

**Fifty-fifth Legislative Assembly, State of North Dakota, begun in the
Capitol in the City of Bismarck, on Monday, the sixth day of January,
one thousand nine hundred and ninety-seven**

SENATE BILL NO. 2127
(Senators Heitkamp, Thane)
(At the request of the Department of Corrections and Rehabilitation)

AN ACT to amend and reenact sections 12-44.1-01, 12-44.1-02, 12-44.1-03, 12-44.1-04, 12-44.1-05, 12-44.1-06, 12-44.1-06.1, 12-44.1-07, 12-44.1-08, 12-44.1-09, 12-44.1-10, 12-44.1-11, 12-44.1-12, 12-44.1-13, 12-44.1-14, 12-44.1-15, 12-44.1-17, 12-44.1-18, 12-44.1-18.1, 12-44.1-18.2, 12-44.1-19, 12-44.1-20, 12-44.1-21, 12-44.1-22, 12-44.1-24, 12-44.1-25, 12-44.1-26, and 12-44.1-27, relating to correctional facilities; and to repeal sections 12-44.1-16 and 12-44.1-23, relating to jails and regional corrections centers; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-44.1-01 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-01. Definitions. As used in this chapter:

1. ~~"City jail" means a confinement facility established and maintained by a city.~~
2. ~~"County jail" means a confinement facility established and maintained by a county.~~ "Correctional facility" means a city or county jail or detention center, regional corrections center, or juvenile detention center for the detention or confinement of persons in accordance with law. The use of the term does not imply and may not be used to require the provision of services including treatment, counseling, vocational, or educational services, except as may otherwise be required or provided for under this chapter.
3. ~~2. "Inmate" means any person, whether sentenced or unsentenced, who is detained or confined in a jail, regional corrections center, or juvenile detention center~~ correctional facility.
4. ~~3. "Jail" means a~~ correctional facility, including a county or city jail or a regional corrections center.
5. ~~4. "Jail administrator" "Administrator" means the sheriff, chief of police, administrator, superintendent, director, or other individual serving as the chief executive officer of a jail, regional corrections center, or juvenile detention center~~ correctional facility.
6. ~~5. "Jail "Correctional facility staff" means custodial~~ correctional personnel with titles such as jailer, deputy, counselor, correctional officer, or any other title, whose duties include the ongoing supervision of the inmates in a jail, regional corrections center, or juvenile detention center correctional facility.
7. ~~6. "Juvenile detention center" means a publicly or privately established and maintained~~ correctional facility for the confinement detention of juvenile inmates juveniles. The term does not include the North Dakota youth correctional center.
8. ~~7. "Regional corrections center" means a~~ correctional facility established and maintained by more than one county or city, or a combination of counties and cities, for the confinement of their inmates, or a county or city facility contracting to confine the inmates of other counties and cities.
8. "Trained correctional facility staff" means correctional personnel who have completed a course of training approved by the department of corrections and rehabilitation.

SECTION 2. AMENDMENT. Section 12-44.1-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-44.1-02. Establishing ~~jails~~ correctional facilities - ~~Jail~~ Correctional facility 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~~ correctional facility at county or city expense.
2. Contracting for ~~jail~~ correctional facility services and use of ~~jail~~ correctional facilities with another county or city maintaining a ~~jail, with a regional corrections center,~~ correctional facility or with the state or federal government.
3. Establishing and maintaining, pursuant to chapter 54-40 and this chapter, a ~~regional corrections center~~ correctional facility 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~~ correctional facility, or for the confinement of lawfully committed North Dakota inmates in a county or city correctional facility of such other state. A city or county may contract with another correctional facility in this state for correctional services for purposes of safety, security, health and medical reasons, or for correctional facility administration. A city or county may contract for the confinement of inmates lawfully sentenced by a tribal court. A city or county may contract for ~~adult jail services and juvenile detention~~ correctional facility services with a privately operated ~~jail facility or juvenile detention center~~ correctional facility. Contracts with private agencies providing ~~adult jail or juvenile detention~~ correctional facility services may be entered into for up to seven years.

SECTION 3. AMENDMENT. Section 12-44.1-03 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-03. Safety and sanitation.

1. Each ~~jail~~ correctional facility shall comply with state and local fire, sanitation, safety, and health codes.
2. The ~~governing body~~ administrator of a ~~jail~~ correctional facility, to ensure adequate fire protection, shall install firefighting equipment at appropriate locations throughout the ~~jail~~ correctional facility.
3. Each ~~jail~~ correctional facility shall have a smoke detection system approved by the state fire marshal and tested on a regular basis.
4. Designated exits ~~shall~~ must permit prompt evacuation of inmates and ~~jail~~ correctional facility staff in an emergency.

SECTION 4. AMENDMENT. Section 12-44.1-04 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

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

4. Ensure that ~~all full-time jail~~ correctional facility staff who work in direct and continuing contact with inmates receive ~~jail management~~ correctional facility training as determined and ~~funded~~ approved by the department of corrections and rehabilitation ~~or such other training as approved by the department of corrections and rehabilitation.~~

SECTION 5. AMENDMENT. Section 12-44.1-05 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-05. Meal payments. ~~A jail~~ An administrator or jail correctional facility staff member receiving lump sum monthly payments for providing inmate meals shall submit an itemized account of the meal expenses to the governing body of the ~~jail~~ correctional facility. Any amount of the monthly payment in excess of the itemized account shall be returned to the general operating fund or be given as salary to the person providing the meals, as determined by the governing body of the ~~jail~~ correctional facility.

SECTION 6. AMENDMENT. Section 12-44.1-06 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-44.1-06. Grades of jail correctional facilities.

1. The department of corrections and rehabilitation shall, following inspection pursuant to section 12-44.1-24, grade ~~jails~~ correctional facilities as to length of allowable inmate confinement based upon construction, size, and usage, as follows:
 - a. "Grade one" means a ~~jail~~ correctional facility for confining inmates not more than one year.
 - b. "Grade two" means a ~~jail~~ correctional facility for confining inmates not more than ninety days.
 - c. "Grade three" means a ~~jail~~ correctional facility for confining inmates not more than ninety-six hours.
2. The length of confinement of a prisoner may be temporarily increased on a case-by-case basis in grade one and grade two ~~jails~~ correctional facilities upon the request of the ~~jail~~ administrator and the approval of the department of corrections and rehabilitation.

SECTION 7. AMENDMENT. Section 12-44.1-06.1 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-06.1. Jail Correctional facilities standards. Grade two and grade three ~~jails~~ correctional facilities do not need to provide outdoor recreation areas, ~~contact visitation areas,~~ or exercise rooms separate from dayrooms. Correctional facilities may allow contact visitation subject to the safety, security, and administration requirements of the correctional facility.

SECTION 8. AMENDMENT. Section 12-44.1-07 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-07. Who may be confined in jail correctional facilities. The following persons may be confined in a ~~jail~~ correctional facility:

1. Persons charged with offenses or ordered by a court to be detained for trial.
2. Persons committed by a court to confinement in order to secure their attendance as witnesses at the trial of any criminal cause.
3. Persons sentenced to imprisonment upon conviction of an offense, and any other person committed or detained as authorized by law.

SECTION 9. AMENDMENT. Section 12-44.1-08 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-08. Confinement of state and federal inmates.

1. ~~Grade one jails~~ correctional facilities may contract for the confinement of ~~persons sentenced to imprisonment in the state penitentiary~~ offenders in the custody of the department of corrections and rehabilitation if sufficient room is not available at the penitentiary, for purposes of safety, security, discipline, medical care, or when the department of corrections and rehabilitation determines it may be in the best interests of the offender or the department of corrections and rehabilitation.
2. ~~All jails;~~ A correctional facility to which ~~any a~~ person is sent or committed by legal process issued by or under the authority of the United States; shall receive such ~~inmate~~ person into custody for safe detention until discharged under federal law.
3. ~~The United States shall be charged, for the confinement of its inmates, the amount actually required and expended by the jail maintaining the federal inmates.~~ A correctional facility detaining or confining federal inmates is entitled to compensation in accordance with fee schedules established by the United States.
4. ~~Repealed by S.L. 1985, ch. 169, § 3.~~
5. ~~Whenever required to do so by any United States officer, a jail administrator or jail staff member shall make out under oath a list of federal inmates in custody, with the date of commitment, by whom committed, and for what offenses. Such list shall be transmitted to the United States district court judge of the district in which the jail is located.~~
6. ~~Any~~ A grade one or grade two ~~jail~~ correctional facility may be used for the ~~safekeeping detention~~ of a fugitive from justice in accordance with any act of Congress ~~or the laws of another state.~~ The correctional facility is entitled to reasonable compensation from the officer or jurisdiction regaining custody of the fugitive.

SECTION 10. AMENDMENT. Section 12-44.1-09 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-09. Housing of inmates. In grade one and grade two ~~jails~~ correctional facilities and, where practicable, in grade three ~~jails~~ correctional facilities, the following groups of inmates must be housed separately from each other:

1. Female inmates from male inmates.
2. Juveniles from adults.
3. Persons detained for hearing or trial from inmates under sentence of imprisonment, unless authorized to be housed together by the ~~jail~~ administrator for security, order, or rehabilitation.
4. Persons detained for hearing or trial or under sentence of imprisonment from ~~detained witnesses and other persons detained under civil commitment~~ persons otherwise detained by order of the court, unless authorized to be housed together by the ~~jail~~ administrator for security, order, or rehabilitation.
5. ~~Mentally disturbed inmates and other inmates with special needs as determined by the jail administrator from the remainder of the jail population, unless authorized to be housed together by the jail administrator for security, order, or rehabilitation.~~ Inmates who may have special needs as determined by the correctional facility or whose behavior may present a serious threat to the safety or security of the correctional facility, the staff, the inmate, or other inmates.
6. ~~Special management inmates whose behavior presents a serious threat to the safety and security of the jail, the inmate, the staff, or the general inmate population from the remainder of the jail population.~~

SECTION 11. AMENDMENT. Section 12-44.1-10 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-10. Detained witnesses and pretrial detainees. Detained witnesses and persons held in custody awaiting arraignment or trial ~~shall~~ may not be restricted in their activities to any extent greater than required to maintain order and security and to assure appearance at arraignment or trial. Witnesses and pretrial detainees shall not be required to do labor other than keeping their living areas clean nor shall they be required to participate in ~~jail~~ correctional facility programs.

SECTION 12. AMENDMENT. Section 12-44.1-11 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-11. Commitment papers - Copies - Endorsement. When an inmate is confined by virtue of any process directed to the ~~jail~~ administrator and the process requires a return to the court from which it was issued, the ~~jail~~ administrator shall keep a copy of the process with the return made thereon. The copy, certified by the ~~jail~~ administrator, ~~shall be~~ is prima facie evidence of ~~his~~ the administrator's right to retain the inmate in custody. All ~~such~~ instruments or copies by which an inmate is committed or released shall be endorsed and filed by the ~~jail~~ administrator. The file and its contents shall be delivered to the ~~jail~~ administrator's successor.

SECTION 13. AMENDMENT. Section 12-44.1-12 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-12. Inmate personal property. A written, itemized inventory of all personal property taken from an inmate at the time of admission shall be made by ~~jail~~ correctional facility staff. ~~Such~~ The property, including money and other valuables, shall be secured and the inmate given a receipt for all property to be held until the inmate's release unless the inmate requests a different disposition in writing. Upon release, the items of inmate personal property shall be compared with the inventory list, and the inmate shall sign a receipt for the property's return. If the inmate is released for transfer to another ~~jail~~ or ~~correctional facility~~, the correctional officer transporting the inmate shall sign the receipt. The releasing ~~jail~~ correctional facility shall maintain a copy of the property receipt for its files.

SECTION 14. AMENDMENT. Section 12-44.1-13 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-13. Supervision of inmates.

1. Inmates shall be supervised on a twenty-four-hour basis by trained ~~jail~~ correctional facility staff.
2. ~~Jail~~ Correctional facility staff shall be located in such proximity to inmate living areas to permit the staff to hear and respond promptly to calls for help.
3. Each ~~jail~~ correctional facility shall provide for the personal observation of inmates on an irregular but frequent schedule.
4. Each ~~jail~~ correctional facility shall maintain sufficient staff to perform all functions relating to the security, control, custody, and supervision of inmates.
5. A ~~matron~~ correctional facility female staff member shall be available at all times during which a female inmate is confined.
6. Inmates shall be prohibited from supervising, controlling, or exerting any authority over other inmates.
7. The ~~jail administrator~~ correctional facility shall maintain a daily written record of information concerning inmates ~~as prescribed by rule~~.

SECTION 15. AMENDMENT. Section 12-44.1-14 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-14. Inmate rights. ~~The governing body~~ Subject to reasonable safety, security, discipline, and correctional facility administration requirements, the administrator of each jail correctional facility shall:

1. ~~Ensure and facilitate the right of inmates to~~ have confidential access to attorneys and their authorized representatives.
2. Ensure that inmates are not subjected to discrimination based on race, national origin, color, creed, sex, economic status, or political belief.
3. Ensure equal access by male and female inmates to programs and services available through the correctional facility.
4. Ensure access to mail, telephone use, and visitors.
5. Ensure that inmates are properly fed, clothed, and housed.
6. Ensure that inmates have adequate medical care.
7. Ensure that inmates may reasonably exercise their religious beliefs.

SECTION 16. AMENDMENT. Section 12-44.1-15 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-15. Searches. Searches of inmates ~~shall~~ may only be conducted:

1. ~~Be conducted so as to avoid~~ Without undue or unnecessary force, ~~embarrassment,~~ or indignity to the ~~individual~~ person searched.
2. ~~Be conducted no more frequently than~~ When reasonably necessary to control contraband in the institution or to recover missing or stolen property.

SECTION 17. AMENDMENT. Section 12-44.1-17 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-17. Inmate educational and counseling programs. ~~The governing body of each grade one and grade two jail shall formulate a plan whereby~~ A correctional facility may utilize the resources of the community are utilized to provide inmates with available educational, vocational, counseling, and work release opportunities. Each jail administrator shall A correctional facility may, if possible, and subject to reasonable safety, security, discipline, and correctional facility administration requirements, provide opportunities for access to available religious, mental health, alcoholism, and addiction counseling by inmates desirous of such counseling.

SECTION 18. AMENDMENT. Section 12-44.1-18 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-18. Inmate work programs. ~~The governing body of a grade one jail shall~~ A correctional facility may maintain a written inmate work assignment plan that provides for inmate employment, subject to the number of work opportunities available and the maintenance of ~~jail security~~ reasonable safety, security, discipline, and correctional facility administration requirements. The inmate work plan ~~shall~~ may provide for inmate employment in ~~jail~~ correctional facility maintenance and operation, in public works projects, ~~and or~~ in various community service projects.

SECTION 19. AMENDMENT. Section 12-44.1-18.1 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-18.1. Inmate work release program. ~~The governing body of a city or county, with the concurrence of affected parties;~~ A correctional facility may provide for a work release program for inmates confined in a city or county penal institution unless the court has ordered that an inmate may not receive work release. Work release projects may include public service and community service projects, and may utilize any particular skill or trade of participating inmates. ~~At the discretion of the judge with jurisdiction over a participating inmate, for every eight hours of work by a participating~~

~~inmate, the inmate's period of confinement shall be reduced by two days. The governing body correctional facility shall take measures to maintain jail security among participating inmates correctional facility security and safety and to protect the safety of the public.~~

SECTION 20. AMENDMENT. Section 12-44.1-18.2 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-44.1-18.2. Work release program - Room and board costs to be paid by inmate. Any inmate who participates in a work release program shall pay the ~~governing body of the jail or regional correction center~~ correctional facility for the room and board costs incurred by the inmate while confined in the ~~jail or regional correction~~ correctional facility. The jail administrator shall determine the amount of meal and lodging costs to be paid by the inmate. The amount may not exceed ten dollars per day or the funds earned by the inmate, whichever is less.

SECTION 21. AMENDMENT. Section 12-44.1-19 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-19. Removal of inmate in emergency not an escape. If a ~~jail~~ correctional facility or any adjoining building shall be on fire or another emergency occurs, and the inmates may be exposed to danger, the ~~jail~~ correctional facility staff shall remove the inmates to a place of safety, and there confine them as long as necessary to avoid the danger. The removal and confinement shall not be deemed an escape of such inmates.

SECTION 22. AMENDMENT. Section 12-44.1-20 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-20. Punishment of inmate. ~~A jail administrator or jail staff member having charge of an inmate under this chapter may use only such means as are necessary to control inmate behavior. If an inmate confined in any jail is disorderly or willfully destroys jail property, the jail administrator may cause the inmate to be secured or kept in solitary confinement for not more than three days for any one offense. A correctional facility shall adopt rules for safety, security, discipline, and correctional facility administration. If an inmate violates any of the rules of a correctional facility, the correctional facility may impose disciplinary sanctions in accordance with its rules.~~

SECTION 23. AMENDMENT. Section 12-44.1-21 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-21. Prohibited acts. ~~A jail administrator or a member of the jail staff shall be guilty of a class A misdemeanor if he or she knowingly:~~

- ~~1. Places or keeps male and female inmates together in the same cell unless they are husband and wife. It is unlawful to deliver or administer any alcoholic beverage or controlled substance to a person detained in a correctional facility except for the delivery or administration of controlled substances or alcoholic beverages in accordance with the orders or prescription of a licensed physician and the approval, except in emergency circumstances, of the correctional facility administrator.~~
- ~~2. Gives, sells, or delivers to any inmate, for any cause whatever, any alcoholic beverage unless prescribed by a physician. Any other person, other than a physician or person under the direction of a physician, who gives, sells, or delivers an alcoholic beverage to an inmate shall be guilty of a class A misdemeanor. A person detained in a correctional facility may not possess any controlled substance or alcoholic beverage unless the substance or beverage is prescribed in accordance with the prescription or orders of a licensed physician, and the approval, except in emergency circumstances, of the correctional facility administrator.~~
- ~~3. Uses corporal punishment against an inmate. A person, other than an official or employee of the correctional facility, who violates subsection 1 by delivering or administering a controlled substance is guilty of a class B felony. An official or employee of the correctional facility who violates subsection 1 by delivering or administering a controlled~~

substance is guilty of a class A felony. A person who violates subsection 1 by delivering alcoholic beverages is guilty of a class A misdemeanor.

4. ~~Uses physical force except as necessary for self defense or control of inmates, protection of another person from imminent physical attack, or the prevention of riot or escape. A person who violates subsection 2 by possessing a controlled substance is guilty of a class B felony. A person who violates subsection 2 by possessing alcoholic beverages is guilty of a class A misdemeanor.~~
5. As used in this section, "controlled substance" is as defined in subsection 6 of section 19-03.1-01, and includes counterfeit substances as defined in subsection 7 of section 19-03.1-01.

SECTION 24. AMENDMENT. Section 12-44.1-22 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-44.1-22. Jail Correctional facility register - Contents. Each jail administrator is responsible for a jail correctional facility register in which must be entered such inmate information on such forms as the department of corrections and rehabilitation shall prescribe by rule.

SECTION 25. AMENDMENT. Section 12-44.1-24 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-44.1-24. Jail Correctional facility standards - Inspections. The department of corrections and rehabilitation shall:

1. Prescribe rules establishing minimum standards for the construction, operation, and maintenance of public or private ~~juvenile detention centers, county and city jails, and regional corrections centers~~ correctional facilities.
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~~ correctional facility.
4. Appoint a ~~jail~~ correctional facility inspector qualified by special experience, education, or training to inspect each ~~jail, juvenile detention center, and regional corrections center~~ correctional facility at least once each year to determine if the rules and regulations have been complied with. Inspection ~~shall~~ must 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 26. AMENDMENT. Section 12-44.1-25 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted 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~~ correctional facility inspector within thirty days following each inspection.
2. Copies of the report must be sent by the ~~jail~~ correctional facility inspector to the ~~governing body administrator~~ responsible for the ~~jail, juvenile detention center, or regional corrections center~~ correctional facility and must also be submitted to the department of corrections and rehabilitation for review.
3. The inspection report must specify those respects in which a ~~jail, juvenile detention center, or regional corrections center~~ correctional facility does or does not comply with the required minimum standards and rules. The inspection report of noncompliance must 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 department of corrections and rehabilitation.

4. Where the nature and extent of deficiencies are such that an immediate order of full or partial closure is deemed necessary by the department of corrections and rehabilitation 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 department of corrections and rehabilitation.
5. Within thirty days after receipt of a notice or order of immediate closure, the ~~governing body administrator~~ of a ~~jail, juvenile detention center, or regional corrections center~~ correctional facility may request a review of the determination by the department of corrections and rehabilitation pursuant to chapter 28-32. The review must be heard not more than forty-five days following the request, unless the period is extended by the department of corrections and rehabilitation.

SECTION 27. AMENDMENT. Section 12-44.1-26 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-44.1-26. Jail Correctional facility variances.

1. All ~~jails, juvenile detention centers, and regional corrections centers~~ A correctional facility shall comply with the requirements of the rules ~~and regulations promulgated~~ adopted by the department of corrections and rehabilitation unless a variance has been granted by the department of corrections and rehabilitation. 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 department of corrections and rehabilitation 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~~ correctional facility.
 - b. The ~~jail, juvenile detention center, or regional corrections center~~ can and correctional facility will substantially comply with the policy of the rule during the time of the variance from the rule.
3. The department of corrections and rehabilitation shall give written reasons for granting or denying a variance request.
4. In previously existing ~~jails, juvenile detention centers, or regional corrections centers~~ correctional facilities where specific rules cannot be complied with because of alleged difficulty or undue hardship, exception to specific physical plant rules must 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~~ correctional facility is not seriously affected.

SECTION 28. AMENDMENT. Section 12-44.1-27 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-44.1-27. Corrective action - Enforcement.

1. Upon receipt of an inspection report stating noncompliance, the ~~governing body administrator~~ of a ~~jail, juvenile detention center, or regional corrections center~~ correctional facility shall promptly meet with the department of corrections and rehabilitation's 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~~ correctional facility or the objectionable portion.

2. If the governing body of a ~~jail, juvenile detention center, or regional corrections center~~ correctional facility 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~~ correctional facility or objectionable portion, the director of the department of corrections and rehabilitation is authorized to petition the district court of the judicial district in which the ~~jail, juvenile detention center, or regional corrections center~~ correctional facility is located to order the initiation of corrective action or the closure of the ~~jail, juvenile detention center, or regional corrections center~~ correctional facility. The petition to the district court must include the inspection report regarding the ~~jail, juvenile detention center, or regional corrections center~~ correctional facility. The governing body shall have twenty days to respond to the petition and shall serve a copy of the response on the director of the department of corrections and rehabilitation by certified mail.
3. A hearing must be held on the petition of the department of corrections and rehabilitation before the district court. An order must 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~~ correctional facility.

SECTION 29. REPEAL. Sections 12-44.1-16 and 12-44.1-23 of the North Dakota Century Code are repealed.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-fifth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2127.

Senate Vote: Yeas 41 Nays 0 Absent 8

House Vote: Yeas 92 Nays 0 Absent 5

Secretary of the Senate

Received by the Governor at _____ M. on _____, 1997.

Approved at _____ M. on _____, 1997.

Governor

Filed in this office this _____ day of _____, 1997,
at _____ o'clock _____ M.

Secretary of State