

Sixty-seventh  
Legislative Assembly  
of North Dakota

## ENGROSSED HOUSE BILL NO. 1410

Introduced by

Representatives Vetter, Damschen, Karls, Klemin, B. Koppelman, K. Koppelman, Pollert,  
Satrom

Senators Kannianen, Meyer, Vedaa

1 A BILL for an Act to create and enact a new section to chapter 25-01 of the North Dakota  
2 Century Code, relating to prohibiting department of human services from substantially  
3 burdening the exercise of religion by a patient or resident under the department's care; to  
4 amend and reenact sections 12-44.1-14 and 12-47-26, subsection 12 of section 23-01-05, and  
5 section 37-17.1-05 of the North Dakota Century Code, relating to prohibiting a correctional  
6 facility or facility under the control of the department of corrections and rehabilitation from  
7 substantially burdening the exercise of religion by an offender in the facility's custody, the state  
8 health officer's authority, and the governor's authority during a declared disaster or emergency;  
9 and to provide a penalty.

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

11 **SECTION 1. AMENDMENT.** Section 12-44.1-14 of the North Dakota Century Code is  
12 amended and reenacted as follows:

13 **12-44.1-14. Inmate rights.**

- 14 1. Subject to reasonable safety, security, discipline, and correctional facility  
15 administration requirements, the administrator of each correctional facility shall:
- 16 4. a. Ensure inmates have confidential access to attorneys and their authorized  
17 representatives.
- 18 2. b. Ensure that inmates are not subjected to discrimination based on race, national  
19 origin, color, creed, sex, economic status, or political belief.
- 20 3. c. Ensure equal access by male and female inmates to programs and services  
21 available through the correctional facility.
- 22 4. d. Ensure access to mail, telephone use, and visitors.
- 23 5. e. Ensure that inmates are properly fed, clothed, and housed.

1       6.   f.   Ensure that inmates have adequate medical care. Adequate medical care means  
2            necessary treatment for a medical or health condition for which serious pain or  
3            hardship would occur if care is not given. A correctional facility may not deny  
4            adequate medical care to an inmate who does not have health insurance or does  
5            not have the ability to pay the costs of the medical or health care.

6       7.   g.   Ensure that inmates may reasonably exercise their religious beliefs.

7       2.   Correctional facility staff or an administrator of a correctional facility may not:

8       a.   Substantially burden the exercise of religion by an offender in the custody of the  
9            correctional facility unless the burden is in furtherance of a compelling  
10          governmental interest and is the least restrictive means of furthering that  
11          compelling governmental interest;

12       b.   Treat religious conduct more restrictively than any comparable secular conduct  
13          unless the correctional facility demonstrates the disparate treatment is necessary  
14          to further a compelling penological interest and is the least restrictive means of  
15          furthering that compelling penological interest; or

16       c.   Deny clergy access to an offender in the custody of the correctional facility for the  
17          purpose of providing religious services unless the correctional facility  
18          demonstrates the denial is necessary to further a compelling penological interest  
19          and is the least restrictive means of furthering that compelling penological  
20          interest.

21       3.   An offender in the custody of a correctional facility claiming to be aggrieved by a  
22          violation of subsection 2 may assert, after exhausting appropriate administrative  
23          remedies, that violation as a claim or defense in a judicial proceeding and obtain  
24          appropriate relief, including costs and reasonable attorney's fees.

25       **SECTION 2. AMENDMENT.** Section 12-47-26 of the North Dakota Century Code is  
26       amended and reenacted as follows:

27       **12-47-26. Uniform kindly treatment of inmates.**

28       1.   The warden and all officers of the penitentiary uniformly shall treat the inmates  
29          thereof of the penitentiary with kindness, and the warden shall require of the officers  
30          and guards that, in the execution of ~~their~~the officers' and guards' respective duties,  
31          ~~they~~the officers and guards in all cases shall refrain from boisterous and unbecoming

1 language in giving their orders and commands. ~~No corporal~~Corporal or other painful or  
2 unusual punishment ~~shall~~may not be inflicted upon the inmates of the penitentiary for  
3 violation of the rules and regulations ~~thereof~~of the penitentiary.

4 2. A facility under the control of the department of corrections and rehabilitation may not:

5 a. Substantially burden the exercise of religion by an offender in the custody of the  
6 facility unless the burden is in furtherance of a compelling governmental interest  
7 and is the least restrictive means of furthering that compelling governmental  
8 interest;

9 b. Treat religious conduct more restrictively than any comparable secular conduct  
10 unless the facility demonstrates the disparate treatment is necessary to further a  
11 compelling penological interest and is the least restrictive means of furthering  
12 that compelling penological interest; or

13 c. Deny clergy access to an offender in the custody of the facility for the purpose of  
14 providing religious services unless the facility demonstrates the denial is  
15 necessary to further a compelling penological interest and is the least restrictive  
16 means of furthering that compelling penological interest.

17 3. An offender in the custody of a facility claiming to be aggrieved by a violation of  
18 subsection 2 may assert that violation as a claim or defense in a judicial proceeding  
19 and obtain appropriate relief, including costs and reasonable attorney's fees.

20 **SECTION 3. AMENDMENT.** Subsection 12 of section 23-01-05 of the North Dakota Century  
21 Code is amended and reenacted as follows:

22 12. Issue any orders relating to disease control measures deemed necessary to prevent  
23 the spread of communicable disease. Disease control measures may include special  
24 immunization activities and decontamination measures. Written orders issued under  
25 this section shall have the same effect as a physician's standing medical order. The  
26 state health officer may apply to the district court in a judicial district where a  
27 communicable disease is present for an injunction canceling public events or closing  
28 places of business. On application of the state health officer showing the necessity of  
29 such cancellation, the court may issue an ex parte preliminary injunction, pending a  
30 full hearing.

- 1           a. Notwithstanding any other provision of law, an order issued pursuant to this  
2           subsection may not:  
3           (1) Substantially burden a person's exercise of religion unless the order is in  
4           furtherance of a compelling governmental interest and is the least restrictive  
5           means of furthering that compelling governmental interest;  
6           (2) Treat religious conduct more restrictively than any secular conduct of  
7           reasonably comparable risk, unless the government demonstrates through  
8           clear and convincing evidence that a particular religious activity poses an  
9           extraordinary health risk; or  
10          (3) Treat religious conduct more restrictively than comparable secular conduct  
11          because of alleged economic need or benefit.  
12          b. A person claiming to be aggrieved by a violation of subdivision a may assert,  
13          after exhausting appropriate administrative remedies, that violation as a claim or  
14          defense in a judicial proceeding and obtain appropriate relief, including costs and  
15          reasonable attorney's fees.

16          **SECTION 4.** A new section to chapter 25-01 of the North Dakota Century Code is created  
17 and enacted as follows:

18          **Religious exercise of patient or resident under the care of the department of human**  
19 **services.**

- 20          1. The department of human services may not:  
21          a. Substantially burden the exercise of religion by patient or resident under the  
22          department's care unless the burden is in furtherance of a compelling  
23          governmental interest and is the least restrictive means of furthering that  
24          compelling governmental interest;  
25          b. Treat religious conduct more restrictively than any comparable secular conduct  
26          unless the department demonstrates the disparate treatment is necessary to  
27          further a compelling penological interest and is the least restrictive means of  
28          furthering that compelling penological interest; or  
29          c. Deny clergy access to a patient or resident for the purpose of providing religious  
30          services unless the department demonstrates the denial is necessary to further a

1                   compelling penological interest and is the least restrictive means of furthering  
2                   that compelling penological interest.

3           2. A patient or resident of the department of human services claiming to be aggrieved by  
4           a violation of this section, may assert, after exhausting appropriate administrative  
5           remedies, that violation as a claim or defense in a judicial proceeding and obtain  
6           appropriate relief, including costs and reasonable attorney's fees.

7           **SECTION 5. AMENDMENT.** Section 37-17.1-05 of the North Dakota Century Code is  
8 amended and reenacted as follows:

9           **37-17.1-05. The governor and disasters or emergencies - Penalty.**

- 10           1. The governor is responsible to minimize or avert the adverse effects of a disaster or  
11           emergency.
- 12           2. Under this chapter, the governor may issue executive orders and proclamations, and  
13           amend or rescind them. Executive orders, proclamations, and regulations have the  
14           force of law.
- 15           3. A disaster or emergency must be declared by executive order or proclamation of the  
16           governor if the governor determines a disaster has occurred or a state of emergency  
17           exists. The state of disaster or emergency shall continue until the governor determines  
18           that the threat of an emergency has passed or the disaster has been dealt with to the  
19           extent that emergency conditions no longer exist. The legislative assembly by  
20           concurrent resolution may terminate a state of disaster or emergency at any time. All  
21           executive orders or proclamations issued under this subsection must indicate the  
22           nature of the disaster or emergency, the area or areas threatened, the conditions  
23           which have brought it about or which make possible termination of the state of disaster  
24           or emergency. An executive order or proclamation must be disseminated promptly by  
25           means calculated to bring its contents to the attention of the general public, unless the  
26           circumstances attendant upon the disaster or emergency prevent or impede such  
27           dissemination, and it must be promptly filed with the department of emergency  
28           services, the secretary of state, and the county or city auditor of the jurisdictions  
29           affected.
- 30           4. An executive order or proclamation of a state of disaster or emergency shall activate  
31           the state and local operational plans applicable to the political subdivision or area in

1 question and be authority for the deployment and use of any forces to which the plan  
2 or plans apply and for use or distribution of any supplies, equipment, and materials  
3 and facilities assembled, stockpiled, or arranged to be made available pursuant to this  
4 chapter or any other provision of law relating to a disaster or emergency.

5 5. During the continuance of any state of disaster or emergency declared by the  
6 governor, the governor is commander in chief of the emergency management  
7 organization and of all other forces available for emergency duty. To the greatest  
8 extent practicable, the governor shall delegate or assign command authority by prior  
9 arrangement embodied in appropriate executive orders or emergency operational  
10 plans, but nothing herein restricts the governor's authority to do so by orders issued at  
11 the time of the disaster or emergency.

12 6. In addition to any other powers conferred upon the governor by law, the governor may:  
13 a. Suspend the provisions of any regulatory statute prescribing the procedures for  
14 conduct of state business, or the orders, rules, or regulations of any state agency,  
15 if strict compliance with the provisions of any statute, order, rule, or regulation  
16 would in any way prevent, hinder, or delay necessary action in managing a  
17 disaster or emergency.  
18 b. Utilize all available resources of the state government as reasonably necessary  
19 to manage the disaster or emergency and of each political subdivision of the  
20 state.  
21 c. Transfer the direction, personnel, or functions of state departments and agencies  
22 or units thereof for the purpose of performing or facilitating emergency  
23 management activities.  
24 d. Subject to any applicable requirements for compensation under section  
25 37-17.1-12, commandeer or utilize any private property if the governor finds this  
26 necessary to manage the disaster or emergency.  
27 e. Direct and compel the evacuation of all or part of the population from any stricken  
28 or threatened area within the state if the governor deems this action necessary  
29 for the preservation of life or other disaster or emergency mitigation, response, or  
30 recovery.

- 1 f. Prescribe routes, modes of transportation, and destinations in connection with an  
2 evacuation.
- 3 g. Control ingress and egress in a designated disaster or emergency area, the  
4 movement of persons within the area, and the occupancy of premises therein.
- 5 h. Suspend or limit the sale, dispensing, or transportation of alcoholic beverages,  
6 explosives, and combustibles, not including ammunition.
- 7 i. Make provision for the availability and use of temporary emergency housing.
- 8 j. Make provisions for the control, allocation, and the use of quotas for critical  
9 shortages of fuel or other life and property sustaining commodities.
- 10 k. Designate members of the highway patrol, North Dakota national guard, or others  
11 trained in law enforcement, as peace officers.
- 12 7. Any person who willfully violates any provision of an executive order or proclamation  
13 issued by the governor pursuant to this chapter is guilty of an infraction.
- 14 8. AuthorizeThe governor may authorize the adjutant general to recall to state active  
15 duty, on a volunteer basis, former members of the North Dakota national guard. Those  
16 recalled must possess the qualifications required by the disaster or emergency. Recall  
17 under this subsection is effective only for the duration of the disaster or emergency  
18 and recalled personnel will be released from state active duty upon competent  
19 authority that the requirement of their service under this subsection has passed.  
20 Compensation for personnel recalled under this subsection will be based upon section  
21 37-07-05.
- 22 9. Notwithstanding any other provision of law, an order, proclamation, rule, or regulation  
23 issued pursuant to this section may not:
- 24 a. Substantially burden a person's exercise of religion unless the order is in  
25 furtherance of a compelling governmental interest and is the least restrictive  
26 means of furthering that compelling governmental interest;
- 27 b. Treat religious conduct more restrictively than any secular conduct of reasonably  
28 comparable risk, unless the government demonstrates through clear and  
29 convincing evidence that a particular religious activity poses an extraordinary  
30 health risk; or

- 1           c. Treat religious conduct more restrictively than comparable secular conduct  
2                 because of alleged economic need or benefit.
- 3        10. A person claiming to be aggrieved by a violation of subsection 9 may assert that  
4        violation as a claim or defense in a judicial proceeding and obtain appropriate relief,  
5        including costs and reasonable attorney's fees.