

CORRECTIONS, PAROLE, AND PROBATION

CHAPTER 155

HOUSE BILL NO. 1496
(Representatives Clayburgh, Lindgren, Graba)
(Senators Mutch, Dotzenrod)

ADULT JAIL SERVICE CONTRACTS

AN ACT to amend and reenact section 12-44.1-02 of the North Dakota Century Code, relating to the abilities of cities and counties to contract with private entities to provide adult jail services.

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 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. A city or county may contract for adult jail services and juvenile detention services with a privately operated jail facility or juvenile detention center. Contracts with private agencies providing adult jail or juvenile detention services may be entered into for up to seven years.

Approved March 21, 1989
Filed March 23, 1989

CHAPTER 156

SENATE BILL NO. 2212
(Committee on Judiciary)

(At the request of the Director of Institutions)

DEPARTMENT OF CORRECTIONS AND REHABILITATION

AN ACT to create and enact a new chapter to title 54 of the North Dakota Century Code, relating to establishing a department of corrections and rehabilitation within the office of the director of institutions; to amend and reenact sections 12-44.1-04, 12-44.1-06, 12-44.1-22, 12-44.1-23, 12-44.1-24, 12-44.1-25, 12-44.1-26, 12-44.1-27, 12-46-03, 12-46-04, 12-46-06, 12-46-09, 12-46-10, 12-46-10.1, 12-46-17, 12-46-18, 12-47-06, 12-47-08, 12-47-11, 12-47-12, 12-47-13, 12-47-15, 12-47-18, 12-47-32, 12-47-34, 12-48-02, 12-48-03, 12-48-03.1, 12-48-03.2, 12-48-06.1, 12-48-07, 12-48-14, 12-48-15, 12-48-22, 12-48.1-01, 12-48.1-02, 12-51-02, 12-51-04, 12-51-05, 12-51-06, 12-51-09, 12-52-01, 12-52-02, 12-52-03, 12-52-04, 12-52-05, 12-52-07, 12-55-07, 54-23-01, 54-23-02, 54-23-22, and 54-23-26 of the North Dakota Century Code, relating to giving authority for the state's corrections agencies to the director of the department of corrections and rehabilitation; and to repeal sections 12-47-33, 12-48-04, 12-48-05, 12-55-06, 54-21-13, 54-23-19, 54-23-20, 54-23-23, 54-23-27, and 54-23-28 of the North Dakota Century Code, relating to parole and probation and to the authority and various requirements of the director of institutions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-44.1-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-44.1-04. Administration - Organization - Management. The governing body of each jail shall:

1. Formulate an operations manual, available to all jail staff, which delineates the written policies and procedures for operating and maintaining the jail.
2. Review and update all policies and procedures in the operations manual at least annually.
3. Specify a single jail administrator in the operations manual to whom all jail staff are responsible. The operations manual shall include the jail administrator's duties, responsibilities, and authority for the management of the jail staff, inmates, programs, and physical plant.
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 criminal justice training and statistics division of the attorney general's office department of

~~corrections~~ or such other training as approved by the ~~criminal justice training and statistics division~~ department of corrections.

SECTION 2. AMENDMENT. Section 12-44.1-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-44.1-06. Grades of jail facilities. The ~~attorney general~~ department of corrections shall, following inspection pursuant to section 12-44.1-24, grade jails as to length of allowable inmate confinement based upon construction, size, and usage, as follows:

1. "Grade one" means a jail for confining inmates not more than one year.
2. "Grade two" means a jail for confining inmates not more than ninety days.
3. "Grade three" means a jail for confining inmates not more than ninety-six hours.

SECTION 3. AMENDMENT. Section 12-44.1-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-44.1-22. Jail register - Contents. Each jail administrator shall be responsible for a jail register in which shall be entered such inmate information on such forms as the ~~attorney general~~ department of corrections shall prescribe by rule.

SECTION 4. AMENDMENT. Section 12-44.1-23 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-44.1-23. Jail report. Each jail administrator shall make and file a quarterly report from the jail register with the ~~attorney general~~ department of corrections. The ~~attorney general~~ department of corrections shall consolidate the jail reports for public release.

SECTION 5. AMENDMENT. Section 12-44.1-24 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-44.1-24. Jail standards - Inspections. The ~~attorney general~~ department of corrections shall:

1. Prescribe rules and regulations pursuant to chapter 28-32 establishing minimum standards for the construction, operation, and maintenance of public or private juvenile detention centers, county and city jails, and regional corrections centers.
2. Prescribe rules for the care and treatment of inmates.
3. Cause rules and regulations to be made available to inmates or be posted in at least one conspicuous place in each jail, juvenile detention center, or regional corrections center and in each cell or cellblock where they may be read by inmates.
4. Appoint a jail inspector qualified by special experience, education, or training to inspect each jail, juvenile detention center, and regional corrections center at least once each year to

determine if the rules and regulations have been complied with. Inspection shall include, but not be limited to, health and safety, fire and life safety, security, rehabilitation programs, recreation, treatment of persons confined, and personnel training.

SECTION 6. AMENDMENT. Section 12-44.1-25 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-44.1-25. Inspection report - Notice of noncompliance - Hearing.

1. A written report of each inspection pursuant to section 12-44.1-24 shall be made by the jail inspector within thirty days following each inspection.
2. Copies of the report shall be sent by the jail inspector to the governing body responsible for the jail, juvenile detention center, or regional corrections center and shall also be submitted to the attorney general department of corrections for review.
3. The inspection report shall specify those respects in which a jail, juvenile detention center, or regional corrections center does or does not comply with the required minimum standards and rules. The inspection report of noncompliance shall specify the time limits within which such standards or rules are to be met, with consideration being given to the magnitude or seriousness of the deficiencies and their potential effects on the health and safety of inmates, the cost of correction, and other information deemed relevant by the attorney general department of corrections.
4. Where the nature and extent of deficiencies are such that an immediate order of full or partial closure is deemed necessary by the attorney general department of corrections to preserve the health and safety of inmates, the period of time for correction may be dispensed with and an order of immediate full or partial closure may be issued by the attorney general department of corrections.
5. Within thirty days after receipt of a notice or order of immediate closure, the governing body of a jail, juvenile detention center, or regional corrections center may request a review of the determination by the attorney general department of corrections pursuant to chapter 28-32. The review shall be heard not more than forty-five days following the request, unless the period is extended by the attorney general department of corrections.

SECTION 7. AMENDMENT. Section 12-44.1-26 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-44.1-26. Jail variances.

1. All jails, juvenile detention centers, and regional corrections centers shall comply with the requirements of the rules and regulations promulgated by the attorney general department of corrections unless a variance has been granted by the attorney general department of corrections. Any request for a variance must be in writing and must cite the rule in question, the reasons for requesting the variance, the period of time for the variance, and

- an explanation of how the policy of the rule will be served without strict compliance with the rule.
2. The ~~attorney general~~ department of corrections may grant a variance if it is determined that:
 - a. Compliance with the rule would cause extreme hardship as a result of circumstances which are unique to the jail, juvenile detention center, or regional corrections center.
 - b. The jail, juvenile detention center, or regional corrections center can and will substantially comply with the policy of the rule during the time of the variance from the rule.
 3. The ~~attorney general~~ department of corrections shall give written reasons for granting or denying a variance request.
 4. In previously existing jails, juvenile detention centers, or regional corrections centers where specific rules cannot be complied with because of alleged difficulty or undue hardship, exception to specific physical plant rules shall be made if the intent of the rule is met and security, supervision of prisoners, established programs, or the safe, healthful, or efficient operation of the jail, juvenile detention center, or regional corrections center is not seriously affected.

SECTION 8. AMENDMENT. Section 12-44.1-27 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-44.1-27. Corrective action - Enforcement.

1. Upon receipt of an inspection report stating noncompliance, the governing body of a jail, juvenile detention center, or regional corrections center shall promptly meet with the ~~attorney general's~~ department of corrections' inspection personnel to consider the inspection report. The governing body shall then initiate appropriate corrective action within ninety days following receipt of the inspection report, or may voluntarily close the jail, juvenile detention center, or regional corrections center or the objectionable portion.
2. If the governing body of a jail, juvenile detention center, or regional corrections center fails to initiate corrective action within ninety days after receipt of the inspection report and notice of noncompliance, or fails to close the jail, juvenile detention center, or regional corrections center or objectionable portion, the ~~attorney general~~ director of the department of corrections is authorized to petition the district court of the judicial district in which the jail, juvenile detention center, or regional corrections center is located to order the initiation of corrective action or the closure of the jail, juvenile detention center, or regional corrections center. The petition to the district court shall include the inspection report regarding the jail, juvenile detention center, or regional corrections center. The governing body shall have twenty days to respond to the petition and shall serve a copy of the response on the ~~attorney~~

general director of the department of corrections by certified mail.

3. A hearing shall be held on the petition of the attorney general department of corrections before the district court. An order shall be rendered by the district court which dismisses the petition, directs that corrective action be initiated in some form by the governing body, or directs the closure of the jail, juvenile detention center, or regional corrections center.

SECTION 9. AMENDMENT. Section 12-46-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-46-03. Officers of the North Dakota industrial school. The officers of the North Dakota industrial school shall be a superintendent and such teachers and assistants as may be deemed necessary and recommended by the superintendent and approved by the director of institutions the division of juvenile services.

SECTION 10. AMENDMENT. Section 12-46-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-46-04. Appointment and removal of officers — Term of office. The director of institutions the division of juvenile services with the approval of the director of the department of corrections and rehabilitation shall appoint the superintendent, and he shall hold his office for a term of two years and until his successor is appointed and qualified, unless he is sooner removed by the director of institutions. He. The superintendent may be removed by the director of institutions the division of juvenile services with the approval of the director of the department of corrections and rehabilitation for misconduct, neglect of duty, incompetency, or other proper cause showing his an inability or refusal properly to properly perform the duties of his the office, but such removal shall be had only after an opportunity is given to him to be heard before a board consisting of the governor, attorney general, and state treasurer upon preferred written charges. Such removal when made, however, shall be final. All other officers and employees shall be appointed by the superintendent, subject to the approval of the director of institutions, and shall hold office at the pleasure of the superintendent the division of juvenile services. The superintendent shall show in the record of any officer or employee who is discharged by him the superintendent the reason therefor.

SECTION 11. AMENDMENT. Section 12-46-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-46-06. Salary of superintendent, officers, and employees. The superintendent and all other officers and employees shall receive a salary to be fixed by the director of institutions the division of juvenile services with the approval of the director of the department of corrections and rehabilitation within the limits of legislative appropriations therefor. All other officers and employees of the school shall receive salaries determined by the superintendent and approved by the director of the division of juvenile services.

SECTION 12. AMENDMENT. Section 12-46-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-46-09. Superintendent may make rules. The superintendent, subject to the approval of the director of ~~institutions~~ the division of juvenile services, shall make rules and regulations not in conflict with the laws of this state:

1. For the admission of visitors.
2. For the government of officers and employees of the North Dakota industrial school.
3. For the conduct of ~~inmates therein~~ students committed to the North Dakota industrial school.

A printed copy of the rules and regulations shall be furnished to each person student committed to the North Dakota industrial school at the time ~~he the student~~ is received and to each officer or employee ~~thereof~~ at the time ~~he is appointed~~ of hire. ~~Ten~~ Two copies of such rules shall be furnished to the state law library for the use of the state officials and the public.

SECTION 13. AMENDMENT. Section 12-46-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-46-10. Records of institutional transactions, complaints, and rule infractions. The superintendent shall cause to be kept a correct record of all the transactions of ~~his~~ the office and a correct account of all ~~his~~ the superintendent's doings. ~~He~~ The superintendent shall ~~cause to be kept~~ keep a memorandum of every complaint of cruel and unjust treatment of any officer or other person ~~or of the want of proper clothing or food made by any inmate~~, and also of any infraction of the rules and regulations of the school by any of the ~~persons~~ students committed thereto, naming ~~him~~ the student, and specifying the offense and the punishment, if any, inflicted therefor, and such record and memorandum shall be laid before the director of ~~institutions~~ the division of juvenile services upon ~~his~~ request.

SECTION 14. AMENDMENT. Section 12-46-10.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-46-10.1. Disciplinary committee - Members - Duties. The superintendent of the North Dakota industrial school shall appoint a disciplinary committee. The membership of this committee should include one cottage supervisor, one member of the professional staff, and may include one student and one member of the general public, as determined by the superintendent. The committee shall hear all charges of serious breach of discipline and recommend to the superintendent what disciplinary action should be administered. The committee will maintain records of its actions. These records shall be subject to review by the director of ~~institutions~~ the division of juvenile services, the attorney general, or any legislative committee at their request. Nothing in this section shall be construed to prevent the superintendent from placing a child under close supervision immediately after that child commits a serious breach of discipline, however, within forty-eight hours the disciplinary committee shall hear the case and make its recommendations to the superintendent concerning further action to be taken, if any.

SECTION 15. AMENDMENT. Section 12-46-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-46-17. Incurrigible inmate student returned to sheriff - Original proceedings continued. If any person who has been convicted of a felony and committed to the North Dakota industrial school shall be or become incurrigible and manifestly or persistently dangerous to the good order, government, and welfare of such school or the students thereof, the director of ~~institutions~~ the division of juvenile services must order such person returned and delivered to the sheriff of the county from which he was committed, and the proceedings against such person thereafter shall be resumed and continued as though no order or warrant of commitment to the North Dakota industrial school had been made.

SECTION 16. AMENDMENT. Section 12-46-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-46-18. Employment and compensation of persons committed. Every person committed to the state industrial school or its auxiliary facilities may receive a stipend as determined by the superintendent, and approved by the director of ~~institutions~~ the division of juvenile services, within the limits of appropriations made by the legislative assembly for such purpose.

SECTION 17. AMENDMENT. Section 12-47-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-47-06. Appointment of officers — ~~Term of office.~~ The director of ~~institutions~~ the division of adult services with the concurrence of the director of the department of corrections and rehabilitation shall appoint the warden, and he shall hold his office for a term of two years and until his successor is appointed and qualified, unless he is sooner removed by the director of ~~institutions~~. He. The warden may be removed by the director of ~~institutions~~ the division of adult services with the approval of the director of the department of corrections and rehabilitation for misconduct, neglect of duty, incompetency, or other proper cause showing his an inability or refusal properly to properly perform the duties of his the office, but such removal shall be had only after an opportunity is given to him to be heard before a board consisting of the governor, attorney general, and state treasurer upon preferred written charges. Such removal when made, however, shall be final. All other officers and employees shall be appointed by the warden, subject to the approval of the director of ~~institutions~~, and shall hold office at the pleasure division of the warden adult services. The warden shall show in the record of any officer or employee who is discharged by him the warden the reason therefor.

SECTION 18. AMENDMENT. Section 12-47-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

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

SECTION 19. AMENDMENT. Section 12-47-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-47-11. Powers and duties of warden. The warden, under the direction of the director of ~~institutions~~ the division of adult services, shall have the charge, custody, and control of the penitentiary and the persons committed thereto, together with all lands, buildings, furniture, tools, implements, stock, provisions, and every other species of property pertaining thereto or within the premises thereof, excluding the crime bureau building-officer's quarters, and control, maintenance, and management of said crime bureau building which shall solely be under the direction of the director of ~~institutions~~ the department of corrections and rehabilitation. ~~He~~ The warden shall superintend and be responsible for the policing of the penitentiary and the discipline of the inmates.

SECTION 20. AMENDMENT. Section 12-47-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-47-12. Warden to make rules and regulations. The warden, subject to the approval of the director of ~~institutions~~ the division of adult services, shall make rules and regulations not in conflict with the laws of this state and shall prescribe penalties for the violation thereof:

1. For the admission of visitors, but admission of visitors shall not be limited to less than ~~two~~ four days in each week.
2. For the government of officers and employees of the penitentiary.
3. For the conduct of prisoners ~~therein~~ committed to the state penitentiary.

A printed copy of the rules and regulations shall be furnished to each person committed to the penitentiary at the time ~~he is received of admission~~ and to each official or employee thereof at the time ~~he is appointed of hire~~. ~~For~~ Two copies of such rules shall be furnished to the state law library for the use of the state officials and the public. Such rules shall be explained to each prisoner in ~~his~~ the prisoner's native language if ~~he~~ the prisoner cannot read English.

SECTION 21. AMENDMENT. Section 12-47-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

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

SECTION 22. AMENDMENT. Section 12-47-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-47-15. Absence of warden and deputy wardens. ~~The warden and the deputy wardens shall not be absent from the Mandan-Bismarck area at the same~~

~~time except by permission of the director of institutions:~~ When the warden and the deputy wardens are absent, the warden must designate in writing one of his a staff members member to act as warden, and must inform the director of ~~institutions~~ the division of adult services, in writing, of his choice prior to each absence, who will act as warden.

SECTION 23. AMENDMENT. Section 12-47-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-47-18. Warden has custody of inmates pursuant to terms of sentence. The warden shall have the charge and custody of all inmates of the penitentiary. ~~He~~ The warden shall retain, confine, and imprison each person received by him under sentence to the penitentiary until the expiration of his the inmate's term of sentence or until ~~he~~ the inmate otherwise is lawfully entitled to release. The warden shall care for, govern, and make an effort to employ all inmates in conformity with their respective sentences and in the manner prescribed by law and the rules and regulations lawfully adopted for the conduct of the penitentiary.

SECTION 24. AMENDMENT. Section 12-47-32 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-47-32. Cash payments - State auditor Office of management and budget may issue warrant. The ~~state auditor~~ office of management and budget may issue his a warrant on the state treasurer, payable to the ~~treasurer of the~~ penitentiary, for the payment of cash advanced to discharged inmates for transportation and temporary aid or for such items as it is necessary for the warden or the director of ~~institutions~~ the department of corrections and rehabilitation to pay in cash. The warden shall file with the ~~state auditor~~ office of management and budget an affidavit stating that certain specific sums are necessary to pay cash advanced to discharged inmates for transportation and temporary aid or other incidental items.

SECTION 25. AMENDMENT. Section 12-47-34 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-47-34. Escapes from warden's custody - Warden may offer reward for recapture - Payment of reward. The warden, with the approval of the director of ~~institutions~~ the department of corrections and rehabilitation, may adopt any measures ~~he may deem~~ deemed proper to aid in the detection and capture of persons escaping from the custody of the warden. When an inmate escapes, the warden shall use every means at ~~his the warden's~~ the warden's command for the apprehension of such person, and for that purpose ~~he may offer~~ a reward of not to exceed one ~~hundred thousand~~ hundred thousand dollars and not less than ~~twenty-five~~ one hundred dollars for information leading to such apprehension.

SECTION 26. AMENDMENT. Section 12-48-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-48-02. Director of ~~institutions~~ the department of corrections and rehabilitation to make rules regarding employment of inmates. The director of ~~institutions~~ the department of corrections and rehabilitation shall establish rules and regulations relating to the care, treatment, and management of all prisoners, wherever they may be employed.

SECTION 27. AMENDMENT. Section 12-48-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-48-03. Manner of employing inmates. The director of institutions the department of corrections and rehabilitation and the warden of the penitentiary shall attempt to employ all inmates of the penitentiary in maintaining the penitentiary and the grounds thereof, in carrying on the work of the industries established at the penitentiary or at other state institutions, in doing any work necessary to be done in the erection, repair, or improvement of any of the state buildings, including the executive mansion, and the grounds of such buildings, or in the construction and improvement of the public highways of the state. Inmates may also be employed in work projects for county and local governmental agencies and subdivisions. The prisoners shall be employed, insofar as practicable, on in the work to which they are best adapted and on in the work that will make it possible for them to acquire skill so that they will be able to earn a livelihood when they are paroled or discharged from the institution. Inmates may be employed outside the yard of the penitentiary in cultivating and improving any ground belonging thereto. The warden shall be held responsible for the escape of any inmate notwithstanding that such employment is outside the penitentiary if the escape is made possible through the warden's negligence or the negligence of himself or any of his the warden's subordinates.

SECTION 28. AMENDMENT. Section 12-48-03.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-48-03.1. The director of institutions the department of corrections and rehabilitation may establish and engage in new prison industries. The warden of the state penitentiary, under the direction and with the approval of the director of institutions the department of corrections and rehabilitation, is authorized to establish, and engage in, such new prison industries as the director deems necessary, and which are of greatest benefit to and in the best interest of the state of North Dakota, the state penitentiary, the 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. 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, fiberresin, upholstered, and metal art work products may be sold only through wholesale or retail outlets that possess a valid sales tax permit, or through export firms for sale to international markets.

2. Hardwood, fiberresin, 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 the department of corrections and rehabilitation.
3. Subsections 1 and 2 do not prevent the sale of prison-made hardwood, fiberresin, upholstered, or metal art work products to any state institution or facility operated by the director of institutions or by the director of the department of corrections and rehabilitation.

SECTION 29. AMENDMENT. Section 12-48-03.2 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read 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 institutions the department of corrections and rehabilitation.

SECTION 30. AMENDMENT. Section 12-48-06.1 of the 1987 Supplement to 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 the department of corrections and rehabilitation 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 chairperson of the committee. The appointed members shall be paid mileage and expenses by the prison industry as authorized for state officials and employees.

SECTION 31. AMENDMENT. Section 12-48-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-48-07. Tools and equipment. The warden, under the direction of the director of institutions the division of adult services, shall procure the machinery, tools, and equipment necessary to carry on and conduct the work and industries of the penitentiary.

SECTION 32. AMENDMENT. Section 12-48-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-48-14. Compensation of inmates. Prisoners engaged in carrying on the work of the penitentiary and its industries shall receive compensation in an amount to be determined by the warden and approved by the director of institutions the department of corrections and rehabilitation within the limits of legislative appropriations for that purpose. The warden shall assign a reasonable daily task to be performed by each prisoner, and the compensation of the prisoner shall be determined by the amount of work ~~he~~ the prisoner performs on such task. All prisoners faithfully performing the daily task assigned shall receive the maximum compensation determined by the director of institutions warden, and whenever it becomes necessary in carrying on this work for a prisoner to labor in excess of ten hours per day, ~~he~~ the prisoner shall receive such additional compensation as is allowed by the director of institutions warden. All prisoners working at the penitentiary industries may receive pay based upon actual production of salable items as determined by the director of institutions warden, to be paid out of such funds as may be appropriated by the legislative assembly.

SECTION 33. AMENDMENT. Section 12-48-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

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

1. The warden of the penitentiary shall keep an account for each inmate. Fifty percent of the earnings of inmates shall be deposited to the credit of their account until they have accumulated in that account a sum of money as provided by penitentiary rules and regulations from their earnings at the penitentiary, or such portion thereof as they have earned at the time of their discharge and the other fifty percent of the earnings must be paid to the inmates on a regular basis. All moneys in the inmate's account shall be paid to the inmate in full when discharged.
2. Inmates may, in writing, authorize the warden or designee to deposit any of their accumulated earnings from the prison industries, hobby, work release, or any other prison program in an interest-earning account in the Bank of North Dakota for the benefit of the inmate. The account shall be a two signature account requiring the inmate's signature and that of an authorized designated officer or employee of the state penitentiary for withdrawal.
3. Other inmate income or funds from sources outside of the penitentiary may be directly deposited or invested by the inmate in any bank or other organization, unless sentencing stipulations, court orders, the inmate's competency, or other interests of the inmate require that the warden deposit such income or funds or a portion thereof in the above-noted Bank of North Dakota account for the inmate's benefit and protection. Before making such a deposit of funds or income from sources outside of the penitentiary for the inmate's benefit and protection, the warden must receive the approval of the director of institutions the division of adult services and provide a written letter of explanation to the inmate.

Funds directly invested or deposited by inmates into their independent accounts, even when assisted in doing so by an officer or employee of the penitentiary, shall in no way make the penitentiary or its officers or employees responsible or accountable for such inmate's investments and deposits.

4. The warden, through ~~his~~ the staff, is responsible for guiding inmates in making proper use of their funds to pay their obligations, ~~and, if possible,~~ including the payment of court costs, court appointed counsel fees, and court ordered restitution, and to provide for their dependent relatives, or to provide for ~~themselves~~ their own medical, surgical, or dental treatment or services not generally provided by the state. The sum of money as provided by penitentiary rules and regulations from each inmate's earnings required to be deposited and accumulated by this section shall not be available to the inmate until discharge. The remainder of the inmate's earnings, including interest earned, shall be available to the inmate under the supervision and control of the warden or designee.

SECTION 34. AMENDMENT. Section 12-48-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

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

SECTION 35. AMENDMENT. Section 12-48.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-48.1-01. Director may provide certain services for inmates. The director of ~~institutions~~ the department of corrections and rehabilitation may participate in programs under which inmates sentenced to the penitentiary and the state farm may be gainfully employed or participate in an educational or other rehabilitation program either in or outside the institution. The director may obtain separate facilities with minimum security for the housing of inmates granted release privileges. In areas where facilities are not within reasonable proximity of the place of employment or training of an inmate so released, the director may arrange for the housing of the inmate in local confinement facilities.

SECTION 36. AMENDMENT. Section 12-48.1-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-48.1-02. Conditions of eligibility for release programs. An inmate shall be eligible for programs outside the institution when the warden determines the inmate is not a high security risk, not likely to commit a crime of violence, and is likely to be rehabilitated by such program. ~~The parole board; after a determination by the warden as provided above; may authorize participation in outside programs; notwithstanding the fact that the inmate has not yet completed a minimum sentence imposed for an offense committed prior to July 1, 1975. An inmate may make application to the warden for permission to participate in such programs. If the warden approves or disapproves the application; he shall forward it to the parole board.~~ The warden, with the approval of the director of the department of

corrections and rehabilitation, may authorize participation in outside programs for an inmate who has been sentenced to ten years or less to the state penitentiary or state farm. In sentences of more than ten years, the parole board, after approval by the warden, may authorize participation in outside programs. The application shall include a statement that the inmate agrees to abide by all terms and conditions of the particular plan adopted for him, and shall state the name and address of the proposed employer, if any, and shall contain such other information as the parole board may require. The parole board may approve, disapprove, or defer action on an application approved by the warden. The plan shall be signed by the inmate prior to participation in the program. Approval may be revoked for any reason by the warden or the parole board at any time after being granted. The parole board and warden shall prescribe rules of conduct and treatment for all inmates on release programs. Short leaves, not to exceed seventy-two hours, may be granted, by the warden, with the approval of the director of the department of corrections and rehabilitation, to inmates with sentences of ten years or less and by the parole board, with the warden's approval to inmates with sentences of more than ten years and upon recommendation by the warden, to all inmates of the state farm and to penitentiary inmates who have been on work or education release programs for at least thirty days. All rules adopted by the parole board and the warden relating to release programs and short leaves shall conform, to the extent allowable by law, with executive order No. 11755 issued by the President of the United States.

SECTION 37. AMENDMENT. Section 12-51-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-51-02. Purpose of state farm. It shall be the purpose of the state farm to employ in manual labor the prisoners committed or transferred thereto. Said farm shall be administered as a work farm for the purpose of assisting in the rehabilitation of the prisoners committed thereto, and with the purpose of furnishing to them labor, instruction, and supervision that will accomplish the purpose sought in this chapter. The director of ~~institutions~~ the department of corrections and rehabilitation may provide for such labor, instruction, and supervision for the persons committed to the state farm.

SECTION 38. AMENDMENT. Section 12-51-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-51-04. Farm operated with penitentiary - Warden to be superintendent - Employment of help. The director of ~~institutions~~ the department of corrections and rehabilitation shall have charge and control of the state farm, and all property which said director has received or acquired, or hereafter may receive or acquire, in connection with the establishment and operation of said farm. For administrative and operational purposes, the said farm shall be deemed a facility of the state penitentiary and shall be operated in connection therewith. The warden of the penitentiary shall be the superintendent or chief administrative officer of the farm. Machinery, equipment, livestock, and other property of the penitentiary and of the farm may be used interchangeably. The ~~director~~ warden may employ such employees as may be necessary and as available funds will permit, and may prescribe their duties and fix their compensation. The ~~director~~ warden may assign to said farm, in any capacity, persons employed in connection with the operation of the penitentiary. Such persons may be assigned either for full-time or part-time work, and, in the judgment of the ~~director~~ warden, the compensation of such persons may be continued to be paid

and charged as before they were assigned to work at said state farm. ~~Until the said farm has been put into operation, all properties that have been received and acquired by the said director for the establishment and operation of said farm may be utilized in carrying on the operations of the state penitentiary.~~

SECTION 39. AMENDMENT. Section 12-51-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-51-05. Laws governing management of state farm. The laws relating to the government and management of, and parole from, the penitentiary, so far as the same may be applicable and not inconsistent with the provisions of this chapter, in all respects shall apply to the government and management of, and parole from, the state farm as to the duties and authority of the director of institutions the department of corrections and rehabilitation and his the director's employees used at said state farm.

SECTION 40. AMENDMENT. Section 12-51-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-51-06. Director Warden and the director of institutions the department of corrections and rehabilitation to establish rules for control of state farm and prisoners committed thereto. The warden with the approval of the director of institutions the department of corrections and rehabilitation may establish, adopt, and enforce proper rules and regulations consistent with the provisions of this chapter for the control and administration of the state farm and the prisoners committed thereto.

SECTION 41. AMENDMENT. Section 12-51-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-51-09. Director of institutions Warden may transfer persons from state farm to penitentiary or from penitentiary to state farm. When the director of institutions warden, either at the time of commitment or at any time thereafter, shall determine determines that for purposes of safety of other inmates or of the general public or for the purpose of discipline or medical care it is necessary or proper that any person committed to the state farm should be transferred to the state penitentiary, such transfer may be made for such period as the director may deem warden deems proper. Where a person who has been committed to the state farm conducts himself in such manner as to interfere interferes with the operation of the farm, or with the welfare or safety of others, and where in the judgment of the director of institutions warden the best interests of such person or the best interests and welfare of other persons committed to the farm so require, the director warden may direct that such person be removed from the farm and placed in the penitentiary. The director warden also may direct that persons who have been sentenced to the penitentiary be transferred to the farm, when such action seems desirable and for the best interests of the person so transferred and in no manner detrimental to the welfare of other persons who have been committed to said farm. The director warden may cause persons committed to the said farm to be assigned for work incident to the operations of the penitentiary or of any other institution or facility under the control of the director warden.

* SECTION 42. AMENDMENT. Section 12-52-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

* NOTE: Section 12-52-01 was also amended by section 1 of Senate Bill No. 2210, chapter 157.

12-52-01. Director of institutions Department of corrections and rehabilitation to administer juvenile aftercare program and other treatment and rehabilitation programs. The director of institutions division of juvenile services with the approval of the director of the department of corrections and rehabilitation may provide an a juvenile aftercare program and other treatment and rehabilitation programs and may contract with public and private agencies to provide aftercare services for persons committed to the state industrial school division of juvenile services and may establish facilities in, and rules and regulations under, which such persons may receive aftercare services.

SECTION 43. AMENDMENT. Section 12-52-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-52-02. Aftercare granted on recommendation of superintendent. No aftercare program shall be provided for any person committed to the North Dakota industrial school or placed under the guardianship, control, and custody of the superintendent, unless the superintendent recommends the program to the director of institutions the division of juvenile services, and some suitable person will receive the person to be placed in the aftercare program under conditions approved by the superintendent. Nothing in this chapter shall prevent the placing of any person into his own home or into a licensed foster home under any program administered by the department of human services.

SECTION 44. AMENDMENT. Section 12-52-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-52-03. Recommitment to the state industrial school for violation of aftercare rules. A person placed in an aftercare program shall be under the guardianship and control of the director of institutions the division of juvenile services, and is subject, at any time until the expiration of the time for which he the person was committed, to be taken into actual custody and returned to the state industrial school. The director of institutions may enforce the rules and regulations made by him for the administration of aftercare programs and the placement of students in them, and when he the director is satisfied that a person placed in an aftercare program has violated any of the rules or regulations, he the director may order that person to be taken into actual custody and returned to the state industrial school, and to be detained therein until the expiration of the time for which he the person was committed, or until he the person is again placed in an aftercare program. The director shall maintain a record of any such order, and a certified copy of the order may be delivered to any peace officer, or any officer or employee of the state industrial school, for service and return. It shall be the duty of the officer or employee to receive the order and to apprehend and immediately deliver the person named in the order to the superintendent of the state industrial school.

SECTION 45. AMENDMENT. Section 12-52-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-52-04. Officer's or employee's return on order of recommitment. The officer or employee executing an order of the director of institutions the division of juvenile services for the apprehension and return of a person to the state industrial school shall endorse on the order a return of his the officer's doings thereunder and deliver the same, together with the person named therein, to the superintendent of the school. The superintendent shall

give to the officer or employee a certificate acknowledging the receipt of the person, order, and return.

SECTION 46. AMENDMENT. Section 12-52-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-52-05. Officer's fee on recommitment - Exception. The fee of any officer, except an officer or employee of the state industrial school, executing an order of the director of ~~institutions~~ the division of juvenile services for the apprehension and return of a person to the state industrial school shall be the same as that for like service in criminal actions.

SECTION 47. AMENDMENT. Section 12-52-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-52-07. Discharge for good conduct. The director of ~~institutions~~ the division of juvenile services may discharge any student from the state industrial school at any time upon satisfactory evidence of reformation and as a reward for good conduct and diligence in study. If the student has no parent, guardian, or other person to whom to return, the director of ~~institutions~~ shall arrange for and procure some suitable person to receive, employ, and care for the person so discharged, ~~without charge to the state.~~

SECTION 48. AMENDMENT. Section 12-55-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-55-07. ~~Parole officers~~ Director - Appointment - Duties. ~~The ex officio members of the board of pardons~~ director of the division of adult services with the approval of the director of the department of corrections and rehabilitation and the approval of the ex officio board members of the pardon board shall appoint ~~one or more parole officers; one~~ a director of whom may be parole and probation, who shall serve as the clerk of the board of pardons and of the parole board, whose duties shall be:

1. To keep a docket of all applications filed with the board of pardons or the parole board and of all action taken thereon.
2. To keep a record of every petition for a pardon, parole, reprieve, or commutation of sentence received by each board, and of every letter or paper filed or appearance made in connection therewith.
3. To keep a record of every pardon, parole, reprieve, or commutation of sentence granted or refused and of the reasons assigned for each such action.
4. To maintain a complete and accurate filing system of all proceedings before each board.
5. To keep and preserve all the files and records of each board and perform duties in relation to files and records as each board prescribes.
6. To have supervision over and to look after the welfare of persons who have been paroled from the penitentiary and of persons who have received sentences to probation or suspended sentences and have been placed upon probation.

- ~~2-~~ 7. To keep a complete record of all persons under their supervision and to make such reports relating to such persons as the board of pardons or the parole board shall require.
- ~~3-~~ 8. To make such investigations and perform such other duties in connection with applications and petitions for pardon, commutation of sentence, or parole as may be prescribed by the board of pardons or the parole board.
- ~~4-~~ 9. To perform such other duties ~~as assigned by the board of pardons or, the parole board may assign to them, or the director of the division of adult services.~~

* SECTION 49. AMENDMENT. Section 54-23-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-23-01. Institutions, agencies, and departments under control of director of institutions. The director of institutions shall have full power to manage, control, and govern, subject only to the limitations contained in this chapter and in title 25, the penitentiary department of corrections and rehabilitation, the school for the blind, the school for the deaf, the Grafton state school, the North Dakota industrial school, and San Haven radio communications, and the state library. The director does not have the power to manage, control, and govern the veterans' home.

SECTION 50. AMENDMENT. Section 54-23-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-23-02. Director shall appoint superintendent or warden of institutions and directors of agencies under his the director's control. The director of institutions shall appoint and may remove the superintendent or warden of each institution under his management and control of the school for the blind and school for the deaf, the state librarian, and the directors of radio communications and the department of corrections and rehabilitation. If there is an alleged or seeming conflict between the powers of the a superintendent or warden director and the director of institutions, the determination of such question by the director of institutions shall be final.

SECTION 51. AMENDMENT. Section 54-23-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-23-22. Transfer of inmates students from the industrial school to other institutions. The director of institutions the division of juvenile services may transfer inmates students of the state industrial school to the state hospital or to the Grafton state school whenever the director is satisfied, upon investigation, that such transfer is advisable. If any inmate student, so transferred, is maintained at the expense of the county from which he the student was committed, the cost of his the student's maintenance in the institution to which he is transferred shall be charged to such county and shall be collected therefrom upon notice to the county auditor of said county by the director.

SECTION 52. AMENDMENT. Section 54-23-26 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

* NOTE: Section 54-23-01 was also amended by section 13 of House Bill No. 1229, chapter 239.

54-23-26. Property of institution is property of state. All property of every kind and all money in the charge of the ~~warden or~~ superintendent of any institution or director of any agency under the control of the director of institutions, or that shall come to ~~his~~ the hands or under ~~his~~ the director of institutions' control on account of the institution or agency under ~~his~~ the director's charge, or from the business thereof, is the property of the state and at all times shall be kept separate and apart from the property of such ~~warden or~~ superintendent or director.

SECTION 53. A new chapter to title 54 of the North Dakota Century Code is hereby created and enacted to read as follows:

Department of corrections and rehabilitation - Creation - Duties - Programs. There is hereby created a department of corrections and rehabilitation in the office of the director of institutions. The department is responsible for the direction and general administrative supervision, guidance, and planning of adult and juvenile correctional facilities and programs within the state. The department includes a division of adult services, a division of juvenile services, and such other divisions as are determined necessary for the effective and efficient operation of the department. Programs and facilities included in the department are the North Dakota state penitentiary, state farm, parole and probation for adult offenders, state industrial school, community programs and services for juvenile offenders under the division of juvenile services, and any other programs developed by the department.

Purpose. The purpose of the department of corrections and rehabilitation is:

1. To develop a statewide correctional philosophy that will provide direction, goals, and standards for corrections.
2. To provide for the care, custody, discipline, training, and treatment of persons committed to state correctional facilities and programs.
3. To coordinate and provide a continuum of correctional services to both adult and juvenile clients.
4. To promote and develop close communication and mutual understanding of corrections issues and concerns between the courts and the department.
5. To provide joint training of staff and career opportunities for corrections staff.
6. To work with local and state entities to develop alternatives to conventional incarceration for those offenders who can be dealt with more effectively in less restrictive, community-based facilities and programs.

Director - Appointment - Qualifications - Compensation. The chief administrative officer of the department is the director of the department of corrections and rehabilitation, who shall be appointed by the director of institutions. The person appointed as director must hold at least a bachelor's degree from an accredited college or university and must have held a management position in correctional or related work for at least five

years. The salary of the director will be set by the director of institutions within the limits of legislative appropriations and within the salary range of the classified position as established by the central personnel division for the position.

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

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

Appointment and removal of officers. The director of the department of corrections and rehabilitation with the approval of the director of institutions may appoint a director of the division of juvenile services, a

director of the division of adult services, and other division directors and personnel as deemed necessary for the effective and efficient operation of the department. The director of the division of juvenile services, the director of the division of adult services, and other division directors who may be appointed, shall meet qualifications as established for the classified positions under the central personnel classification system. The division directors may be removed by the director of the department, with the approval of the director of institutions, for misconduct, neglect of duty, incompetency, or other cause showing an inability or refusal to properly perform the duties of their office. All other officers and employees of each division must be appointed and removed by the director of the division, subject to the approval of the director of the department of corrections and rehabilitation. All officers and employees of the department of corrections and rehabilitation are subject to the provisions of the state personnel policies.

Salaries of division directors and other officers. The director of the department of corrections and rehabilitation shall determine the salary of each division director within the limits of legislative appropriations and within the salary range of the classified position as established by the central personnel division for the position. All other officers and employees shall receive salaries determined by their division director and approved by the director of the department.

SECTION 54. REPEAL. Sections 12-47-33, 12-48-04, 12-48-05, 12-55-06, 54-21-13, 54-23-19, 54-23-20, 54-23-23, 54-23-27, and 54-23-28 of the North Dakota Century Code are hereby repealed.

Approved April 14, 1989
Filed April 17, 1989

CHAPTER 157

SENATE BILL NO. 2210
 (Committee on Judiciary)
 (At the request of the Director of Institutions)

DIVISION OF JUVENILE SERVICES

AN ACT to create and enact two new sections to chapter 27-21 of the North Dakota Century Code, relating to definitions and custodial powers for purposes of the division of juvenile services; to amend and reenact sections 12-52-01, 27-21-01, 27-21-02, 27-21-03, 27-21-05, 27-21-06, 27-21-07, 27-21-08, and 27-21-09 of the North Dakota Century Code, relating to aftercare and other programs and the creation of a division of juvenile services in the department of corrections and rehabilitation; and to repeal sections 27-21-04 and 27-21-10 of the North Dakota Century Code, relating to an advisory board and cooperation with federal agencies and departments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 12-52-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-52-01. Director of institutions Department of corrections and rehabilitation to administer juvenile aftercare program and other treatment and rehabilitation programs. The director of institutions department of corrections and rehabilitation may provide an a juvenile aftercare program and other treatment and rehabilitation programs and may contract with public and private agencies to provide aftercare services for persons committed to the state industrial school division of juvenile services and may establish facilities in, and rules and regulations under, which such persons may receive aftercare services.

SECTION 2. A new section to chapter 27-21 of the North Dakota Century Code is hereby created and enacted to read as follows:

Definitions. As used in this chapter:

1. "Placement hearing" means a review of the placement of a child by a team of at least three individuals, selected by the division director, who have not had a direct involvement with the child. The child, or the child's representative, must be given the opportunity to inform the reviewing team of the child's interest and concerns. A summary record of these proceedings must be made.
2. "Temporary placement" means the placement of a child who may be a danger to self or others in a facility or setting for a short period of time until the most appropriate placement can be determined for the child. A temporary placement may also be the prompt removal of a child from a placement into an alternative setting until another more appropriate setting can be found.

* NOTE: Section 12-52-01 was also amended by section 42 of Senate Bill No. 2212, chapter 156.

SECTION 3. AMENDMENT. Section 27-21-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-21-01. Creation of state youth authority division of juvenile services - Director. A state youth authority division of juvenile services is hereby created and established with the powers and duties prescribed by this chapter. The state youth authority division of juvenile services shall be created within the department of human services corrections and rehabilitation, and its chief administrative officer shall be the executive director of the department of human services, or his designee appointed by the director of the department of corrections and rehabilitation and shall be known as the director of the division of juvenile services. On the effective date of this Act, each child committed to the custody of the state youth authority will, by operation of law, be committed to the custody of the division of juvenile services subject to the order committing the child.

SECTION 4. AMENDMENT. Section 27-21-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-21-02. State youth authority Division of juvenile services - Powers and duties. The state youth authority division of juvenile services shall be the administrative agency which shall take custody of delinquent and unruly children committed to its care by the juvenile courts. Upon committing a child to the custody of the state youth authority division of juvenile services, the committing judge, the juvenile supervisor juvenile court, law enforcement officers, and other public officials shall make available to the state youth authority division of juvenile services all pertinent data in their possession with respect to the child. Upon taking custody or if authorized by the court prior to receiving custody of a child, the state youth authority division of juvenile services shall process the child through such diagnostic testing and evaluation programs as may be necessary to determine his disposition the treatment and rehabilitation which is in his the best interest of the child and in the best interest of the state. In doing so, the state youth authority division of juvenile services may utilize the psychological, addiction, psychiatric, vocational, medical, and other diagnostic and testing services that are available, examine all the pertinent circumstances, and review the reasons for his the child's commitment. Upon completion of the diagnostic testing and evaluation program, the state youth authority of a child committed to its custody, the division shall make disposition under subsection 1, 2, or 3 of this section and inform the court of its disposition. Upon completion of the diagnostic testing and evaluation of a child not in its custody, the division shall make develop and recommend to the juvenile court an individualized treatment and rehabilitation plan for the child. This plan must include recommendations for the disposition of the child as follows:

1. Place him Placement in the custody care of his the child's parent, relative, guardian, or in a foster home or suitable private institution licensed by the state for the care or treatment and rehabilitation of children;
2. Place him Placement in the custody care of the state industrial school or in a vocational, training, or similar other treatment and rehabilitation institution for children or young adults within this state; or

3. Place him Placement in the custody care of a vocational, training, or similar other treatment and rehabilitation institution for children or young adults in another state in the event that adequate facilities for his the child's treatment and rehabilitation are not available within this state and the committing judge juvenile court concurs in the placement.

Subject to the authority of the committing court and the Uniform Juvenile Court Act, the state youth authority shall retain jurisdiction of the child until he reaches the age of eighteen years, and may change placement of the child at any time it appears to be in his best interest and in the best interest of the state, except when the child is placed in the custody, temporary or otherwise, of the state industrial school, in which case, any change of placement or custody is subject to the recommendation of the superintendent of the industrial school and the approval of the director of institutions.

SECTION 5. A new section to chapter 27-21 of the North Dakota Century Code is hereby created and enacted to read as follows:

Placement procedures. The division of juvenile services shall retain custody of the child as granted by the authority of the committing court and the Uniform Juvenile Court Act. The court in an order committing the child to the division may require court approval before a placement may be made to a more restrictive setting. All other placements may be made by the division at any time it appears to be in the child's best interest and in the best interest of the state. A child, child's parent, or guardian who objects to a placement to a more restrictive setting made by the division may request a placement hearing to review the placement. In an emergency, or for reasons of safety and security, the division may temporarily place a child in an appropriate facility. A child, child's parent, or guardian who objects to the temporary placement may request a placement hearing to review the placement determined by the division.

SECTION 6. AMENDMENT. Section 27-21-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-21-03. Temporary custody care. The state youth authority division of juvenile services may, if other means are unavailable, place a child committed to its custody in the temporary custody care of the state industrial school, a vocational, training, medical, psychiatric, psychological, or other institution suitable for children within this state for not more than sixty days, in order to provide for diagnostic testing and evaluation and other assessments pending disposition under section 27-21-02.

SECTION 7. AMENDMENT. Section 27-21-05 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-21-05. State youth authority Division of juvenile services to report to the committing judge juvenile court. Within ten days after the completion of diagnostic testing and evaluation of a child, the director division shall report the results thereof develop and recommend an individualized treatment and rehabilitation plan to the committing judge and the disposition made, if any, other than a juvenile court unless the recommendation is temporary placement care pursuant to section 27-21-03. The director division shall review each placement and the current status of each child committed to the division at least every three months to determine

whether a change in placement or program is necessary for the continued accomplishment of the treatment or and rehabilitation plan of the child, and shall report his the findings and dispositions to the advisory board and the department of human services committing juvenile court.

SECTION 8. AMENDMENT. Section 27-21-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-21-06. State youth authority Division of juvenile services to contract with facilities in other states for custody care.

1. The state youth authority division of juvenile services is hereby empowered to contract and make placements with the appropriate agencies or department departments of other states in order that they may receive custody care of committed children for vocational, training, or other treatment and rehabilitation purposes contemplated by this chapter. Before contracting with any agency or department of another state, the director of the division, or the director's designee, shall assess the facilities that are offered by such department or agency, and, after contracting, forward to each district judge in the state the committing juvenile court a summary on the facilities that are furnished by such agency or department and such other information pertaining thereto as may reasonably be requested.
2. Any contract or placement entered into shall provide for:
 - a. Its duration.
 - b. Payments to be made to the other state for maintenance and extraordinary medical and dental expenses of children received, and for participation in or receipt of rehabilitative or correctional services, facilities, programs or treatment not reasonably included as part of normal maintenance.
 - c. Participation in programs of youth employment, the crediting of payments received by children on account thereof, and the crediting of proceeds from the disposal of any products resulting from such programs.
 - d. Transportation of children to and from the other state.
 - e. The right of the director, or his the director's designee, to have at all reasonable times access to any institution in which a child in its custody care may be committed placed, either temporarily or otherwise, for the purpose of inspecting the facilities thereof and visiting the child under commitment to the state youth authority division of juvenile services.
 - f. The submission of reports by each institution in accordance with section 27-21-07 concerning the progress of treatment or rehabilitation of each child placed in its custody care.
 - g. Such other matters as may be necessary and appropriate to fix the obligations, responsibilities, and rights of both states.

Children under the jurisdiction custody of the state youth authority division of juvenile services who are in the custody care of an institution of another state shall at all times be subject to the jurisdiction of this state, and at any time may be removed therefrom for change of placement as provided in section 27-21-02. All children placed in custody care in another state shall be treated in a reasonable and humane manner and shall be treated equally with other children placed in custody care in the same institution. Placement of a child in another state shall not deprive him the child of any legal rights he the child would have had if placed in an institution in this state.

SECTION 9. AMENDMENT. Section 27-21-07 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-21-07. Report by custodian caretaker to state youth authority division of juvenile services. Any person, agency, department, or vocational, training, or other treatment and rehabilitation institution, either within or without outside of this state, that has received custody care of a child under this chapter, other than temporary custody care, shall:

1. Submit to the director of the division, in such form as he the director may reasonably prescribe, a quarterly report of the progress of the child; and
2. Submit to the director of the division, as required by him and in such form as he the director may reasonably prescribe, any interim report of the progress of the juvenile he child that the director deems necessary in the interest of the child.

Quarterly and interim reports shall be made available to the committing juvenile court, the advisory board, and the department of human services.

SECTION 10. AMENDMENT. Section 27-21-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-21-08. Planning - Development — Assessment of existing facilities. The state youth authority division of juvenile services shall provide treatment and rehabilitation programs and services and aid in the development of new or improved means of prevention, control, treatment and rehabilitation supervision, and management of children committed to its custody. It shall utilize research and other information available from all sources and, if necessary, initiate studies to aid in the general planning and development of appropriate programs for the placement, treatment and rehabilitation of children. The state youth authority shall assess existing programs and activities within the state, and keep informed of current developments relating to placement, treatment and rehabilitation of children.

SECTION 11. AMENDMENT. Section 27-21-09 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-21-09. Cooperation with other agencies and departments of the state - Right to inspect facilities of state institutions - Right to examine children. The state youth authority division of juvenile services shall cooperate with and receive the cooperation of the board of pardons, the department of human services, the director of institutions, the state parole board department of public instruction, the department of vocational education, the juvenile courts, the state department of health and

consolidated laboratories, and such other agencies and departments of the state as may be necessary to carry out the objectives of this chapter. The ~~state youth authority~~ division of juvenile services may inspect at all reasonable times the facilities of those institutions within the state it is authorized to utilize under this chapter, and may examine any child it has placed in the ~~custody~~ care of such institution, and may contract with public and private agencies to provide services for them or to retain from them required services to meet the purpose and objective of this chapter.

SECTION 12. REPEAL. Sections 27-21-04 and 27-21-10 of the North Dakota Century Code are hereby repealed.

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 158

HOUSE BILL NO. 1052
(Legislative Council)
(Interim Judiciary Committee)

CRIMINAL SENTENCING

AN ACT to create and enact four new sections to chapter 12.1-32 of the North Dakota Century Code, relating to suspended execution and deferred imposition of sentence and lengths of periods of probation, release, discharge, or termination of probation, records and statistical data regarding suspended execution and deferred imposition of sentence, and when a probationer is deemed an escapee; to amend and reenact sections 12-59-18, 12.1-32-02, 12.1-32-07, subsection 4 of section 12.1-32-09, sections 12.1-32-14, 29-26-22, 39-06-30, 39-06-42, 39-07-11, subdivision e of subsection 4 of section 39-08-01, sections 40-05-06, 40-18-13, and 62.1-02-01 of the North Dakota Century Code, relating to references to suspended execution or suspended imposition of sentence, sentencing alternatives in criminal cases, and restoration of property; and to repeal chapter 12-53 and section 12.1-32-06 of the North Dakota Century Code, relating to suspended sentences and incidents and conditions of probation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-59-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-59-18. Orders not reviewable - Exception. Orders of the board ~~shall~~ are not be reviewable except as to compliance with the terms of this chapter or ~~chapter 12-53~~ subsection 3 or 4 of section 12.1-32-02.

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

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~~ must be sentenced to one or a combination of the following alternatives, unless the sentencing alternatives are otherwise specifically provided in the statute defining the offense or sentencing is deferred under subsection 4:

- a. Payment of the reasonable costs of ~~his~~ the person's prosecution.
- b. Probation.
- c. A term of imprisonment, including intermittent imprisonment:

* NOTE: Section 12.1-32-02 was also amended by section 1 of Senate Bill No. 2340, chapter 172.

- (1) In 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 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 Except as provided by section 3 of this Act, sentences imposed under this subsection ~~shall~~ may not exceed in duration the maximum sentences of imprisonment provided by section 12.1-32-01, section 12.1-32-09, or as provided specifically in a statute defining an offense. This subsection ~~shall~~ must not be construed as not permitting the unconditional discharge of an offender following conviction. Sentences A sentence under subdivisions subdivision e or f ~~shall~~ must 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~~ must be given by the court to a defendant for all time spent in custody as a result of the criminal charge for which the sentence was imposed, or as a result of the conduct on which such charge was based. "Time spent in custody" ~~shall include~~ includes time spent in custody in a jail or mental institution for the offense charged, whether that time is spent prior to trial, during trial, pending sentence, or pending appeal.
3. ~~Superseded by N.D.R.Crim.P., Rule 35.~~ A court may suspend the execution of all or a part of the sentence imposed. The court shall place the defendant on probation during the term of suspension.
4. A court, upon application or its own motion, may defer imposition of sentence. The court must place the defendant on probation during the period of deferment. An order deferring imposition of sentence is reviewable upon appeal from a verdict or judgment. In any subsequent prosecution, for any other offense, the prior

conviction for which imposition of sentence is deferred may be pleaded and proved, and has the same effect as if probation had not been granted or the information or indictment dismissed under section 5 of this Act.

5. A court may, prior to imposition of sentence, order the convicted offender committed to an appropriate licensed public or private institution for diagnostic testing for such period of time as may be necessary, but not to exceed thirty days. The court may, by subsequent order, extend the period of commitment for not to exceed thirty additional days. The court may also order such diagnostic testing without ordering commitment to an institution. Validity of a sentence ~~shall~~ must not be challenged on the ground that diagnostic testing was not performed pursuant to this subsection.
- ~~5-~~ 6. All sentences imposed ~~shall~~ must be accompanied by a written statement by the court setting forth the reasons for imposing the particular sentence. The statement ~~shall~~ must become part of the record of the case.
- ~~6-~~ 7. If an offender is sentenced to a term of imprisonment, that term of imprisonment commences at the time of sentencing, unless, upon motion of the defendant, the court orders the term to commence at some other time.
- ~~7-~~ 8. Unless otherwise specifically authorized in the statute defining the offense, ~~no~~ a court ~~shall~~ may not include a minimum term of imprisonment as part of its sentence.
- ~~8-~~ 9. 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-~~ 10. A person who is convicted of a felony who is and sentenced to imprisonment for not more than one year ~~shall be~~ is deemed to have been convicted of a misdemeanor upon successful completion of the term of imprisonment and any term of probation imposed as part of the sentence.

SECTION 3. A new section to chapter 12.1-32 of the North Dakota Century Code is hereby created and enacted to read as follows:

Length and termination of probation - Additional probation for violation of conditions.

1. Except as provided in this section, the length of the period of probation imposed in conjunction with a sentence to probation or a suspended execution or deferred imposition of sentence may not extend for more than five years for a felony and two years for a misdemeanor or infraction from the later of the date of:
- a. The order imposing probation;
 - b. The defendant's release from incarceration; or

- c. Termination of the defendant's parole.
2. In cases where the defendant has pled or been found guilty of abandonment or nonsupport of spouse or children, the period of probation may be continued for as long as responsibility for support continues.
 3. In felony cases, in consequence of violation of probation conditions, the court may impose an additional period of probation not to exceed five years. The additional period of probation may follow a period of incarceration if the defendant has not served the maximum period of incarceration available at the time of initial sentencing or deferment.
 4. The court may terminate a period of probation and discharge the defendant at any time earlier than that provided in subsection 1 if warranted by the conduct of the defendant and the ends of justice.
 5. Notwithstanding the fact that a sentence to probation subsequently can be modified or revoked, a judgment that includes such a sentence constitutes a final judgment for all other purposes.

SECTION 4. AMENDMENT. Section 12.1-32-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-32-07. Supervision of probationer - Conditions of probation - Revocation.

1. When the court imposes probation upon conviction for a felony, the court shall place the defendant under the supervision and management of the pardon board. In all other cases, the court may place the defendant under the supervision and management of the pardon board or other responsible party selected by the court.
2. The conditions of probation shall must be such as the court in its discretion deems reasonably necessary to ensure that the defendant will lead a law-abiding life or to assist ~~him~~ the defendant to do so. The court shall provide as an explicit condition of every ~~sentence~~ to probation that the defendant not commit another offense during the period for which the ~~sentence~~ probation remains subject to revocation.
3. When imposing a sentence to probation, probation in conjunction with imprisonment, or probation in conjunction with suspended execution or deferred imposition of sentence, the court may impose such conditions as it deems appropriate, and may include any one or more of the following:
 - a. Work faithfully at a suitable employment or faithfully pursue a course of study or of vocational training that will equip ~~him~~ the defendant for suitable employment.
 - b. Undergo available medical or psychiatric treatment and remain in a specified institution ~~is~~ if required for that purpose.
 - c. Attend or reside in a facility established for the instruction, recreation, or residence of persons on probation.

- d. Support his the defendant's dependents and meet other family responsibilities.
 - e. Make restitution or reparation to the victim of his the defendant's conduct for the damage or injury which was sustained, or perform other reasonable assigned work. When restitution, reparation, or assigned work is a condition of the sentence probation, the court shall proceed as provided in section 12.1-32-08.
 - f. Pay a fine imposed after consideration of the provisions of section 12.1-32-05, except when imposition of sentence is deferred.
 - g. Refrain from possessing a firearm, destructive device, or other dangerous weapon unless granted written permission by the court or probation officer.
 - h. Refrain from excessive use of alcohol, or any use of narcotics or of another dangerous or abusable drug without a prescription.
 - i. Permit the probation officer to visit him the defendant at reasonable times at his the defendant's home or elsewhere.
 - j. Remain within the jurisdiction of the court, unless granted permission to leave by the court or the probation officer.
 - k. Answer all reasonable inquiries by the probation officer and promptly notify the probation officer of any change in address or employment.
 - l. Report to a probation officer at reasonable times as directed by the court or the probation officer.
 - m. Submit to a medical examination or other reasonable testing for the purpose of determining his the defendant's use of narcotics, marijuana, or other controlled substance whenever required by a probation officer.
 - n. Refrain from associating with known users or traffickers in narcotics, marijuana, or other controlled substances.
 - o. Submit his the defendant's person, place of residence, or vehicle to search and seizure by a probation officer at any time of the day or night, with or without a search warrant.
 - p. Serve a term of imprisonment of up to one-half of the maximum term authorized for the offense of which the defendant was convicted or one year, whichever is less.
- 3- 4. When a defendant is sentenced the court imposes a sentence to probation, he shall probation in conjunction with imprisonment, or probation in conjunction with suspended execution or deferred imposition of sentence, the defendant must be given a certificate explicitly setting forth the conditions on which he the defendant is being released.

- 4- 5. The court may, upon notice to the probationer and with good cause, may modify or enlarge the conditions of a sentence to probation at any time prior to the expiration or termination of the period for which the sentence probation remains conditional. If the defendant violates a condition of probation at any time prior to the expiration or termination of the period, the court may continue him the defendant on the existing sentence probation, with or without modifying or enlarging the conditions, or if such continuation, modification, or enlargement is not appropriate, may revoke the probation and impose any other sentence that was available under section 12.1-32-02 or 12.1-32-09 at the time of initial sentencing or deferment. In the case of suspended execution of sentence, the court may revoke the probation and cause the defendant to suffer the penalty of the sentence previously imposed upon the defendant.
- 5- 6. The court may continue or modify probation conditions or revoke probation for a violation of probation conditions occurring before the expiration or termination of the period of probation notwithstanding that the order of the court is imposed after the expiration or termination has occurred. The petition for revocation must be issued within sixty days of the expiration or termination of probation.
7. Jurisdiction over a probationer may be transferred from the court which that imposed the sentence to another court of this state, with the concurrence of both courts. Retransfers of jurisdiction may also occur in the same manner. The court to which jurisdiction has been transferred under this subsection shall be authorized to may exercise all powers permissible under this chapter over the defendant.

SECTION 5. A new section to chapter 12.1-32 of the North Dakota Century Code is hereby created and enacted to read as follows:

Release, discharge, or termination of probation.

1. Whenever a person has been placed on probation and in the judgment of the court that person has satisfactorily met the conditions of probation, the court shall cause to be issued to the person a final discharge from further supervision.
2. Whenever a person has been placed on probation pursuant to subsection 4 of section 12.1-32-02, the court at any time, when the ends of justice will be served, and when reformation of the probationer warrants, may terminate the period of probation and discharge the person so held. Every defendant who has fulfilled the conditions of probation for the entire period, or who has been discharged from probation prior to termination of the probation period, may at any time be permitted in the discretion of the court to withdraw the defendant's plea of guilty. The court may in its discretion set aside the verdict of guilty. In either case, the court may dismiss the information or indictment against the defendant. The court may, upon its own motion or upon application by the defendant and before dismissing the information or indictment, reduce to a misdemeanor a felony conviction for which the plea of guilty has been withdrawn or set aside. The defendant must then be released from all penalties and disabilities resulting

from the offense or crime of which the defendant has been convicted except as provided by section 62.1-02-01.

SECTION 6. A new section to chapter 12.1-32 of the North Dakota Century Code is hereby created and enacted to read as follows:

Records and filing of papers.

1. Whenever the court orders that a person convicted of a felony is to be placed on probation, the clerk of the court in which the order is entered immediately shall make full copies of the judgment or order of the court with the conditions of probation and shall certify the same to the clerk of the pardon board. Upon the disposition of any criminal case, the clerk of court shall transmit to the pardon board statistical data, in accordance with rules adopted by the board, regarding all defendants whether found guilty or discharged.
2. Whenever imposition of sentence is deferred and, pursuant to section 5 of this Act, the plea of guilty is withdrawn by the defendant or the verdict of guilty is set aside by the court, the clerk of court shall file all papers, including the findings and final orders in proceedings under section 5 of this Act, and shall note the date of filing on the papers. The records and papers are subject to examination by the clerk, a judge of the court, the juvenile commissioner, probation officers, the defendant or defendant's counsel, and the state's attorney. Others may examine the records and papers only upon the written order of a judge of the court.

SECTION 7. A new section to chapter 12.1-32 of the North Dakota Century Code is hereby created and enacted to read as follows:

When probationer deemed escapee and fugitive from justice. A probationer is considered an escapee and a fugitive from justice if the probationer leaves the jurisdiction before the expiration of the probationary period without permission of the court or the pardon board.

SECTION 8. AMENDMENT. Subsection 4 of section 12.1-32-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. Upon any plea of guilty, or verdict or finding of guilt of the defendant of such felony, a hearing ~~shall~~ must be held, before sentence is imposed, by the court sitting without a jury. Except in the most extraordinary cases, the court shall obtain a presentence report and may receive a diagnostic testing report under subsection ~~4~~ 5 of section 12.1-32-02 before holding a hearing under this subsection. The court shall fix a time for the hearing, and notice thereof ~~shall~~ must be given to the defendant and the prosecution at least five days prior thereto. The court shall permit the prosecution and counsel for the defendant, or the defendant if ~~he~~ the defendant is not represented by counsel, to inspect the presentence report sufficiently prior to the hearing as to afford a reasonable opportunity for verification. In extraordinary cases, the court may withhold material not relevant to a proper sentence, diagnostic opinion which might seriously disrupt a program of rehabilitation, any source of information

obtained on a promise of confidentiality, and material previously disclosed in open court. A court withholding all or part of a presentence report shall inform the parties of its action and place in the record the reasons therefor. The court may require parties inspecting all or part of a presentence report to give notice of any part thereof intended to be controverted. In connection with the hearing, the defendant ~~shall be~~ is entitled to compulsory process, and cross-examination of such witnesses as appear at the hearing. A duly authenticated copy of a former judgment or commitment ~~shall be~~ is prima facie evidence of such former judgment or commitment. If it appears by a preponderance of the information, including information submitted during the trial of such felony and the sentencing hearing and so much of the presentence report as the court relies upon, that the defendant is a dangerous special offender, the court shall sentence the defendant to imprisonment for an appropriate term within the limits specified in subsection 2. The court shall place in the record its findings including an identification of the information relied upon in making such findings, and its reasons for the sentence imposed.

SECTION 9. AMENDMENT. Section 12.1-32-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-32-14. Restoration of property or other work to be required of certain offenders. Other provisions of this chapter notwithstanding, whenever a person convicted of criminal mischief shall be placed on probation pursuant to section 12.1-32-02 or 12.1-32-07, the court shall include as a condition of that probation the requirement that the person perform restoration or other assigned work as specified in subdivision e of subsection ~~2~~ 3 of section 12.1-32-07.

SECTION 10. AMENDMENT. Section 29-26-22 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

29-26-22. Judgment for fines, costs, and court administration fee - Statement to be filed by court - Docketing and enforcement. In all cases of conviction, a court administration fee of up to twenty-five percent of the maximum allowable fine for the offense may be taxed against the defendant in lieu of the assessment of court costs. If the court does assess costs as part of its sentence, the court shall include in the judgment the facts justifying the amount assessed. When a fine is imposed and suspended or the imposition of a sentence is ~~suspended pursuant to chapter 12-53 deferred under subsection 4 of section 12.1-32-02~~, the court administration fee may be taxed against the defendant and twenty-five percent of the fee collected must be added to the fund for the maintenance of common schools pursuant to section 2 of article IX of the Constitution of North Dakota. A judgment that the defendant pay a fine, costs, or court administration fee, or any combination thereof, may be docketed, and thereafter constitutes a lien upon the real estate of the defendant in like manner as a judgment for money rendered in a civil action. The court may allow the defendant to pay any assessed costs or administrative fee in installments. When a defendant is assessed costs or administrative fees, the court may not impose at the same time an alternative sentence to be served if the costs are not paid.

SECTION 11. AMENDMENT. Section 39-06-30 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-06-30. Conviction - Meaning and effect. For purposes of this title the term "conviction" means a final order or judgment of conviction by the North Dakota supreme court or any lower court having jurisdiction provided that no appeal is pending and the time for filing a notice of appeal has elapsed. Subject to the filing of an appeal, a conviction ~~shall include~~ includes those instances when:

1. A sentence is imposed and suspended;
2. Imposition of a sentence is suspended deferred under ~~chapter 12-53~~ subsection 4 of section 12.1-32-02; or
3. There is a forfeiture of bail or collateral deposited to secure a defendant's appearance in court and the forfeiture has not been vacated.

SECTION 12. AMENDMENT. Section 39-06-42 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-06-42. Penalty for driving while license suspended or revoked - Impoundment of vehicle number plates - Authority of cities.

1. Except as provided in chapters 39-16 and 39-16.1 and section 39-06.1-11, any person who drives a motor vehicle on a highway or on public or private areas to which the public has a right of access for vehicular use in this state while that person's license or privilege so to do is suspended or revoked is guilty of a class B misdemeanor.
2. If the suspension or revocation was imposed for violation of section 39-08-01 or equivalent ordinance or was governed by section 39-06-31 or chapter 39-20, the sentence must be at least four consecutive days' imprisonment and such fine as the court deems proper. The execution of sentence and may not be suspended or the imposition of sentence may not be suspended deferred under ~~chapter 12-53~~ subsection 3 or 4 of section 12.1-32-02. Forfeiture of bail is not permitted in lieu of the defendant's personal appearance in open court for arraignment on a charge under this subsection.
3. In addition to any other punishment imposed, the court may order the number plates of the motor vehicle owned and operated by the offender at the time of the offense to be impounded by the sheriff for the duration of the period of suspension or revocation. When a period of suspension has been extended under subsection 5 of section 39-06-17, the court may order the number plates to be impounded in accordance with this subsection. The impounded number plates may be released, upon order of the court, to a bona fide purchaser of the offender's motor vehicle, if that purchaser produces a new certificate of title to the motor vehicle issued by the registrar of motor vehicles.
4. A city may, by ordinance, authorize its municipal judge to order impoundment of motor vehicle number plates in the manner provided in subsection 3.

SECTION 13. AMENDMENT. Section 39-07-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-07-11. Magistrate to keep record of convictions of traffic violations - Records of conviction to be forwarded to licensing authority. Every magistrate, as defined in section 29-01-14, shall keep a full record of every case brought before the magistrate in which a person is charged with a violation of chapter 12.1-16 resulting from the operation of a motor vehicle, or of any provision of chapters 39-05 through 39-13, 39-21, and 39-24, or with a violation of a municipal ordinance which is equivalent to any of the provisions of the foregoing statutes. Within ten days after a final order or judgment of conviction, for a violation not subject to disposition and reporting under chapter 39-06.1, by the North Dakota supreme court or any lower court having jurisdiction, provided that no appeal is pending and the time for filing a notice of appeal has elapsed, the magistrate then having jurisdiction shall forward a report of that fact to the licensing authority. If the reported violation caused another person's serious bodily injury, as defined in section 12.1-01-04, the magistrate shall include that information in the report. Any conviction for which a report is received by the licensing authority may be deemed by the licensing authority to be final, and the licensing authority may take any action authorized by law to be taken based on the report. Subject to the filing of an appeal, a conviction includes those instances when:

1. A sentence is imposed and suspended;
2. Imposition of a sentence is ~~suspended~~ deferred under ~~chapter 12-53~~ subsection 4 of section 12.1-32-02; or
3. There is a forfeiture of bail or collateral deposited to secure a defendant's appearance in court and the forfeiture has not been vacated.

SECTION 14. AMENDMENT. Subdivision e of subsection 4 of section 39-08-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- e. ~~A sentence~~ The execution or imposition of sentence under this section may not be suspended or deferred under ~~chapter 12-53~~ subsection 3 or 4 of section 12.1-32-02 except that a fine or a sentence of imprisonment may be suspended in any of the following instances:
- (1) Upon conviction of being in actual physical control of a motor vehicle in violation of this section or equivalent ordinance.
 - (2) If the defendant is under age eighteen when convicted except that if the defendant has, within the preceding five years, previously been convicted of violating section 39-08-01 or equivalent ordinance, the sentence must include at least forty-eight consecutive hours imprisonment or in a minimum security facility or at least ten days of community service, ~~which.~~ The execution of the sentence or may not be suspended nor the imposition of sentence may not be suspended ~~deferred~~ deferred under ~~chapter 12-53~~ subsection 3 or 4 of section 12.1-32-02.

SECTION 15. AMENDMENT. Section 40-05-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-05-06. City fines and penalties limited.

1. Except as provided in subsections 2 and 3, the fine or penalty for the violation of any ordinance, resolution, or regulation of a city ~~shall~~ may not exceed five hundred dollars, and the imprisonment ~~shall~~ may not exceed thirty days for one offense.
2. For every violation of a city ordinance regulating the operation or equipment of motor vehicles or regulating traffic, except those ordinances listed in section 39-06.1-05, a fee may be established, by ordinance, which shall not exceed the limits, for equivalent categories of violations, set forth in section 39-06.1-06.
3. For every violation of a city ordinance prohibiting shoplifting, vandalism, criminal mischief, or malicious mischief, the penalty may not exceed a fine of one thousand dollars, imprisonment for thirty days, or both such fine and imprisonment.

This section ~~shall not be construed to~~ does not prohibit the utilization of the sentencing alternatives, other than a fine or imprisonment, provided by section 12.1-32-02 for the violation of a city ordinance, nor ~~shall~~ does this section limit the use of deferred or suspended sentences pursuant to chapter ~~12-53~~ under subsections 3 and 4 of section 12.1-32-02.

SECTION 16. AMENDMENT. Section 40-18-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-18-13. Sentencing alternatives - Suspension of sentence or imposition of sentence. Subject to section 40-05-06, a municipal judge may use the sentencing alternatives provided by section 12.1-32-02 and may suspend any sentence the judge imposes or ~~suspend~~ defer the imposition of any sentence during the good behavior of any person adjudged to have committed an offense, or for other reasonable cause, under ~~chapter 12-53~~ subsection 3 or 4 of section 12.1-32-02, except that a municipal judge may not suspend a sentence or the imposition of sentence for driving a motor vehicle in violation of an operator's license suspension, revocation, or restriction or for a violation of section 39-08-01 or equivalent ordinance if that suspension of sentence or suspension of the imposition of sentence is prohibited under ~~section~~ sections 39-06-17, ~~section~~ 39-06-42, or chapter 39-08.

* SECTION 17. AMENDMENT. Section 62.1-02-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

62.1-02-01. Who not to possess firearms - Penalty.

1. A person who has been convicted anywhere for a felony involving violence or intimidation, as defined in chapters 12.1-16 through 12.1-25, is prohibited from owning a firearm or having one in possession or under control for a period of ten years from the date of conviction or release from incarceration or probation, whichever is the latter.
2. A person who has been convicted of any felony not provided for in subsection 1 or has been convicted of a class A misdemeanor involving violence or intimidation and that crime was committed

* NOTE: Section 62.1-02-01 was also amended by section 1 of Senate Bill No. 2105, chapter 762.

while using or possessing a firearm or dangerous weapon, as defined in chapters 12.1-16 through 12.1-25, is prohibited from owning a firearm or having one in possession or under control for a period of five years from the date of conviction or release from incarceration or probation, whichever is the latter.

3. A person who is or has ever been diagnosed and confined or committed to a hospital or other institution in North Dakota or elsewhere by a court of competent jurisdiction, as a mentally ill person as defined in section 25-03.1-02, or as a mentally deficient person as defined in section 25-01-01, is prohibited from purchasing a firearm or having one in possession or under control. This limitation does not apply to a person who has not suffered from the disability for the previous three years.
4. A person under the age of eighteen years may not possess a handgun except that such a person may, while under the direct supervision of an adult, possess a handgun for the purposes of firearm safety training, target shooting, or hunting.

A person who violates subsection 1 or 2 is guilty of a class C felony, and a person who violates subsection 3 or 4 is guilty of a class A misdemeanor. For the purposes of this section, "conviction" means determination by a jury or court that a person committed one of the above-mentioned crimes even though the court suspended execution of sentence in accordance with subsection 3 of section 12.1-32-02 or deferred imposition of sentence in accordance with ~~sections 12-53-13 through 12-53-19~~ subsection 4 of section 12.1-32-02, placed the defendant on probation, granted a conditional discharge in accordance with section 19-03.1-30, or the defendant's conviction has been reduced in accordance with subsection 9 10 of section 12.1-32-02 or section 5 of this Act.

SECTION 18. REPEAL. Chapter 12-53 and section 12.1-32-06 of the North Dakota Century Code are hereby repealed.

Approved April 10, 1989
Filed April 11, 1989

CHAPTER 159

SENATE BILL NO. 2110
(Committee on Judiciary)
(At the request of the Attorney General)

CRIMINAL RECORD INFORMATION

AN ACT to amend and reenact subsections 2 and 4 of section 12-60-16.1, subsections 2 and 3 of section 12-60-16.2, and section 12-60-16.4 of the North Dakota Century Code, relating to criminal history record information definitions and reportable offenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 2 and 4 of section 12-60-16.1 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

2. "Criminal history record information" includes ~~data concerning a reportable event which the bureau is required or permitted to retain under sections 12-60-16.1 through 12-60-16.10~~ 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. "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.

SECTION 2. AMENDMENT. Subsections 2 and 3 of section 12-60-16.2 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

2. The ~~state's~~ prosecuting 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~~ prosecuting 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.

SECTION 3. AMENDMENT. Section 12-60-16.4 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-60-16.4. Criminal history record information - 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.
7. Municipal ordinance violations that are equivalent to misdemeanors listed in subsections 1 through 6.

Approved April 12, 1989
Filed April 13, 1989

CHAPTER 160

HOUSE BILL NO. 1365
(Representative Wentz)
(Senator Holmberg)

SEX OFFENSE CRIMINAL RECORD DISSEMINATION

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-60-16.6 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

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

1. The information has not been purged or sealed.
2. The information is of a conviction, including a conviction for violating section 12.1-20-03, 12.1-20-04, 12.1-20-06.1, or 12.1-20-11 notwithstanding any disposition following a deferred imposition of sentence; or the information is of a reportable event occurring within one year preceding the request.
3. The request is written and contains:
 - a. The name of the requester.
 - b. The name of the record subject.
 - c. At least two items of information used by the bureau to retrieve criminal history records, including:
 - (1) The fingerprints of the record subject.
 - (2) The state identification number assigned to the record subject by the bureau.
 - (3) The social security number of the record subject.
 - (4) The date of birth of the record subject.
 - (5) A specific reportable event identified by date and either agency or court.
4. The identifying information supporting a request for a criminal history record does not match the record of more than one individual.

Approved April 14, 1989
Filed April 17, 1989

CHAPTER 161

SENATE BILL NO. 2329
(Senators Holmberg, Robinson)
(Representatives Lindgren, Carlson)

TOWNSHIP CONSTABLE ELIMINATION

AN ACT to amend and reenact sections 12-60-17, 28-01-17, 29-05-10, 32-22-36, 58-04-10, 58-05-02, 58-05-05, 58-05-07, 58-07-03, 58-15-03, and 58-15-04 of the North Dakota Century Code, relating to the office of township constable; and to repeal sections 58-10-03, 58-10-04, and 58-10-05 of the North Dakota Century Code, relating to township constables.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-60-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-60-17. Superintendent to make rules and regulations. The superintendent, pursuant to chapter 28-32, shall make and promulgate such rules and regulations, not inconsistent with the provisions of this chapter, as may be necessary and proper for the efficient performance of the bureau's duties. Such rules and regulations shall be printed and forwarded to each state's attorney, sheriff, ~~constable~~, marshal, or other peace officer, and each of said officers shall assist the superintendent in the performance of his duties by complying with such rules and regulations.

SECTION 2. AMENDMENT. Section 28-01-17 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-01-17. Actions having three-year limitations - Exceptions. The following actions must be commenced within three years after the claim for relief has accrued:

1. An action against a sheriff, or coroner, or ~~constable~~ upon a liability incurred by the doing of an act in his official capacity and by virtue of his office, or by the omission of an official duty, including the nonpayment of money collected upon an execution. However, this subsection does not apply to an action for an escape.
2. An action upon a statute for a penalty or forfeiture, if the action is given to the party aggrieved, or to such party and the state, unless the statute imposing it prescribes a different limitation.
3. An action for the foreclosure of a mechanic's lien.

SECTION 3. AMENDMENT. Section 29-05-10 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

29-05-10. "Peace officer" defined. A peace officer is a sheriff of a county or his deputy, or a coroner, ~~constable~~, marshal, or policeman of a township or city, or any state or federal law enforcement officer.

SECTION 4. AMENDMENT. Section 32-22-36 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-22-36. Prisoners shall not be removed from one prison to another - Exceptions. Any person being committed to any prison, or in custody of any officer, sheriff, jailer, keeper, or other person, or his under officer or deputy, for any criminal or supposed criminal matter, shall not be removed from such prison or custody, into another prison or custody, unless it is by habeas corpus or some other legal writ, or when the prisoner shall be delivered to ~~the constable~~ a peace officer or other inferior officer, to be carried to some common jail, or shall be removed from one place to another within the county, in order to procure his discharge or trial in due course of law, or in a case of sudden fire, infection, or other necessity, or when the sheriff shall commit such prisoner to the jail of an adjoining county for the want of a sufficient jail in his own county, as is provided in the chapters concerning jails and jailers, or when the prisoner, in pursuance of law, may be claimed or demanded by the executive of the United States, or the executive of any other state. If any person, after commitment as aforesaid, shall make out, sign, or countersign any warrant or warrants for such removal, except as before excepted, then he shall forfeit to the prisoner or aggrieved party, a sum not exceeding three hundred dollars, to be received by the prisoner or party aggrieved in the manner hereinafter mentioned.

SECTION 5. AMENDMENT. Section 58-04-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

58-04-10. Officers to be elected by ballot. The supervisors, treasurer, and clerk, ~~and constables~~ in each township shall be elected by ballot. All other officers, if not otherwise provided by law, shall be chosen either by yeas and nays or by a division as the electors determine.

* SECTION 6. AMENDMENT. Section 58-05-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

58-05-02. Officers of a township - Terms of office. The elected officers of a civil township shall be:

1. Three supervisors.
2. One township clerk.
3. One assessor except as herein provided.
4. One treasurer.

~~5. Two constables.~~

One supervisor shall be elected at each annual township meeting and shall hold his office for a term of three years. The other elective officers shall be elected every two years and shall hold their respective offices for a term of two years. Each officer shall serve until his successor is elected and qualified. The same person may hold the offices of township clerk and treasurer if a majority of the electors present vote in favor of the merging

* NOTE: Section 58-05-02 was also amended by section 3 of House Bill No. 1510, chapter 737.

of such offices at the annual township meeting. The person elected to fill the merged office shall perform all of the duties required of both the township clerk and treasurer except as otherwise specifically provided by law. If a majority of the electors present and voting at an annual township meeting vote in favor of making the office of assessor appointive, the board of township supervisors shall appoint a township assessor for a four-year term of office, the first term commencing on January 1, 1974. In lieu of electing or appointing a township assessor, the board of township supervisors, if authorized by a majority of the electors present and voting at an annual township meeting, may on behalf of the township contract with the county in which the township is located or with any other political subdivision or with any individual to perform the duties of and have the powers of the township assessor. The length and terms of such a contract shall be negotiated by the board of township supervisors with the governing body of the county or other political subdivision or with the individual, as the case may be, and the township is hereby authorized to make such payments as may be provided for in the contract. The electors of any township in which the office of township assessor was abolished prior to July 1, 1973, shall, at the next annual township meeting, elect a township assessor or authorize the board of township supervisors to appoint a township assessor or to contract for the making of the assessment as hereinbefore provided. The township electors may by majority vote of those present and voting at an annual township meeting change the previously adopted method of providing for the assessment to either of the other two methods authorized in this section but such change shall not become effective until expiration of the term of office of the assessor or until a vacancy occurs in the office of assessor or until expiration of the contract for making the assessments, whichever is applicable according to the method of providing for the assessment that was previously adopted.

SECTION 7. AMENDMENT. Section 58-05-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

58-05-05. Bonds of officers. Each person elected or appointed to the office of township clerk, assessor, or treasurer, ~~or constable~~ within ten days after he is notified of his election or appointment, and before entering upon the duties of his office, shall be bonded for the faithful discharge of his duties in the same manner as other civil officers are bonded and in the following amounts:

1. The bond of the township clerk shall be in such amount as may be determined by the board of township supervisors.
2. The bond of the treasurer shall be in such amount as may be determined by the board of township supervisors and shall be not less than the maximum amount of money that shall be subject to such treasurer's control at any one time.
3. The bond of the assessor shall be in the amount of one thousand dollars.
- ~~4. The bond of each constable shall be in the amount of five hundred dollars.~~

Such bonds, or the certificates issued in lieu thereof, shall be filed in the office of the township clerk.

SECTION 8. AMENDMENT. Section 58-05-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

58-05-07. Officers to take oath. Each person elected or appointed to the office of supervisor, township clerk, assessor, treasurer, ~~constable~~, or township overseer of highways, within ten days after he is notified of his election or appointment, shall take and subscribe the oath prescribed in section 4 of article XI of the Constitution of North Dakota. If the oath shall be administered by the township clerk, no fee shall be charged therefor.

SECTION 9. AMENDMENT. Section 58-07-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

58-07-03. Duties of township clerk. The township clerk shall perform the following duties:

1. Act as clerk of the board of township supervisors and keep in his office a true record of all of its proceedings.
2. File and safely keep all certificates of oaths and bonds required to be kept in his office and all other papers required by law to be filed in his office, and have and keep custody of the record books and papers of the township when no other provision is made therefor by law.
3. Enter in the minutes of the proceedings of each township meeting each order or direction and every rule and regulation adopted at such meeting.
4. File and preserve all accounts audited by the township board or allowed at a township meeting and enter a statement thereof in the township record books.
5. ~~Transmit to the clerk of the district court the name of each constable elected or appointed in his township immediately after the qualification of any such constable.~~
- ~~6.~~ File his bond in the office of the county auditor and his oath and the oath of his deputy, if one is appointed, in the office of the clerk of the district court.
- ~~7.~~ 6. Preserve and record the annual statement of the treasurer, except that in those townships in which the offices of township clerk and treasurer have been merged, the person elected to fill the new office shall file a copy of the annual treasurer's statement with the chairman of the board of township supervisors.
- ~~8.~~ 7. Require all legally elected officers who accept the offices to which they are elected to qualify within the time prescribed by law and in accordance with all other provisions thereof.
- ~~9.~~ 8. Make a record of all statements of the remittances of any township funds from the county treasurer to the township treasurer as such statements are mailed to him by the county treasurer, except that in those townships in which the offices of township clerk and treasurer have been merged, the person elected to fill the new

office shall make a record of all statements of the remittances of any township funds from the county treasurer to the township treasurer and shall file such statements with the chairman of the board of township supervisors.

- ~~10-~~ 9. Keep an account of the township funds in the same manner as is required of the township treasurer, except that in those townships in which the offices of township clerk and treasurer have been merged, the person elected to fill the office shall keep an account of the township funds and shall report the balance of such funds to the chairman of the board of township supervisors no less frequently than every sixty days.
- ~~11-~~ 10. Perform all duties imposed upon him under the laws of this state relating to the forming of jury panels.

SECTION 10. AMENDMENT. Section 58-15-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

58-15-03. Bond of policeman - Removal by board. The policeman appointed to act in an unincorporated townsite shall give a bond and qualify in the same manner as township ~~constables~~ officers. The bond shall be in the amount fixed by the board of township supervisors and shall be filed as other township officers' bonds are filed. The board of township supervisors may remove the police officer whenever it shall deem it expedient.

SECTION 11. AMENDMENT. Section 58-15-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

58-15-04. Powers, duties, and authority of policeman. A policeman appointed under this chapter shall have the same powers, duties, and authority as ~~the constable of the township~~ a peace officer. During the period for which he is appointed, the policeman shall patrol the unincorporated township each night, and shall guard against fire, theft, and burglary, preserve the peace, and execute the laws of this state.

SECTION 12. REPEAL. Sections 58-10-03, 58-10-04, and 58-10-05 of the North Dakota Century Code are hereby repealed.

Approved March 22, 1989
Filed March 23, 1989