

CORRECTIONS, PAROLE, AND PROBATION

CHAPTER 151

SENATE BILL NO. 2199
(Senator Thane)
(Representative Dietz)

INMATE CONFINEMENT CONTRACTS

AN ACT to amend and reenact section 12-44.1-02 of the North Dakota Century Code, relating to establishing jails and entering into jail contracts and allowing counties and cities to contract with counties and cities in other states for the confinement of inmates.

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

SECTION 1. AMENDMENT. Section 12-44.1-02 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-44.1-02. ESTABLISHING JAILS - JAIL CONTRACTS - REGIONAL CORRECTIONS CENTERS. For the confinement of lawfully committed persons, the governing body of a county or city shall do or shall participate in the doing of, one of the following:

1. Establishing and maintaining a jail at county or city expense.
2. Contracting for jail services and use of jail facilities with another county or city maintaining a jail, with a regional corrections center, or with the state or federal government.
3. Establishing and maintaining, pursuant to chapter 54-40 and this chapter, a regional corrections center in conjunction with other counties and cities.

A county or city may additionally contract with a county or city of another state for the confinement of lawfully committed county or city inmates from that state in a North Dakota jail or juvenile detention center, or for the confinement of lawfully committed North Dakota inmates in a county or city facility of such other state.

Approved March 9, 1981

CHAPTER 152

HOUSE BILL NO. 1085
 (Legislative Council)
 (Interim State and Federal Government "B" Committee)

STATE FARM ELIGIBILITY AND SENTENCING ALTERNATIVES

AN ACT to amend and reenact sections 12-51-07 and 12.1-32-02 of the North Dakota Century Code, relating to prisoners eligible for commitment to the state farm and to sentencing alternatives.

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

* SECTION 1. AMENDMENT. Section 12-51-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-51-07. PRISONERS ELIGIBLE FOR COMMITMENT TO STATE FARM - COMMITMENT THERETO DEEMED A CONVICTION OF MISDEMEANOR. The judges of the district courts, and of the county courts with increased jurisdiction, may commit to the state farm, so far as the capacity of the farm shall permit, all male persons who otherwise would be committed to the county jail or to the penitentiary for violation of any criminal law of this state, where the sentence is ~~not less~~ more than thirty days ~~nor~~ but not more than one year provided that no person shall be committed to the state farm who:

1. Has at any time been convicted of a sexual offense;
2. Has served a sentence or portion thereof in a penitentiary correctional facility upon conviction of a felony; or
3. Has a history of moral or sexual degeneration or of violent assaultive behavior which has resulted in physical injury or serious psychological harm to others.

~~A--person--committed--to--the--state--farm--shall--not--be--deemed--to--have--been--convicted--of--a--felony,--but--shall--be--deemed--to--have--been--convicted--of--a--misdemeanor--~~

SECTION 2. AMENDMENT. Section 12.1-32-02 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

* NOTE: Section 12-51-07 was also amended by section 27 of House Bill No. 1061, chapter 320.

12.1-32-02. SENTENCING ALTERNATIVES - CREDIT FOR TIME IN CUSTODY - DIAGNOSTIC TESTING.

1. Every person convicted of an offense who is sentenced by the court shall be sentenced to one or a combination of the following alternatives, unless the sentencing alternatives are otherwise specifically provided in the statute defining the offense:
 - a. Payment of the reasonable costs of his prosecution.
 - b. Probation.
 - c. A term of imprisonment, including intermittent imprisonment:
 - (1) In the--penitentiary--or--a--regional--detention facility--approved--by--the--direector--of--institutions a state correctional facility, a regional corrections center, a county jail, or in the state farm in accordance with section 12-51-07, if convicted of a felony or a class A misdemeanor.
 - (2) In a county jail,--in--the--state--farm,--or--in--a regional--detention--facility--approved--by--the director---of---institutions or in a regional corrections center, if convicted of a class B misdemeanor.
 - d. A fine.
 - e. Restitution for damages resulting from the commission of the offense.
 - f. Restoration of damaged property, or other appropriate work detail.
 - g. Commitment to an appropriate licensed public or private institution for treatment of alcoholism, drug addiction, or mental disease or defect.
 - h. Commitment to any other facility or program deemed appropriate for the treatment of the individual offender, including available community-based programs.

Sentences imposed under this subsection shall not exceed in duration the maximum sentences of imprisonment provided by section 12.1-32-01, section 12.1-32-09, or as provided specifically in a statute defining an offense. This subsection shall not be construed as not permitting the unconditional discharge of an offender following conviction. Sentences under subdivisions e or f shall be

imposed in the manner provided in section 12.1-32-08. This subsection shall not be construed to prohibit utilization of sections 12-53-13 through 12-53-19, relating to suspension of imposition of sentence, nor shall this subsection limit the conditions which can be imposed on a probationer under section 12-53-14.

2. Credit against any sentence to a term of imprisonment shall be given by the court to a defendant for all time spent in custody as a result of the criminal charge for which the sentence was imposed, or as a result of the conduct on which such charge was based. "Time spent in custody" shall include time spent in custody in a jail or mental institution for the offense charged, whether that time is spent prior to trial, during trial, pending sentence, or pending appeal.
3. Superseded by N.D.R.Crim.P., Rule 35.
4. A court may, prior to imposition of sentence, order the convicted offender committed to an appropriate licensed public or private institution for diagnostic testing for such period of time as may be necessary, but not to exceed thirty days. The court may, by subsequent order, extend the period of commitment for not to exceed thirty additional days. The court may also order such diagnostic testing without ordering commitment to an institution. Validity of a sentence shall not be challenged on the ground that diagnostic testing was not performed pursuant to this subsection.
5. All sentences imposed shall be accompanied by a written statement by the court setting forth the reasons for imposing the particular sentence. The statement shall become part of the record of the case.
6. If an offender is sentenced to a term of imprisonment, that term of imprisonment commences at the time of sentencing, unless, upon motion of the defendant, the court orders the term to commence at some other time.
7. Unless otherwise specifically authorized in the statute defining the offense, no court shall include a minimum term of imprisonment as part of its sentence.
8. A court may commit a female offender to the state penitentiary or other suitable facility under the same minimum security restrictions and with the same privileges as state farm inmates when the sentence imposed is more than thirty days but not more than one year.
9. A person convicted of a felony who is sentenced to imprisonment for not more than one year shall be deemed to have been convicted of a misdemeanor upon successful completion of the term of imprisonment.

Approved January 30, 1981

CHAPTER 153

HOUSE BILL NO. 1137
(Committee on Judiciary)
(At the request of the Parole Board)

PROBATION AND PAROLE RELEASE,
APPLICATION, AND BREACH

AN ACT to amend and reenact sections 12-53-12, 12-59-05, 12-59-08, and 12-59-15 of the North Dakota Century Code, relating to parole and probation.

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

SECTION 1. AMENDMENT. Section 12-53-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-53-12. RELEASE FROM PROBATION - PERIOD OF PROBATION. Whenever it is the judgment of the court that a person on probation has satisfactorily met the conditions of his probation, it shall cause to be issued to said person a final discharge from further supervision and may terminate the suspended sentence. The length of the period of probation shall not be more than the maximum term for which he might have been imprisoned, except that in cases where the defendant has been found guilty of abandonment or nonsupport of spouse or children, the period may be continued for as long as responsibility for support continues.

SECTION 2. AMENDMENT. Section 12-59-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-59-05. CONSIDERATION BY BOARD - GUARANTEE. Within At a meeting to be determined by the parole board, within one year after his a prisoner's admission to the penitentiary, or within six months after his the prisoner's admission to the state farm, and at such intervals thereafter as it may determine,--the and by application pursuant to section 12-59-08, the board may deny or grant parole or continue consideration to another meeting. The board shall consider all pertinent information regarding each prisoner, including the circumstances of his the offense, his the presentence report, his the previous social history and criminal record, his the conduct, employment, and attitude in prison, and the reports of such physical and mental examinations as have been made.

SECTION 3. AMENDMENT. Section 12-59-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-59-08. APPLICATION FOR PAROLE - HEARING - EMERGENCY PAROLES. All applications for parole shall be filed with the clerk of the board. Applications may be heard at any a meeting of the parole board to be determined by the parole board, after the initial consideration guaranteed by section 12-59-05. In the event of an emergency application, the ex officio members of the board of pardons, acting as authorized by section 12-55-04, may, in accordance with section 12-55-19, grant such emergency parole. Thereafter the parolee shall be under the supervision and jurisdiction of the parole board.

SECTION 4. AMENDMENT. Section 12-59-15 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-59-15. BREACH OF PAROLE - HEARINGS - ORDER OF RECOMMITMENT. Any person shall be deemed to be in the custody and under the control of the board while on parole, and shall be subject, at any time until the expiration of the term for which he or she was sentenced, if he or she violates the rules established by the parole board, to be taken into actual custody. The parolee shall be entitled to a preliminary hearing to determine if there is reasonable cause to believe the parolee has violated the parole conditions. If a hearing officer determines there is reasonable cause, the parolee shall be returned to the penitentiary for a hearing before the parole board within sixty days. When it shall appear to the board after a full hearing that a person out on parole has violated any of such rules or regulations, it may order that such person be taken into actual custody and recommitted to and confined in the penitentiary or state farm as provided in his sentence. The board shall enter any such order in the record of its proceedings. The warden shall receive and reimprison such person in accordance with the terms of his original sentence.

Any preliminary hearing pursuant to this chapter may be before the chief parole officer, a deputy, or any other person authorized by the chief parole officer to hear cases of alleged parole or probation violation, except that no hearing officer shall be the person making the allegation of violation.

With respect to any hearing pursuant to this chapter, the parolee:

1. Shall have written notice of the nature and content of the allegations to be made, including notice that its purpose is to determine whether there is probable cause to believe that he has committed a violation that may lead to a revocation of parole.
2. Shall be permitted to advise with any persons whose assistance he reasonably desires, prior to the hearing.

- ~~3.--Shall--have--the--right--to--confront--and--examine--any--persons
who--have--made--allegations--against--him,--unless--the--hearing
officer--determines--that--such--confrontation--would--present--a
substantial--present--or--subsequent--danger--of--harm--to--such
person--or--persons--~~
- ~~4.--May--admit,--deny,--or--explain--the--violation--alleged--and--may
present--proof,--including--affidavits--and--other--evidence,--in
support--of--his--contentions,---A--record--of--the--proceedings
shall--be--made--and--preserved.~~
1. When it is alleged that a parolee has violated the conditions of the parole agreement, the chief parole officer may issue a warrant for the arrest of the parolee.
 2. The parolee shall be 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 or reasonable grounds to believe that the parolee violated the conditions of the parole agreement.
 3. The preliminary hearing shall be conducted before the chief parole officer or any other independent hearing officer authorized by the chief parole officer, but in no case shall it be conducted before anyone directly involved in the case.
 4. If the hearing officer determines there is probable cause, the parolee shall be returned to the penitentiary or state farm, transferred to a county jail or the state hospital, or released from actual custody on the terms of the parole agreement, pending a final revocation hearing before the parole board. If the board determines, at the final revocation hearing, that the parolee has violated the conditions of the parole agreement, it may order that the parolee be recommitted to the penitentiary or state farm as provided in his sentence.
 5. At any hearing pursuant to this section a record shall 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 such confrontation would create a risk of harm to the witness.
 - d. A written statement as to the reasons for the decision.

Approved February 20, 1981

CHAPTER 154

HOUSE BILL NO. 1509
(Conny)CRIMINAL JUSTICE TRAINING AND
STATISTICS DIVISION

AN ACT to create a criminal justice training and statistics division within the office of attorney general; to provide for powers and duties of the division; to create a peace officer training and standards board within the division; to require training and certification of peace officers, local correctional officers, and sheriffs; to require training for state's attorneys and defense attorneys; to provide for rulemaking power and an appeals procedure; to create a new section to chapter 39-03, relating to the provision of training at the law enforcement training center; to amend and reenact subsection 4 of section 12-44.1-04 of the North Dakota Century Code, relating to jail management training; and to repeal chapter 12-61 of the North Dakota Century Code, relating to the combined law enforcement council.

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

SECTION 1. CRIMINAL JUSTICE TRAINING AND STATISTICS DIVISION - PERSONNEL - PURPOSE. A criminal justice training and statistics division is created under the attorney general. The division shall consist of a director and such other personnel as may be designated by the attorney general. The attorney general shall supervise the criminal justice training and statistics division. It shall be the purpose of the criminal justice training and statistics division to certify and conduct the training of peace officers, local correctional officers, and sheriffs, to conduct training for state's attorneys and defense attorneys, and to gather, analyze, and disseminate information regarding the state's criminal justice system.

SECTION 2. POWERS AND DUTIES. The powers and duties of the criminal justice training and statistics division shall be:

1. To determine the specialized training needs of peace officers.

2. To conduct training for peace officers which will meet their specialized needs.
3. To prescribe the criteria for certification of basic, advanced, and specialized peace officer training curriculum, instructors, and schools.
4. To certify curriculum, instructors, schools, and officers that have met the training certification criteria.
5. To establish the curriculum for basic and advanced peace officer training.
6. To prescribe minimum standards of sidearm training for peace officers prior to carrying a sidearm, and to certify officers who have met the established standards.
7. To conduct and certify training for local correctional officers.
8. To conduct training which meets the approved course work requirements for continuing legal education credit for state's attorneys and their assistants, and for defense attorneys.
9. To develop and maintain a manpower, training, and certification information system.
10. To develop and maintain a jail information system.
11. To analyze data available from the division's information system and other criminal justice related information systems and to compile appropriate periodic reports based on that data.
12. To assist state and local criminal justice agencies in the development of record systems and information systems.
13. To coordinate the utilization of data which is generated by state and local record information systems.
14. To conduct research projects designed to respond to criminal justice system needs and executive, judicial, or legislative branch requests.
15. To accept and administer gifts, or grants, or contracts with persons or organizations, including the federal government, on such terms as may be beneficial to the state.

SECTION 3. PEACE OFFICER STANDARDS AND TRAINING BOARD - MEMBERSHIP - DUTIES. A peace officer standards and training board is created under the law enforcement training and statistics division. The board shall consist of seven members. The director

of the law enforcement training center shall be a member of the board. The other six members shall be four peace officers, one county government representative, and one city government representative. These six persons shall be appointed by the attorney general and shall serve staggered two-year terms as he directs. The attorney general shall also appoint the chairman. The director of the criminal justice training and statistics division shall be an ex officio nonvoting member of the board. The board shall exercise, through the division director, the powers and duties of the division in establishing training and setting standards for peace officers and local correctional officers.

SECTION 4. QUALIFIED OFFICERS TO BE CERTIFIED. The division shall issue certificates to each officer who meets training and sidearm certification requirements established by the division. Such certificates may be different grades, depending upon the qualifications of the officers. Such certification may be revoked by the division. Any officer whose certification is to be revoked shall be entitled to a hearing before the peace officer standards and training board. When it is deemed to be necessary by the division director the officer's certification may be temporarily revoked pending the hearing.

SECTION 5. STATE'S ATTORNEYS - TRAINING. Every newly elected or appointed state's attorney or assistant state's attorney within the first year of employment shall attend a course of training conducted by the division. The division shall also provide an annual training session for state's attorneys and their assistants. The curriculum, location, and dates of such training sessions shall be determined by the division in cooperation with the state's attorney association.

SECTION 6. CORRECTIONAL OFFICERS - TRAINING. Every newly appointed local correctional officer shall within the first year of employment attend a course of training conducted by the division. The curriculum, location, and dates of such sessions shall be determined by the peace officer standards and training board and in cooperation with the sheriff's association.

SECTION 7. SHERIFFS - TRAINING. Every newly elected or appointed sheriff shall attend within the first year of employment a course of training on civil duties conducted by the division. The curriculum, location, and dates shall be determined by the division in cooperation with the sheriff's association. Such course shall be open to all sheriffs and deputies.

SECTION 8. PEACE OFFICERS - TRAINING. Every newly elected or appointed peace officer, except prosecutors, shall within the first year of employment attend a course of training which is certified by the division as meeting the basic law enforcement training requirements. A peace officer who has met the basic training requirements shall be exempt from the provisions of this section.

SECTION 9. DEFENSE ATTORNEYS - TRAINING. The division shall conduct or contract for the administration of an annual training session for defense attorneys. The curriculum, location, and dates of the session shall be determined by the division in cooperation with the state bar association and the North Dakota trial lawyers association or shall be governed by a contract with an appropriate person, agency, or association. Such course shall be open to all members of the state bar association. A fee to cover costs may be set for the course. It shall be conducted so as to meet the requirements for approved course work for continuing legal education credit.

SECTION 10. RULEMAKING POWER. The attorney general may adopt rules to carry out the powers and duties assigned to the criminal justice training and statistics division. All rules adopted by the attorney general and appeals therefrom, shall be in accordance with chapter 28-32.

SECTION 11. A new section to chapter 39-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

LAW ENFORCEMENT TRAINING CENTER - TRAINING CONDUCTED. The superintendent of the highway patrol shall be responsible for the operation, maintenance, and administration of the law enforcement training center. The superintendent shall appoint a director of the training center who shall be responsible for coordinating basic and advanced peace officer training and such other duties as may be prescribed by the superintendent. All peace officer training which is conducted at the law enforcement training center shall meet the certification criteria established by the peace officer standards and training board and shall be in accordance with the basic and advanced peace officer curriculum established by the peace officer standards and training board.

SECTION 12. AMENDMENT. Subsection 4 of section 12-44.1-04 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. Ensure that all full-time jail staff who work in direct and continuing contact with inmates receive jail management training as determined and funded by the ~~combined-law-enforcement-council~~ criminal justice training and statistics division of the attorney general's office or such other training as approved by the ~~combined-law enforcement-council~~ criminal justice training and statistics division.

SECTION 13. REPEAL. Chapter 12-61 of the North Dakota Century Code is hereby repealed.

Approved April 6, 1981