

CORRECTIONS, PAROLE, AND PROBATION

CHAPTER 158

SENATE BILL NO. 2374
(D. Meyer)

PRISON INMATE RECORDS CONFIDENTIALITY

AN ACT to create and enact a new section to chapter 12-47 of the North Dakota Century Code, relating to the confidentiality of prison inmate records.

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

SECTION 1. Certain penitentiary inmates' records confidential. The clinical, behavioral, treatment, medical, and social records and materials of a penitentiary inmate, regardless of source, are confidential and privileged and may not be disclosed directly or indirectly to anyone other than the parole board, a public or private treatment facility, a recognized law enforcement agency, and others entitled by law to receive such information. A state or federal court may order the inspection of such confidential and privileged records and materials, or parts thereof, by individuals or organizations having shown a proper legitimate purpose and reason to inspect such records and materials.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 159

SENATE BILL NO. 2339
(Senators D. Meyer, Lodoen, Heinrich)
(Representative Gorman)

PRISON INDUSTRIES

AN ACT to amend and reenact sections 12-48-03.1 and 12-48-06.1 of the North Dakota Century Code, relating to the operation of prison industries, the sale of prison-made products, and the prison industry advisory committee.

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

SECTION 1. AMENDMENT. Section 12-48-03.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-48-03.1. The director of institutions may establish and engage in new prison industries. The warden of the state penitentiary, under the direction and with the approval of the director of institutions, is authorized to establish, and engage in, such new prison industries as the director deems necessary, and which are of greatest benefit to and in the best interest of the state of North Dakota, the state penitentiary, the North Dakota state farm, and the inmates of the institutions. The warden, with the approval of the director of institutions, may also discontinue existing industries where such discontinuance is deemed necessary. The director and the warden shall make all rules and regulations and do all things necessary or incidental to the establishing and maintaining of such industries including the manufacture, sale, or distribution of the produce or products therefrom, and, so far as is compatible with the efficient operation of the industry, shall use the inmates and employees of the penitentiary as laborers in such industries. The director and warden shall also do all things necessary and incidental to the discontinuance of those industries no longer deemed necessary or of benefit. The Except as provided in subsections 1, 2, and 3, the director of institutions may authorize the sale of selected prison industry products to wholesale and retail outlets. All other prison industry products shall 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 is impractical or prohibited by law. The warden shall keep a true and accurate account of all receipts from the established industries and deposit the earnings in an account as provided by law. Sales of prison industry products are subject to the following:

1. All hardwood, fiberesin, upholstered, and metal art work products made in the prison by roughrider industries, or other factory that manufactures the above products, may be purchased directly by state agencies and political subdivisions for use in government-owned or rented buildings and by nonprofit organizations excluding trade associations, fraternal organizations, co-ops, and health insurance companies. All other prison-made hardwood, fiberesin, upholstered, and metal art work products may be sold only through wholesale or retail outlets that possess a valid sales tax permit, or through export firms for sale to international markets.
2. Hardwood, fiberesin, upholstered, and metal art work products manufactured by roughrider industries, or other factory that manufactures the above products, and purchased by state agencies, nonprofit organizations, and political subdivisions may not be disposed of or leave the premises of the state agency, nonprofit organization, and political subdivision for a period of ten years from the date of the original purchase without written authorization from the director of institutions.
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 institutions.

SECTION 2. AMENDMENT. Section 12-48-06.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-48-06.1. Prison industry advisory committee. There is hereby established a prison industry advisory committee which consists of the director of institutions and seven members, who are representative of each type of industry within the prison, and who are appointed by the governor. Meetings of the committee shall be called not less than twice a year by the director of institutions who shall be the chairman of the committee. The appointed members shall be paid mileage and expenses by the prison industry as authorized for state officials and employees.

Approved April 21, 1987
Filed April 27, 1987

CHAPTER 160

SENATE BILL NO. 2194
(Committee on State and Federal Government)
(At the request of the Director of Institutions)

PRISON INDUSTRY EXCHANGES

AN ACT authorizing North Dakota state penitentiary industry to trade, barter, and exchange merchandise, equipment, and services.

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

SECTION 1. 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 institutions.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 161

SENATE BILL NO. 2417
(Senator Maxson)
(Representative Dalrymple)

PAROLE AGREEMENT VIOLATIONS

AN ACT to amend and reenact subsection 6 of section 12-59-15 of the North Dakota Century Code, relating to the authority of the parole board.

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

SECTION 1. AMENDMENT. Subsection 6 of section 12-59-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6. 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~~ the parolee's sentence, to serve in custody, in the penitentiary or state farm, all or part of the remaining time of the sentence that has not been served in custody in the penitentiary or state farm.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 162

HOUSE BILL NO. 1051
(Legislative Council)
(Interim Law Enforcement Committee)

CRIMINAL HISTORY RECORD INFORMATION

AN ACT to provide for the reporting, collecting, maintaining, and disseminating of criminal history record information; to amend and reenact section 12-60-07 of the North Dakota Century Code, relating to the powers and duties of the bureau of criminal investigation; to repeal sections 12-60-10, 12-60-11, 12-60-12, 12-60-15, and 12-60-16 of the North Dakota Century Code, relating to the bureau of criminal investigation, fingerprinting arrestees, furnishing information, and reporting transfer, release or other disposition of arrestees; and to provide a penalty.

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

SECTION 1. Definitions. As used in sections 1 through 10 of this Act, unless the context otherwise requires:

1. "Bureau" means the bureau of criminal investigation.
2. "Criminal history record information" includes data concerning a reportable event which the bureau is required or permitted to retain under sections 1 through 10 of this Act.
3. "Court" means the supreme court, district courts, county courts, and municipal courts of the North Dakota judicial system.
4. "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, adjudication, correctional supervision, rehabilitation, or release of persons suspected in, charged with, or convicted of, a crime.
5. "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 2 of this Act.
 - 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. "Noncriminal justice agency" means an entity that is not a criminal justice agency.
 7. "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. "Reportable event" means an interaction with a criminal justice agency for which a report is required to be filed under section 2 of this Act. 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. Reportable events. Except as otherwise provided in sections 1 through 10 of this Act, each criminal justice agency shall report to the bureau the information described in this section for each felony and reportable offense so designated pursuant to section 4 of this Act. The following criminal justice agencies shall perform the duties indicated:

1. Except as otherwise provided in this subsection, each criminal justice agency that makes an arrest for a reportable offense shall, with respect to that offense and the person arrested, furnish to the bureau the fingerprints, charges, and descriptions of the person arrested. If the arrest is made by a criminal justice agency that is a state law enforcement agency, then, on request of the arresting agency, a sheriff or jail administrator shall take the fingerprints. The arresting agency shall then furnish the required information to the bureau. If a decision is made not to refer the arrest for prosecution, the criminal justice agency making that decision shall report the decision to the bureau. A criminal justice agency may make agreements with other criminal justice agencies for the purpose of furnishing to the bureau information required under this subsection.
2. The state's attorney of each county shall notify the bureau of all charges filed, including all those added

after the filing of a criminal court case, and whether charges were not filed in criminal cases for which the bureau has a record of an arrest.

3. After the court pronounces sentence for a reportable offense, and if the person being sentenced has not been fingerprinted with respect to that case, the state's attorney shall ask the court to order a law enforcement agency to fingerprint that person. If the court determines that the person being so sentenced has not previously been fingerprinted for the same case, the court shall order the fingerprints taken. The law enforcement agency shall forward the fingerprints to the bureau.
4. The prosecuting attorney having jurisdiction over a reportable offense shall furnish the bureau all final dispositions of criminal cases for which the bureau has a record of an arrest or a record of fingerprints reported under subsection 3. For each charge, this information must include at least the following:
 - a. Judgments of not guilty, judgments of guilty including the sentence pronounced by the court, discharges, and dismissals in the trial court;
 - b. Reviewing court orders filed with the clerk of the court which reverse or remand a reported conviction or which vacate or modify a sentence; and
 - c. Judgments terminating or revoking a sentence to probation and any resentencing after such a revocation.
5. The North Dakota state penitentiary, board of pardons, parole board, and local correctional facility administrators shall furnish the bureau with all information concerning the receipt, escape, death, release, pardon, parole, commutation of sentence, granting of executive clemency, or discharge of an individual who has been sentenced to that agency's custody for any reportable offense which is required to be collected, maintained, or disseminated by the bureau. In the case of an escape from custody or death while in custody, information concerning the receipt and escape or death, must also be furnished.

SECTION 3. Rulemaking required. The attorney general shall adopt appropriate rules for criminal justice agencies regarding the reporting, collecting, maintaining, and disseminating of criminal history record information. The rules must include:

1. Policies and procedures to be used by criminal justice agencies regarding:

- a. Security of criminal history record information.
 - b. Inspection and challenging of criminal history record information by a record subject.
 - c. Auditing of criminal history record information to ensure that it is accurate and complete and that it is reported, collected, maintained, and disseminated in accordance with sections 1 through 10 of this Act.
 - d. Development and content of agreements between the bureau and criminal justice agencies providing for reporting of and access to criminal history record information.
 - e. Use of criminal history record information for the purpose of research and statistical analysis of criminal activity.
 - f. Criteria under which criminal history records are purged or sealed.
2. Reportable events to be reported by each criminal justice agency, in order to avoid duplication in reporting.
 3. Time requirements for reporting criminal history record information to the bureau.

SECTION 4. Reportable offenses. Criminal justice agencies shall report to the bureau reportable events for each felony and for each of the following misdemeanor offenses:

1. Class A and B misdemeanor offenses in sections 6-08-16 and 6-08-16.1.
2. Class A misdemeanor offenses included in title 12.1.
3. Class A and B misdemeanor offenses in chapters 19-03.1 and 19-03.2, and in section 12-47-21.
4. Class B misdemeanor offenses in sections 12.1-17-01, 12.1-20-12.1, 12.1-21-05, 12.1-21-06, 12.1-23-05, and 12.1-29-03.
5. Class A misdemeanor offenses in sections 53-06.1-16 and 53-06.1-16.1.
6. Class A misdemeanor offenses in title 62.1.

SECTION 5. Exchange of criminal history record information among criminal justice agencies and the courts. The bureau and other criminal justice agencies shall disclose criminal history record information:

1. To a criminal justice agency that requests the information for its functions as a criminal justice agency or for use in hiring or retaining its employees.
2. To a court, on request, to aid in a decision concerning sentence, probation, or release pending trial or appeal.
3. Pursuant to a judicial, legislative, or administrative agency subpoena issued in this state.
4. As otherwise expressly required by law.

SECTION 6. Dissemination to parties not described in section 5. Only the bureau may disseminate criminal history record information to parties not described in section 5. The dissemination may be made only if all the following requirements are met:

1. The information has not been purged or sealed.
2. The information is of a conviction, or the information is of a reportable event occurring within one year preceding the request.
3. The request is written and contains:
 - a. The name of the requester.
 - b. The name of the record subject.
 - c. At least two items of information used by the bureau to retrieve criminal history records, including:
 - (1) The fingerprints of the record subject.
 - (2) The state identification number assigned to the record subject by the bureau.
 - (3) The social security number of the record subject.
 - (4) The date of birth of the record subject.
 - (5) A specific reportable event identified by date and either agency or court.
4. The identifying information supporting a request for a criminal history record does not match the record of more than one individual.

SECTION 7. Prohibited dissemination. If dissemination is prohibited under section 6, or there is no information, the bureau shall provide the following answer to the requester: "No information is available because either no information exists or dissemination is prohibited."

SECTION 8. Required disclosure of certain dissemination. If the bureau disseminates information under section 6, unless the request was accompanied by an authorization on forms prescribed by the bureau and signed by the record subject, the bureau shall mail notice of that dissemination to the record subject at the last known address of the record subject.

SECTION 9. Fee for record check. The bureau shall impose a fee of twenty dollars for a record check conducted for a noncriminal justice agency that is not also a court.

SECTION 10. Penalty. Any willful violation as defined in section 12.1-02-02 of any provision of sections 1 through 9 of this Act relating to reporting or disseminating criminal history record information is a class A misdemeanor.

SECTION 11. AMENDMENT. Section 12-60-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-60-07. Powers and, duties, and functions of the bureau. The duties and responsibilities of the bureau shall be-

1. ~~To~~ The bureau shall cooperate with and assist the criminal bureau of the department of justice at Washington, D. C., and similar departments in other states in establishing and carrying on a complete system of criminal identification.
2. ~~To~~ The bureau shall cooperate with and assist all judges, state's attorneys, sheriffs, chiefs of police, and all other law enforcement officers of this or any other state and of the federal government in establishing such system of criminal identification.
3. ~~To file for record the fingerprint impressions of every person confined in any penitentiary or jail when such person is suspected of having committed a felony or of being a fugitive from justice, and to file such other information as they may receive from the law enforcement officers of this or any other state, or from the federal government~~ The bureau is the state central repository for the collection, maintenance, and dissemination of criminal history record information.
4. ~~To~~ The bureau shall assist the sheriffs and other peace officers in establishing a system for the apprehension of criminals and detection of crime.
5. When called upon by any state's attorney, sheriff, police officer, marshal, or other peace officers, the superintendent, chief of the bureau, and their investigators may assist, aid, and cooperate in the investigation, apprehension, arrest, detention, and

conviction of all persons believed to be guilty of committing any felony within the state.

6. ~~To~~ The bureau shall perform such other duties in the investigation, detection, apprehension, prosecution, or suppression of crimes as may be assigned by the attorney general in the performance of ~~his~~ the attorney general's duties.
7. ~~To~~ The bureau shall provide assistance from time to time in conducting police schools for training peace officers in their powers and duties, and in the use of approved methods for detection, identification, and apprehension of criminals and ~~to~~ require attendance at such police schools.
8. ~~To~~ accumulate, keep, and maintain a file for the identification of persons convicted of issuing false and fraudulent checks, no account checks, and nonsufficient funds checks, and to aid local law enforcement officials in the detection, apprehension, and conviction of said persons.
- 9- ~~To~~ The bureau shall perform the inspection and enforcement duties for the attorney general's licensing department.
- ~~10-~~ 9. ~~To~~ The bureau shall detect and apprehend persons illegally possessing or disposing of drugs.

SECTION 12. REPEAL. Sections 12-60-10, 12-60-11, 12-60-12, 12-60-15, and 12-60-16 of the North Dakota Century Code are hereby repealed.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 163

SENATE BILL NO. 2365
(Senator Maixner)
(Representative Rydell)

DOMESTIC VIOLENCE PROCEDURES

AN ACT to provide arrest procedures, guidelines, and training for law enforcement officers in handling incidents of domestic violence, and protection by judicial intervention for victims of domestic violence; and to provide a penalty.

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

SECTION 1. Definitions. As used in this Act:

1. "Domestic violence" includes physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault, on the complaining family or household members.
2. "Family or household member" means spouses, former spouses, parents, persons related by blood or marriage, persons who are presently residing together or who have resided together in the past, and persons who have a child in common regardless of whether they are or have been married or have lived together at any time.
3. "Peace officer" means a public servant authorized by law or by a government agency or branch to enforce the law and to conduct or engage in investigations of violations of law.

SECTION 2. Arrest procedures.

1. Whenever a peace officer has probable cause to believe that a person has committed a crime involving domestic violence, the peace officer may arrest the person and charge the person with the appropriate crime. The decision to arrest and charge the person may not be dependent on the specific consent of the victim, involve a consideration of the relationship of the parties, or be based solely on a request by the victim.

2. A peace officer investigating a crime involving domestic violence may not threaten, suggest, or otherwise indicate, for the purpose of discouraging requests for law enforcement intervention, that family or household members will be arrested. When complaints are received from two or more family or household members, the peace officer shall evaluate each complaint separately to determine whether to seek an arrest warrant.

SECTION 3. Reports. A peace officer shall make a written report of the investigation of any allegation of domestic violence regardless of whether an arrest was made. The peace officer shall submit the report to the peace officer's supervisor or to any other person to whom the peace officer is required to submit similar reports.

SECTION 4. Order prohibiting contact.

1. If a person charged with or arrested for a crime involving domestic violence is released from custody before arraignment or trial, the court authorizing the release of the person shall consider and may issue, if there is no outstanding restraining or protection order prohibiting the person from having contact with the victim, an order prohibiting the person from having contact with the victim. The order must contain the court's directives and must inform the person that any violation of the order constitutes a criminal offense. The court shall provide a copy of the order to the victim. The court shall determine at the time of the person's arraignment whether an order issued pursuant to this section will be extended. If the court issues an order pursuant to this section prior to the time the person is charged, the order expires at the person's arraignment or within seventy-two hours of issuance if charges against the person are not filed.
2. If the court has probable cause to believe that the person charged or arrested is likely to use, display, or threaten to use a firearm or dangerous weapon as defined in section 12.1-01-04 in any further acts of violence, the court may require that the person surrender any firearm or dangerous weapon in the person's immediate possession or control, or subject to the person's immediate possession or control, to the sheriff of the county or chief of police of the municipality in which the person resides for safekeeping.
3. Whenever an order prohibiting contact is issued, modified, extended, or terminated under this section, the clerk of court shall forward a copy of the order on or before the next business day to the appropriate law enforcement agency specified in the order. Upon receipt of the copy of the order, the law enforcement agency shall enter the order for one year or until the date of expiration specified by the order into any information system

available in the state that is used by law enforcement agencies to list outstanding warrants. The order is enforceable in any jurisdiction in this state.

SECTION 5. Law enforcement guidelines and training.

1. On or before July 1, 1988, each law enforcement agency in the state shall develop and implement, with assistance from the criminal justice training and statistics division, specific operational guidelines for arrest policies and procedures in crimes involving domestic violence. The guidelines must include procedures for the conduct of criminal investigations, procedures for arrests and victim assistance by peace officers, procedures concerning the provision of services to victims, and any additional procedures as may be necessary to carry out the provisions of this Act.
2. The peace officers standards and training board shall establish, in conjunction with the state's attorneys association, an education and training program for peace officers and state's attorneys concerning the handling of crimes involving domestic violence. The training must stress the enforcement of criminal laws in domestic violence cases and the use of community resources.

SECTION 6. Penalty. A person who willfully violates a court order issued pursuant to section 4 of this Act is guilty of a class A misdemeanor.

Approved April 14, 1987
Filed April 15, 1987