

CORRECTIONS, PAROLE, AND PROBATION

CHAPTER 110

HOUSE BILL NO. 1116

(Judiciary Committee)

(At the request of the Department of Corrections and Rehabilitation)

CORRECTIONAL FACILITIES AND INMATE OFFENSES

AN ACT to amend and reenact sections 12-44.1-02, 12-44.1-06, 12-44.1-13, 12-44.1-21, and 12-44.1-25 of the North Dakota Century Code, relating to correctional facilities; to repeal section 12-44.1-27 of the North Dakota Century Code, relating to corrective action and enforcement for correctional facilities; and to provide a penalty.

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 amended and reenacted as follows:

12-44.1-02. Establishing correctional facilities - 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 correctional facility at county or city expense.
2. Contracting for correctional facility services and use of correctional facilities with another county or city maintaining a correctional facility or with the state or federal government.
3. Establishing and maintaining, pursuant to chapter 54-40 or 54-40.3 and this chapter, a correctional facility in conjunction with other counties and cities.
4. A county or city may contract with a county or city of another state for ~~the~~
 - a. ~~The~~ confinement of lawfully committed county or city inmates from ~~that the other~~ state in a ~~North Dakota~~ correctional facility; or for the
 - b. ~~The~~ confinement of lawfully committed North Dakota inmates in a county ~~or~~, city, or regional correctional facility of ~~such other~~ another state.

5. 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.
6. A city or county may contract for the confinement of inmates lawfully sentenced by a tribal court.
7. A city or county may contract for correctional facility services with a privately operated correctional facility. Contracts with private agencies providing correctional facility services may be entered into for up to seven years.

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

12-44.1-06. Grades of correctional facilities.

1. The department of corrections and rehabilitation shall, following inspection pursuant to section 12-44.1-24, grade correctional facilities as to length of allowable inmate confinement based upon construction, size, and usage, as follows:
 - a. "Grade one" means a correctional facility for confining inmates not more than one year.
 - b. "Grade two" means a correctional facility for confining inmates not more than ninety days.
 - c. "Grade three" means a 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 correctional facilities upon the request of the administrator and the approval of the department of corrections and rehabilitation.
3. The department of corrections and rehabilitation, upon the request of the governing body of the correctional facility, may authorize a correctional facility to regularly confine inmates for more than one year if the correctional facility meets criteria established by the department, including:
 - a. A classification system approved by the department.
 - b. Education programs, including vocational education and a general equivalency diploma program.
 - c. Treatment programs, including licensed alcohol or drug addiction counseling.
 - d. Inmate work programs, including prison industries work programs.
 - e. An infirmary and onsite medical and pharmacy services.
 - f. Indoor and outdoor recreation.

SECTION 3. 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 correctional facility staff.
2. 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 correctional facility shall provide for the personal observation of inmates on an irregular but frequent schedule.
4. Each correctional facility shall maintain sufficient law enforcement officers with correctional training or trained correctional facility staff to perform all functions relating to the intake and booking, security, control, custody, and supervision of inmates.
5. A correctional facility female staff member shall be available at all times ~~during which~~ when a female inmate is confined in the correctional facility.
6. Inmates shall be prohibited from supervising, controlling, or exerting any authority over other inmates.
7. The correctional facility shall maintain a daily written record of information concerning inmates.

SECTION 4. AMENDMENT. Section 12-44.1-21 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-21. Prohibited acts.

1. It is unlawful ~~to deliver or administer any alcoholic beverage or~~ for a person to willfully:
 - a. Manufacture, or possess with intent to manufacture, a 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.
 - b. Deliver, or possess with intent to deliver, a controlled substance in a correctional facility. This subsection does not apply to the possession or delivery of controlled substances in accordance with the orders or prescription of a licensed physician and the approval, except in emergency circumstances, of the correctional facility administrator.
 - c. A person who violates this subsection is guilty of a class A felony.
2. ~~A person~~ It is unlawful for an inmate detained in a correctional facility ~~may not~~ to possess any controlled substance ~~or alcoholic beverage~~

unless the substance or beverage is prescribed except in accordance with the prescription or orders of a licensed physician, and the approval, except in emergency circumstances, of the correctional facility administrator. It is unlawful for an inmate in a correctional facility to possess alcohol or alcoholic beverages. If a correctional facility has adopted a rule banning the possession of tobacco in a correctional facility, it is unlawful for an inmate in a correctional facility to possess any tobacco except when the correctional facility administrator has authorized possession of tobacco for religious purposes or when on an authorized release from the correctional facility. An inmate who violates this subsection with respect to:

- a. Possession of a controlled substance is guilty of a class B felony.
 - b. Possession of alcohol or alcoholic beverages is guilty of a class A misdemeanor.
 - c. Possession of tobacco is guilty of a class B misdemeanor.
3. A person, other than an official or employee of the correctional facility, who violates subsection 4 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 4 by delivering or administering a controlled substance is guilty of a class A felony. A person who violates subsection 4 by delivering alcoholic beverages is guilty of a class A misdemeanor. It is unlawful for a person to willfully deliver alcohol or alcoholic beverages to an inmate in a correctional facility. It is unlawful for a person to willfully deliver tobacco to an inmate in a correctional facility that has adopted a rule banning the possession of tobacco except when the correctional facility administrator has authorized possession of tobacco for religious purposes or when the inmate is on an authorized release from the correctional facility. A person who violates this subsection by:
- a. Delivery of alcohol or alcoholic beverages to an inmate in a correctional facility is guilty of a class A misdemeanor.
 - b. Delivery of tobacco to an inmate in a correctional facility is guilty of a class B misdemeanor.
4. It is unlawful for a person who is not an inmate to willfully possess a controlled substance in a correctional facility except in accordance with the orders or prescription of a licensed physician. A person who violates this 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. It is unlawful for an inmate in a correctional facility to willfully procure, make, or possess an object, including a shard made of any material or a weapon, firearm, ammunition, or explosive material, intended to be used for an assault on another person or to damage property. An inmate in a correctional facility who violates this subsection with respect to:
- a. A shard or weapon that is not a dangerous weapon or firearm as defined in section 62.1-01-01 is guilty of a class B felony.

- b. Ammunition, a knife of any length, a weapon that is a dangerous weapon or firearm as defined in section 62.1-01-01, or explosive material is guilty of a class A felony.
6. It is unlawful for a person to deliver or provide to an inmate in a correctional facility an object intended to be used for an assault on another person or to damage property. A person who violates this subsection with respect to:
- a. A shard or weapon that is not a dangerous weapon or firearm as defined in section 62.1-01-01 is guilty of a class B felony.
 - b. Ammunition, a knife of any length, a weapon that is a dangerous weapon or firearm as defined in section 62.1-01-01, or is an explosive or destructive device is guilty of a class A felony.
7. 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. As used in this section, "willfully" is as defined in section 12.1-02-02. As used in this section, "alcohol" and "alcoholic beverage" are as defined in section 5-01-01. As used in this section, "tobacco" means any form of tobacco, including cigarettes, cigars, snuff, or tobacco in any form in which it may be used for smoking or chewing.

SECTION 5. AMENDMENT. Section 12-44.1-25 of 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 ~~The~~ correctional facility inspector shall submit a written inspection report to the administrator of the correctional facility and the director of the department of corrections and rehabilitation within thirty days following each inspection.
2. Copies of the report must be sent by the correctional facility inspector to the administrator responsible for the 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 when a correctional facility does or does not comply complies with the, or is in violation of, required minimum standards and, applicable state or federal law, or the department of corrections and rehabilitation rules for correctional facilities. The inspection report of noncompliance must If a correctional facility is in violation of any required minimum standards, applicable state or federal law, or department of corrections and rehabilitation rules for correctional facilities, the director of the department of corrections and rehabilitation may issue an order of noncompliance. The director shall identify the violation and required corrective measures in the order of noncompliance and specify the time limits within which such standards or rules are to be met, with consideration being given to the correctional facility shall correct the violations. The director shall consider the magnitude or seriousness of the deficiencies violations and their potential effects on the health and

safety of inmates, staff, law enforcement, and the public, the cost of correction, and other information deemed relevant by the department of corrections and rehabilitation director considers relevant in establishing the time period for the correctional facility to correct the violations. If the director determines that the violations are limited and minor, the director may issue a letter of noncompliance to the correctional facility and identify the violations and required corrective measures and the correctional facility shall immediately correct the violations.

3. The director of the department of corrections and rehabilitation may assess the department's actual costs for inspection and monitoring the correctional facility upon issue of an order of noncompliance to the correctional facility.
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 If a correctional facility fails to complete required corrective action within the time specified in the order of noncompliance, the director of the department of corrections and rehabilitation may issue an order for full, partial, or temporary closure of the correctional facility. If the director determines that the extent of the noncompliance presents a danger to the health and safety of inmates, staff, law enforcement, visitors, or the public, the period of time for correction may be dispensed with and director may issue an order of immediate full or, partial, or temporary closure may be issued by the department of corrections and rehabilitation without a prior order of noncompliance.
5. Within thirty days after receipt of a notice or order of immediate full, partial, or temporary closure, the administrator of a 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 at the request of the correctional facility. The department of corrections and rehabilitation may direct the correctional facility to pay to the department the reasonable and actual costs incurred by the department for any investigation and proceedings under this section.

SECTION 6. REPEAL. Section 12-44.1-27 of the North Dakota Century Code is repealed.

Approved March 12, 2007
Filed March 13, 2007

CHAPTER 111**SENATE BILL NO. 2357**

(Senators Nelson, Lyson)
(Representatives Gruchalla, Koppelman)

INMATE HOUSING

AN ACT to amend and reenact section 12-44.1-09 of the North Dakota Century Code, relating to the housing of inmates.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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. Each correctional facility shall adopt a classification system for inmates to provide for the security, safety, and order of the correctional facility and for the safety and security of the community. If the correctional facility has adopted a classification system approved by the department of corrections and rehabilitation, the correctional facility is not required to comply with subsections 3, 4, and 5 of this section. In grade one and grade two correctional facilities and, where practicable, in grade three correctional facilities, the following groups of inmates must be housed separately from each other:

1. Female inmates from male inmates.
2. Juveniles from adults, except that an adult held under a delinquency proceeding may be held with juveniles and a juvenile transferred or waived to adult court on a felony criminal offense may be housed with adults in a jail or regional correctional facility.
3. Persons detained for hearing or trial from inmates under sentence of imprisonment, unless authorized to be housed together by the administrator for security, order, or rehabilitation.
4. Persons detained for hearing or trial or under sentence of imprisonment from persons otherwise detained by order of the court, unless authorized to be housed together by the administrator for security, order, or rehabilitation.
5. 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.

Approved May 2, 2007
Filed May 3, 2007

CHAPTER 112**SENATE BILL NO. 2025**

(Legislative Council)

(Budget Committee on Government Services)

MEDICATION ADMINISTRATION AT CORRECTIONAL FACILITIES

AN ACT to create and enact a new section to chapter 12-44.1 of the North Dakota Century Code, relating to provision of medication at a correctional facility; to amend and reenact section 43-12.1-04 of the North Dakota Century Code, relating to exemptions from the Nurse Practices Act; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 12-44.1 of the North Dakota Century Code is created and enacted as follows:

Provision of medication - Training requirements - Verification - Rules.

1. A correctional facility may authorize an employee to provide medication to an inmate of a correctional facility if the employee is:
 - a. Licensed or registered under title 43 and is providing the medication within the scope of practice of the profession for which the individual is licensed or registered; or
 - b. A correctional facility staff member who has successfully completed medication administration training that has been preapproved by the North Dakota board of nursing.
2. If a correctional facility uses a correctional facility staff member to provide medication to an inmate under subdivision b of subsection 1:
 - a. The correctional facility staff member may not provide the medication by the parenteral route; and
 - b. The correctional facility shall provide to the board of nursing verification of appropriate medication administration training for that correctional facility staff member.

⁶⁰ **SECTION 2. AMENDMENT.** Section 43-12.1-04 of the North Dakota Century Code is amended and reenacted as follows:

⁶⁰ Section 43-12.1-04 was also amended by section 12 of Senate Bill No. 2130, chapter 256.

43-12.1-04. Persons exempt from provisions of chapter. This chapter does not apply to a person that is not licensed or registered under this chapter and is:

1. ~~Persons who perform~~ A person that performs nursing interventions in cases of emergency or disaster.
2. ~~Students~~ A student practicing nursing as a part of an in-state nursing education program.
3. ~~Legally~~ A licensed nurse nurse of another state who is in good standing and who is employed in this state by the United States government or any of its bureaus, divisions, or agencies.
4. A nurse licensed by another state or Canada, whose employment requires the nurse to accompany and care for a patient in transit for health care.
5. A nurse licensed by another state whose employment by a resident of that state requires the nurse to accompany and care for the resident in North Dakota.
6. ~~A person~~ An individual who performs nursing tasks for a family member.
7. A person ~~who is not licensed under this chapter and who that~~ renders assistance pursuant to chapter 23-27.
8. A person licensed or registered under another chapter of this title and carrying out the therapy or practice for which the person is licensed or registered.
9. A person ~~who that~~ provides medications, other than by the parenteral route:
 - a. Within a correctional facility, in compliance with section 1 of this Act;
 - b. Within a residential treatment centers center for children licensed under chapter 25-03.2 and North Dakota Administrative Code chapter 75-03-17;
 - ~~b-~~ c. Within a treatment or care centers center for developmentally disabled persons licensed under chapter 25-16;
 - e- d. Within a group homes home, a residential child care facilities facility, and or an adult foster care facilities facility licensed under section 50-11-01 or North Dakota Administrative Code chapter 75-03-16; or
 - ~~d-~~ e. Within a human service centers center licensed under chapter 50-06.
10. A nurse currently licensed to practice nursing by another jurisdiction:
 - a. Whose practice in another state requires that nurse to attend orientation, meetings, or continuing education in North Dakota;

- b. Who serves as a guest lecturer or short-term consultant; or
 - c. Who provides evaluation undertaken on behalf of an accrediting organization.
11. An individual, including a feeding assistant, performing nonhands-on tasks while employed in a medicare-funded organization.
 12. Upon written notification to the board by an out-of-state nursing program, a student practicing nursing as a part of a nursing education program preparing for initial or advanced licensure as a registered nurse or licensed practical nurse which is approved by a board of nursing and is located in an institution of higher education that offers transferable credit.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved May 1, 2007
Filed May 2, 2007

CHAPTER 113

HOUSE BILL NO. 1482

(Representatives Koppelman, Kreidt, Svedjan, Thoreson)
(Senators Dever, Warner)

CHRONICALLY ILL OFFENDER HEALTH CARE

AN ACT to create and enact a new section to chapter 12-47 of the North Dakota Century Code, relating to health care for chronically or terminally ill offenders.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 12-47 of the North Dakota Century Code is created and enacted as follows:

Definitions - Health care for chronically or terminally ill offenders - Notice to health care facility.

1. As used in this section:
 - a. "Chronically ill" has the same meaning as in section 26.1-33.2-01.
 - b. "Department" means the department of corrections and rehabilitation.
 - c. "Health care facility" means an assisted living facility as defined in section 23-09-01, a basic care facility as defined in section 23-09.3-01, or a nursing home as defined in section 23-30-01, except that transitional care units and other long-term care beds owned or operated on the premises of acute care hospitals or critical care hospitals are not health care facilities for the purpose of this section.
 - d. "Terminally ill" has the same meaning as in section 26.1-33.2-01.
2. If an offender is to be given an early release, pardon, or parole due to a chronic or terminal illness for admission as a resident of a health care facility due to the chronic or terminal illness, the department shall provide prior written notice to the administrator of the facility, stating:
 - a. The offense for which the offender was convicted and a description of the actual offense;
 - b. The offender's status with the department;
 - c. That, subject to subsection 3, the information provided by the department regarding the offender may be provided to residents and employees of the facility by the administrator of the facility;
 - d. The offender's health status and type of health care the offender requires;

- e. Any available risk assessment information regarding the offender's likelihood of reoffending; and
- f. The name of the party responsible for the payment for the services provided by the health care facility to the offender.

Approved April 10, 2007
Filed April 11, 2007

CHAPTER 114

HOUSE BILL NO. 1077

(Judiciary Committee)

(At the request of the Department of Corrections and Rehabilitation)

INMATE FUNDS AND RESTITUTION

AN ACT to amend and reenact sections 12-48-15 and 12-48-22 of the North Dakota Century Code, relating to inmate funds and accounts and fines and restitution for the misconduct of offenders.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-48-15 of the North Dakota Century Code is amended and reenacted as follows:

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

1. The warden of the penitentiary shall keep an account for each inmate. Not more than fifty percent of an inmate's penitentiary earnings, as provided by penitentiary rules, must be withheld from an inmate and deposited in a separate account for the inmate and may not be made available to the inmate until the inmate's release from the penitentiary, except as authorized by the warden. The remainder of an inmate's earnings must be made available to the inmate on a regular basis.
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 must 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. The warden may directly deposit an inmate's funds from sources outside of the penitentiary in any bank or account the inmate may designate. If a court order does not allow an inmate to designate a bank or account other than a Bank of North Dakota account or if it is necessary for the benefit and protection of the inmate, the warden, upon written explanation to the inmate, shall deposit an inmate's funds from sources outside the penitentiary into a Bank of North Dakota account. The department of corrections and rehabilitation and its divisions, departments, officers, and employees may not be held responsible or liable for any inmate income or funds deposited into a bank or account designated by an inmate.
4. The warden is responsible for guiding inmates in making proper use of their funds to pay their obligations, including the payment of any ~~administration~~ administratively ordered fee, fine or restitution, court-appointed counsel fees, court-ordered restitution, support for dependent relatives, or to provide for their own medical, surgical, eye

care, or dental treatment, or to pay for other services not generally provided by the state. The warden may withdraw funds from an inmate's penitentiary account or Bank of North Dakota two-signature account, without the inmate's signature, to meet the inmate's legitimate financial obligations. Before the funds may be withdrawn, the inmate must first receive written notice and be provided a penitentiary administrative hearing with the right to ~~penitentiary staff assistance and the right to appeal according to the director of the department of corrections and rehabilitation rules.~~ An inmate is not entitled to prior written notice, administrative hearing, or right to an appeal to the department of corrections and rehabilitation when funds are to be withdrawn for payment of a court-ordered obligation, including child support, provided the inmate has had notice and an opportunity to be heard in the court proceedings.

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

SECTION 2. AMENDMENT. Section 12-48-22 of the North Dakota Century Code is amended and reenacted as follows:

12-48-22. Fines and restitution for misconduct of offender. The warden, with the approval of the director of the department of corrections and rehabilitation, shall institute and maintain a uniform system of fines and ~~penalties to be deducted~~ restitution for violation of department rules and when an offender causes personal injury or property damage. The warden may deduct the fine or restitution from the compensation any funds credited to any offender for misconduct or refusal to perform the daily task assigned an offender's penitentiary account or Bank of North Dakota two-signature account.

Approved March 6, 2007
Filed March 7, 2007

CHAPTER 115**SENATE BILL NO. 2260**

(Senators Robinson, Christmann, Fischer)
(Representatives Koppelman, Kreidt, Mueller)

CRIMINAL HISTORY RECORD CHECKS

AN ACT to create and enact a new subdivision to subsection 2 of section 12-60-24, a new section to chapter 19-03.1, a new section to chapter 43-12.1, a new subsection to section 43-15-10, a new section to chapter 43-23, and a new section to chapter 43-41 of the North Dakota Century Code, relating to criminal history record checks; to amend and reenact sections 12-60-16.5, 12-60-16.6, 12-60-24, 15.1-06-06, 15.1-13-14, 32-28-02, 50-11-01, 50-11-02.4, 50-11-06.8, 50-11-06.9, 50-11.3-01, and 50-12-03.2, subsection 4 of section 53-06.2-05, and section 54-59-20 of the North Dakota Century Code, relating to criminal history record checks; to provide for limitations on correctional facility construction or remodeling; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-60-16.5 of the North Dakota Century Code is amended and reenacted as follows:

12-60-16.5. Criminal history record information - Exchange of information among criminal justice agencies and the courts. The bureau and other criminal justice agencies shall disclose criminal history record information:

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

SECTION 2. AMENDMENT. Section 12-60-16.6 of the North Dakota Century Code is amended and reenacted 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, 12.1-20-03.1, 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 three years preceding the request.

3. The request is written and contains:
 - a. The name of the requester.
 - b. The fingerprints of the record subject or, if the request is made without submitting the fingerprints, the request must also include the name of the record subject-
 - e. ~~At~~ and 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) (2) The social security number of the record subject.
 - (4) (3) The date of birth of the record subject.
 - (5) (4) 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.

In order to confirm a record match, the bureau may contact the requester to collect additional information if a request contains an item of information that appears to be inaccurate or incomplete.

⁶¹ **SECTION 3.** A new subdivision to subsection 2 of section 12-60-24 of the North Dakota Century Code is created and enacted as follows:

The department of financial institutions for each applicant for a specified occupation with the department as specified by the commissioner and principal owners and managing officers of applicants for a license from the department of financial institutions.

⁶² **SECTION 4. AMENDMENT.** Section 12-60-24 of the North Dakota Century Code is amended and reenacted as follows:

⁶¹ Section 12-60-24 was also amended by section 1 of House Bill No. 1313, chapter 374, section 1 of House Bill No. 1455, chapter 367, section 2 of House Bill No. 1490, chapter 70, section 1 of Senate Bill No. 2037, chapter 491, and section 4 of Senate Bill No. 2260, chapter 115.

⁶² Section 12-60-24 was also amended by section 1 of House Bill No. 1313, chapter 374, section 1 of House Bill No. 1455, chapter 367, section 2 of House Bill No. 1490, chapter 70, section 1 of Senate Bill No. 2037, chapter 491, and section 3 of Senate Bill No. 2260, chapter 115.

12-60-24. Criminal history record checks.

1. a. ~~The agencies and entities named in subsection 2 shall require each~~ Each applicant, employee, or petitioner for adoption ~~to or~~ name change who is subject to a criminal history record check under subsection 2 shall consent to a statewide and nationwide criminal history record check for the purpose of determining suitability or fitness for a permit, license, registration, employment, or adoption.
 - b. Each applicant, employee, registrant, or petitioner for adoption or name change subject to a criminal history record check shall provide to the requesting agency or entity written consent to conduct the check and to release or disclose the information in accordance with state and federal law, two sets of fingerprints from a law enforcement agency or other local agency authorized to take fingerprints, any other identifying information requested, and a statement indicating whether the applicant or employee has ever been convicted of a crime.
 - c. The agency, official, or entity shall submit these fingerprints to the bureau of criminal investigation for nationwide criminal history record information that includes resubmission of the fingerprints by the bureau of criminal investigation to the federal bureau of investigation. Except if otherwise provided by law, federal bureau of investigation criminal history record information obtained by an agency or entity is confidential. For a request for nationwide criminal history record information made under this section, the bureau of criminal investigation is the sole source to receive the fingerprint submissions and responses from the federal bureau of investigation. A person who takes fingerprints under this section may charge a reasonable fee to offset the cost of fingerprinting. Unless otherwise provided by law, the bureau of criminal investigation may charge appropriate fees for criminal history information.
2. The bureau of criminal investigation shall provide to each agency, official, or entity listed in this subsection who has requested a statewide and nationwide criminal history record check, the response of the federal bureau of investigation and any statewide criminal history record information that may lawfully be made available under this chapter:
 - a. The governing body of a city or a county, by ordinance or resolution, for ~~each~~ a final applicant for a specified occupation with the city or county.
 - b. The agriculture commissioner for each applicant for a license to grow industrial hemp under section 4-41-02.
 - c. The education standards and practices board for initial, reentry, and reciprocal teacher licenses under sections 15.1-13-14 and 15.1-13-20 and school guidance and counseling services under section 15.1-13-23.
 - d. The medical examiners board for licenses or disciplinary investigations under section 43-17-07.1, except that criminal

- history record checks need not be made unless required by the board.
- e. The private investigative and security board for licenses or registrations under section 43-30-06.
 - f. The department of human services department for foster care licenses under ~~section 50-11-06.8~~ chapter 50-11, appointments of legal guardians under ~~section 50-11.3-04~~ chapter 50-11.3, and petitions for adoptions under ~~section 50-12-03.2~~ chapter 50-12, except that the criminal history record investigation must be conducted in accordance with those ~~sections~~ chapters. A criminal history record investigation completed under chapter 50-11, 50-11.3, or 50-12 may be used to satisfy the requirements of a criminal history record investigation under either of the other two chapters.
 - g. The department of human services department for carecheck registrations under section 50-11.1-06.2.
 - h. The chief information officer of the information technology department for certain ~~employees~~ individuals under section 54-59-20.
 - i. A public peace officer training school that has been approved by the peace officer standards and training board for enrollees in the school. The school may only disclose the criminal history record information as authorized by law. The school shall pay the costs for securing the fingerprints, any criminal history record information made available under this chapter, and for the nationwide criminal history background check. This subdivision does not apply to the highway patrol law enforcement training center and enrollees who have a limited license under section 12-63-09.
 - j. The North Dakota public employees retirement board for individuals first employed by the public employees retirement board after July 31, 2005, who have unescorted physical access to the office or any security-sensitive area of the office as designated by the executive director.
 - k. The executive director of the retirement and investment office for individuals first employed by the retirement and investment office after July 31, 2005, who have unescorted physical access to the office or any security-sensitive area of the office as designated by the executive director.
 - l. The Bank of North Dakota for ~~each~~ a final applicant for a specified occupation with the Bank as designated by the president.
 - m. Job service North Dakota for ~~each~~ a final applicant for a specified occupation with job service as designated by the executive director.
 - n. The state department of health for ~~employees assigned duties related to bioterrorism and homeland security issues~~ a final applicant for or an employee in a specified occupation with the

- department as designated by the state health officer; a nurse aide seeking to have a finding of neglect removed from the nurse aide registry; or an individual being investigated by the state department of health who holds a license, certificate, or registration in a health-related field; or, when requested by the department, an applicant for registration, certification, or licensure by the department.
- o. The board of nursing for applicants, licensees, registrants, or disciplinary investigations under chapter 43-12.1, except that criminal history record checks need not be made unless required by the board.
- p. The state board of pharmacy for applicants or disciplinary investigations under chapter 43-15 and registrations, or revocation or suspension of registrations, under chapter 19-03.1, except that criminal history record checks need not be made unless required by the board.
- q. The state real estate commission for applicants, licensees, or investigations under chapter 43-23, except that criminal history record checks need not be made unless required by the commission.
- r. The North Dakota board of social work examiners for applicants for initial licensure or licensees under chapter 43-41, except that criminal history record checks for licensees need not be made unless required by the board.
- s. All agencies, departments, bureaus, boards, commissions, or institutions of the state, including the North Dakota university system, for all employees or final applicants for employment as a security guard or to otherwise provide security.
- t. The office of management and budget for each individual who has access to personal information as designated by the director.
- u. The department of corrections and rehabilitation for all agents and employees and a final applicant for employment designated by the director and for each agent, employee, or a final applicant for employment of a privately operated entity providing contract correctional services for the department who exercises direct authority over juveniles, inmates, probationers, or parolees.
- v. A city, county, or combination of cities or counties that operates a correctional facility subject to chapter 12-44.1, for each agent and employee and a final applicant for employment of the correctional facility who has direct contact with or exercises direct authority over any juvenile or inmate of the correctional facility, and for each agent, employee, or a final applicant for employment of a privately operated entity providing contract correctional services for the correctional facility who exercises direct authority over juveniles, inmates, probationers, or parolees.
- w. The North Dakota university system for a final applicant for or employee in a specified position in the university system or a

university system institution or for each student applying for or admitted to a specified program of study, as designated by the chancellor.

- x. The governing board of a public school or, for a nonpublic school, the superintendent of public instruction, for employees designated by the governing board or nonpublic school. The governing board or the nonpublic school is responsible for paying the costs associated with obtaining a background check.
- y. The governing board of a public school or, for a nonpublic school, the superintendent of public instruction, for a final applicant seeking employment with the school or otherwise providing services to the school, if that individual has unsupervised contact with the students. For purposes of this subdivision, "unsupervised contact" with students means being in proximity to one or more students, on school grounds or at school functions, outside the presence of an individual who has been subject to a criminal background check. The governing board or the nonpublic school is responsible for paying the costs associated with obtaining a background check.
- z. The racing commission for applicants for licenses under chapter 53-06.2, except that criminal history record checks need not be made unless required by the commission.
- aa. A district court for a petition to change a name under chapter 32-28.

SECTION 5. AMENDMENT. Section 15.1-06-06 of the North Dakota Century Code is amended and reenacted as follows:

15.1-06-06. Approval of public and nonpublic schools. Each public and nonpublic school in this state offering elementary or secondary education to students must be approved by the superintendent of public instruction. Except as otherwise provided by law, the superintendent may not approve a school unless:

1. Each classroom teacher is licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board;
2. Each classroom teacher is teaching only in those course areas or fields for which the teacher is licensed or for which the teacher has received an exception under section 15.1-09-57;
3. The students are offered all subjects required by law; ~~and~~
4. The school is in compliance with all local and state health, fire, and safety laws; and
5. The school has conducted all criminal history record checks required by section 12-60-24.

SECTION 6. AMENDMENT. Section 15.1-13-14 of the North Dakota Century Code is amended and reenacted as follows:

15.1-13-14. Initial and reentry licensure of teachers - Criminal history record check. The board shall check, or cause to be checked, the criminal history record of each applicant for initial licensure and reentry licensure as a teacher in accordance with section 12-60-24. All costs associated with the background check and with obtaining and processing the fingerprints are the responsibility of the applicant. Criminal history records provided to the board pursuant to this section are confidential and closed to the public and may only be used by the board for determining an applicant's eligibility for licensure and obtaining documentation to support a denial of licensure.

SECTION 7. A new section to chapter 19-03.1 of the North Dakota Century Code is created and enacted as follows:

Criminal history record checks. The board may require an applicant for registration or a registrant whose registration is subject to revocation or suspension or employees or officers of an applicant or registrant to submit to a statewide and nationwide criminal history record check. The nationwide criminal history record check must be conducted in the manner provided by section 12-60-24. All costs associated with obtaining a background check are the responsibility of the applicant or registrant.

SECTION 8. AMENDMENT. Section 32-28-02 of the North Dakota Century Code is amended and reenacted as follows:

32-28-02. Change of name of person - Petition - Criminal history record checks - Exceptions.

1. Any person desiring to change that person's name may file a petition in the district court of the county in which the person is a resident, setting forth:
 - a. That the petitioner has been a bona fide resident of the county for at least six months before the filing of the petition.
 - b. The reason for which the change of the petitioner's name is sought.
 - c. The name requested.
2. When an individual files a petition for a name change, the court shall determine whether the petitioner has a criminal history in this state or any other state. The court may require the petitioner to submit to a statewide and nationwide criminal history record check. The criminal history record check must be conducted in the manner provided for in section 12-60-24. All costs associated with the criminal history record check are the responsibility of the petitioner. This subsection does not apply to a request for a name change as part of an application for a marriage license under section 14-03-20, to a request for a name change in conjunction with the annulment of a marriage under chapter 14-04 or the dissolution or separation of a marriage under chapter 14-05, or to the change of a minor's name unless the court has reason to believe the request is being made to defraud or mislead, is not being made in good faith, will cause injury to an individual, or will compromise public safety. If the individual petitioning for a name change has a felony conviction under a law of this state or a law of another state or the federal government, the request is presumed to be made in bad faith, to defraud or mislead, to cause injury to an individual, or to compromise

public safety. The name change may not be granted unless the individual requesting the name change proves by clear and convincing evidence that the request is not based upon an intent to defraud or mislead, is made in good faith, will not cause injury to an individual, and will not compromise public safety.

3. The judge of the district court, upon being duly satisfied by affidavit or proof in open court of the truth of the allegations set forth in the petition, that there exists proper and reasonable cause for changing the name of the petitioner, and that thirty days' previous notice of the intended application has been given in the official newspaper of the county in which the petitioner resides, shall order a change of the name of the petitioner. Proper and reasonable cause does not exist if the court determines that the request for a name change is made to defraud or mislead, is not made in good faith, will cause injury to an individual, or will compromise public safety. The court may waive publication of the notice when the proposed change relates only to a first or given name as distinguished from a surname or upon evidence satisfactory to the court that the petitioner has been the victim of domestic violence as defined in section 14-07.1-01.
- ~~3-~~ 4. If the person whose name is to be changed is a minor, the court shall consider the appointment of a guardian ad litem, and notice of the intended application must be published in the official newspaper of the county in which the minor resides and, if different, the official newspaper of the county in which each of the minor's parents reside. If the minor has a noncustodial parent, a copy of the notice must be deposited in a post office in this state, postage prepaid, not later than ten days after the publication of the notice, and directed to the noncustodial parent's last reasonably ascertained post-office address. An affidavit of mailing of the notice prepared in accordance with the North Dakota Rules of Civil Procedure must be filed with the court.
5. If the court issues a name change order for a petitioner who has a criminal history in this or any other state, the court, within ten days after the issuance of the change of name order, shall report the name change to the bureau of criminal investigation.
6. The provisions of this section may not delay the granting of a marriage license under section 14-03-20, which may be granted without the change of name.

SECTION 9. A new section to chapter 43-12.1 of the North Dakota Century Code is created and enacted as follows:

Nursing licensure or registration - Criminal history record checks. The board may require each applicant for initial or renewed nursing licensure or registration and any licensee or registrant who is the subject of a disciplinary investigation or proceeding to submit to a statewide and nationwide criminal history record check. The nationwide criminal history record check must be conducted in the manner provided by section 12-60-24. All costs associated with obtaining a background check are the responsibility of the applicant, licensee, or registrant. The board may grant a nonrenewable temporary permit to an applicant for initial or renewed license or registration who submits to a criminal history record check as required by this chapter if the applicant has met all other licensure or registration requirements in accordance with subsection 2 of section 43-12.1-09.

⁶³ **SECTION 10.** A new subsection to section 43-15-10 of the North Dakota Century Code is created and enacted as follows:

To require information regarding an applicant's or licensee's fitness, qualifications, and previous professional record and performance from recognized data sources, including the national association of boards of pharmacy data bank, other data repositories, licensing and disciplinary authorities of other jurisdictions, professional education and training institutions, liability insurers, health care institutions, and law enforcement agencies be reported to the board. The board may require an applicant for licensure or a licensee who is the subject of a disciplinary investigation to submit to a statewide and nationwide criminal history record check. The nationwide criminal history record check must be conducted in the manner provided by section 12-60-24. All costs associated with obtaining a background check are the responsibility of the licensee or applicant.

SECTION 11. A new section to chapter 43-23 of the North Dakota Century Code is created and enacted as follows:

Criminal history record checks. The commission may require an applicant for licensure or a licensee whose licensure is subject to investigation by the commission to submit to a statewide and nationwide criminal history record check. The nationwide criminal history record check must be conducted in the manner provided by section 12-60-24. All costs associated with obtaining a background check are the responsibility of the applicant or licensee.

SECTION 12. A new section to chapter 43-41 of the North Dakota Century Code is created and enacted as follows:

Criminal history record and child abuse and neglect checks.

1. The board shall require each applicant for licensure and may require any licensee to submit to a statewide and nationwide criminal history record check. The nationwide criminal history record check must be conducted in the manner provided in section 12-60-24. All costs associated with obtaining a background check are the responsibility of the applicant.
2. The board shall require from each applicant for licensure and may require from any licensee written consent to a child abuse information index check and authorization for the department of human services or its designee to release to the board reports of decisions that services are required for child abuse or neglect filed pursuant to section 50-25.1-05.2. All information obtained from the department or its designee is confidential and closed to the public except that it may be disclosed for use in an adjudicative or judicial proceeding. All costs associated with obtaining the reports are the responsibility of the applicant or licensee.

⁶³ Section 43-15-10 was also amended by section 3 of House Bill No. 1054, chapter 363.

SECTION 13. AMENDMENT. Section 50-11-01 of the North Dakota Century Code is amended and reenacted as follows:

50-11-01. Foster care for children - License required. No person may furnish foster care for children for more than thirty days during a calendar year without first procuring a license to do so from the department. The mandatory provisions of this section requiring licensure do not apply when the care is provided in:

1. The home of a person related to the child by blood or marriage.
2. A home or institution under the management and control of the state or a political subdivision.
3. A home or facility furnishing room and board primarily to accommodate the child's educational or career and technical education needs.

A person providing care under subsection 1 shall submit to a criminal history record investigation as required under section 50-11-06.8.

SECTION 14. AMENDMENT. Section 50-11-02.4 of the North Dakota Century Code is amended and reenacted as follows:

50-11-02.4. Criminal history record investigation - Fingerprinting not required.

1.
 - a. ~~Except as provided in section 50-11-06.9, each facility providing foster care for children shall secure from any individual employed by the facility and any adult living in the facility, but not being provided care in the facility, identifying information other than fingerprints, that is appropriate to accomplish a statewide criminal history record investigation.~~
 - b. Except as provided in section 50-11-06.9, the department shall secure from any individual employed by, or providing care in, an adult family foster care facility and any adult living in the facility, but not being provided care in the facility, identifying information other than fingerprints, that is appropriate to accomplish a statewide criminal history record investigation.
2. Fingerprints need not be taken and a nationwide background check need not be made if an individual:
 - a. Has resided continuously in this state for eleven years or since reaching age eighteen, whichever is less;
 - b. Is on active United States military duty or has resided continuously in this state since receiving an honorable discharge; or
 - c. Is excused from providing fingerprints under rules adopted by the department.
3. The department shall verify that sufficient identifying information has been provided. Upon verification, the department shall submit that information to the bureau of criminal investigation.

4. The bureau of criminal investigation shall provide any criminal history record information that may lawfully be made available under chapter 12-60 to the department. The department shall provide a copy of any response received from the bureau of criminal investigation to the facility.
5. The department shall pay the cost of securing any criminal history record information made available under chapter 12-60.
6. The department shall consult with the bureau of criminal investigation to determine the identifying information, other than fingerprints, appropriate to accomplish a statewide criminal history record investigation.
7. The department may adopt emergency rules under this section without the finding otherwise required under section 28-32-02.

SECTION 15. AMENDMENT. Section 50-11-06.8 of the North Dakota Century Code is amended and reenacted as follows:

50-11-06.8. Criminal history record investigation - Fingerprinting required.

1. ~~Except as provided in sections 50-11-02.4 and 50-11-06.9, each~~ Each facility providing foster care for children shall secure, from a law enforcement agency or any other agency authorized to take fingerprints, two sets of fingerprints and shall provide all other information necessary to secure state criminal history record information and a nationwide background check under federal law from:
 - a. Any individual employed by, or providing care in, the facility; and
 - b. Any adult living in the facility, but not being provided care in the facility.
2. The facility shall assure that information obtained under subsection 1 is provided to the department.
3. Upon receipt of all fingerprints and necessary information relating to a license request, the department shall submit the information and fingerprints to the bureau of criminal investigation. The department shall provide a copy of any response received from the bureau of criminal investigation to the facility.
4. The bureau of criminal investigation shall request a nationwide background check from the federal bureau of investigation and, upon receipt of a response, provide the response of the federal bureau of investigation to the department. The bureau shall also provide any criminal history record information that may lawfully be made available under chapter 12-60 to the department.
5. Upon request by the operators of a facility, a law enforcement agency shall take fingerprints of persons described in this section if the request is made for purposes of this section.

6. The department shall pay the cost of securing fingerprints, any criminal history record information made available under chapter 12-60, and a nationwide background check.
7. An agency that takes fingerprints as provided under this section may charge a reasonable fee to offset the costs of the fingerprinting.
8. Except as provided in sections 50-11-02.4 and 50-11-06.9, the department shall secure from a law enforcement agency or any other agency authorized to take fingerprints, two sets of fingerprints and all other information necessary to secure state criminal history record information and a nationwide background check under federal law from:
 - a. Any individual employed by, or providing care in, an adult family foster care facility; and
 - b. Any adult living in an adult family foster care facility, but not being provided care in the facility.
9. A criminal history record investigation completed under this section may be used to satisfy the criminal history record investigation requirements of sections 50-11.3-01 and 50-12-03.2.

SECTION 16. AMENDMENT. Section 50-11-06.9 of the North Dakota Century Code is amended and reenacted as follows:

50-11-06.9. Criminal history record investigation - When not required. A criminal history record investigation may not be required, under section 50-11-06.8 or 50-11-02.4, of a family foster care home for ~~children or of a family foster care home for~~ adults licensed or approved on August 1, 1999, for so long as that home remains continuously licensed or approved.

SECTION 17. AMENDMENT. Section 50-11.3-01 of the North Dakota Century Code is amended and reenacted as follows:

50-11.3-01. Criminal history record investigation required.

1. Before appointment as a legal guardian under chapter 27-20, the individual to be appointed legal guardian must be subject to an assessment that includes the result of a criminal history record investigation made under this section. In addition, any adult living in the household of the individual to be appointed legal guardian must be subject to a criminal history record investigation made under this section.
2. ~~Except as provided in subsection 6, an~~ An individual to be appointed legal guardian or any adult living in that individual's household as described in subsection 1 shall secure, from a law enforcement agency or other agency authorized to take fingerprints, two sets of fingerprints and shall provide all other information necessary to secure state criminal history record information and a nationwide background check under federal law. Upon a request made under this section, a law enforcement agency shall take fingerprints of any individual to be appointed legal guardian or any adult living in that individual's household as described in subsection 1 and may charge a reasonable fee to offset the cost of fingerprinting.

3. An individual to be appointed legal guardian or any adult living in that individual's household as described in subsection 1 shall assure that information obtained under subsection 2 is provided to the department of human services.
 4. Upon receipt of all fingerprints and necessary information relating to a criminal history record investigation, the department of human services shall submit those fingerprints and that information to the bureau of criminal investigation.
 5. The bureau of criminal investigation shall request a nationwide background check from the federal bureau of investigation and, upon receipt of a response, provide the response of the federal bureau of investigation to the department of human services. The bureau of criminal investigation shall also provide any criminal history record information that may lawfully be made available under chapter 12-60 to the department of human services. The bureau of criminal investigation may charge a reasonable fee to offset the cost of providing any criminal history record information and may require payment of any charge imposed by the federal bureau of criminal investigation for a nationwide background check.
 6. ~~Fingerprints need not be taken and a nationwide background check need not be made if an individual:~~
 - a. ~~Has resided continuously in this state for eleven years or since reaching age eighteen, whichever is less;~~
 - b. ~~Is on active United States military duty or has resided continuously in this state since receiving an honorable discharge; or~~
 - c. ~~Is excused from providing fingerprints under rules adopted by the department of human services.~~
 7. The department of human services shall provide an individual to be appointed legal guardian or any adult living in that individual's household, who provided the department with information under subsection 2, with any information received under this section from the bureau of criminal investigation which the department of human services is not prevented by federal law from disclosing to the individual to be appointed legal or any adult living in that individual's household.
- 8- 7. The department of human services may adopt emergency rules under this section without the finding otherwise required under section 28-32-02.
8. A criminal history record investigation completed under this section may be used to satisfy the criminal history record investigation requirements of sections 50-11-06.8 and 50-12-03.2.

SECTION 18. AMENDMENT. Section 50-12-03.2 of the North Dakota Century Code is amended and reenacted as follows:

50-12-03.2. Criminal history record investigation required.

1. A child-placing agency shall include, in any adoptive home study report, the results of a criminal history record investigation made under this section. If the results reveal a conviction of a crime described in chapter 50-11.3, the home study report must include a determination that a home provided by the prospective adoptive parent is not a suitable home for the placement of any child and a recommendation that the petition for adoption be denied. A child-placing agency shall consider any criminal history record information available when making a recommendation in a home study report.
2. ~~Except as provided in subsection 6,~~ a A child-placing agency shall secure, from a law enforcement agency or any other agency authorized to take fingerprints, two sets of fingerprints and shall provide all other information necessary to secure state criminal history record information and a nationwide background check under federal law from any prospective adoptive parent and any adult living in the prospective adoptive parent's household. Upon a request of a child-placing agency, a law enforcement agency shall take fingerprints of any prospective adoptive parent and any adult living in the prospective adoptive parent's household for purposes of this section. An agency that takes fingerprints as provided under this section may charge a reasonable fee to offset the cost of fingerprinting.
3. The child-placing agency shall assure that information obtained under subsection 2 is provided to the department of human services and shall arrange payment to the bureau of criminal investigation sufficient to defray the cost of securing criminal history record information under this section.
4. Upon receipt of all fingerprints and necessary information relating to a criminal history record investigation, the department of human services shall submit those fingerprints and that information to the bureau of criminal investigation.
5. The bureau of criminal investigation shall request a nationwide background check from the federal bureau of investigation and, upon receipt of a response, provide the response of the federal bureau of investigation to the department of human services. The bureau of criminal investigation shall also provide any criminal history record information that may lawfully be made available under chapter 12-60 to the department.
6. ~~Fingerprints need not be taken and a nationwide background check need not be made if a prospective adoptive parent:~~
 - a. ~~Has resided continuously in this state for eleven years or since reaching age eighteen, whichever is less;~~
 - b. ~~Is on active United States military duty or has resided continuously in this state since receiving an honorable discharge; or~~

- e. ~~Is excused from providing fingerprints under rules adopted by the department of human services.~~
7. The department of human services shall provide the child-placing agency with any information, received under this section from the bureau of criminal investigation, that the department of human services is not prevented by federal law from disclosing to the child-placing agency.
8. 7. The department of human services may adopt emergency rules under this section without the finding otherwise required under section 28-32-02.
8. A criminal history record investigation completed under this section may be used to satisfy the criminal history record investigation requirements of sections 50-11-06.8 and 50-11.3-01.

⁶⁴ **SECTION 19. AMENDMENT.** Subsection 4 of section 53-06.2-05 of the North Dakota Century Code is amended and reenacted as follows:

4. License all participants in the racing and simulcast parimutuel wagering industry and require and obtain information the commission deems necessary from license applicants. The commission may obtain a statewide and nationwide criminal history record check from the bureau of criminal investigation, without charge, criminal history record information as required in the licensing process for the purpose of determining suitability or fitness for a license. The nationwide check must be conducted in the manner provided in section 12-60-24. All costs associated with obtaining a background check are the responsibility of the applicant for a license.

⁶⁵ **SECTION 20. AMENDMENT.** Section 54-59-20 of the North Dakota Century Code is amended and reenacted as follows:

54-59-20. Employees of the department - Security background information. The chief information officer shall require as a condition of employment with the department that individuals who have unescorted physical access to the facilities or other security sensitive areas of the department designated by the chief information officer submit to a criminal history record check in accordance with section 12-60-24. The chief information officer may require as a condition of contracting with the department or other state agency or department with respect to an information technology project that any individual employed by the contractor or a subcontractor to perform the work under the contract submit to a criminal history record check in accordance with section 12-60-24.

SECTION 21. DEPARTMENT OF CORRECTIONS AND REHABILITATION FACILITIES. Notwithstanding North Dakota Century Code section 54-23.3-04, the director of the department of corrections and rehabilitation may not advertise for bids

⁶⁴ Section 53-06.2-05 was also amended by section 3 of House Bill No. 1126, chapter 448.

⁶⁵ Section 54-59-20 was also amended by section 6 of Senate Bill No. 2037, chapter 491.

or issue a request for qualifications for a construction manager for construction of a new correctional facility or remodeling of the existing state penitentiary until the concept is authorized by the emergency commission and approved by the budget section.

SECTION 22. EXPIRATION DATE. Section 21 of this Act is effective through June 30, 2009, and after that date is ineffective.

SECTION 23. EMERGENCY. Sections 3, 13, 14, 15, 16, 17, and 18 of this Act are declared to be an emergency measure.

Approved April 30, 2007
Filed May 1, 2007

CHAPTER 116**HOUSE BILL NO. 1504**

(Representatives Charging, Froelich, Onstad)
(Senators Marcellais, Warner)

TRIBAL POLICE OFFICER LICENSING

AN ACT to create and enact a new section to chapter 12-63 of the North Dakota Century Code, relating to tribal police officers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 12-63 of the North Dakota Century Code is created and enacted as follows:

Tribal police officers.

1. A tribal police officer of a federally recognized Indian tribe in this state who meets the requirements of this chapter and the rules adopted by the board is eligible for a peace officer license or part-time peace officer license.
2. The board shall issue a peace officer license or part-time peace officer license to a tribal police officer who is eligible for a peace officer license or part-time peace officer license under this section and who has paid the prescribed license fee if:
 - a. The tribal police officer has been appointed as a special deputy in accordance with section 11-15-02;
 - b. The tribal police officer is employed by the state or a political subdivision; or
 - c. There is an agreement between the state or a political subdivision and the tribe for tribal police officers to perform law enforcement services.
3. A tribal police officer who is a member of a police force of a tribal government and who is licensed under this section may exercise the powers of a peace officer of this state within the exterior boundaries of the reservation, or off the reservation, in accordance with the terms and conditions of the special deputy appointment, the employment agreement, or the agreement between the state or political subdivision and the tribe.
4. A tribal police officer who has a peace officer license under this section is subject to this chapter and the rules adopted by the board, including requirements for license renewal or reinstatement, annual sidearm qualification, and continuing education.
5. The state or political subdivision is not liable for any act or omission of a tribal police officer exercising peace officer powers authorized by an agreement between the state or a political subdivision and a tribe.

6. This section does not diminish or expand the jurisdiction of any tribe or the state.

Approved May 1, 2007
Filed May 2, 2007

CHAPTER 117**SENATE BILL NO. 2029**

(Legislative Council)

(Commission on Alternatives to Incarceration)

**ELECTRONIC HOME DETENTION AND GPS
MONITORING**

AN ACT to create and enact a new chapter to title 12 of the North Dakota Century Code, relating to electronic home detention and global positioning system monitoring for certain offenders; and to amend and reenact subdivision b of subsection 3 of section 12.1-08-06 of the North Dakota Century Code, relating to the definition of official detention.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 12 of the North Dakota Century Code is created and enacted as follows:

Definitions. As used in this chapter:

1. "Approved electronic monitoring device" means a global positioning system device or other electronic monitoring device approved by the department or the court which is primarily intended to actively or passively monitor, record, and transmit confirmation of a participant's location or the participant's presence or nonpresence in the home.
2. "Court" means the district or municipal court having criminal or juvenile jurisdiction to place a participant in electronic home detention or global positioning system monitoring.
3. "Department" means the department of corrections and rehabilitation.
4. "Home detention" means the confinement of an individual adjudicated, convicted, or charged with an offense to the individual's place of residence under the terms and conditions established by the court or the department.
5. "Participant" means an adult or juvenile offender placed into an electronic monitoring program.

Application. Except for an offense for which the law requires mandatory incarceration, electronic home detention or global positioning system monitoring may be used for adult and juvenile offenders as selected by the court, the parole board, or the department for adult offenders as an intermediate measure of supervised probation, and for delinquent juvenile offenders in the custody of the division of juvenile services as a condition of community placement. Electronic home detention and global positioning system monitoring may be used for the following:

1. Pretrial or preadjudicatory detention.
2. Probation.

3. Community corrections approved by the court.
4. Parole.
5. Work release under chapter 12-44.1 or approved by the parole board.
6. Institutional release approved by the court or the parole board.
7. County jail diversion approved by the court.
8. Sex offender containment.

Program description.

1. Subject to the availability of funding, the court or, with the approval of the court, the department or a correctional facility subject to chapter 12-44.1 may implement an electronic home detention and global positioning system monitoring program.
2. A participant may be required to remain within the interior premises or within the property boundaries of the participant's residence at all times during the hours designated by the court, the parole board, or the department. Instances of approved absences from the residence may include:
 - a. Work or employment approved by the court, the parole board, or the department or traveling to or from approved employment;
 - b. Unemployment and seeking employment approved for the participant by the court, the parole board, or the department;
 - c. Medical, psychiatric, mental health treatment, counseling, or other treatment programs approved for the participant by the court, the parole board, or the department;
 - d. Attendance at an educational institution or a program approved for the participant by the court, the parole board, or the department;
 - e. Attendance at a regularly scheduled religious service at a place of worship;
 - f. Participation in a community work release or community service program approved for the participant by the court, the parole board, or the department; or
 - g. For another compelling reason consistent with the public interest, as approved by the court, the parole board, or the department.
3. A participant shall admit any individual or agent designated by the court, the parole board, or the department into the participant's residence at any time for purposes of verifying the participant's compliance with the conditions of the participant's detention.
4. A participant shall make the necessary arrangements to allow for any individual or agent as designated by the court, the parole board, or the department to visit the participant's place of education or employment at

any time, based upon the approval of the educational institution or employer, for the purpose of verifying the participant's compliance with the conditions of the participant's detention.

5. A participant shall acknowledge and participate in the approved electronic monitoring program as designated by the court, the parole board, or the department at any time for the purpose of verifying the participant's compliance with the conditions of the participant's detention.
6. A participant shall maintain the following:
 - a. A monitoring device in the participant's residence or on the participant's person, or both; and
 - b. A working telephone in the participant's residence or in the absence of a telephone a monitoring device in the participant's residence and on the participant's person.
7. A participant shall obtain approval from the court, the parole board, or the department before the participant changes residence or the schedule described in subsection 2.
8. The court, the parole board, or the department shall inform a participant that violation of the order for home detention may subject the participant to prosecution or adjudication for the offense of escape from official detention.
9. A participant shall abide by other conditions as set by the court, the parole board, or the department.
10. An approved electronic monitoring device may be used to record a conversation between a participant and the monitoring device or the participant and the individual supervising the participant solely for the purpose of identification and not for the purpose of eavesdropping or conducting any other illegally intrusive monitoring.

Consent of the participant. Before entering an order for commitment for electronic home detention or global positioning system monitoring, the court, the parole board, or the department shall inform the participant and other individuals residing in the residence of the nature and extent of the approved electronic monitoring devices by securing the written consent of the participant in the program and ensuring that the approved electronic devices be minimally intrusive upon the privacy of the participant and other individuals residing in the residence.

SECTION 2. AMENDMENT. Subdivision b of subsection 3 of section 12.1-08-06 of the North Dakota Century Code is amended and reenacted as follows:

- b. "Official detention" means arrest, custody following surrender in lieu of arrest, detention in any facility for custody of persons under charge or conviction of an offense or alleged or found to be delinquent, detention under a law authorizing civil commitment in lieu of criminal proceedings or authorizing such detention while criminal proceedings are held in abeyance, detention for extradition, home detention as authorized by section 1 of this Act, or custody for purposes incident to the foregoing, including transportation, medical diagnosis or treatment, court appearances, work, and recreation, or being absent without permission from any release granted while under custody of a sentence such as work or education release, community confinement, or other temporary leaves from a correctional or placement facility, ~~but "official"~~ "Official" detention does not include supervision on probation or parole or constraint incidental to release.

Approved April 3, 2007

Filed April 4, 2007