates from the other state is subject to the following conditions:

1. Before a correctional facility may accept an out-of-state inmate, the governing body of the correctional facility shall approve and sign the contract that authorizes housing out-of-state inmates.

2. Before accepting an out-of-state inmate, the administrator of the correctional facility shall review the out-of-state inmate's file and request a nationwide criminal history background check. The administrator may not accept:

   a. Any inmate with a history of escape or attempted escape from official detention as defined under section 12.1-08-06 or under an equivalent federal statute or statute of another state;

   b. Any inmate with a history of institutional violence, including violence against staff or other inmates;

   c. Any inmate who has pled guilty to, or has been convicted of, a crime of violence. For the purpose of this section, a crime of violence includes kidnapping and any violation of any state or federal law when the inmate knowingly or intentionally inflicted, attempted to inflict, or threatened serious bodily injury, or death, or when the inmate was armed with a firearm, dangerous weapon, or destructive device;

   d. An inmate who has been convicted of aggravated assault involving substantial or serious bodily injury, and the offense is a felony under the laws of the sending state or under federal law, unless the administrator has obtained the approval of the department of corrections and rehabilitation in advance of the placement. The state of North Dakota and any officer or employee of the department is immune from any civil liability for damages for personal injury or property damage caused by an inmate placed in a correctional facility under this subsection;

e. Any inmate who has pled guilty to, or has been convicted of, a sexual offense in which the victim was a child under the age of fifteen years, or the inmate compelled, or attempted to compel, the victim to submit by force or by threat of imminent death, serious bodily injury, or kidnapping, or if in the course of the offense, the inmate inflicted serious or substantial bodily injury on the victim; or

f. Any inmate who has a documented affiliation as a member of a criminal street gang as defined under section 12.1-06.2-01 or equivalent statute of another state or under federal law.

3. Out-of-state inmates may not be permitted to leave the premises of the correctional facility except to comply with a court order or to receive medical care.

4. The correctional facility may not house out-of-state inmates in the same cells with inmates of the department of corrections and rehabilitation.

5. A contract under this section must include a requirement that if an out-of-state inmate is charged with committing a crime while in the custody of the correctional facility, the sending state shall take custody of the inmate upon the request of the correctional facility and the written consent of the state's attorney of the county where the correctional facility is located. If the sending state takes custody of the inmate and the state's attorney requests the inmate be returned to this state for prosecution, the correctional facility is responsible for the cost of returning the inmate to this state for prosecution. If an out-of-state inmate is convicted and sentenced to the legal and physical custody of the department of corrections and rehabilitation for a crime committed while in the custody of the correctional facility, the correctional facility shall reimburse the department for its costs to confine the inmate until completion of the term of imprisonment.

6. The department of corrections and rehabilitation may not assume custody of an out-of-state inmate placed in a correctional facility in this state under a contract between the governing body of a correctional facility and a sending state except under a lawful sentence and judgment of a district court of this state and after notice to the sending state.

7. If the state or a political subdivision of this state incurs any cost in the investigation or prosecution of an offense committed by an out-of-state inmate while in the custody of a contracting correctional facility, the correctional facility shall reimburse the state or political subdivision for the costs incurred.

8. A contract under this section must include a requirement that the sending state shall notify the correctional facility of the expiration date of the out-of-state inmate's imprisonment when the sending state transfers the out-of-state inmate to the correctional facility and that the sending state shall retake the out-of-state inmate before the expiration date of the out-of-state inmate's imprisonment.

9. For purposes of this section, "out-of-state inmate" means an individual who is convicted of a crime in a state other than North Dakota; "sending state" means another state and includes a city, county, or regional

correctional center of another state; and "correctional facility" means a facility subject to this chapter.

10. The correctional facility shall defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers, and employees from and against claims for personal injury or property damage caused by an out-of-state inmate placed in a correctional facility under this section.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 21, 2009
Filed April 22, 2009

CHAPTER 116

SENATE BILL NO. 2114

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

AN ACT to create and enact subsection 8 to section 12-44.1-21 of the North Dakota Century Code, relating to wireless electronic devices on or within correctional facilities; to amend and reenact section 12-44.1-06 and subsection 7 of section 12-44.1-21 of the North Dakota Century Code, relating to grades of correctional facilities and the definition of contraband; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-44.1-06 of the North Dakota Century Code is amended and reenacted as follows:

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.

~~3. The department of corrections and rehabilitation, upon the request of the governing body of the correctional facility, may authorize a correctional facility to regularly confine inmates for more than one year if the correctional facility meets criteria established by the department, including:~~

   ~~a. A classification system approved by the department.~~

   ~~b. Education programs, including vocational education and a general equivalency diploma program.~~

   ~~c. Treatment programs, including licensed alcohol or drug addiction counseling.~~

~~d. Inmate work programs, including prison industries work programs.~~

~~e. An infirmary and onsite medical and pharmacy services.~~

~~f. Indoor and outdoor recreation.~~

[71] **SECTION 2.** Subsection 8 to section 12-44.1-21 of the North Dakota Century Code is created and enacted as follows:

8. a. It is unlawful for an inmate in a correctional facility to willfully manufacture, possess, or use a wireless electronic communication device in a correctional facility except for law enforcement purposes.

b. It is unlawful for any person to willfully deliver, or possess with intent to deliver, a wireless electronic communication device to an inmate in a correctional facility or to any person for redelivery to an inmate in a correctional facility, or to allow an inmate to possess or use a wireless electronic communication device in a correctional facility except for law enforcement purposes.

c. A violation of this subsection is a class C felony.

[72] **SECTION 3. AMENDMENT.** Subsection 7 of section 12-44.1-21 of the North Dakota Century Code is amended and reenacted as follows:

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. As used in this section, a wireless electronic communication device includes a cellular telephone, personal digital assistant, pager, mobile broadband card, internet router, digital camera, two-way radio, modem, or any other electronic device capable of wireless transmission, reception, interception, or storage of oral communications, text, e-mail, video or photograph images, data signals, or radio communications, and also includes a component of a wireless electronic device, regardless whether the component itself is able to transmit, store, or receive oral communications, text, e-mail, video or photograph images, data signals, or radio communications. A wireless electronic communications device does not include a medically prescribed device or any other device approved by the department.

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[71] Section 12-44.1-21 was also amended by section 3 of Senate Bill No. 2114, chapter 116.

[72] Section 12-44.1-21 was also amended by section 2 of Senate Bill No. 2114, chapter 116.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 24, 2009
Filed April 29, 2009

CHAPTER 117

HOUSE BILL NO. 1237

(Representatives Nelson, Hofstad, S. Meyer)
(Senators Lyson, Robinson)

AN ACT to create and enact a new section to chapter 12-44.1 of the North Dakota Century Code, relating to allowing correctional officers to carry weapons in certain circumstances; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Correctional officers authorized to carry weapons. The administrator of a correctional facility may allow a qualified correctional officer to carry a weapon, including a firearm, during the transport of another governmental agency's prisoner if the correctional facility has a contract with the governmental agency to transport the agency's prisoners and that contract requires the officer doing the transport to be armed with a weapon. For purposes of this section, "governmental agency" means an agency or department of this state or of any political subdivision in this state, or another state or of a political subdivision of another state, or of the United States. The administrator of a correctional facility shall adopt a policy, approved by the director of the department of corrections and rehabilitation, which establishes the qualifications and training an officer must meet to carry a weapon under this section. Sections 62.1-02-05, 62.1-02-10, and 62.1-03-01 do not apply to the possession and use of a firearm by a qualified correctional officer acting in the course of employment as allowed by this section.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 21, 2009
Filed April 22, 2009

CHAPTER 118

SENATE BILL NO. 2116

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

AN ACT to create and enact subsection 8 to section 12-47-21 and a new subsection to section 12-47-36 of the North Dakota Century Code, relating to wireless electronic communications devices on or within premises under the control of the department of corrections and rehabilitation and records of offenders; to amend and reenact subsection 7 of section 12-47-21 of the North Dakota Century Code, relating to the definition of contraband; to repeal section 12-47-38 of the North Dakota Century Code, relating to contracting with county jails to house female prisoners; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[73] **SECTION 1.** Subsection 8 to section 12-47-21 of the North Dakota Century Code is created and enacted as follows:

8. a. It is unlawful for a penitentiary inmate to willfully manufacture, possess, or use a wireless electronic communications device on or within any premises under the control of the department of corrections and rehabilitation or any of its divisions except for law enforcement purposes.

b. It is unlawful for any person to willfully deliver, or possess with intent to deliver, a wireless electronic communications device to a penitentiary inmate or to any person for redelivery to a penitentiary inmate, or to allow a penitentiary inmate to possess or use a wireless electronic communications device, on or within any premises under the control of the department of corrections and rehabilitation or any of its divisions except for law enforcement purposes.

c. A violation of this subsection is a class C felony.

[74] **SECTION 2. AMENDMENT.** Subsection 7 of section 12-47-21 of the North Dakota Century Code is amended and reenacted as follows:

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

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[73] Section 12-47-21 was also amended by section 2 of Senate Bill No. 2116, chapter 118.

[74] Section 12-47-21 was also amended by section 1 of Senate Bill No. 2116, chapter 118.

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. As used in this section, a wireless electronic communications device includes a cellular telephone, personal digital assistant, pager, mobile broadband card, internet router, digital camera, two-way radio, modem, or any other electronic device capable of wireless transmission, reception, interception, or storage of oral communications, text, electronic mail, video or photograph images, data signals, or radio communications, and also includes a component of a wireless electronic device, regardless whether the component itself is able to transmit, store, or receive oral communications, text, electronic mail, video or photograph images, data signals, or radio communications. A wireless electronic communications device does not include a medically prescribed device or any other device approved by the department.

SECTION 3. A new subsection to section 12-47-36 of the North Dakota Century Code is created and enacted as follows:

The medical, psychological, and treatment records of the department 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 may be disclosed for the purpose of conducting research and educational activities. A person conducting research or educational activities may not redisclose identifying information received under this subsection.

SECTION 4. REPEAL. Section 12-47-38 of the North Dakota Century Code is repealed.

SECTION 5. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 24, 2009
Filed April 29, 2009

CHAPTER 119

SENATE BILL NO. 2134

(Government and Veterans Affairs Committee)
(At the request of the Department of Corrections and Rehabilitation)

AN ACT to amend and reenact sections 12-48-03.1 and 12-48-03.2 of the North Dakota Century Code, relating to prison industries.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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.

1. 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~~ may 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~~ prison 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.~~ 2. 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~~ governmental agencies, including federal, state, and tribal agencies and political subdivisions, for use in ~~government-owned or rented buildings~~ official business, 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~~ Prison industries may sell commissary items and prison industries-made clothing to inmates. Prison industries-made products may also be sold ~~only~~ through wholesale or retail outlets that possess a valid sales tax permit ~~or~~, and if the products are manufactured under the prison industries enhancement certification program under Public Law No. 96-157 [93 Stat. 1215; 18 U.S.C. 176(c)], in interstate commerce and 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 2. AMENDMENT. Section 12-48-03.2 of the North Dakota Century Code is amended and reenacted as follows:

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.

Approved March 19, 2009
Filed March 19, 2009

CHAPTER 120

SENATE BILL NO. 2122

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

AN ACT to amend and reenact sections 12-55.1-05, 12-59-02, 12-59-07, 12-59-08, 12-59-09, 12-59-10, 12-59-15, and 27-06-06 of the North Dakota Century Code, relating to the powers and duties of the parole board, the powers and duties of the pardon advisory board, and preparation and filing of transcripts in criminal actions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-55.1-05 of the North Dakota Century Code is amended and reenacted as follows:

12-55.1-05. Pardon clerk - Duties. The director of the ~~division of parole and probation~~ department of corrections and rehabilitation or the director's designee shall serve as the pardon clerk under this chapter. The pardon clerk shall:

1. Maintain a register of all applications filed for commutation, reprieve, pardon, conditional pardon, or remission of fine and shall maintain a complete and accurate record of all proceedings in connection with the applications, including all correspondence, documents, evidence, and appearances made in connection with the application.

2. Conduct investigations, employ psychologists, psychiatrists, or other specialists necessary for the determination of matters before the pardon advisory board or the governor under this chapter, and perform other duties in connection with matters under this chapter as may be requested by the pardon advisory board or the governor.

3. Maintain a record of every commutation, reprieve, pardon, conditional pardon, or remission of fine granted or refused, along with the reasons for each action.

SECTION 2. AMENDMENT. Section 12-59-02 of the North Dakota Century Code is amended and reenacted as follows:

12-59-02. Meetings - Compensation - Rules. The governor shall appoint a member of the parole board to be chairman. The chairman of the parole board shall designate three members of the parole board for each meeting of the parole board. Meetings of the parole board must be held in accordance with rules established by the parole board and must be held as often as required to properly conduct the business of the board, but in any event not less than six times per year. The parole board may only take action upon the concurrence of at least two members who participated in the same meeting. The final decision of at least two parole board members who participated in the same parole board meeting constitutes the decision of the parole board. Members are entitled to be compensated at the rate of seventy-five dollars per day for each day actually and necessarily spent in the performance of their duties as board members plus the same mileage and expenses as are authorized for state officials and employees. The director of the ~~division of~~

~~parole and probation,~~ department of corrections and rehabilitation or the director's designee~~,~~ is the clerk for the parole board.

SECTION 3. AMENDMENT. Section 12-59-07 of the North Dakota Century Code is amended and reenacted as follows:

12-59-07. Requirements precedent to parole. The parole board may grant an application for parole if the board is convinced the applicant will conform to the terms and conditions of parole the board or the ~~division of parole and probation~~ department of corrections and rehabilitation may establish for the applicant. The ~~division of parole and probation~~ department of corrections and rehabilitation may establish intermediate conditions of parole, including incarceration for a period of seventy-two hours and restitution, subject to the subsequent approval of the parole board.

SECTION 4. AMENDMENT. Section 12-59-08 of the North Dakota Century Code is amended and reenacted as follows:

12-59-08. Application for parole - Emergency paroles. An applicant for parole shall file an application with the ~~division of parole and probation~~ department of corrections and rehabilitation. The parole board may consider the application at a meeting scheduled by the chairman. The board may request an applicant to personally appear before the board before the board makes a decision on an application. The board may grant or deny parole, or grant a conditional parole, or continue its consideration to another meeting. In the event of an application for emergency parole, two members of the parole board may grant emergency parole, subject to terms and conditions of emergency parole that may be established by two members of the parole board or by the ~~division of parole and probation~~ department of corrections and rehabilitation. An applicant who receives parole remains in the legal custody of the department of corrections and rehabilitation until the expiration of the maximum term or terms of imprisonment for which the applicant was sentenced, less any sentence reduction the applicant has received.

SECTION 5. AMENDMENT. Section 12-59-09 of the North Dakota Century Code is amended and reenacted as follows:

12-59-09. Contents of application for parole. An application for parole must be in writing, addressed to the ~~division of parole and probation~~ department of corrections and rehabilitation, and must be signed by the applicant or some person in the applicant's behalf.

SECTION 6. AMENDMENT. Section 12-59-10 of the North Dakota Century Code is amended and reenacted as follows:

12-59-10. Notice of application for parole. The ~~division of parole and probation~~ department of corrections and rehabilitation shall provide written notice of an application for parole to the district court and state's attorney's office in the county or counties where judgment of conviction was entered against the applicant. The notice must include the name of the applicant, the date of entry and docket number of the criminal judgment, the crime or crimes stated in the criminal judgment, and the date and place for the meeting on the application.

SECTION 7. AMENDMENT. Section 12-59-15 of the North Dakota Century Code is amended and reenacted as follows:

12-59-15. Breach of parole - Hearings - Order of recommitment.

1. When it is alleged that a parolee has violated any of the terms or conditions of parole established by the parole board or by the ~~division of parole and probation~~ department of corrections and rehabilitation, the director of the ~~division of parole and probation or the director's designee~~ department of corrections and rehabilitation may issue a warrant for the arrest of the parolee.

2. Upon issuance of a warrant of arrest for a parole violation, the running of the time period of parole must be suspended until the parole board issues a final order under this section. The parolee is entitled to credit for time spent in physical custody from the time of arrest until the time the parole board issues a final order.

3. The parolee is entitled to a preliminary hearing, as promptly as is convenient after the arrest and reasonably near the place of the alleged violation or arrest, to determine whether there is probable cause to find that the parolee violated any of the terms and conditions of parole established by the board or by the ~~division of parole and probation~~ department of corrections and rehabilitation.

4. The preliminary hearing must be conducted before the director of the ~~division of parole and probation~~ department of corrections and rehabilitation or other hearing officer authorized by the director. The preliminary hearing must be conducted by a disinterested hearing officer not directly involved in the supervision of the parolee or by the person bringing the allegation of a parole violation.

5. If the hearing officer determines there is probable cause to find that the parolee has violated any of the terms and conditions of parole established by the board or by the ~~division of parole and probation~~ department of corrections and rehabilitation, the board may redetermine the time remaining in the period of parole to reflect any portion of the period during which the parolee was not under supervision or not in the custody of law enforcement personnel in the state.

6. If the hearing officer determines there is probable cause to find that the parolee has violated any of the terms and conditions of parole established by the board or by the ~~division of parole and probation~~ department of corrections and rehabilitation, the parolee must be returned to the physical custody of the department of corrections and rehabilitation, transferred to another correctional facility or the state hospital, or released from actual custody pursuant to such terms and conditions as may be established by the parole board or the ~~division of parole and probation~~ department of corrections and rehabilitation, pending a final revocation hearing before the parole board. If the board determines at the final revocation hearing that the parolee has violated any of the terms and conditions of parole established by the board or by the ~~division of parole and probation~~ department of corrections and rehabilitation, it may order that the parolee be recommitted to the physical custody of the department of corrections and rehabilitation to serve all or part of the remaining time of the sentence that has not been served in custody.

7. At any hearing pursuant to this section a record must be made and the parolee shall have:

   a. Written notice of the purpose of the hearing and the alleged violations.

   b. The opportunity to be heard in person and present witnesses and documentary evidence.

   c. The opportunity to confront and cross-examine adverse witnesses, unless the hearing officer determines that confrontation would create a risk of harm to the witness.

   d. A written statement as to the reasons for the decision.

8. When the board determines the parolee has absconded from supervision, the board may order the parolee to pay the costs of being returned to the board. Moneys recovered under this subsection must be remitted to the department of corrections and rehabilitation.

SECTION 8. AMENDMENT. Section 27-06-06 of the North Dakota Century Code is amended and reenacted as follows:

27-06-06. Transcript in criminal action prepared at expense of state - Filing and use of transcript. A judge of a district court in which a criminal action or proceeding has been tried, on that judge's own motion or on application of the defendant or the state's attorney of the county, may order a transcript of the original shorthand notes of the action or proceeding, or of any part thereof, to be made by the reporter at state expense whenever there is reasonable cause therefor. The transcript, when prepared, must consist of one copy to be filed in the office of the clerk of court, one copy for each party separately represented, and, if ~~parole or probation be granted, one copy to the division of parole and probation~~ the defendant is sentenced to the legal and physical custody of, or placed under the supervision and management of, the department of corrections and rehabilitation, one copy to the department. The court reporter shall receive compensation for preparation of the transcript in accordance with the provisions of section 27-06-08.

Approved March 19, 2009
Filed March 19, 2009

CHAPTER 121

HOUSE BILL NO. 1416

(Representatives Dahl, Delmore, Klemin)
(Senators Freborg, Holmberg, Nelson)

AN ACT to create and enact sections 12-60-08.1 and 29-05-11.1 of the North Dakota Century Code, relating to the power of the attorney general to issue administrative subpoenas for bureau investigations and the duty of criminal justice agencies to enter warrants into the central warrant information system; and to amend and reenact subsections 1, 2, 3, 9, and 12 of section 12.1-32-15 of the North Dakota Century Code, relating to registration requirements for sexual offenders and offenders against children.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 12-60-08.1 of the North Dakota Century Code is created and enacted as follows:

12-60-08.1. Power of the attorney general to issue subpoenas in bureau investigations. The attorney general may issue an administrative subpoena compelling the recipient to provide records or information to an agent of the bureau of criminal investigation in any criminal matter being investigated by the bureau.

[75] **SECTION 2. AMENDMENT.** Subsections 1, 2, 3, 9, and 12 of section 12.1-32-15 of the North Dakota Century Code are amended and reenacted as follows:

1. As used in this section:

   a. "A crime against a child" means a violation of chapter 12.1-16, section 12.1-17-01.1 if the victim is under the age of twelve, 12.1-17-02, 12.1-17-04, subdivision a of subsection 6 of section 12.1-17-07.1, section 12.1-18-01, 12.1-18-02, 12.1-18-05, chapter 12.1-29, or subdivision a of subsection 1 or subsection 2 of section 14-09-22, or an equivalent offense from another court in the United States, a tribal court, or court of another country, in which the victim is a minor or is otherwise of the age required for the act to be a crime or an attempt or conspiracy to commit these offenses.

   b. "Department" means the department of corrections and rehabilitation.

   c. "Mental abnormality" means a congenital or acquired condition of an individual that affects the emotional or volitional capacity of the individual in a manner that predisposes that individual to the

[75] Section 12.1-32-15 was also amended by section 1 of House Bill No. 1041, chapter 137, section 1 of House Bill No. 1334, chapter 136, and section 3 of Senate Bill No. 2209, chapter 139.

commission of criminal sexual acts to a degree that makes the individual a menace to the health and safety of other individuals.

d. "Predatory" means an act directed at a stranger or at an individual with whom a relationship has been established or promoted for the primary purpose of victimization.

e. "Sexual offender" means a person who has pled guilty to or been found guilty, including juvenile delinquent adjudications, of a violation of section 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-05.1, 12.1-20-06, 12.1-20-07 except for subdivision a, 12.1-20-11, 12.1-20-12.1, or 12.1-20-12.2, chapter 12.1-27.2, or subsection 2 of section 12.1-22-03.1, or an equivalent offense from another court in the United States, a tribal court, or court of another country, or an attempt or conspiracy to commit these offenses.

f. "Sexually dangerous individual" means an individual who meets the definition specified in section 25-03.3-01.

g. "Temporarily domiciled" means staying or being physically present in this state for more than thirty days in a calendar year or at a location for longer than ten consecutive days, attending school for longer than ten days, or maintaining employment in the jurisdiction for longer than ten days, regardless of the state of the residence.

2. The court shall impose, in addition to any penalty provided by law, a requirement that the individual register, within three days of coming into a county in which the individual resides or ~~is~~ within the period identified in this section that the individual becomes temporarily domiciled. The individual must register with the chief of police of the city or the sheriff of the county if the individual resides, attends school, or is employed in an area other than a city. The court shall require an individual to register by stating this requirement on the court records, if that individual:

a. Has pled guilty or nolo contendere to, or been found guilty as a felonious sexual offender or an attempted felonious sexual offender, including juvenile delinquent adjudications of equivalent offenses unless the offense is listed in subdivision c.

b. Has pled guilty or nolo contendere to, or been found guilty as a sexual offender for, a misdemeanor or attempted misdemeanor. The court may deviate from requiring an individual to register if the court first finds the individual is no more than three years older than the victim if the victim is a minor, the individual has not previously been convicted as a sexual offender or of a crime against a child, and the individual did not exhibit mental abnormality or predatory conduct in the commission of the offense.

c. Is a juvenile found delinquent under subdivision d of subsection 1 of section 12.1-20-03, subdivision a of subsection 2 of section 12.1-20-03, or as a sexual offender for a misdemeanor. The court may deviate from requiring the juvenile to register if the court first finds the juvenile has not previously been convicted as a sexual offender or for a crime against a child, and the juvenile did not

exhibit mental abnormality or predatory conduct in the commission of the offense.

d. Has pled guilty or nolo contendere to, or been found guilty of, a crime against a child or an attempted crime against a child, including juvenile delinquent adjudications of equivalent offenses. Except if the offense is described in section 12.1-29-02, or section 12.1-18-01 or 12.1-18-02 and the person is not the parent of the victim, the court may deviate from requiring an individual to register if the court first finds the individual has not previously been convicted as a sexual offender or for a crime against a child, and the individual did not exhibit mental abnormality or predatory conduct in the commission of the offense.

e. Has pled guilty or nolo contendere, been found guilty, or been adjudicated delinquent of any crime against another individual which is not otherwise specified in this section if the court ~~finds the individual demonstrated mental abnormality or sexual predatory conduct in the commission of the offense~~ determines that registration is warranted by the nature of the crime and therefore orders registration for the individual. If the court orders an individual to register as an offender under this section, the individual shall comply with all of the registration requirements in this chapter.

3. If a court has not ordered an individual to register in this state, an individual who resides or is temporarily domiciled in this state shall register if the individual:

a. Is incarcerated or is on probation or parole after July 31, 1995, for a crime against a child described in section 12.1-29-02, or section 12.1-18-01 or 12.1-18-02 if the individual was not the parent of the victim, or as a sexual offender;

b. Has pled guilty or nolo contendere to, or been adjudicated for or found guilty of, an offense in a court of this state for which registration is mandatory under this section or an offense from another court in the United States, a tribal court, or court of another country equivalent to those offenses set forth in this section; or

c. Has pled guilty or nolo contendere to, or has been found guilty of, a crime against a child or as a sexual offender for which registration is mandatory under this section if the conviction occurred after July 31, 1985.

9. An individual required to register under this section who violates this section is guilty of a class C felony. The clerk of court shall forward all warrants issued for a violation of this section to the county sheriff, who shall enter all such warrants into the national crime information center wanted person file. A court may not relieve an individual, other than a juvenile, who violates this section from serving a term of at least ninety days in jail and completing probation of one year.

12. The attorney general, with the assistance of the department and the juvenile courts, shall develop guidelines for the risk assessment of sexual offenders who are required to register, with a low-risk,

moderate-risk, or high-risk level being assigned to each offender as follows:

a. The department shall conduct a risk assessment of sexual offenders who are incarcerated in institutions under the control of the department and sexual offenders who are on supervised probation. The department, in a timely manner, shall provide the attorney general any information, including the offender's level of risk and supporting documentation, concerning individuals required to be registered under this section who are about to be released or placed into the community.

b. The attorney general shall conduct a risk assessment of sexual offenders who are not under the custody or supervision of the department. The attorney general may adopt a law enforcement agency's previous assignment of risk level for an individual if the assessment was conducted in a manner substantially similar to the guidelines developed under this subsection.

c. The juvenile courts or the agency having legal custody of a juvenile shall conduct a risk assessment of juvenile sex offenders who are required to register under this section. The juvenile courts or the agency having legal custody of a juvenile shall provide the attorney general any information, including the offender's level of risk and supporting documentation, concerning juveniles required to register and who are about to be released or placed into the community.

d. The ~~agency~~ ~~responsible~~ ~~for~~ ~~conducting~~ ~~the~~ ~~risk~~ ~~assessment~~ attorney general shall notify the offender ~~as~~ ~~to~~ ~~the~~ ~~level~~ of the risk level assigned to that offender. An offender may request a review of that determination with the ~~appropriate~~ ~~agency~~ attorney general's sexual offender risk assessment committee and may present any information that the offender believes may lower the assigned risk level.

SECTION 3. Section 29-05-11.1 of the North Dakota Century Code is created and enacted as follows:

29-05-11.1. Duty of peace officer to enter warrant. A peace officer who receives a warrant for the arrest of a fugitive and does not execute the warrant shall enter the warrant in the central warrant information system. A warrant of arrest for the failure to pay a fine or fee may be entered at the discretion of the peace officer. A criminal justice agency may specify whether the agency will extradite from outside the county or state and the county or state from which the agency will extradite.

Approved April 21, 2009
Filed April 23, 2009

CHAPTER 122

HOUSE BILL NO. 1311

(Representatives Dahl, Gruchalla, Kretschmar)
(Senators Fischer, J. Lee, Robinson)

AN ACT to amend and reenact sections 12-60-16.1 and 12-60-16.6 of the North Dakota Century Code, relating to criminal history record information.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-60-16.1 of the North Dakota Century Code is amended and reenacted as follows:

12-60-16.1. Definitions. As used in sections 12-60-16.1 through 12-60-16.10, unless the context otherwise requires:

1. "Bureau" means the bureau of criminal investigation.

2. "Court" means the supreme court, district courts, and municipal courts of the North Dakota judicial system.

3. "Criminal history record" means the compilation of criminal history record information of a person reported to the bureau in accordance with this chapter.

4. "Criminal history record information" includes information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, information, or other criminal charges, any dispositions arising therefrom, sentencing, correctional supervision, and release.

~~4.~~ 5. "Criminal justice agency" means any government law enforcement agency or entity authorized by law to provide information regarding, or to exercise the powers of, arrest, detention, prosecution, correctional supervision, rehabilitation, or release of persons suspected in, charged with, or convicted of, a crime.

~~5.~~ 6. "Disseminate" means to transmit criminal history record information in any oral or written form. The term does not include:

a. The transmittal of the information within a criminal justice agency.

b. The reporting of the information as required by section 12-60-16.2.

c. The transmittal of the information between criminal justice agencies in order to permit the initiation of subsequent criminal justice proceedings against a person relating to the same offense.

~~6.~~ 7. "Noncriminal justice agency" means an entity that is not a criminal justice agency.

~~7.~~ 8. "Record subject" means the person who is the primary subject of a criminal history record. The term includes any representative designated by that person by power of attorney or notarized authorization. If the subject of the record is under legal disability, the term includes that person's parents or duly appointed legal representative.

~~8.~~ 9. "Reportable event" means an interaction with a criminal justice agency for which a report is required to be filed under section 12-60-16.2. The term includes only those events in which the subject of the event is an adult or a juvenile adjudicated as an adult.

SECTION 2. 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 a 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 criminal history record information has not been purged or sealed.

2. The criminal history record 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 criminal history record information is of a reportable event occurring within three years preceding the request.

3. The request is written and contains:

   a. The name of the requester.

   b. The fingerprints of the record subject or, if the request is made without submitting the fingerprints, the request must also include the name of the record subject and at least two items of information used by the bureau to retrieve criminal history records, including:

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

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

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

      (4) 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. This section does not prohibit the disclosure of a criminal history record by the requester or other persons after the dissemination of the record by the bureau to the requester.

Approved April 16, 2009
Filed April 17, 2009

CHAPTER 123

HOUSE BILL NO. 1084

(Finance and Taxation Committee)
(At the request of the Tax Commissioner)

AN ACT to create and enact a new subdivision to subsection 2 of section 12-60-24 of the North Dakota Century Code, relating to criminal history record checks for applicants for employment with the tax commissioner.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[76] **SECTION 1.** A new subdivision to subsection 2 of section 12-60-24 of the North Dakota Century Code is created and enacted as follows:

> The office of tax commissioner for a final applicant for a specified occupation with the tax commissioner as designated by the tax commissioner.

Approved March 19, 2009
Filed March 24, 2009

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[76] Section 12-60-24 was also amended by section 1 of House Bill No. 1437, chapter 377, section 1 of Senate Bill No. 2152, chapter 379, and section 1 of Senate Bill No. 2162, chapter 422.

CHAPTER 124

SENATE BILL NO. 2161

(Judiciary Committee)
(At the request of the Adjutant General)

AN ACT to create and enact two new sections to chapter 12-60 of the North Dakota Century Code, relating to lost, missing, or runaway children.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Two new sections to chapter 12-60 of the North Dakota Century Code are created and enacted as follows:

Lost, missing, or runaway children. The bureau shall:

1. Establish and maintain a statewide file system for the purpose of effecting an immediate law enforcement response to reports of lost, missing, or runaway children.

2. Implement a data exchange system to compile, to maintain, and to make available for dissemination to North Dakota and to out-of-state law enforcement agencies, descriptive information that can assist appropriate agencies in recovering lost, missing, or runaway children.

3. Establish contacts and exchange information regarding lost, missing, or runaway children with the national crime information center.

4. Notify all enforcement agencies that reports of lost, missing, or runaway children must be entered as soon as the minimum level of data specified by the bureau is available to the reporting agency and that no waiting period for entry of such data exists. If the enforcement agency is unable to enter the data, the bureau immediately upon notification shall enter the information into the national crime information center file.

5. Compile and retain information regarding lost, missing, or runaway children in a separate file, in a manner that allows the information to be used by law enforcement and other agencies, considered appropriate by the bureau, for investigative purposes. The enforcement agency is responsible for maintaining the disposition of the case and periodically shall review the case with the reporting party and the bureau to ensure all available information is included and to determine the current status of the case.

6. Provide prompt confirmation of the receipt and entry of lost, missing, or runaway children reports into the file system to the enforcement agency providing the report or to the parent, guardian, or identified family member as provided in subsection 7.

7. Allow any parent, guardian, or identified family member to submit a lost, missing, or runaway child report to the bureau which will be included in the bureau file system and transmitted to the national crime information

center, if they are unable to receive services from the local law enforcement agency.

8. Compile and maintain a historical data repository relating to lost, missing, or runaway children for all of the following purposes:

   a. To develop and improve techniques utilized by law enforcement agencies when responding to reports of lost, missing, or runaway children.

   b. To provide a factual and statistical base for research which would address the problem of lost, missing, or runaway children.

School enrollment procedures to aid identification and location of lost, missing, and runaway children.

1. When a child enrolls in a public or nonpublic school, licensed day care facility, home education, licensed day care center, licensed child care facility, headstart program, or nursery school for the first time, the school, licensed day care facility, headstart program, or school superintendent of the jurisdiction shall:

   a. Require the child's parent, guardian, or legal custodian to present to the school, licensed day care facility, or school superintendent of the jurisdiction, within forty days of enrollment, proof of identity of the child; and

   b. Request the appropriate school records for the child from the previous school attended by the child. The school enrolling the child shall make the request within thirty days of enrollment of the child.

2. If a child's parent, guardian, or legal custodian does not present the proof of identity required in subsection 1 within forty days of enrollment or if the school does not receive the school records of the child within sixty days of enrollment, the school, licensed day care facility, or school superintendent of the jurisdiction shall notify the bureau and a local law enforcement authority that no proof of identity has been presented for the child.

3. A school shall transfer records or proof of identity of a child within ten calendar days upon receipt of request.

4. When a school, licensed day care facility, or school superintendent receives a notice from a law enforcement authority, parent, guardian, or legal custodian that a child who is or has been enrolled in that school or facility has been reported as a lost, missing, or runaway child, the school, licensed day care facility, or school superintendent shall:

   a. Flag the records of the child; and

   b. Notify the bureau and a local law enforcement authority if a request for school records is received from any source.

5. When the division of vital records of the state department of health receives a notice from a law enforcement authority that a child is reported as lost, missing, or runaway, the division of vital records shall:

   a. Flag the records of the individual; and

   b. Notify the bureau and a local law enforcement authority if a request for records is received from any source.

6. If it is necessary for law enforcement authorities to conduct an investigation on a lost, missing, or runaway child, school or day care personnel may not inform the person claiming custody of the child of the investigation while it is being conducted.

7. For purposes of this section:

   a. "Flag the records" means marking the division of vital records, school, day care, or home education records in such a manner that any personnel viewing that record will be automatically alerted that the child or individual has been reported as lost, missing, or runaway.

   b. "Home education" means a program of education supervised by a child's parent, in the child's home, in accordance with the requirements of chapter 15.1-23.

   c. "Proof of identity" means a certified copy of a birth certificate, a certified transcript, or similar student records from the previous school, or any other documentary evidence the school, licensed day care facility, or school superintendent considers appropriate proof of identity.

   d. "School" or "licensed day care facility" means all elementary and secondary schools, licensed day care centers, licensed child care facilities, headstart programs, and nursery schools whether public or nonpublic.

Approved April 28, 2009
Filed May 1, 2009

CHAPTER 125

HOUSE BILL NO. 1127

(Political Subdivisions Committee)
(At the request of the Attorney General)

AN ACT to amend and reenact section 12-62-01.1, subsection 1 of section 19-03.1-32, and subsection 5 of section 54-12-14 of the North Dakota Century Code, relating to the time within which county and city officials have to furnish crime statistics to the attorney general's office, the powers of enforcement personnel, and the asset forfeiture fund; and to repeal sections 44-04-23, 54-12-15, and 54-12-16 of the North Dakota Century Code, relating to computer software concerns upon the advent of the year 2000 and the duties of and protections offered by the drug enforcement unit were assumed by the bureau of criminal investigation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-62-01.1 of the North Dakota Century Code is amended and reenacted as follows:

12-62-01.1. County and city officials to furnish crime statistics. To assist in controlling crime in the state through the use of reliable statistics relating to crimes and criminal activity, the attorney general may obtain from the clerks of district courts, municipal courts, and criminal justice agencies all information the attorney general deems necessary to ascertain the status of crimes and criminal activity in North Dakota. It is the duty of the officials to furnish the information requested by the attorney general <u>within thirty days of the request</u> on whatever forms or in whatever manner the attorney general may prescribe.

SECTION 2. AMENDMENT. Subsection 1 of section 19-03.1-32 of the North Dakota Century Code is amended and reenacted as follows:

1. Any officer of the state bureau of criminal investigation ~~or the state drug enforcement unit~~ designated by the attorney general of this state may:

   a. Carry firearms in the performance of official duties.

   b. Execute and serve search warrants, arrest warrants, administrative inspection warrants, subpoenas, and summonses issued under the authority of this state.

   c. Make arrests without warrant for any offense under this chapter committed in the officer's presence, or if the officer has probable cause to believe that the person to be arrested has committed or is committing a violation of this chapter which may constitute a felony.

   d. Make seizures of property pursuant to this chapter.

   e. Perform other law enforcement duties as the attorney general designates.

SECTION 3. AMENDMENT. Subsection 5 of section 54-12-14 of the North Dakota Century Code is amended and reenacted as follows:

5. For paying, at the discretion of the attorney general, overtime compensation to agents of the bureau of criminal investigation ~~and drug enforcement unit~~ incurred as a result of investigations of violations of any state criminal law or law relating to the control of drug abuse.

SECTION 4. REPEAL. Sections 44-04-23, 54-12-15, and 54-12-16 of the North Dakota Century Code are repealed.

Approved April 8, 2009
Filed April 9, 2009

CHAPTER 126

HOUSE BILL NO. 1223

(Representative Klemin)
(Senator Lyson)

AN ACT to amend and reenact sections 12-67-01, 12-67-02, 12-67-03, and 12-67-04 of the North Dakota Century Code, relating to electronic monitoring of certain offenders.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-67-01 of the North Dakota Century Code is amended and reenacted as follows:

12-67-01. 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, as defined in section 12-44.1-01.

2. "Approved electronic monitoring device" means a global positioning system device or other electronic monitoring device approved by the department or the ~~court~~ administrator which is primarily intended to actively or passively monitor, record, and transmit confirmation of a participant's location or the participant's presence or nonpresence in the home.

~~2.~~ 3. "Court" means the district or municipal court having criminal or juvenile jurisdiction ~~to place~~ over a participant in electronic home detention or global positioning system monitoring.

~~3.~~ 4. "Department" means the department of corrections and rehabilitation.

~~4.~~ 5. "Home detention" means the confinement of an individual adjudicated, convicted, or charged with an offense to the individual's place of residence under the terms and conditions established by the court, the administrator, or the department.

~~5.~~ 6. "Participant" means an adult or juvenile offender placed into an electronic monitoring program.

SECTION 2. AMENDMENT. Section 12-67-02 of the North Dakota Century Code is amended and reenacted as follows:

12-67-02. Application.

1. For those offenders who are sentenced by the court to a term of imprisonment in a county jail or regional correctional facility, the court may commit the offender to the legal and physical custody of the administrator of the jail or correctional facility who shall make the

decision as to whether the use of electronic home detention or global positioning system monitoring is appropriate for that offender.

2. Except for an offense for which the law requires mandatory incarceration, electronic home detention or global positioning system monitoring may be used for adult and juvenile offenders as selected by the court, the administrator, the parole board, or the department for adult offenders as an intermediate measure of supervised probation, and for delinquent juvenile offenders in the custody of the division of juvenile services as a condition of community placement. Electronic home detention and global positioning system monitoring may be used for the following:

~~1.~~ a. Pretrial or preadjudicatory detention.

~~2.~~ b. Probation.

~~3.~~ c. Community corrections approved by the court.

~~4.~~ d. Parole.

~~5.~~ e. Work release under chapter 12-44.1 or approved by the parole board.

~~6.~~ f. Institutional release approved by the court or the parole board.

~~7.~~ g. County jail diversion approved by the court.

~~8.~~ h. Sex offender containment.

SECTION 3. AMENDMENT. Section 12-67-03 of the North Dakota Century Code is amended and reenacted as follows:

12-67-03. Program description - Fees.

1. Subject to the availability of funding, ~~the court or, with the approval of the court,~~ the department or a correctional facility subject to chapter 12-44.1 may implement an electronic home detention and global positioning system monitoring program.

2. A participant may be required to remain within the interior premises or within the property boundaries of the participant's residence at all times during the hours designated by the court, the administrator, the parole board, or the department. Instances of approved absences from the residence may include:

   a. Work or employment approved by the court, the administrator, the parole board, or the department or traveling to or from approved employment;

   b. Unemployment and seeking employment approved for the participant by the court, the administrator, the parole board, or the department;

c. Medical, psychiatric, mental health treatment, counseling, or other treatment programs approved for the participant by the court, the administrator, the parole board, or the department;

d. Attendance at an educational institution or a program approved for the participant by the court, the administrator, the parole board, or the department;

e. Attendance at a regularly scheduled religious service at a place of worship;

f. Participation in a community work release or community service program approved for the participant by the court, the administrator, the parole board, or the department; or

g. For another compelling reason consistent with the public interest, as approved by the court, the administrator, the parole board, or the department.

3. A participant shall admit any individual or agent designated by the court, the administrator, the parole board, or the department into the participant's residence at any time for purposes of verifying the participant's compliance with the conditions of the participant's detention.

4. A participant shall make the necessary arrangements to allow for any individual or agent as designated by the court, the administrator, the parole board, or the department to visit the participant's place of education or employment at any time, based upon the approval of the educational institution or employer, for the purpose of verifying the participant's compliance with the conditions of the participant's detention.

5. A participant shall acknowledge and participate in the approved electronic monitoring program as designated by the court, the administrator, the parole board, or the department at any time for the purpose of verifying the participant's compliance with the conditions of the participant's detention.

6. A participant shall maintain the following:

a. A monitoring device in the participant's residence or on the participant's person, or both; and

b. A working telephone in the participant's residence or in the absence of a telephone a monitoring device in the participant's residence and on the participant's person.

7. A participant shall obtain approval from the court, the administrator, the parole board, or the department before the participant changes residence or the schedule described in subsection 2.

8. The court, the administrator, the parole board, or the department shall inform a participant that violation of the order for home detention may subject the participant to prosecution or adjudication for the offense of escape from official detention.

9. The court or the administrator shall assess to each participant the actual cost of the electronic monitoring. The court or the administrator also shall assess to each participant an administration fee of not more than five dollars per day which is to be used to reimburse the sheriff or other law enforcement agency for the cost of electronic monitoring enforcement services.

10. A participant shall abide by other conditions as set by the court, the administrator, the parole board, or the department.

~~10.~~ 11. An approved electronic monitoring device may be used to record a conversation between a participant and the monitoring device or the participant and the individual supervising the participant solely for the purpose of identification and not for the purpose of eavesdropping or conducting any other illegally intrusive monitoring.

SECTION 4. AMENDMENT. Section 12-67-04 of the North Dakota Century Code is amended and reenacted as follows:

12-67-04. Consent of the participant. Before ~~entering an order for commitment for~~ electronic home detention or global positioning system monitoring may be used, the court, the administrator, the parole board, or the department shall inform the participant and other individuals residing in the residence of the nature and extent of the approved electronic monitoring devices by securing the written consent of the participant in the program and ensuring that the approved electronic devices be minimally intrusive upon the privacy of the participant and other individuals residing in the residence.

Approved April 8, 2009
Filed April 9, 2009

CHAPTER 127

HOUSE BILL NO. 1040

(Legislative Council)
(Judicial Process Committee)

AN ACT to provide for a procedure for missing person investigations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Missing person reports.

1. A report of a missing person may be made to any law enforcement agency in the state. The law enforcement agency may not refuse to accept a missing person report solely on the basis that:

   a. The missing person is an adult;

   b. The circumstances do not indicate foul play;

   c. The person has been missing for a short period of time;

   d. The person has been missing for a long period of time; or

   e. There is no indication that the missing person was in the jurisdiction served by the law enforcement agency at the time of the disappearance.

2. Notwithstanding subsection 1, if, upon receiving sufficient information from the person making the report, the law enforcement agency that receives the initial report of a missing person determines that a law enforcement agency in another jurisdiction is clearly the more appropriate law enforcement agency to receive the missing person report, the law enforcement agency that receives the initial report may refer the missing person report to the more appropriate law enforcement agency. The responsibility for the missing person report remains with the law enforcement agency that receives the initial missing person report until the law enforcement agency in the other jurisdiction confirms, in writing, its acceptance of responsibility for the missing person report. If the law enforcement agency to which the missing person report is referred is located within this state, that law enforcement agency shall accept or decline the responsibility for the referred missing person report within twenty-four hours after receiving the request from the initial law enforcement agency. The law enforcement agency to which the report is referred may not decline acceptance of responsibility for the missing person report without good cause shown and may not decline acceptance of responsibility for the report solely on the basis of the factors listed in subsection 1.

3. The law enforcement agency shall accept a missing person report in person. A law enforcement agency also may accept reports by telephone or by electronic or other media to the extent that the reporting is consistent with law enforcement policies or practices.

SECTION 2. Notification and other action.

1. When possible, the law enforcement agency shall inform the person making the report, a family member of the missing person, or other person who may be in a position to assist the law enforcement agency regarding the agency's efforts to locate the missing person about general information regarding the handling of the missing person case or information regarding intended efforts in the case to the extent that the law enforcement agency determines that disclosure would not adversely affect the agency's ability to locate or protect the missing person or to apprehend or prosecute any person criminally involved in the disappearance.

2. All DNA samples obtained in missing person cases must be forwarded immediately to the state crime laboratory to perform a DNA analysis. The state crime laboratory shall establish procedures for determining how to prioritize analysis of the samples relating to missing person cases.

3. The law enforcement agency shall submit relevant information to the federal bureau of investigation's violent criminal apprehension program as soon as is practicable.

SECTION 3. Prompt determination of high-risk missing person - Law enforcement agency reports.

1. A high-risk missing person is an individual whose whereabouts are not currently known and the circumstances indicate that the individual may be at risk of injury or death.

2. Upon the determination by the law enforcement agency that the missing person is a high-risk missing person, the law enforcement agency shall notify the bureau of criminal investigation. The law enforcement agency shall provide to the bureau of criminal investigation the information most likely to aid in the location and safe return of the high-risk missing person.

3. The responding local law enforcement agency immediately shall enter all collected information relating to the missing person case in available state and federal databases. If the responding local law enforcement agency does not have the capability to enter this data directly in the state and federal databases, the bureau of criminal investigation shall enter all collected information relating to the missing person case in available state and federal databases. The information shall be provided in accordance with applicable guidelines relating to the databases.

SECTION 4. Unidentified person or human remains identification responsibilities.

1. If the official with custody of the human remains is not a coroner or medical examiner, the official promptly shall transfer the unidentified remains to the coroner or medical examiner to examine human remains for the purpose of identification of the human remains.

2. A coroner or medical examiner or any other person may not dispose of or engage in actions that will materially affect the unidentified human remains before the coroner or medical examiner:

   a. Obtains samples suitable for DNA identification and archiving;

   b. Obtains photographs of the unidentified person or human remains; and

   c. Exhausts all other appropriate steps for identification.

SECTION 5. Attorney general to develop missing person procedural policy. To provide guidance to law enforcement agencies in the state, the attorney general shall develop a procedures manual, consistent with this Act, relating to the investigation of missing person cases. The attorney general shall distribute the manual to law enforcement agencies.

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