

SENATE BILL NO. 2108

Introduced by

Senator C. Nelson

Representative DeKrey

(At the request of the Department of Corrections and Rehabilitation

1 A BILL for an Act to amend and reenact sections 12-47-18.1, 12-47-34, 12-47-36, and 12-48-15
2 of the North Dakota Century Code, relating to inmate transfers, escapes, records, and moneys;
3 and to repeal section 32-22-36 of the North Dakota Century Code, relating to writs for transfer
4 of prisoners.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Section 12-47-18.1 of the 1995 Supplement to the North
7 Dakota Century Code is amended and reenacted as follows:

8 **12-47-18.1. Transfer of persons between state correctional facilities.** ~~When the~~
9 ~~warden determines that for purposes of safety of other inmates or the general public or for~~
10 ~~discipline or medical care or when in the best interest of the inmate or the facility in which the~~
11 ~~inmate is housed, the~~ The warden may transfer the inmate an offender to any facility under the
12 warden's control or contract to transfer an offender to another correctional facility for purposes
13 of safety, security, discipline, medical care, or when the warden determines it may be in the
14 best interests of the offender or the penitentiary.

15 **SECTION 2. AMENDMENT.** Section 12-47-34 of the 1995 Supplement to the North
16 Dakota Century Code is amended and reenacted as follows:

17 **12-47-34. Escapes from warden's custody - Warden may offer reward for**
18 **recapture - Payment of reward.** The warden, with the approval of the director of the
19 department of corrections and rehabilitation, may adopt ~~any measures deemed proper to aid in~~
20 necessary for the detection and capture of persons offenders escaping from the custody of the
21 warden or the department of corrections and rehabilitation. ~~When an inmate~~ If an offender in
22 the custody of the warden or the department of corrections and rehabilitation escapes, the
23 warden shall may use every all lawful means at the warden's command for the apprehension of
24 such person, and for that purpose the offender. The warden may offer a reward of not to

1 exceed one thousand dollars and not less than one hundred dollars for information leading to
2 ~~such~~ apprehension of an offender who has escaped from the custody of the warden or the
3 department of corrections and rehabilitation.

4 **SECTION 3. AMENDMENT.** Section 12-47-36 of the 1995 Supplement to the North
5 Dakota Century Code is amended and reenacted as follows:

6 **12-47-36. ~~Certain penitentiary inmates' records~~ Records confidential.** ~~The clinical,~~
7 ~~behavioral, treatment, medical, and social records and materials of a penitentiary inmate,~~
8 ~~regardless of source, are confidential and privileged and may not be disclosed directly or~~
9 ~~indirectly to the inmate or anyone other than the parole board, a public or private treatment~~
10 ~~facility, a recognized law enforcement agency, and others entitled by law to receive such~~
11 ~~information. A state or federal court may order the inspection of such confidential and~~
12 ~~privileged records and materials, or parts thereof, by individuals or organizations having shown~~
13 ~~a proper legitimate purpose and reason to inspect such records and materials. The medical,~~
14 psychological, treatment, or social records of the department of corrections and rehabilitation or
15 its divisions or departments relating to persons in the custody or under the supervision and
16 management of the department of corrections and rehabilitation must be kept confidential and
17 may not be disclosed directly or indirectly to any person, organization, or agency, except as
18 otherwise provided in this section. A court may order the inspection of such records, or parts of
19 such records, upon application to the court and a showing that there is a proper and legitimate
20 purpose for the inspection of the records, with service of the application on the department of
21 corrections and rehabilitation and opportunity for the department of corrections and
22 rehabilitation to submit a written response. Notwithstanding any other provisions of law relating
23 to privilege or confidentiality, records may be inspected by or disclosed to the following persons,
24 organizations, or agencies without prior application to the court: the pardon advisory board; the
25 parole board; any division, department, official, or employee of the department of corrections
26 and rehabilitation; another state receiving a parolee or probationer under the provisions of
27 chapter 12-56 or 12-56.1; a federal, state, regional, or county correctional facility receiving
28 physical custody of a person under the legal custody of the department of corrections and
29 rehabilitation; the employees in the office of the attorney general; the state's attorney and
30 district court of the county where the judgment of conviction was entered; a state or federal
31 court where a person in the custody or under the supervision of the department of corrections

1 and rehabilitation has commenced litigation and the records are relevant to the litigation; or
2 municipal, county, state, or federal law enforcement agencies. A criminal defendant's
3 presentence investigation report, together with any attachment or addendum, is subject to
4 rule 32 of the North Dakota Rules of Criminal Procedure and any amendments made thereto.
5 The parole board may permit the inspection of a person's preparole report, or parts of the
6 report, prepared for the parole board. The employment status of a person in the custody of or
7 under the supervision and management of the department of corrections and rehabilitation may
8 be disclosed to an agency or official charged with the enforcement of child support. Medical,
9 psychological, or treatment records may be disclosed without prior application to the court to a
10 public hospital or treatment facility, the department of human services, or to a licensed private
11 medical or treatment facility, when necessary for the evaluation, treatment, or care of a person
12 in the custody or under the supervision of the department of corrections and rehabilitation.

13 **SECTION 4. AMENDMENT.** Section 12-48-15 of the 1995 Supplement to the North
14 Dakota Century Code is amended and reenacted as follows:

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

- 17 1. The warden of the penitentiary shall keep an account for each inmate. Not more
18 than fifty percent of an inmate's penitentiary earnings, as provided by penitentiary
19 rules, must be withheld from an inmate and deposited in a separate account for the
20 inmate to accumulate a sum of money and may not be made available to the
21 inmate until the inmate's release from the penitentiary, except as authorized by the
22 warden. The remainder of an inmate's earnings must be ~~paid~~ made available to
23 the inmate on a regular basis. ~~All moneys in the inmate's account must be paid to~~
24 ~~the inmate in full when discharged.~~
- 25 2. Inmates may, in writing, authorize the warden or designee to deposit any of their
26 accumulated earnings from the prison industries, hobby, work release, or any other
27 prison program in an interest-earning account in the Bank of North Dakota for the
28 benefit of the inmate. The account must be a two-signature account requiring the
29 inmate's signature and that of an authorized designated officer or employee of the
30 state penitentiary for withdrawal.

1 3. ~~Other inmate income or funds from sources outside of the penitentiary may be~~
2 ~~directly deposited or invested by the inmate in any bank or other organization,~~
3 ~~unless sentencing stipulations, court orders, the inmate's competency, or other~~
4 ~~interests of the inmate require that the warden deposit such income or funds or a~~
5 ~~portion thereof in the above noted Bank of North Dakota account for the inmate's~~
6 ~~benefit and protection. Before making such a deposit of funds or income from~~
7 ~~sources outside of the penitentiary for the inmate's benefit and protection, the~~
8 ~~warden must receive the approval of the director of the division of adult services~~
9 ~~and provide a written letter of explanation to the inmate. Funds directly invested or~~
10 ~~deposited by inmates into their independent accounts, even when assisted in doing~~
11 ~~so by an officer or employee of the penitentiary, shall in no way make the~~
12 ~~penitentiary or its officers or employees responsible or accountable for such~~
13 ~~inmate's investments and deposits. The warden may directly deposit an inmate's~~
14 ~~funds from sources outside of the penitentiary in any bank or account the inmate~~
15 ~~may designate. If a court order does not allow an inmate to designate a bank or~~
16 ~~account other than a Bank of North Dakota account or if it is necessary for the~~
17 ~~benefit and protection of the inmate, the warden, upon written explanation to the~~
18 ~~inmate, shall deposit an inmate's funds from sources outside the penitentiary into a~~
19 ~~Bank of North Dakota account. The department of corrections and rehabilitation~~
20 ~~and its divisions, departments, officers, and employees may not be held~~
21 ~~responsible or liable for any inmate income or funds deposited into a bank or~~
22 ~~account designated by an inmate.~~

23 4. ~~The warden, through the staff,~~ is responsible for guiding inmates in making proper
24 use of their funds to pay their obligations, including the payment of court costs,
25 court-appointed counsel fees, ~~and~~ court-ordered restitution, ~~and to provide for their~~
26 support for dependent relatives, or to provide for their own medical, surgical, eye
27 care, or dental treatment or services not generally provided by the state. The
28 warden may withdraw funds from an inmate's penitentiary account or Bank of
29 North Dakota two-signature account, without the inmate's signature, to meet the
30 inmate's legitimate financial obligations. Before the funds may be withdrawn, the
31 inmate must first receive written notice and be provided a penitentiary

1 administrative hearing with the right to penitentiary staff assistance and the right to
2 appeal to the director of the department of corrections and rehabilitation. ~~The sum~~
3 ~~of money as provided by penitentiary rules from each inmate's earnings required to~~
4 ~~be deposited and accumulated by this section is not available to the inmate until~~
5 ~~discharge, unless authorized by the warden. The remainder of the inmate's~~
6 ~~earnings, including interest earned, is available to the inmate under the supervision~~
7 ~~and control of the warden or designee. An inmate is not entitled to prior written~~
8 ~~notice, administrative hearing, or right to an appeal to the department of~~
9 ~~corrections and rehabilitation when funds are to be withdrawn for payment of a~~
10 ~~court-ordered obligation, including child support, provided the inmate has had~~
11 ~~notice and an opportunity to be heard in the court proceedings.~~

12 5. The warden may pay an inmate all funds in the inmate's account, less the inmate's
13 outstanding obligations to the penitentiary, when the inmate is transferred to a
14 county jail, regional correctional center, or placed in community corrections
15 confinement. The warden shall pay an inmate all funds in the inmate's account
16 less the inmate's outstanding obligations to the penitentiary, when the inmate is
17 transferred to a correctional facility outside of this state, is released on parole, or
18 the inmate is discharged from the penitentiary.

19 **SECTION 5. REPEAL.** Section 32-22-36 of the North Dakota Century Code is
20 repealed.