

November 2005

NORTH DAKOTA CENTURY CODE CHAPTERS RELATING TO INMATE HOUSING

At the October 12, 2005, meeting of the Budget Committee on Government Services, the committee requested information regarding statutes that relate to housing state inmates. The following North Dakota Century Code (NDCC) chapters and sections relating to inmates and inmate housing are attached as appendices:

- Appendix A - Chapter 12-44.1 - Jails and Regional Correction Centers.
- Appendix B - Chapter 12-47 - The Penitentiary.
- Appendix C - Chapter 12-48 - Employment of Inmates of the Penitentiary.
- Appendix D - Chapter 12-48.1 - Work Release Programs.
- Appendix E - Chapter 54-23.3 - Department of Corrections and Rehabilitation.
- Appendix F - Section 12.1-32-02.
- Appendix G - Section 29-27-07.

NORTH DAKOTA CENTURY CODE CHAPTER 12-44.1 - JAILS AND REGIONAL CORRECTION CENTERS

North Dakota Century Code Section 12-44.1-06 identifies the different grades of correctional facilities. This section provides that the Department of Corrections and Rehabilitation shall inspect and grade correctional facilities as to the length of allowable inmate confinement based upon construction, size, and usage as follows:

- "Grade 1" means a correctional facility for confining inmates not more than one year;
- "Grade 2" means a correctional facility for confining inmates not more than 90 days; and
- "Grade 3" means a correctional facility for confining inmates not more than 96 hours.

This section also provides that the length of confinement of a prisoner may be temporarily increased on a case-by-case basis in Grades 1 and 2 correctional facilities upon the request of the administrator and the approval of the Department of Corrections and Rehabilitation.

North Dakota Century Code Section 12-44.1-06.3 relates to female inmates in Grade 1 correctional facilities. This section allows, notwithstanding Section 12-44.1-06, a Grade 1 correctional facility that has a contract with the Department of Corrections and Rehabilitation to confine female inmates who have been sentenced to the legal and physical custody of the Department of Corrections and Rehabilitation to confine the female inmate **for more than one year** in accordance with the terms of the contract.

North Dakota Century Code Section 12-44.1-08 relates to the confinement of state and federal inmates. This section allows Grade 1 correctional facilities to contract for the confinement of offenders in the custody of the Department of Corrections and Rehabilitation if sufficient room is not available at the Penitentiary for the purposes of safety, security, discipline, medical care, or when the Department of Corrections and Rehabilitation determines it may be in the best interests of the offender or the department.

North Dakota Century Code Section 12-44.1-09 relates to the housing of inmates. This section requires each correctional facility to adopt a classification system for inmates to provide for the security, safety, and order of the correctional facility and for the safety and security of the community. This section also requires that in Grades 1 and 2 correctional facilities and, where practicable, in Grade 3 correctional facilities, the following groups of inmates must be housed separately from each other:

1. Female inmates from male inmates.
2. Juveniles from adults.
3. Persons detained for hearing or trial from inmates under sentence of imprisonment, unless authorized to be housed together by the administrator for security, order, or rehabilitation.
4. Persons detained for hearing or trial or under sentence of imprisonment from persons otherwise detained by order of the court, unless authorized to be housed together by the administrator for security, order, or rehabilitation.
5. Inmates who may have special needs as determined by the correctional facility or whose behavior may present a serious threat to the safety or security of the correctional facility, the staff, the inmate, or other inmates.

If the correctional facility has adopted a classification system approved by the Department of Corrections and Rehabilitation, the correctional facility is not required to comply with subsections 3, 4, and 5 of NDCC Section 12-44.1-09.

North Dakota Century Code Section 12-44.1-24 relates to the correctional facility standards and inspections. This section provides that the Department of Corrections and Rehabilitation shall prescribe rules establishing minimum standards for the construction, operation, and maintenance of public or private correctional facilities; prescribe rules for the care and treatment of inmates; cause rules and regulations to be made available to inmates or be posted

in at least one conspicuous place in each correctional facility; and appoint a correctional facility inspector qualified by special experience, education, or training to inspect each correctional facility at least once each year to determine if the rules and regulations have been complied with. The inspection must include health and safety, fire and life safety, security, rehabilitation programs, recreation, treatment of persons confined, and personnel training.

North Dakota Century Code Section 12-44.1-26 allows for correctional facility variances. This section provides that a correctional facility shall comply with the requirements of the rules adopted by the Department of Corrections and Rehabilitation unless a variance has been granted by the department. The Department of Corrections and Rehabilitation may grant a variance if it is determined that compliance with the rule would cause extreme hardship as a result of circumstances which are unique to the correctional facility and the correctional facility will substantially comply with the policy of the rule during the time of variance from the rule. The Department of Corrections and Rehabilitation shall give written reasons for granting or denying a variance request. This section also provides that in previously existing correctional facilities where specific rules cannot be complied with because of alleged difficulty or undue hardship, exception to specific physical plant rules must be made if the intent of the rule is met and security, supervision of prisoners, established programs, or the safe, healthful, or efficient operation of the correctional facility is not seriously affected.

NORTH DAKOTA CENTURY CODE CHAPTER 12-47 - THE PENITENTIARY

North Dakota Century Code Section 12-47-17 relates to offenders committed to the Department of Corrections and Rehabilitation and the records that are to be kept. This section provides that the Department of Corrections and Rehabilitation shall receive any offender who has been convicted and committed to the legal and physical custody of the department when the offender has been delivered to the department with a copy of the judgment and sentence of the court ordering the commitment to the custody of the department.

North Dakota Century Code Section 12-47-18 provides that the director of the Department of Corrections and Rehabilitation shall be responsible for offenders committed to the legal and physical custody of the department. This section also provides that the director shall care for, govern, and make an effort to employ all offenders in conformity with their sentences and in the manner prescribed by law and the rules and regulations lawfully adopted for the conduct of the Penitentiary and the department.

North Dakota Century Code Section 12-47-18.1 provides for the transfer of persons between correctional facilities. This section provides that the director

of the Department of Corrections and Rehabilitation may transfer an offender to any facility under the department's control or contract to transfer an offender to another correctional facility for purposes of safety, security, discipline, medical care, or when the director determines it may be in the best interests of the public, the offender, or the department.

North Dakota Century Code Section 12-47-38 relates to the director of the Department of Corrections and Rehabilitation contracting for housing female inmates. This section provides that if there is no qualified state facility available, the director of the Department of Corrections and Rehabilitation shall contract with a county for the housing of female inmates in the county jail, to the extent space is available in the county jail. This section also provides that the county jail must be designed in a manner that can adequately segregate the female inmates from the male inmates, and any county with which the department contracts must have available and must provide the female inmates access to educational and vocational programs, chemical dependency treatment programs, mental health programs, medical services, and adequate recreational facilities.

NORTH DAKOTA CENTURY CODE CHAPTER 12-48 - EMPLOYMENT OF INMATES OF THE PENITENTIARY

North Dakota Century Code Section 12-48-01 allows the employment of offenders committed to the Department of Corrections and Rehabilitation and Section 12-48-02 provides for the director of the Department of Corrections and Rehabilitation to make the rules regarding the employment of offenders. Section 12-48-02 provides that the director of the department shall establish rules and regulations relating to the care, treatment, **employment**, and management of all offenders committed to the legal and physical custody of the department.

NORTH DAKOTA CENTURY CODE CHAPTER 12-48.1 - WORK RELEASE PROGRAMS

North Dakota Century Code Section 12-48.1-01 provides that the director of the Department of Corrections and Rehabilitation may provide certain services for offenders. This section provides that the director of the department may participate in programs in which offenders committed to the legal and physical custody of the department may be gainfully employed or participate in an educational or other rehabilitation program either in or outside facilities under the control of the department. This section also provides that the director may obtain or contract with separate facilities with minimum security for housing offenders granted release privileges, and in areas where facilities are not within reasonable proximity of the place of employment or training of an

offender with release privileges, the director may arrange for the housing of the offender in local confinement facilities.

**NORTH DAKOTA CENTURY
CODE CHAPTER 54-23.3 -
DEPARTMENT OF CORRECTIONS
AND REHABILITATION**

North Dakota Century Code Section 54-23.3-02 provides that the purpose of the Department of Corrections and Rehabilitation is to include providing for the care, custody, discipline, training, and treatment of persons committed to state correctional facilities and programs and to coordinate and provide a continuum of correctional services to both adult and juvenile clients.

North Dakota Century Code Section 54-23.3-04 identifies the powers and duties of the director of the Department of Corrections and Rehabilitation. Duties provided under this section include developing necessary programs and services for adult and juvenile offenders, within legislative appropriations, providing for their treatment and rehabilitation and recognizing their special needs; promoting the development of alternatives to conventional incarceration for those offenders who can be dealt with more effectively in less restrictive, community-based facilities and programs; and contracting for correctional services, and to provide such services, with the United States, Canada, other states, and any of their governmental subdivisions and agencies and with another agency or governmental unit in this state, or with any private or public correctional or treatment facility or agency.

**OTHER NORTH DAKOTA
CENTURY CODE SECTIONS**

North Dakota Century Code Section 12.1-32-02 allows sentencing alternatives, credit for time in custody, and diagnostic testing. This section provides

that a term of imprisonment, including intermittent imprisonment, is:

1. In a state correctional facility in accordance with Section 29-27-07, in a regional corrections center, or in a county jail if convicted of a felony or a Class A misdemeanor.
2. In a county jail or in a regional corrections center if convicted of a Class B misdemeanor.
3. In a facility or program deemed appropriate for the treatment of the individual offender, including available community-based programs.
4. In the case of persons convicted of an offense who are under 18 years of age at the time of sentencing, the court is limited to sentencing the minor defendant to a term of imprisonment in the custody of the Department of Corrections and Rehabilitation.

North Dakota Century Code Section 29-27-07 relates to the commitment of offenders to the Department of Corrections and Rehabilitation and the place of confinement. This section provides that 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. This section also provides that after assuming custody of the convicted person, the Department of Corrections and Rehabilitation may transfer the inmates 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.

ATTACH:7