

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION  
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2/48

2005 SENATE JUDICIARY

SB 2148

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2148

Senate Judiciary Committee

Conference Committee

Hearing Date January 12, 2005

Tape Number	Side A	Side B	Meter #
1	X		0.0- 5700

Committee Clerk Signature *Maria L. Solberg*

Minutes: Relating to definitions under the department of corrections and rehabilitation's in regards to visiting times.

**Senator John (Jack) T. Traynor**, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following testimony:

**Testimony In Support of the Bill:**

**Ken Sornson** - Assistant Attorney General. Introduced the bill (meter 110) and gave testimony Att. #1. Introduced amendments - Att. #2.

**Sen. Trenbeath** questioned if in agreement with this amendment what is the present plan to try to fulfill the original visitation requirements..

**Patrick Branson** - Deputy Warden Bismarck State Penitentiary. (meter 651) spoke of what is currently being done at the prison and how due to space issues it has to be this way. Discussed scheduling issues; the minimum guarantee is MRCC 2 days, Gen. Visitation 5 days. This is most problematic in the "behind the glass" MRCC visiting area only. The problem with restrictive

Senate Judiciary Committee  
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visiting is that the number of maximum security individuals have tripled. With these we will stick to the five days but will have go with a schedule and limit how many hours you can visit someone. Until we build a bigger facility we will continue to be in violation of the ruling. **Sen. Traynor** questioned how this bill (meter 880) would effect morale. In earlier studies there seems to be very little impact. **Senator Triplett** further asked what it would take to meet this requirement (meter 989) discussion. Holiday's are harder to work around. The majority of visitations are like money. When they get the time they spend it (beginning of month) so we try to schedule it to spread it out.

**Sen. Nelson** asked for a review of inmates and there jobs at the prison .(meter 1153) Discussion on "hard labor" and shall work rather than "may" work . Reviewed of inmates with restriction and type of work available. Receive \$1.45 day to \$3.60 day (kitchen) There is a written/verble format t a staff member's process to discipline an inmate. **Senator Syverson** asked what happened to the "prison farm". **Sen. Traynor** stated that visits are important for the prisoners morale.

**Elane Little** - Bismarck State Penitentiary (meter 1758) Spoke in support of the bill  
**Sen. Nelson** questioned the "clothing" at release (meter 2050) The prison only provides it if it is needed. Further discussion on "may and "shall" provide work (meter 2274) Discussion on what happened if they do not want to work. Most "lifers" want to work to make the days not seem as long. The use of housing as a discipline mesure (meter 2516).

**Sen. Trenbeath** stated that if you left the four days in the bill as a mandatory and created an exception of no fewer then two days with respect to restrictive visitation or what you are comfortable with **Sen. Traynor** asked what the cost was to expand. Currently there is no way to

expand with out a new facility. There are plans in our "new facility", it has a new visiting area. It is in the "replacement of the East cell house" with the infirmary and other things. This is not in the Governors budget. We have used goals in our code but not successfully. When using a monthly schedule and an average-using an accumulative system, the element we can not control or have little control is the families, some travel from across the state and have only limited visiting availability. We go by hours, over the years it has worked the best, sited a long distance visit may use 8 hours on one month. **Senator Hacker** questioned why they do not splint the month, using the first and the fifteenth. We did this at MMRC with the alphabet and an every other day system. They are down to two day visits. The prison holds visiting in high regards. Our problems are in the trouble areas. When you schedule you need a employee to schedule and run the schedule. We currently do first come first serve. (meter 4261) When we are overcrowded we cut the time to one to two hours. **Sen. Nelson** asked for a physical description of room (4808). **Senator Hacker** stated that it looks like the prison is working on the issue. (meter 4980)

**Testimony in Opposition of the Bill:**

None

Discussion of amendment (meter 5000) Do Pass Amendment submitted by Mr. Sornsom with an additional change made by **Sen. Trenbeath** and seconded by **Senator Triplett**. All in favor Do Pass as Amended SB 2148 as two time amended by **Sen. Nelson** and seconded by **Senator Triplett**. All in favor, none oppose, no absence.

Carrier: **Senator Triplett**

**Senator John (Jack) T. Traynor**, Chairman closed the Hearing

## FISCAL NOTE

Requested by Legislative Council  
01/19/2005

Amendment to: SB 2148

**1A. State fiscal effect:** Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Appropriations</b>	\$0	\$0	\$0	\$0	\$0	\$0

**1B. County, city, and school district fiscal effect:** Identify the fiscal effect on the appropriate political subdivision.

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

**2. Narrative:** Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.

No estimated fiscal impact as a result of this bill.

**3. State fiscal effect detail:** For information shown under state fiscal effect in 1A, please:

A. **Revenues:** Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

n/a

B. **Expenditures:** Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

n/a

C. **Appropriations:** Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

n/a

Name:	Dave Krabbenhoft	Agency:	DOCR
Phone Number:	328-6135	Date Prepared:	01/19/2005

## FISCAL NOTE

Requested by Legislative Council  
01/03/2005

Bill/Resolution No.: SB 2148

1A. **State fiscal effect:** Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Appropriations</b>	\$0	\$0	\$0	\$0	\$0	\$0

1B. **County, city, and school district fiscal effect:** Identify the fiscal effect on the appropriate political subdivision.

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. **Narrative:** Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.

No estimated fiscal impact as a result of this bill.

3. **State fiscal effect detail:** For information shown under state fiscal effect in 1A, please:

A. **Revenues:** Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

n/a

B. **Expenditures:** Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

n/a

C. **Appropriations:** Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

n/a

Name:	Dave Krabbenhoft	Agency:	DOCR
Phone Number:	328-6135	Date Prepared:	01/05/2005

Date: 01/12/05  
Roll Call Vote #: 1

**2005 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2148**

## Senate Judiciary Committee

Check here for Conference Committee

## **Legislative Council Amendment Number**

Action Taken Move to Amended twice 58163.0101

Motion Made By Sen. Trenbeath Seconded By Senator Triplett

Total (Yes) 6 No 0

**Absent** 0

## **Floor Assignment**

If the vote is on an amendment, briefly indicate intent:

Date: 01/12/05  
Roll Call Vote #: 2

**2005 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2148**

## Senate Judiciary Committee

Check here for Conference Committee

**Legislative Council Amendment Number \_\_\_\_\_**

Action Taken      Move to DO PASS as Amended twice 58163.0101

Motion Made By Sen. Nelson Seconded By Senator Triplett

Total (Yes) 6 No 0

**Absent** 0

## Floor Assignment Senator Triplett

If the vote is on an amendment, briefly indicate intent:

### REPORT OF STANDING COMMITTEE

**SB 2148: Judiciary Committee (Sen. Traynor, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 6 ABSENT AND NOT VOTING). SB 2148 was placed on the Sixth order on the calendar.

Page 1, line 3, after "12-47-11" insert ", 12-47-12"

Page 3, after line 9, insert:

**"SECTION 5. AMENDMENT.** Section 12-47-12 of the North Dakota Century Code is amended and reenacted as follows:

**12-47-12. Warden to make rules.** The warden, subject to the approval of the director of the ~~division of adult services~~department of corrections and rehabilitation, shall make rules not in conflict with the laws of this state and shall prescribe penalties for violation of the rules:

1. For the admission of visitors, but admission of visitors may not be limited to less than four days in each week, subject to the space limitations of the facility.
2. For the government of officers and employees of the penitentiary.
3. For the conduct of persons offenders imprisoned in the penitentiary.

A printed copy of the rules must be furnished to each person offender imprisoned in the penitentiary at the time of admission and to each official or employee of the penitentiary at the time of hire. Two copies of the rules must be furnished to the state law library for the use of the state officials and the public. The rules must be explained to a prisoner an offender who cannot read English."

Page 5, line 2, replace "may" with "shall"

Page 6, line 23, after "employed" insert "The"

Page 9, line 3, remove "daily"

Page 10, line 3, remove the overstrike over "the"

Page 10, line 13, after "The" insert "offender shall submit a signed"

Page 10, line 14, after "application" insert "which"

Page 10, line 15, remove "include" and overstrike "the name"

Page 10, line 16, overstrike "and address of the proposed employer, if any, and" and after "entain" insert "include"

Page 10, line 19, overstrike "The", remove "offender shall sign the application", and overstrike "prior to"

Page 10, line 20, overstrike "participation in the program."

Page 10, line 22, overstrike "parole board and" and remove "the director of"

Page 10, line 23, remove "the"

**REPORT OF STANDING COMMITTEE (410)**  
**January 17, 2005 5:04 p.m.**

**Module No: SR-10-0590**  
**Carrier: Triplett**  
**Insert LC: 58163.0101 Title: .0200**

Page 11, line 3, remove "and to offenders who have been on work or education"

Page 11, line 4, remove "release programs for at least thirty days"

Renumber accordingly

2005 HOUSE JUDICIARY

SB 2148

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2148

House Judiciary Committee

Conference Committee

Hearing Date 2/15/05

Tape Number	Side A	Side B	Meter #
1	xx		41.5-end
1		xx	0-15.5
1		xx	29.7-38
Committee Clerk Signature		<i>Dawn Penrose</i>	

Minutes: 13 members present, 1 member absent (Rep. Bernstein).

Chairman DeKrey: We will open the hearing on SB 2148.

Ken Sorenson, AG's Office: Support (see written testimony), explained the bill.

Representative Koppelman: What has been the practical effect of having judges sentence to the Dept rather than to a specific institution. What's changed in that.

Ken Sorenson, AG's Office: The issue with the specific placement by the court, was the court may or may not be aware of the person's criminal history, be aware of other treatment requirements, basically the placement becomes to some extent, a classification issue and if you had a court sentencing a person directly to the Missouri River Correctional Center and they were really a higher custody level inmate, with a potential escape risk, we would have a problem.

Also, the dept. of corrections is in a better position to determine what would be an appropriate placement after their completed the classification. To some extent, some of that placement decision followed the problems with, at that point, a very small number of women offenders and

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House Judiciary Committee  
Bill/Resolution Number SB 2148  
Hearing Date 2/15/05

the courts still making direct placements of those women in facilities, where the facility was unable to accommodate them.

**Representative Koppelman:** Looking at the top of page 4 of the bill, actually beginning on the bottom of page 3, it looks like there is some language in the current statute that speaks to specific kinds of complaints that include things like cruel and unusual treatment, which is obviously a constitutional type of objection or complaint and the language that is being substituted, talks about grievances. Is there a difference between what the current statute deals with and simply a grievance.

**Ken Sorenson, AG's Office:** Basically, a grievance can cover anything from a constitutional issue, like an inmate claims he's not getting necessary medical care to something like I didn't get the same portion in the food line as another inmate. It covers the whole spectrum.

**Representative Koppelman:** Cruel and unusual punishment, which is a serious constitutional question.

**Ken Sorenson, AG's Office:** For some of the offenders out there, getting a smaller portion may be, in their mind, cruel and unusual punishment.

**Representative Klemin:** There are a number of provisions in here about rules, both department rules and penitentiary rules and the department can adopt rules and the warden can adopt rules, which is the way I read some of these provisions. So that there could be two sets of rules, for example. Is that right. If the penitentiary rules, department rules that both govern the conduct.

**Ken Sorenson, AG's Office:** Basically, a lot of their rules are, they try to have consistency between the MRCC, the Penitentiary, and the James River CC, but basically Mr. Schutzle is

responsible for those rules and then Elaine Little will sign off and approve those rules. So they don't have a separate set of department of corrections rules governing penitentiary operations, and penitentiary rules governing penitentiary operations. There will be penitentiary rules.

**Representative Klemin:** Section 5, page 3, the warden to make rules subject to the approval of the director of DOCR. Section 22, line 4 and 5, pg. 12, performance criteria established through department and penitentiary rules. There are several places, that is only one example, where department has been added to penitentiary. That's why I was asking whether there were two sets of rules, because it seems like this provides for two sets of rules or is that not what we're talking about.

**Ken Sorenson, AG's Office:** The statute that has this language, is their performance based sentence reduction statute. The reason we are using this language is because you may have offenders who are actually incarcerated in the penitentiary, but we may also have offenders who are located in a facility such as the Bismarck Transition Center, and that decision to place them in the Bismarck Transition Center may have been a department decision as opposed to a penitentiary decision.

**Representative Klemin:** So these other facilities, then do not have their own rules.

**Ken Sorenson, AG's Office:** The Bismarck Transition Center is a contract facility, and it has some of its own rules as a nonprofit corporation, but it also operates under a contract which has a lot of policies and procedures under the department.

**Representative Klemin:** To go back to the rules on page 3, section 5, on lines 21-24, talks about where those rules are, and I understand that department of corrections and penitentiary are not subject to administrative practices act where they adopt rules.

Ken Sorenson, AG's Office: That's correct.

Representative Klemin: So they can pretty much adopt the rules they want, anytime they want, for whatever purpose as long as it's not inconsistent with statute.

Ken Sorenson, AG's Office: And not inconsistent with the federal constitution.

Representative Klemin: We've got administrative code that we can go and look at, when we want to know the rules on all of these other agencies, and as I see it here, the only place we can find any of those rules that Corrections might have or the Warden might have, would be in the State Law Library, on line 23, two copies must be turned in to the state law library for the use of state officials and the public. All of these rules that the other agencies have, are on-line, and we can go to the Supreme Court or to the NEXUS disk that we all get, and see all of the other rules on our computers, but we can't see any of the rules, these rules. Why can't they be made more available than just putting two copies in the state law library.

Ken Sorenson, AG's Office: They are, with the exception of post orders and various rules that could get into internal safety and security operations, they are all considered open records.

Representative Klemin: It's not very convenient if we want to see what the rules are. We'd have to make an open records request to produce the rules, or go look them up in the state law library.

Representative Onstad: As you look through the bill, you can see where the warden is being replaced with director, and director is kind of replacing warden, in different areas. Are we outlining or redefining your own job description of who is in charge of what.

Ken Sorenson, AG's Office: No, it's basically to reflect who actually has the responsibility in the situation, whether it's the department or the warden. Again, the warden is still going to be

responsible for the immediate confinement, immediate operations of the penitentiary. The question is when we move that prisoner from the penitentiary to another facility and they escape, and we've got a statute that says the warden is responsible for the escape, but the warden had nothing to do with the placement within that facility and that walk-away, so it is making it a department-wide responsibility.

**Representative Onstad:** I guess I noticed that inmate is being replaced with offender, on the bottom of page 6, line 30, manner of employing inmates, that also would be offender then.

**Ken Sorenson, AG's Office:** That should have been changed to offenders.

**Representative Boehning:** In Section 20, page 11, the release situation. Under what conditions can and will an inmate be released for up to 72 hrs. or less.

**Ken Sorenson, AG's Office:** When reason I can think of is for a funeral. That's current law.

**Tim Schutzle, Warden of the Penitentiary:** The use of release programs right now is nonexistent. One of our rules is that we no longer have a furlough program for the inmates. This law did permit it at one point in time, but since then, the administrative board has stopped the furlough program. For practicality, we don't have 72 hr releases, or less than 72 hr releases. However, there are times when we will allow an inmate to leave the facility for funeral leave. So this section of the law still allows us to do that, where we will escort them with an officer.

**Representative Boehning:** They will be supervised with that, during that time.

**Tim Schutzle:** Yes.

**Representative Boehning:** In Section 22, meritorious act, I see under that you can allow an offender an extra two days good time served. Under what conditions, can you explain that.

**Tim Schutze:** We use the meritorious good time if an inmate has performed a heroic act. We've had examples where in the past year, we've allowed an inmate to get two extra days, or sometimes 4, 6, or 8 extra days good time off of their sentence for something they have done within the facility. If an inmate had an attempted suicide, another inmate was yelling and brought it to the attention of the staff, saying you have to come here, he didn't have to say anything, but he did. That's a meritorious act. So we rewarded him with some extra good time off of his sentence for that. If an officer is in danger and an inmate stepped up to protect that officer, that's a meritorious act. We will then as a committee recommend good time and then I look at the case, as does Elaine, and we decide if we want to award good time or not for that.

**Representative Maragos:** Thank you. Further testimony in support of SB 2148. Testimony in opposition to SB 2148.

**Carol Two Eagles:** I'm not entirely against the bill, but I would like to speak about the complaints that I continue to receive, especially from our American Indian prisoners, or from, and this is both in the Youth CC and in the main penitentiary, as regard to some of the rule making and the way in which the rules are applied. The feeling there is that a lot of times, and I've gotten this from some of the people who've worked within the system, who are frankly afraid for their jobs, they won't come, they won't even write a letter, so I'm carrying this for them. They maintain that there is a certain amount of capriciousness that is involved, that's a hot button word, but that's the word they use. I think it does apply from what I have seen. We have situations where they are, especially as regards spiritual and religious rights, these are a constitutional issue, there are privileges to attend sweat lodges as if they some Disneyland sort of entertainment activity, instead of a very serious spiritual activity are withdrawn, often at the last

minute. I don't know if this has changed, but the last I was requested to go and provide services to the women in the Penitentiary, I was told that they would pay the cost of the fuel, for example, to travel, which is quite a distance, for a Christian minister, but not for me. This denies these people their access, they want it, they and for it, they request it, and there doesn't seem to be anybody go over there. I have seen this here at the Youth CC routinely, where the females are treated more harshly than the young men, and actually is the young men who complained. They said we have a complaint. We don't know where to go with it, but we're not getting any satisfaction from inside here. I spoke with the chaplains and one of them said, well yes this happened. The young women had prayer ties and suddenly the staff came in one day, and we never did find out why, rounded up their prayer ties and through them in the garbage and they were told that you don't need this junk. That's not an option. I think you need to have some oversight, I'm not sure that this bill is complete. I think we need to address that. We had this happen to the younger men in a lesser sense where, we have to plan ahead the same as anybody else, our time is not free, in the sense that nobody else wants us to do things. In order to serve those kids, I will rearrange my time so that people who are out, there's a huge demand from people who are out of requests, they come in a never ending stream, and now we have three sweat lodges around the area where people come for continued access to this particular version of spirituality. There is resentment from them, even the chaplains are not entirely happy with this, well, they say they force them to come to the Christian church, they make sure that they are always there on time. But that does not happen when they come for sweat lodge. It is routine for us to be allowed two hours for the young people. They don't show up until 4:30, and then we're supposed to be out by 6:00. Sunday was because of a basketball game, I'm sure this is much

more important than healing their soul. This has happened lots, I've been collecting this data. I think you need to have oversight over these rules and the rulemaking. There needs to be some additional mechanism in here, I'm not entirely sure what it is, but I'm definitely available to try and make this happen so that such things don't happen again. This is important. This is not a lark. When anybody sundances, your commitment is your choice of how many days you will fast, no food or water. This is a commitment. Men pierce for a reason. We give our bodies, because that is the only thing that cannot be taken completely from us without killing us. That's a measure of how serious we are. This is not fun. This is not an easy life. I take it very hard when I see people who want to access this and they can't. We're not allowed to proselytize, but I'm definitely allowed to bring it to your attention that there are inequities. You have the power to fix it.

**Representative Zaiser:** In terms of oversight, what are you talking about.

**Carol Two Eagles:** Well it talks about rule making in there, and it just says that they will have the power to make rules and those rules do affect us. For example, the prison was made tobacco-free. So that means they weren't allowed to smoke the holy pipe, you put tobacco in that pipe. It's not a wad of paper, or anything illegal, it's tobacco. Tobacco has a function, historically, for thousands of years. Its function is to carry everything that comes near it as a prayer. We were not allowed to smoke the pipe as a result. This is wrong. We have not had this problem so far, and I hope we don't develop it at the correctional center for the kids. Some of them have asked how did this happen, because this is our traditional way, this is authentic, this is not something that we just invented. There is that inequity. We need to fix those things.

**Representative Charging:** What part of the bill do you think we should amend to encourage the correctional facility to recognize the spiritual aspects.

**Carol Two Eagles:** I believe it would be in the section on who has the power to make rules, and it would be in there. I can't remember the section number.

**Representative Charging:** Maybe the corrections people could respond, is there opportunity now.

**Elaine Little:** Both the Division of Juvenile Services and the Prisons Division, have very extensive rules relating to religious practices and their right to practice. They also have their constitutional rights, inmates also have the right, at any time, if they feel that their rights are not being met, they have the right to challenge through the grievance procedure, and then through the court. Many of the things that were just mentioned this morning, I've never heard, I've not seen any kind of complaints, or heard anything about the issues that she mentioned. I can correct one of the comments she just made about the tobacco and the pipes for the sweat lodges. That's not true. They get to practice their religion. We have very extensive policies that relate to the religious rights of both the inmates and the juveniles at the correctional center.

**Representative Maragos:** Thank you. Further testimony in opposition or neutral. We will close the hearing.

(Reopened later in the same session)

**Representative Maragos:** What are the committee's wishes in regard to SB2148.

**Representative Zaiser:** I move a Do Pass.

**Representative Galvin:** Seconded.

**Representative Klemin:** We've had a lot of discussion about rules this legislative session, and here we've got pretty much rules that, if we want to see them, we've got to go to the State Law Library. It's mentioned in the bill and some of the amendments refer to department and penitentiary rules, I guess I'm not proposing any amendments to this, I am just making a commentary here, that it would be nice if these rules were a little more accessible to the public and legislators.

**Representative Charging:** In Ken's testimony, what is the compliance for visitation through American Correctional Association.

**Representative Maragos:** What page are you looking at.

**Representative Charging:** Page 5.

**Ken Sorenson:** I understand the part she is referring to. In the statute, section 12-47-12 is the provision regarding visitation and it provides that the visitation may not be less than 4 times per week. This is a problem in setting up that number of days because of facility capacity and staff capacity. The department had proposed to just delete the specific reference to the 4 days by rule. The Senate Judiciary committee just said subject to facility capacity. Regarding the American Correctional Association, the ND State Penitentiary is an American Correctional Association accredited facility, and it does have its visitation policies in accordance with accreditation, and the reason that we put in that requirement, is even if facility capacity affects the way they are able conduct visitation, they are still going to conduct visitation in compliance with their accreditation requirements for the American Correctional Association. There are fairly strict requirements to get the ACA accreditation.

**Representative Charging:** How many days are there?

**Ken Sorenson:** The ACA doesn't specify. Most facilities do not have a specific visitation requirement. This is a piece of ND law that goes way back, and that's why we said that, that whatever we do with visitation, we're still going to make sure that we maximize it and still keep in compliance with accreditation requirements.

**Representative Charging:** By deleting the 4 days, then it is completely up to the discretion of the warden or director.

**Ken Sorenson:** What happened was the Senate Judiciary committee didn't like the 4 days in, it is still going to be subject to facility capacity.

**Representative Charging:** But it's up to the discretion of the supervisor.

**Ken Sorenson:** Yes, they will have to make the decision. Like secure visitation, they don't have a secure visitation capacity to handle 4 visitation days per week.

**Representative Charging:** Do you see lots of families coming in, with this affect family visitation.

**Tim Schutze:** No it doesn't affect a lot of families right now. We have six days a week at the State Pen, six days a week at James River CC, the problem is at the Missouri River CC, where we have 3 days a week, however, we did just start going to four days a week here within the last month. The issue though, down there, is we don't have enough staff people on shift to supervise visiting. Often times at the Missouri River CC, even on three days a week, there will only be 1 or 2 families in the room, yet we are forced to put an officer in that situation to supervise the visits for one or two people. This does not limit visiting, it actually only helps with us being able to assign that staff person to another area to supervise the inmates. As far as seeing a lot of

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families come through, at the State Pen we see a lot of people visiting, which is why we have visiting 6 days a week, and the room is usually always full.

**Representative Charging:** So this won't diminish that.

**Tim Schutze:** No.

**Representative Maragos:** Thank you. The clerk will call the vote.

**11 YES 1 NO 2 ABSENT**

**DO PASS**

**CARRIER: Rep. Zaiser**

Date: 2/15/05  
Roll Call Vote #: 1

**2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 58-2148**

## HOUSE JUDICIARY COMMITTEE

Check here for Conference Committee

**Legislative Council Amendment Number**

Action Taken Do Pass

Motion Made By Rep. Zaiser Seconded By Rep. Galvin

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	A		Representative Delmore	✓	
Representative Maragos	✓		Representative Meyer	—	
Representative Bernstein	A		Representative Onstad	—	
Representative Boehning	✓		Representative Zaiser	—	
Representative Charging		✓			
Representative Galvin	✓				
Representative Kingsbury	✓				
Representative Klemin	✓				
Representative Koppelman	✓				
Representative Kretschmar	✓				

Total (Yes) || No |

Absent 2

Floor Assignment \_\_\_\_\_ Rep. Zaiser

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE (410)**  
**February 15, 2005 11:23 a.m.**

**Module No: HR-30-2930**  
**Carrier: Zalser**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2148, as engrossed:** Judiciary Committee (Rep. DeKrey, Chairman) recommends **DO PASS** (11 YEAS, 1 NAY, 2 ABSENT AND NOT VOTING). Engrossed SB 2148 was placed on the Fourteenth order on the calendar.

2005 TESTIMONY

SB 2148

#1

SENATE BILL NO. 2148  
SENATE JUDICIARY COMMITTEE  
January 12, 2005

Chairman Traynor, Members of the Senate Judiciary Committee.

My name is Ken Sorenson, Assistant Attorney General. I am submitting this written testimony on behalf of the North Dakota Department of Corrections and Rehabilitation (DOCR) on Senate Bill No. 2148, which has been introduced at the request of the DOCR.

The Legislative Assembly established the DOCR within the Director of Institution's Office in 1989. The Director of Institution's Office was abolished in 1991 and the DOCR became a separate state agency.

When the DOCR was established, there were only two state adult correctional facilities, the North Dakota State Penitentiary (NDSP) and the Missouri River Correctional Center (MRCC), formerly known as the State Farm. The NDSP, the state's maximum custody facility, had less than 500 inmates, and that number included women inmates in a housing unit inside the Penitentiary and about 100 inmates at the MRCC, the NDSP's affiliated minimum custody facility. Also at that time, the state district courts directly sentenced defendants to the NDSP or the MRCC.

The DOCR has grown considerably since it was created in 1989. The first four floors of the James River Correctional Center (JRCC) a medium custody facility, were opened up in the early summer of 1998. The top two floors were completed in 2001. The JRCC initially housed both men and women. The JRCC separated the men and the women by housing them on separate floors.

In 2003, the DOCR began the process of working with the Southwest Multi-County Regional Correction Center to house women offenders in New England. In the early fall of 2003, the DOCR moved its minimum custody offenders from the MRCC and the JRCC to New England. In August of 2004, the DOCR moved the higher custody offenders from the JRCC to New England. The NDSP, the JRCC, and the MRCC are now all-male facilities, and the New England contract facility, called the Dakota Women's Correction and Rehabilitation Center, is an all-women's facility.

The DOCR, in cooperation with the State Hospital, also operates the Tompkins Rehabilitation and Correction Center (TRCC) on the campus of the State Hospital. The TRCC handles both male and female offenders. In 2002, the Bismarck Transition Center began operations for male offenders and in 2003, the DOCR began a similar transition program in Fargo with Centre, Inc. for female offenders.

Many of the statutes, some of which were amended in 1989, are inconsistent with current DOCR operations and need to be updated. That is the DOCR's intended purpose with SB 2148.

## **1. DEFINITIONS**

SB 2148 creates a definition section to be included in N.D.C.C. ch. 54-23.3, which is the chapter of the Century Code establishing the DOCR. While the definitions are referenced in the first part of the title, they are placed in the last section of the bill. The DOCR felt that the definitions were necessary to clarify and distinguish the status of the individuals either physically committed to the DOCR or under the supervision and management of the DOCR. Presently, the statutes inconsistently refer to individuals who are either physically committed to the DOCR or under the supervision and management of the DOCR with a variety of terms, including inmate, prisoner, person, and offender.

## **2. Placements at the North Dakota Youth Correctional Center**

If the Juvenile Court transfers a case to the District Court under N.D.C.C. § 27-20-34 and the District Court finds the individual guilty of a criminal offense, then N.D.C.C. § 29-27-07 requires the District Court to commit the individual to the DOCR, which will then determinate appropriate placement. N.D.C.C. § 12-46-13 requires the DOCR to place the juvenile at the North Dakota Youth Correctional Center (NDYCC) if the individual is under the age of 16. When the juvenile reaches age 18, N.D.C.C. § 12-46-13 presently requires the DOCR to transfer the individual "to a penal institution or detention facility to serve the balance of the person's sentence." The mandatory transfer may not serve the interests of the DOCR or the individual. The individual may be too youthful and too vulnerable to be placed in an adult correctional facility. In addition, the mandatory transfer may interrupt the individual's treatment and education programs at the North Dakota Youth Correctional Center. It is also possible that the balance of the individual's sentence after reaching the eighteenth birthday may be short enough not warrant a transfer.

The DOCR proposes in Section 1 of SB 2148 to amend N.D.C.C. § 12-46-13 to provide the DOCR with the authority to continue the individual's placement at the NDYCC until the individual's twentieth birthday.

## **3. Sentences to the North Dakota State Penitentiary**

In 1995, the Legislative Assembly amended N.D.C.C. § 29-27-07 to require that the district courts may only sentence defendants to the legal and physical custody of the DOCR. Only the DOCR may determine the placement of inmates. Section 29-27-07 states:

**29-27-07. Commitment of offenders to department of corrections and rehabilitation - Place of confinement.**

1. If a judge of the district court imposes a term of imprisonment to a state correctional facility upon conviction of a felony or a class A misdemeanor, the judge may not designate a state correctional facility in which the offender is to be confined but shall commit the offender to the legal and physical custody of the department of corrections and rehabilitation.
2. After assuming custody of the convicted person, the department of corrections and rehabilitation may transfer the inmate from one correctional facility to another for the purposes of safety, security, discipline, medical care, or if the department determines it is in the best interest of the public, the inmate, or the department.

There are various provisions throughout chapters 12-47, 12-48, 12-48.1, and 12-54.1 that refer to sentences to the North Dakota State Penitentiary. In addition, Section 29-27-05 still addresses judgments of imprisonment to the North Dakota State Penitentiary and requires the sheriff to deliver a defendant to the Warden of the North Dakota State Penitentiary. Under N.D.C.C. § 1-01-49, the general definition section of the Century Code, the term "Penitentiary" includes its affiliated facilities, which are the James River Correctional Center, a medium custody facility in Jamestown, North Dakota, and the Missouri River Correctional Center, a minimum custody facility in Bismarck. However, the DOCR also has placed offenders in county jails, in Federal Bureau of Prison facilities, the Prairie Correctional Center, a private contract prison in Appleton, Minnesota, in prisons in other states, and in programs such as the Tompkins Rehabilitation and Correctional Center (TRCC) at the North Dakota State Hospital and transition programs such as the Bismarck Transition Center for male offenders, and Centre, Inc. in Fargo for women offenders. In addition, the DOCR has placed the women prisoners, except those who are in programs such as Centre, Inc. in the Dakota Women's Correctional and Rehabilitation Center (DWCRC), New England, North Dakota, which is operated under contract with the Southwest Multi-County Correctional Center, Dickinson, North Dakota.

The offenders in these facilities and programs are actually in the legal and physical custody of the DOCR. SB 2148 proposes to amend various statutes in chapters 12-47, 12-48, 12-48.1, and 12-54.1 that refer to sentences to the North Dakota State Penitentiary to reflect that the commitment is to the custody of the DOCR. These proposed changes are included in Sections 2,3,4,6,7,9,14,18, 21, 22, and 23 of SB 2148.

#### **4. Authority of the DOCR and authority of the Warden of the North Dakota State Penitentiary.**

The statutes in N.D.C.C. ch. 12-47, 12-48, and 12-48.1 generally provide the Warden with authority over inmates at the North Dakota State Penitentiary. However, oftentimes it is the case that the statutes and who actually has responsibility for the offender are not consistent. For example, an offender sentenced to the legal and physical custody of the DOCR may be initially placed at the North Dakota State Penitentiary, then placed by the DOCR at the TRCC program at the North Dakota State Hospital, and end up in the Bismarck Transition Center. N.D.C.C. § 12-47-17 provides that the Warden shall assign inmates to correctional facilities or other placements. However, the DOCR may be making the assignment or placement to programs such as the TRCC and Bismarck Transition Center. N.D.C.C. § 12-47-18 requires the Warden to confine inmates until the expiration of sentence; yet the DOCR may have placed the offender in a treatment program outside of the NDSP or in another correctional facility. N.D.C.C. § 12-47-34 makes the Warden responsible for escapes, even though the offender may be in a separate facility or program. N.D.C.C. § 12-48-03 makes the Warden liable for escapes of offenders who may have escaped while in an outside work program, which would include the Bismarck Transition Center or the Centre, Inc. program.

The DOCR proposes in SB 2148 to amend various statutes in N.D.C.C. ch. 12-47, 12-48, and 12-48.1 in order that the statutes reflect that it is the DOCR who actually has responsibility over the offender in most cases. The Warden of the NDSP and the MRCC and the Warden of the JRCC will still retain responsibility over the operations of those facilities, subject to oversight by the director of the DOCR. These proposed changes are included in Sections 8,10,12,13,19 and 21 of SB 2148.

#### **5. Performance Based Sentence Reduction**

N.D.C.C. § 12-54.1-01 in its present form was enacted to provide for performance based sentence reduction ("good time") for "offenders sentenced to the penitentiary or any of its affiliated facilities". The language is not consistent with N.D.C.C. § 29-27-07 and not consistent with the various placements of offenders by the DOCR. The amendment changes this language to refer to offenders committed to the legal and physical custody of the DOCR. The last sentence of the statute reads: "While incarcerated in the penitentiary or any of its affiliated facilities, an inmate may earn five days good time per month except for any sentence where the incarceration time is six months or less." There are two problems with this sentence. The DOCR frequently places offenders at other facilities besides the Penitentiary. Those offenders would not be eligible to receive good time under this last sentence because they are not incarcerated at the Penitentiary or its affiliated facilities. The other problem with this sentence is that the language "While incarcerated at the penitentiary" was intended to mean that offenders were not eligible for good time for time spent in custody in a county jail prior to imposition of sentence and also were not entitled to good time for any part of a sentence that was suspended. However, it

has been questioned whether the DOCR has been properly calculating minimum release dates based on the current language. The DOCR calculated good time release dates based on total months of sentence under the predecessor version of Section 12-54.1-01 before the 1991 amendment. Based on the intent of the 1991 amendments, the DOCR has continued to use the same calculation method. However, the DOCR's calculation method has been questioned as to whether it is consistent with the statutory language, regardless of the intent of the language. The DOCR proposes to amend the statute to provide what it has been doing has long as it has been calculating sentence reduction, which is to calculate the sentence based on a per month basis for each month of the sentence imposed. The proposed amendment also provides that the DOCR may not award sentence reduction for time spent in custody prior to imposition of sentence and for time on probation. The proposed change is included in Section 21 of SB 2148.

## **6. MISCELLANEOUS CHANGES**

Section 5 amends N.D.C.C. § 12-47-13 by replacing somewhat archaic and wordy language with more usable language regarding the obligation of the Warden to keep records. Section 11 amends N.D.C.C. § 12-48-01 to consistently apply the term offender. Section 15 amends N.D.C.C. § 12-48-07 to replace "division of adult services" with "department of corrections and rehabilitation" to be consistent with reference to the DOCR. Section 16 amends N.D.C.C. § 12-48-14 to include more usable and concise language regarding offender employment. Section 17 amends N.D.C.C. § 12-48-22 to replace the word "prisoner" with offender. Section 20 amends N.D.C.C. § 12-48.1-03 to provide that an offender's primary obligation from any funds earned in work release is to pay for the support of the offender's dependents, and to pay the offender any balance consistent with the requirements of N.D.C.C. § 12-48-15, the statute governing inmate accounts.

## **7. PROPOSED AMENDMENTS**

### **a. Visitation Requirements**

N.D.C.C. § 12-47-12 provides the Warden with rule-making authority, subject to the approval of the director of the DOCR. Part of N.D.C.C. § 12-47-12 authorizes the Warden to make rules for the admission of visitors, but then provides that "admission of visitors may not be limited to less than four days in each week." The DOCR proposes to amend this part of Section 12-47-12 to remove this language. Overcrowding and the increased pace of admissions has made the current statutory language pretty much unworkable. At the present time, the MRCC is not able to provide visitation based on a four-day per week schedule on account of staff and facility availability. The Treatment Unit at the NDSP has to arrange visitation around the inmates' treatment programs and is not able to provide visitation based on a four-day per week schedule. The Penitentiary and the JRCC does not have the facility capacity to provide secure visitation four days per week. The Wardens of the NDSP and the JRCC need the authority and flexibility to set visitation days, times,

and procedures at the NDSP, MRCC, and JRCC based on staffing, security and facility capacity. The DOCR prison facilities will still maintain compliance with American Correctional Association (ACA) accreditation standards with this proposed amendment to SB 2148.

b. Programs and Temporary Leaves

N.D.C.C. § 12-48.1-02 in its statutory form and in its proposed amended form in Section 19 is difficult and does not reflect current DOCR and Parole Board operations. The submitted amendment will shorten the length of the statute and make it compatible with current DOCR and Parole Board operations regarding outside programs and short releases or furloughs.

#2

## Proposed Amendments to Senate Bill 2148

Page 1, line 3, after "12-47-11," insert "12-47-12"

Page 2, after line 11, insert:

**SECTION 2. AMENDMENT.** Section 12-47-04 of the North Dakota Century Code is amended and reenacted as follows:

**12-47-12. Warden to make rules.** The warden, subject to the approval of the director of the division of adult services department of corrections and rehabilitation, shall make rules not in conflict with the laws of this state and shall prescribe penalties for violation of the rules:

1. For the admission of visitors, ~~but admission of visitors may not be limited to less than four days in each week,~~ <sup>remove striking</sup> ~~subject to the limitations of the physical space of the visiting facility.~~
2. For the government of officers and employees of the penitentiary.
3. For the conduct of persons offenders imprisoned in the penitentiary.

A printed copy of the rules must be furnished to each person offender imprisoned in the penitentiary at the time of admission and to each official or employee of the penitentiary at the time of hire. Two copies of the rules must be furnished to the state law library for the use of state officials and the public. The rules must be explained to a prisoner an offender who cannot read English.

Page 2, line 12, replace "2" with "3"

Page 2, line 23, replace "3" with "4"

Page 2, line 30, replace "4" with "5"

Page 3, line 10, replace "5" with "6"

Page 3, line 24, replace "6" with "7"

Page 4, line 8, replace "7" with "8"

Page 4, line 20, replace "8" with "9"

Page 4, line 28, replace "9" with "10"

Page 5, line 4, replace "10" with "11"

Page 6, line 1, replace "11" with "12"

Page 6, line 6, replace "12" with "13"

Page 6, line 13, replace "13" with "14"

Page 7, line 3, replace "14" with "15"  
Page 8, line 18, replace "15" with "16"  
Page 8, line 25, replace "16" with "17"  
Page 9, line 11, replace "17" with "18"  
Page 9, line 18, replace "18" with "19"  
Page 9, line 30, replace "19" with "20"  
Page 10, line 3, remove the overstrike on the second "the"  
Page 10, line 13, after "The" insert "offender shall submit a signed"  
Page 10, line 14, after "application" insert "which"  
Page 10, line 15, overstrike "the name"  
Page 10, line 16, overstrike "and address of the proposed employer, if any, and"  
Page 10, line 19, overstrike "The plan must be signed by the", remove "offender  
shall sign the application", and overstrike "prior to"  
Page 10, line 20, overstrike "participation in the program."  
Page 20, line 22, overstrike "parole board and", and remove "the director of"  
Page 20, line 23, remove "the"  
Page 11, line 3, remove "and to offenders who have been on work or education"  
Page 11, line 4, remove "release programs for at least thirty days."  
Page 11, line 8, replace "20" with "21"  
Page 11, line 17, replace "21" with "22"  
Page 12, line 3, replace "22" with "23"  
Page 12, line 18, replace "23" with "24"  
Page 12, line 28, replace "24" with "25"

RENUMBER ACCORDINGLY

**SENATE BILL NO. 2148**  
**HOUSE JUDICIARY COMMITTEE**  
February 15, 2005

Chairman DeKrey, Members of the House Judiciary Committee.

My name is Ken Sorenson, Assistant Attorney General. I am submitting this written testimony on behalf of the North Dakota Department of Corrections and Rehabilitation (DOCR) on Senate Bill No. 2148, which has been introduced at the request of the DOCR.

**1. BRIEF HISTORY OF THE DOCR**

In 1989, the Legislative Assembly established the DOCR within the Director of Institution's Office. 1989 N.D. Laws, ch. 156. When the Legislative Assembly established the DOCR, it included the North Dakota State Penitentiary (NDSP), the Missouri River Correctional Center (MRCC), and the North Dakota Youth Correctional Center (NDYCC) under the DOCR. The State Youth Authority, which had been operated under the Department of Human Services, was replaced by the Division of Juvenile Services. Parole and probation was previously under the Board of Pardons. The 1989 Legislative Assembly included parole and probation for adult offenders in the DOCR. The Director of Institution's Office was abolished in 1991 and the DOCR became a separate state agency. 1991 N.D.Laws, ch. 592.

When the DOCR was established in 1989, there were two state correctional facilities for adult offenders, both in Bismarck: (1) the NDSP, a maximum custody facility; and (2) the MRCC, formerly known as the State Farm, a minimum custody facility. The NDSP and the MRCC had less than 500 offenders in custody. That number included women offenders in a housing unit inside the Penitentiary and about 100 offenders at the MRCC. At that time, the state district courts sentenced defendants directly to the NDSP or the MRCC.

The DOCR has grown considerably since it was created, both in incarcerated offender population and the extent of its operations. The 1997 Legislative Assembly authorized the remodeling of a building on the North Dakota State Hospital campus in Jamestown for a medium custody facility, the James River Correctional Center (JRCC). The DOCR placed offenders in the first four floors of the JRCC in the early summer of 1998. The top two floors were completed in 2001. The JRCC initially housed both men and women. The JRCC separated the men and the women by housing them on separate floors.

The 2003 Legislative Assembly directed the DOCR to contract with the Southwest Multi-County Regional Correction Center (SWMCC) in Dickinson to house women offenders in the former St. Mary's boarding school in New England, North Dakota. In the early fall of 2003, the DOCR moved its minimum custody offenders from the MRCC and the JRCC to New England. In August of 2004, although the facility was

still not complete, the DOCR moved its higher custody women offenders from the JRCC to New England. The NDSP, the JRCC, and the MRCC are now all-male facilities, and the New England contract facility, the Dakota Women's Correction and Rehabilitation Center (DWCR), is an all-women's facility.

The DOCR, with the cooperation of the State Hospital, also operates the Tompkins Rehabilitation and Correction Center (TRCC), an intensive chemical dependency treatment program, on the campus of the State Hospital. The TRCC handles both male and female offenders. In 2002, the DOCR began contracting for transition services for male offenders at the Bismarck Transition Center and in 2003, the DOCR began contracting for transition services for female offenders with Centre, Inc. in Fargo, North Dakota.

In addition, the DOCR contracts with the Prairie Correctional Facility, a private correctional facility in Appleton, Minnesota, it contracts with grade one county correctional facilities and regional correction centers throughout the state, and it also contracts with other state facilities and United States Department of Justice Bureau of Prison facilities to house offenders committed to the legal and physical custody of the DOCR.

N.D.C.C chapters 12-46, 12-47, 12-48, 12-48.1, and 29-27 include statutory provisions that are internally inconsistent with each other or with current DOCR operations. They also include inconsistent terms and obsolete language. It is the DOCR's intended purpose with SB 2148 to amend these statutes and create a new definition section in the DOCR chapter, N.D.C.C. ch. 54-23.3, to meet the requirements of present DOCR operations.

## **2. Placements at the North Dakota Youth Correctional Center**

Section 1 of SB 2148 provides an amendment to N.D.C.C. § 12-46-13 relating to placement of juveniles at the North Dakota Youth Correctional Center (NDYCC) who have been convicted of a crime in the District Court. If the Juvenile Court transfers a case to the District Court under N.D.C.C. § 27-20-34 and the District Court finds the individual guilty of a criminal offense, then N.D.C.C. § 29-27-07 requires the District Court to commit the individual to the DOCR, which will then determinate appropriate placement. N.D.C.C. § 12-46-13 requires the DOCR to place the juvenile at the NDYCC if the individual is under the age of 16. When the juvenile reaches age 18, N.D.C.C. § 12-46-13 presently requires the DOCR to transfer the individual "to a penal institution or detention facility to serve the balance of the person's sentence." The mandatory transfer may not serve the interests of the DOCR or the individual. The individual may be too youthful and too vulnerable to be placed in an adult correctional facility. In addition, the mandatory transfer may interrupt the individual's treatment and education programs at the NDYCC. It is also possible that the balance of the individual's sentence after reaching the eighteenth birthday may be short enough not warrant a transfer.

The DOCR proposes to amend N.D.C.C. § 12-46-13 to provide the DOCR with the authority to continue the individual's placement at the NDYCC until the individual's twentieth birthday if the DOCR determines it is necessary for safety, security, or treatment and education purposes.

### **3. Sentences to the North Dakota State Penitentiary**

In 1995, the Legislative Assembly amended N.D.C.C. § 29-27-07 to require that the district courts may only sentence defendants to the legal and physical custody of the DOCR. Under the 1995 amendments, only the DOCR may determine the placement of inmates. Section 29-27-07 states:

**29-27-07. Commitment of offenders to department of corrections and rehabilitation - Place of confinement.**

1. If a judge of the district court imposes a term of imprisonment to a state correctional facility upon conviction of a felony or a class A misdemeanor, the judge may not designate a state correctional facility in which the offender is to be confined but shall commit the offender to the legal and physical custody of the department of corrections and rehabilitation.
2. After assuming custody of the convicted person, the department of corrections and rehabilitation may transfer the inmate from one correctional facility to another for the purposes of safety, security, discipline, medical care, or if the department determines it is in the best interest of the public, the inmate, or the department.

There are various provisions throughout chapters 12-47, 12-48, 12-48.1, and 12-54.1 that refer to sentences to the NDSP. In addition, Section 29-27-05 still addresses judgments of imprisonment to the NDSP and requires the sheriff to deliver a defendant to the Warden of the NDSP. Under N.D.C.C. § 1-01-49, the general definition section of the Century Code, the term "Penitentiary" includes its affiliated facilities, the JRCC and the MRCC. However, the DOCR also has placed offenders in county jails and regional correction centers, in Federal Bureau of Prison facilities, the Prairie Correctional Center, in prisons in other states, in programs such as the TRCC, and at the Bismarck Transition Center for male offenders and Centre, Inc. in Fargo for women offenders. In addition, the DOCR has placed the women prisoners, except those who are in programs such as Centre, Inc., in the Dakota DWCRC. The offenders in these facilities and programs are actually in the legal and physical custody of the DOCR.

SB 2148 proposes to amend various statutes in chapters 12-47, 12-48, 12-48.1, 12-54.1 and ch. 29-27 that refer to sentences to the North Dakota State Penitentiary to reflect that the commitment is to the legal and physical custody of the DOCR. These proposed changes are included in Sections 2, 3, 7, 10, 19, 22, 23 and 24 of SB 2148.

#### **4. Authority of the DOCR and authority of the Warden of the North Dakota State Penitentiary.**

N.D.C.C. ch. 12-47, 12-48, and 12-48.1 generally provide the Warden with authority over inmates at the North Dakota State Penitentiary. However, oftentimes it is the case that the statutes in these chapters and who actually has responsibility for the offender are not consistent. For example, an offender sentenced to the legal and physical custody of the DOCR may be initially placed at the NDSP, and then placed by the DOCR at the TRCC program at the North Dakota State Hospital, and end up in the Bismarck Transition Center. N.D.C.C. § 12-47-17 provides that the Warden shall assign inmates to correctional facilities or other placements. However, the DOCR may be making the assignment or placement to programs such as the TRCC and Bismarck Transition Center. N.D.C.C. § 12-47-18 requires the Warden to confine inmates until the expiration of sentence; yet the DOCR may have placed the offender in a treatment program outside of the NDSP or in another correctional facility. N.D.C.C. § 12-47-34 makes the Warden responsible for escapes, even though the offender may be in a separate facility or program. N.D.C.C. § 12-48-03 makes the Warden liable for escapes of offenders who may have escaped while in an outside work program, which would include the Bismarck Transition Center or the Centre, Inc. program.

The DOCR proposes in SB 2148 to amend various statutes in N.D.C.C. ch. 12-47, 12-48, and 12-48.1 in order that the statutes reflect that it is the DOCR who actually has responsibility over the offender in most cases. The Warden of the NDSP and the MRCC and the Warden of the JRCC will still retain responsibility over the operations of those facilities, subject to oversight by the director of the DOCR. These proposed changes are included in Sections 8, 9, 11, 14, 15, and 20 of SB 2148.

#### **5. Visitation Requirements**

Section 5 amends N.D.C.C. § 12-47-12, which provides the Warden with rule-making authority. For consistency in the statutes, changes are made to replace "division of adult services" with "department of corrections and rehabilitation" and replace "persons" with "offenders". N.D.C.C. § 12-47-12(1) authorizes the Warden to make rules for the admission of visitors, subject to the requirement that "admission of visitors may not be limited to less than four days in each week." Overcrowding and the increased pace of admissions has made the current statutory language pretty much unworkable. At the present time, the MRCC is not able to provide visitation based on a four-day per week schedule on account of staff and facility availability. The Treatment Unit at the NDSP has to arrange visitation around the inmates' treatment programs and is not able to provide visitation based on a four-day per week schedule. The Penitentiary and the JRCC do not have the facility capacity to provide secure visitation four days per week. The Wardens of the NDSP and the JRCC need the authority and flexibility to set visitation days, times, and procedures at the NDSP, MRCC, and JRCC based on staffing, security and facility

capacity. The Senate Judiciary Committee included an amendment to Section 12-47-12 to provide that the visitation requirements of four visitation days per week will be subject to facility capacity. The DOCR will still maintain compliance with American Correctional Association (ACA) accreditation standards relating to visitation.

## **6. Miscellaneous Housekeeping Changes**

- a. Section 4 of SB 2148 amends § 12-47-11. Section 6 of SB 2148 amends N.D.C.C. § 12-47-13. Section 12 amends N.D.C.C. § 12-48-01. Section 13 amends N.D.C.C. § 12-48-02. Section 16 amends N.D.C.C. § 12-48-07. Section 17 amends N.D.C.C. § 12-48-14. Section 18 amends N.D.C.C. § 12-48-22. These are housekeeping changes to replace archaic and overly wordy language and for consistency with terminology.
- b. Section 21 amends N.D.C.C. § 12-48.1-03 to provide that an offender's primary obligation from any funds earned in work release is to pay for the support of the offender's dependents, which reflects state and federal law, and to pay the offender any balance consistent with the requirements of N.D.C.C. § 12-48-15, the statute governing inmate accounts.

## **7. Performance Based Sentence Reduction**

Section 22 of SB 2148 amends N.D.C.C. § 12-54.1-01 relating to performance based sentence reduction. This section in its present form was enacted in 1991 to provide for performance based sentence reduction ("good time") for "offenders sentenced to the penitentiary or any of its affiliated facilities". The language is not consistent with N.D.C.C. § 29-27-07 and not consistent with the various placements of offenders by the DOCR in facilities outside of the NDSP and its affiliated facilities, the JRCC and the MRCC. Under the proposed amendment, the language is changed to refer to offenders committed to the legal and physical custody of the DOCR. The last sentence of the statute presently reads: "While incarcerated in the penitentiary or any of its affiliated facilities, an inmate may earn five days good time per month except for any sentence where the incarceration time is six months or less." There are two problems with this sentence. The first problem, as already mentioned, is that the DOCR frequently places offenders at other facilities besides the NDSP and its affiliated facilities. If the language in this section is applied literally, those offenders would not be eligible to receive good time under this last sentence because they are not incarcerated at the Penitentiary or its affiliated facilities. The other problem with this sentence is that the language "While incarcerated at the penitentiary" was intended to mean that offenders were not eligible for good time for time spent in custody in a county jail prior to imposition of sentence and also were not entitled to good time for any time the offender was on probation. Prior to the 1991 amendments, inmates would receive from five to ten days per month of good time sentence reduction based on length of sentence. The good time was not performance based and was also applied to county jail time and probation time.

Under the pre-1991 version of the good time statute, the Penitentiary calculated projected good time release dates based on total months of sentence. After the 1991 amendments, the DOCR continued to calculate a projected good time release based on the total months of the sentence, but it excluded time spent in custody prior to imposition of sentence and it excluded probation time. However, the DOCR's calculation method has been questioned as to whether it is consistent with the existing statutory language, despite the intent of the language. The DOCR proposes to amend the statute to provide what it has been doing all along when calculating sentences, namely to calculate a projected release date based on a per month basis for each month of the sentence imposed. The proposed amendment also provides that the DOCR may not award sentence reduction for time spent in custody prior to imposition of sentence and for time on probation. The proposed change is included in Section 21 of SB 2148.

## **8. Definition Section**

Section 25 of SB 2148 creates a definition section to be included in N.D.C.C. ch. 54-23.3, which is the chapter of the Century Code establishing the DOCR. Presently, the statutes in N.D.C.C. chapters 12-46, 12-47, 12-48, 12-48.1, and 54-23.3 inconsistently refer to individuals who are either physically committed to the DOCR or under the supervision and management of the DOCR with a variety of terms, including inmate, prisoner, person, and offender. In addition, these terms are not defined in these chapters. The DOCR feels that the definitions are necessary to clarify and distinguish the status of the individuals either physically committed to the DOCR or under the supervision and management of the DOCR.