

Sixty-first
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1238

Introduced by

Representatives Nelson, Hofstad, S. Meyer

Senators Lyson, Triplett

1 A BILL for an Act to create and enact a new section to chapter 12-44.1 of the North Dakota
2 Century Code, relating to the housing of out-of-state inmates by correctional facilities; to amend
3 and reenact section 12-44.1-02 of the North Dakota Century Code, relating to the housing of
4 out-of-state inmates by correctional facilities; and to declare an emergency.

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

6 **SECTION 1. AMENDMENT.** Section 12-44.1-02 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **12-44.1-02. Establishing correctional facilities - Correctional facility contracts -**
9 **Regional corrections centers.**

- 10 1. For the confinement of lawfully committed persons, the governing body of a county
11 or city shall ~~do or shall participate in the doing of, one of the following:~~
- 12 ~~4.~~ a. ~~Establishing and maintaining~~ Establish and maintain a correctional facility at
13 county or city expense; i
- 14 ~~2.~~ b. ~~Contracting~~ Contract for correctional facility services and use of correctional
15 facilities with another county or city ~~maintaining that maintains~~ a correctional
16 facility or with the state or federal government; or
- 17 ~~3.~~ c. ~~Establishing and maintaining~~ Establish and maintain, pursuant to chapter
18 54-40 or 54-40.3 and this chapter, a correctional facility in conjunction with
19 other counties and cities.
- 20 ~~4.~~ 2. A Subject to the requirements of section 2 of this Act, a county or city may contract
21 with a state or a county or city of another state for:
- 22 a. ~~The~~ the confinement of lawfully committed state, county, or city inmates from
23 the other state; or,

- 1 ~~b-~~ 3. ~~The A county or city may contract with a state or a county or city of another state~~
2 for the confinement of lawfully committed North Dakota inmates in a county, city, or
3 regional correctional facility of another state.
- 4 ~~5-~~ 4. A city or county may contract with another correctional facility in this state for
5 correctional services for purposes of safety, security, health and medical reasons,
6 or for correctional facility administration.
- 7 ~~6-~~ 5. A city or county may contract for the confinement of inmates lawfully sentenced by
8 a tribal court.
- 9 ~~7-~~ 6. A city or county may contract for correctional facility services with a privately
10 operated correctional facility. Contracts with private agencies ~~providing that~~
11 provide correctional facility services may be entered into for up to seven years.

12 **SECTION 2.** A new section to chapter 12-44.1 of the North Dakota Century Code is
13 created and enacted as follows:

14 **Contracts for out-of-state inmates - Requirements.** A correctional facility that
15 contracts with another state or a county or city of another state for the confinement of lawfully
16 committed state, county, or city inmates from the other state is subject to the following
17 conditions:

- 18 1. Before a correctional facility may accept an out-of-state inmate, the governing
19 body of the correctional facility shall approve and sign the contract that authorizes
20 housing out-of-state inmates.
- 21 2. Before accepting an out-of-state inmate, the administrator of the correctional
22 facility shall review the out-of-state inmate's file and request a nationwide criminal
23 history background check. The administrator may not accept:
- 24 a. Any inmate with a history of escape or attempted escape from official
25 detention as defined under section 12.1-08-06 or under an equivalent federal
26 statute or statute of another state;
- 27 b. Any inmate with a history of institutional violence, including violence against
28 staff or other inmates;
- 29 c. Any inmate who has pled guilty to, or has been convicted of, a crime of
30 violence. For the purpose of this section, a crime of violence includes
31 kidnapping and any violation of any state or federal law when the inmate

- 1 knowingly or intentionally inflicted, attempted to inflict, or threatened serious
2 bodily injury, or death, or when the inmate was armed with a firearm,
3 dangerous weapon, or destructive device;
- 4 d. An inmate who has been convicted of aggravated assault involving
5 substantial or serious bodily injury, and the offense is a felony under the laws
6 of the sending state or under federal law, unless the administrator has
7 obtained the approval of the state warden in advance of the placement. The
8 state of North Dakota and any officer or employee of the department is
9 immune from any civil liability for damages for personal injury or property
10 damage caused by an inmate placed in a correctional facility under this
11 subsection;
- 12 e. Any inmate who has pled guilty to, or has been convicted of, a sexual offense
13 in which the victim was a child under the age of fifteen years, or the inmate
14 compelled, or attempted to compel, the victim to submit by force or by threat
15 of imminent death, serious bodily injury, or kidnapping, or if in the course of
16 the offense, the inmate inflicted serious or substantial bodily injury on the
17 victim; or
- 18 f. Any inmate who has a documented affiliation as a member of a criminal street
19 gang as defined under section 12.1-06.2-01 or equivalent statute of another
20 state or under federal law.
- 21 3. Out-of-state inmates may not be permitted to leave the premises of the
22 correctional facility except to comply with a court order or to receive medical care.
- 23 4. The correctional facility may not house out-of-state inmates in the same cells with
24 inmates of the department of corrections and rehabilitation.
- 25 5. A contract under this section must include a requirement that if an out-of-state
26 inmate is charged with committing a crime while in the custody of the correctional
27 facility, the sending state shall take custody of the inmate upon the request of the
28 correctional facility and the written consent of the state's attorney of the county
29 where the correctional facility is located. If the sending state takes custody of the
30 inmate and the state's attorney requests the inmate be returned to this state for
31 prosecution, the correctional facility is responsible for the cost of returning the

1 inmate to this state for prosecution. If an out-of-state inmate is convicted and
2 sentenced to the legal and physical custody of the department of corrections and
3 rehabilitation for a crime committed while in the custody of the correctional facility,
4 the correctional facility shall reimburse the department for its costs to confine the
5 inmate until completion of the term of imprisonment.

6 6. The department of corrections and rehabilitation may not assume custody of an
7 out-of-state inmate placed in a correctional facility in this state under a contract
8 between the governing body of a correctional facility and a sending state except
9 under a lawful sentence and judgment of a district court of this state and after
10 notice to the sending state.

11 7. If the state or a political subdivision of this state incurs any cost in the investigation
12 or prosecution of an offense committed by an out-of-state inmate while in the
13 custody of a contracting correctional facility, the correctional facility shall reimburse
14 the state or political subdivision for the costs incurred.

15 8. A contract under this section must include a requirement that the sending state
16 shall notify the correctional facility of the expiration date of the out-of-state inmate's
17 imprisonment when the sending state transfers the out-of-state inmate to the
18 correctional facility and that the sending state shall retake the out-of-state inmate
19 before the expiration date of the out-of-state inmate's imprisonment.

20 9. For purposes of this section, "out-of-state inmate" means an individual who is
21 convicted of a crime in a state other than North Dakota; "sending state" means
22 another state and includes a city or county of another state; and "correctional
23 facility" means a facility subject to this chapter.

24 10. The correctional facility shall defend, indemnify, and hold harmless the state of
25 North Dakota, its agencies, officers, and employees from and against claims for
26 personal injury or property damage caused by an out-of-state inmate placed in a
27 correctional facility under this section.

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