

**FIRST ENGROSSMENT  
with Senate Amendments**

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;:
- 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 county or city~~ Subject to the requirements of section 2 of this Act, the governing  
21 body of a correctional facility may contract with a state or a regional correctional  
22 center, county, or city of another state for:
- 23 ~~a.~~ The the confinement of lawfully committed state, county, or city inmates from  
24 the other state;: ~~or.~~

1        ~~b-~~ 3. The governing body of a correctional facility may contract with a state or a regional  
2                    correctional center, county, or city of another state for the confinement of lawfully  
3                    committed North Dakota inmates in a county, city, or regional correctional facility of  
4                    another state.

5        ~~5-~~ 4. ~~A city or county~~ The governing body of a correctional facility may contract with  
6                    another correctional facility in this state for correctional services for purposes of  
7                    safety, security, health and medical reasons, or for correctional facility  
8                    administration.

9        ~~6-~~ 5. ~~A city or county~~ The governing body of a correctional facility may contract for the  
10                   confinement of inmates lawfully sentenced by a tribal court.

11       ~~7-~~ 6. ~~A city or county~~ The governing body of a correctional facility may contract for  
12                   correctional facility services with a privately operated correctional facility.  
13                   Contracts with private agencies providing that provide correctional facility services  
14                   may be entered into for up to seven years.

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

17                **Contracts for out-of-state inmates - Requirements.** The governing body of a  
18                correctional facility that contracts with another state or a regional correctional center, county, or  
19                city of another state for the confinement of lawfully committed state, county, or city inmates  
20                from the other state is subject to the following conditions:

21                1. Before a correctional facility may accept an out-of-state inmate, the governing  
22                    body of the correctional facility shall approve and sign the contract that authorizes  
23                    housing out-of-state inmates.

24                2. Before accepting an out-of-state inmate, the administrator of the correctional  
25                    facility shall review the out-of-state inmate's file and request a nationwide criminal  
26                    history background check. The administrator may not accept:

27                    a. Any inmate with a history of escape or attempted escape from official  
28                    detention as defined under section 12.1-08-06 or under an equivalent federal  
29                    statute or statute of another state;

30                    b. Any inmate with a history of institutional violence, including violence against  
31                    staff or other inmates;

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

- 1           where the correctional facility is located. If the sending state takes custody of the  
2           inmate and the state's attorney requests the inmate be returned to this state for  
3           prosecution, the correctional facility is responsible for the cost of returning the  
4           inmate to this state for prosecution. If an out-of-state inmate is convicted and  
5           sentenced to the legal and physical custody of the department of corrections and  
6           rehabilitation for a crime committed while in the custody of the correctional facility,  
7           the correctional facility shall reimburse the department for its costs to confine the  
8           inmate until completion of the term of imprisonment.
- 9           6. The department of corrections and rehabilitation may not assume custody of an  
10           out-of-state inmate placed in a correctional facility in this state under a contract  
11           between the governing body of a correctional facility and a sending state except  
12           under a lawful sentence and judgment of a district court of this state and after  
13           notice to the sending state.
- 14           7. If the state or a political subdivision of this state incurs any cost in the investigation  
15           or prosecution of an offense committed by an out-of-state inmate while in the  
16           custody of a contracting correctional facility, the correctional facility shall reimburse  
17           the state or political subdivision for the costs incurred.
- 18           8. A contract under this section must include a requirement that the sending state  
19           shall notify the correctional facility of the expiration date of the out-of-state inmate's  
20           imprisonment when the sending state transfers the out-of-state inmate to the  
21           correctional facility and that the sending state shall retake the out-of-state inmate  
22           before the expiration date of the out-of-state inmate's imprisonment.
- 23           9. For purposes of this section, "out-of-state inmate" means an individual who is  
24           convicted of a crime in a state other than North Dakota; "sending state" means  
25           another state and includes a city, county, or regional correctional center of another  
26           state; and "correctional facility" means a facility subject to this chapter.
- 27           10. The correctional facility shall defend, indemnify, and hold harmless the state of  
28           North Dakota, its agencies, officers, and employees from and against claims for  
29           personal injury or property damage caused by an out-of-state inmate placed in a  
30           correctional facility under this section.

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