

CORRECTIONS, PAROLE, AND PROBATION

CHAPTER 92

HOUSE BILL NO. 1410

(Representatives Vetter, Damschen, Karls, Klemin, B. Koppelman, K. Koppelman,
Pollert, Satrom)
(Senators Kannianen, Meyer, Vedaa)

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

12-44.1-14. Inmate rights.

1. Subject to reasonable safety, security, discipline, and correctional facility administration requirements, the administrator of each correctional facility shall:
 1. a. Ensure inmates have confidential access to attorneys and their authorized representatives.
 2. b. Ensure that inmates are not subjected to discrimination based on race, national origin, color, creed, sex, economic status, or political belief.
 3. c. Ensure equal access by male and female inmates to programs and services available through the correctional facility.
 4. d. Ensure access to mail, telephone use, and visitors.
 5. e. Ensure that inmates are properly fed, clothed, and housed.
 6. f. Ensure that inmates have adequate medical care. Adequate medical care means necessary treatment for a medical or health condition for which serious pain or hardship would occur if care is not given. A correctional facility may not deny adequate medical care to an inmate who does not

have health insurance or does not have the ability to pay the costs of the medical or health care.

7. g. Ensure that inmates may reasonably exercise their religious beliefs.
2. Correctional facility staff or an administrator of a correctional facility may not:
 - a. Substantially burden the exercise of religion by an offender in the custody of the correctional facility unless the burden is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest;
 - b. Treat religious conduct more restrictively than any comparable secular conduct unless the correctional facility demonstrates the disparate treatment is necessary to further a compelling penological interest and is the least restrictive means of furthering that compelling penological interest; or
 - c. Deny clergy access to an offender in the custody of the correctional facility for the purpose of providing religious services unless the correctional facility demonstrates the denial is necessary to further a compelling penological interest and is the least restrictive means of furthering that compelling penological interest.
3. An offender in the custody of a correctional facility claiming to be aggrieved by a violation of subsection 2 may assert, after exhausting appropriate administrative remedies, that violation as a claim or defense in a judicial proceeding and, if the offender is the prevailing party, may obtain appropriate relief, including costs and reasonable attorney's fees.

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

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

1. The warden and all officers of the penitentiary uniformly shall treat the inmates thereof of the penitentiary with kindness, and the warden shall require of the officers and guards that, in the execution of theirthe officers' and guards' respective duties, theythe officers and guards in all cases shall refrain from boisterous and unbecoming language in giving their orders and commands. No corporalCorporal or other painful or unusual punishment shallmay not be inflicted upon the inmates of the penitentiary for violation of the rules and regulations thereof of the penitentiary.
2. A facility under the control of the department of corrections and rehabilitation may not:
 - a. Substantially burden the exercise of religion by an offender in the custody of the facility unless the burden is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest;
 - b. Treat religious conduct more restrictively than any comparable secular conduct unless the facility demonstrates the disparate treatment is necessary to further a compelling penological interest and is the least restrictive means of furthering that compelling penological interest; or

- c. Deny clergy access to an offender in the custody of the facility for the purpose of providing religious services unless the facility demonstrates the denial is necessary to further a compelling penological interest and is the least restrictive means of furthering that compelling penological interest.
3. An offender in the custody of a facility claiming to be aggrieved by a violation of subsection 2 may assert, after exhausting appropriate administrative remedies, that violation as a claim or defense in a judicial proceeding and, if the offender is the prevailing party, may obtain appropriate relief, including costs and reasonable attorney's fees.

³⁸ **SECTION 3. AMENDMENT.** Subsection 12 of section 23-01-05 of the North Dakota Century Code is amended and reenacted as follows:

12. Issue any orders relating to disease control measures deemed necessary to prevent the spread of communicable disease. Disease control measures may include special immunization activities and decontamination measures. Written orders issued under this section shall have the same effect as a physician's standing medical order. The state health officer may apply to the district court in a judicial district where a communicable disease is present for an injunction canceling public events or closing places of business. On application of the state health officer showing the necessity of such cancellation, the court may issue an ex parte preliminary injunction, pending a full hearing.
 - a. Notwithstanding any other provision of law, an order issued pursuant to this subsection may not:
 - (1) Substantially burden a person's exercise of religion unless the order is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest;
 - (2) Treat religious conduct more restrictively than any secular conduct of reasonably comparable risk, unless the government demonstrates through clear and convincing evidence that a particular religious activity poses an extraordinary health risk; or
 - (3) Treat religious conduct more restrictively than comparable secular conduct because of alleged economic need or benefit.
 - b. A person claiming to be aggrieved by a violation of subdivision a may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief, including costs and reasonable attorney's fees.

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

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

1. The department of human services may not:

³⁸ Section 23-01-05 was also amended by section 1 of House Bill No. 1118, chapter 191, section 107 of House Bill No. 1247, chapter 352, section 1 of House Bill No. 1418, chapter 190, and section 1 of Senate Bill No. 2181, chapter 192.

- a. Substantially burden the exercise of religion by patient or resident under the department's care unless the burden is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest;
 - b. Treat religious conduct more restrictively than any comparable secular conduct unless the department demonstrates the disparate treatment is necessary to further a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest; or
 - c. Deny clergy access to a patient or resident for the purpose of providing religious services unless the department demonstrates the denial is necessary to further a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest.
2. A patient or resident of the department of human services claiming to be aggrieved by a violation of this section, may assert, after exhausting appropriate administrative remedies, that violation as a claim or defense in a judicial proceeding and obtain appropriate relief, including costs and reasonable attorney's fees.

³⁹ **SECTION 5. AMENDMENT.** Section 37-17.1-05 of the North Dakota Century Code is amended and reenacted as follows:

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

1. The governor is responsible to minimize or avert the adverse effects of a disaster or emergency.
2. Under this chapter, the governor may issue executive orders and proclamations, and amend or rescind them. Executive orders, proclamations, and regulations have the force of law.
3. A disaster or emergency must be declared by executive order or proclamation of the governor if the governor determines a disaster has occurred or a state of emergency exists. The state of disaster or emergency shall continue until the governor determines that the threat of an emergency has passed or the disaster has been dealt with to the extent that emergency conditions no longer exist. The legislative assembly by concurrent resolution may terminate a state of disaster or emergency at any time. All executive orders or proclamations issued under this subsection must indicate the nature of the disaster or emergency, the area or areas threatened, the conditions which have brought it about or which make possible termination of the state of disaster or emergency. An executive order or proclamation must be disseminated promptly by means calculated to bring its contents to the attention of the general public, unless the circumstances attendant upon the disaster or emergency prevent or impede such dissemination, and it must be promptly filed with the department of emergency services, the secretary of state, and the county or city auditor of the jurisdictions affected.

³⁹ Section 37-17.1-05 was also amended by section 2 of House Bill No. 1118, chapter 191, section 3 of House Bill No. 1118, chapter 191, section 1 of House Bill No. 1180, chapter 272, and section 2 of Senate Bill No. 2181, chapter 192.

4. An executive order or proclamation of a state of disaster or emergency shall activate the state and local operational plans applicable to the political subdivision or area in question and be authority for the deployment and use of any forces to which the plan or plans apply and for use or distribution of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to this chapter or any other provision of law relating to a disaster or emergency.
5. During the continuance of any state of disaster or emergency declared by the governor, the governor is commander in chief of the emergency management organization and of all other forces available for emergency duty. To the greatest extent practicable, the governor shall delegate or assign command authority by prior arrangement embodied in appropriate executive orders or emergency operational plans, but nothing herein restricts the governor's authority to do so by orders issued at the time of the disaster or emergency.
6. In addition to any other powers conferred upon the governor by law, the governor may:
 - a. Suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business, or the orders, rules, or regulations of any state agency, if strict compliance with the provisions of any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in managing a disaster or emergency.
 - b. Utilize all available resources of the state government as reasonably necessary to manage the disaster or emergency and of each political subdivision of the state.
 - c. Transfer the direction, personnel, or functions of state departments and agencies or units thereof for the purpose of performing or facilitating emergency management activities.
 - d. Subject to any applicable requirements for compensation under section 37-17.1-12, commandeer or utilize any private property if the governor finds this necessary to manage the disaster or emergency.
 - e. Direct and compel the evacuation of all or part of the population from any stricken or threatened area within the state if the governor deems this action necessary for the preservation of life or other disaster or emergency mitigation, response, or recovery.
 - f. Prescribe routes, modes of transportation, and destinations in connection with an evacuation.
 - g. Control ingress and egress in a designated disaster or emergency area, the movement of persons within the area, and the occupancy of premises therein.
 - h. Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, explosives, and combustibles, not including ammunition.
 - i. Make provision for the availability and use of temporary emergency housing.

- j. Make provisions for the control, allocation, and the use of quotas for critical shortages of fuel or other life and property sustaining commodities.
 - k. Designate members of the highway patrol, North Dakota national guard, or others trained in law enforcement, as peace officers.
7. Any person who willfully violates any provision of an executive order or proclamation issued by the governor pursuant to this chapter is guilty of an infraction.
8. ~~Authorize~~The governor may authorize the adjutant general to recall to state active duty, on a volunteer basis, former members of the North Dakota national guard. Those recalled must possess the qualifications required by the disaster or emergency. Recall under this subsection is effective only for the duration of the disaster or emergency and recalled personnel will be released from state active duty upon competent authority that the requirement of their service under this subsection has passed. Compensation for personnel recalled under this subsection will be based upon section 37-07-05.
9. Notwithstanding any other provision of law, an order, proclamation, rule, or regulation issued pursuant to this section may not:
 - a. Substantially burden a person's exercise of religion unless the order is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest;
 - b. Treat religious conduct more restrictively than any secular conduct of reasonably comparable risk, unless the government demonstrates through clear and convincing evidence that a particular religious activity poses an extraordinary health risk; or
 - c. Treat religious conduct more restrictively than comparable secular conduct because of alleged economic need or benefit.
10. A person claiming to be aggrieved by a violation of subsection 9 may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief, including costs and reasonable attorney's fees.

Approved April 19, 2021

Filed April 20, 2021

CHAPTER 93

HOUSE BILL NO. 1069

(Judiciary Committee)

(At the request of the Department of Corrections and Rehabilitation)

AN ACT to amend and reenact section 12-47-31 of the North Dakota Century Code, relating to the discharge of offenders.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-47-31 of the North Dakota Century Code is amended and reenacted as follows:

12-47-31. Discharge of offenders - Clothing - Transportation.

The department of corrections and rehabilitation shall provide an offender released from the department appropriate clothing and transportation to a reasonable point within the state as specified in the release plan, based upon need.

Approved March 8, 2021

Filed March 9, 2021

CHAPTER 94

SENATE BILL NO. 2108

(Judiciary Committee)

(At the request of the Department of Corrections and Rehabilitation)

AN ACT to amend and reenact subsection 3 of section 12-47-36 of the North Dakota Century Code, relating to exceptions to exempt and confidential records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁴⁰ **SECTION 1. AMENDMENT.** Subsection 3 of section 12-47-36 of the North Dakota Century Code is amended and reenacted as follows:

3. Notwithstanding any other provisions of law relating to privilege or confidentiality, except for the confidentiality requirements of federal drug and alcohol treatment and rehabilitation laws, the following persons, organizations, or agencies without prior application to the court may inspect case history, medical, psychological, or treatment records:
 - a. The governor;
 - b. The pardon advisory board, if the governor has appointed a pardon advisory board;
 - c. The parole board;
 - d. Any division, department, official, or employee of the department of corrections and rehabilitation;
 - e. Another state receiving a parolee or probationer under the provisions of chapter 12-65;
 - f. A federal, state, regional, or county correctional facility receiving physical custody of a person under the legal custody of the department of corrections and rehabilitation;
 - g. The employees in the office of the attorney general and investigators, consultants, or experts retained by the state;
 - h. The risk management division of the office of management and budget for the purpose of investigating and defending actions or claims under chapter 32-12.2;
 - i. The district court of the county where the judgment of conviction was entered;
 - j. A state or federal court where a person who is or was in the custody or under the supervision and management of the adult services division of

⁴⁰ Section 12-47-36 was also amended by section 16 of House Bill No. 1247, chapter 352.

the department of corrections and rehabilitation has commenced litigation and, the parties, their counsel, and representatives of the parties in proceedings, if the records are relevant to the litigation and the subject of the records has signed an authorization;

- k. A criminal justice agency as defined in section 44-04-18.7; or
- l. The United States social security administration and veterans administration; or
- m. A state, federal, or tribal agency that evaluates sex offenders for civil commitment or assesses sex offender risk level for registration.

Approved March 22, 2021

Filed March 23, 2021

CHAPTER 95

SENATE BILL NO. 2178

(Senators Lee, Dwyer, Hogue)
(Representatives M. Johnson, Klemin, Roers Jones)

AN ACT to amend and reenact subsection 2 of section 12-48.1-02 and section 12-59-02 of the North Dakota Century Code, relating to eligibility for release programs and parole board compensation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 12-48.1-02 of the North Dakota Century Code is amended and reenacted as follows:

2. The director of the department may authorize participation in outside programs for an offender who has ten years or less remaining on a sentence and has been committed ~~to ten years or less~~ to the legal and physical custody of the department. The parole board, with the approval of the director of the department, may authorize participation in outside programs for offenders who have more than ten years remaining on a sentence and have been committed to the legal and physical custody of the department ~~for more than ten years~~.

SECTION 2. AMENDMENT. Section 12-59-02 of the North Dakota Century Code is amended and reenacted as follows:

12-59-02. Meetings - Compensation - Rules.

The governor shall appoint a member of the parole board to be chairman. The chairman of the parole board shall designate three members of the parole board for each meeting of the parole board. Meetings of the parole board must be held in accordance with rules established by the parole board and must be held as often as required to properly conduct the business of the board, but in any event not less than six times per year. The parole board may only take action upon the concurrence of at least two members who participated in the same meeting. The final decision of at least two parole board members who participated in the same parole board meeting constitutes the decision of the parole board. Members are entitled to be compensated at the same rate of seventy-five dollars per day for each day actually and necessarily spent in the performance of their duties as board members paid to members of the legislative assembly for attendance at interim committee meetings plus the same mileage and expenses as are authorized for state officials and employees. The director of the department of corrections and rehabilitation or the director's designee is the clerk for the parole board.

Approved March 31, 2021

Filed April 1, 2021

CHAPTER 96**HOUSE BILL NO. 1070**

(Judiciary Committee)

(At the request of the Department of Corrections and Rehabilitation)

AN ACT to amend and reenact section 12-59-12 of the North Dakota Century Code, relating to modification of parole board action.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-59-12 of the North Dakota Century Code is amended and reenacted as follows:

12-59-12. Board may reconsider action.

The board may reconsider its action in granting a parole to any ~~convict~~individual at any time before ~~such convict~~the individual has been released and finally discharged from the penitentiary, a local correctional facility, a federal correctional facility, or a correctional facility of another state. Such action may be taken on the board's own motion or on the petition of interested parties. Upon notice to a parolee and with good cause, the board may modify or enlarge conditions of parole at any time before the expiration or termination of the parole.

Approved March 8, 2021

Filed March 9, 2021

CHAPTER 97

HOUSE BILL NO. 1294

(Representatives Roers Jones, M. Johnson, Jones, Klemin, Satrom, Vetter)
(Senators Bakke, Dwyer, Luick, Meyer, K. Roers)

AN ACT to create and enact section 12-60-16.12 of the North Dakota Century Code, relating to the unauthorized dissemination of criminal history record information; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 12-60-16.12 of the North Dakota Century Code is created and enacted as follows:

12-60-16.12. Criminal history record information - Civil action - Penalty.

A person that disseminates, publishes, or maintains or causes to be disseminated, published, or maintained, the criminal history record information of an individual which pertains to that individual's charge or arrest for a criminal offense, and solicits, requests, or accepts money or other thing of value for removing the criminal history record information is civilly liable to that individual in the amount of five hundred dollars or actual damages, whichever is greater, plus reasonable attorney's fees and court costs.

Approved March 31, 2021

Filed April 1, 2021

CHAPTER 98

HOUSE BILL NO. 1073

(Judiciary Committee)

(At the request of the Department of Environmental Quality)

AN ACT to create and enact a new section to chapter 23-01 and a new section to chapter 23.1-01 of the North Dakota Century Code, relating to criminal history background checks for applicants for licenses and permits issued by the state department of health and the department of environmental quality; and to amend and reenact subdivisions n and vv of subsection 2 of section 12-60-24 of the North Dakota Century Code, relating to criminal history record checks.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁴¹ **SECTION 1. AMENDMENT.** Subdivision n of subsection 2 of section 12-60-24 of the North Dakota Century Code is amended and reenacted as follows:

- n. The state department of health for a final applicant for ~~or an employee in a specified occupational~~ a job opening or a current employee with the department as designated by the state health officer; an individual being investigated by the department; or, when requested by the department, an applicant for registration, ~~certification, or licensure by the department as a designated caregiver or a compassion center agent under chapter 19-24.1.~~

⁴² **SECTION 2. AMENDMENT.** Subdivision vv of subsection 2 of section 12-60-24 of the North Dakota Century Code is amended and reenacted as follows:

- vv. The department of environmental quality for a final applicant for ~~or an employee specified in occupational~~ a job opening or a current employee with the department; an individual being investigated by the department; or, when requested by the department, an applicant for ~~registration, certification, or licensure by the department~~ a radioactive materials license under chapter 23.1-03 or a solid waste permit under chapter 23.1-08.

SECTION 3. A new section to chapter 23-01 of the North Dakota Century Code is created and enacted as follows:

⁴¹ Section 12-60-24 was also amended by section 2 of House Bill No. 1073, chapter 98, section 18 of House Bill No. 1247, chapter 352, section 1 of House Bill No. 1253, chapter 164, section 1 of Senate Bill No. 2062, chapter 452, section 1 of Senate Bill No. 2110, chapter 218, section 1 of Senate Bill No. 2131, chapter 378, section 1 of Senate Bill No. 2174, chapter 447, section 1 of Senate Bill No. 2187, chapter 323, section 1 of Senate Bill No. 2338, chapter 379.

⁴² Section 12-60-24 was also amended by section 1 of House Bill No. 1073, chapter 98, section 18 of House Bill No. 1247, chapter 352, section 1 of House Bill No. 1253, chapter 164, section 1 of Senate Bill No. 2062, chapter 452, section 1 of Senate Bill No. 2110, chapter 218, section 1 of Senate Bill No. 2131, chapter 378, section 1 of Senate Bill No. 2174, chapter 447, section 1 of Senate Bill No. 2187, chapter 323, section 1 of Senate Bill No. 2338, chapter 379.

Criminal history background checks.

The state department of health may require a final applicant for a job opening or a current employee with the department, as designated by the state health officer, complete a state and national criminal history record check as provided under section 12-60-24.

SECTION 4. A new section to chapter 23.1-01 of the North Dakota Century Code is created and enacted as follows:

Criminal history background checks.

The department may require an applicant for a license or permit to complete a state and nationwide criminal history record check as provided in section 12-60-24. If the applicant is not an individual, the department may require an individual responsible for the applicant to complete a state and a nationwide criminal history record check as provided in section 12-60-24. The applicant or responsible individual shall submit personal information and fingerprints with the application necessary to complete the state and nationwide criminal history background record check. All costs associated with the state and nationwide criminal history record check are the responsibility of the applicant.

Approved April 8, 2021

Filed April 9, 2021

CHAPTER 99

HOUSE BILL NO. 1196

(Representatives Roers Jones, Heinert, Ista, Keiser, Mock, O'Brien)
(Senator Dwyer)

AN ACT to amend and reenact sections 12-60.1-01 and 12-60.1-02 and subsection 8 of section 12-60.1-04 of the North Dakota Century Code, relating to sealing criminal records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-60.1-01 of the North Dakota Century Code is amended and reenacted as follows:

12-60.1-01. Definitions.

As used in this chapter:

1. "Court record" includes:
 - a. Any document or information collected, received, or maintained by court personnel in connection with a judicial proceeding;
 - b. Any index, calendar, docket, register of actions, official record of the proceedings, order, decree, judgment, minute, and any information in a case management system created or prepared by court personnel relating to a judicial proceeding; and
 - c. Information maintained by court personnel pertaining to the administration of the court or clerk of court office and not associated with a particular case.
2. "Criminal record" means court and prosecution records subject to sealing under this chapter. A criminal record does not include criminal history record information as defined in subsection 5 of section 12-60-16.1 or criminal justice data information maintained in the criminal justice data information sharing system under section 54-12-34.
3. ~~"Employee" has the same meaning as in section 14-02.4-02.~~
4. ~~"Employer" has the same meaning as in section 14-02.4-02.~~
5. "Prosecutor" means the office or agency with jurisdiction over the offense for purposes of postconviction proceedings.
- 6-4. "Seal" means to prohibit the disclosure of the existence or contents of court or prosecution records unless authorized by court order.

SECTION 2. AMENDMENT. Section 12-60.1-02 of the North Dakota Century Code is amended and reenacted as follows:

12-60.1-02. Grounds to file petition to seal criminal record.

1. An individual may file a petition to seal a criminal record if:
 - a. The individual pled guilty to or was found guilty of a misdemeanor offense and the individual has not been ~~charged with~~convicted of a new crime for at least three years ~~from the date of release from incarceration, parole, or probation before filing the petition;~~ or
 - b. The individual pled guilty to or was found guilty of a felony offense and the individual has not been ~~charged with~~convicted of a new crime for at least five years ~~from the date of release from incarceration, parole, or probation before filing the petition.~~
2. This chapter does not apply to:
 - a. A felony offense involving violence or intimidation during the period in which the offender is ineligible to possess a firearm under subdivision a of subsection 1 of section 62.1-02-01; or
 - b. An offense for which an offender has been ordered to register under section 12.1-32-15.

SECTION 3. AMENDMENT. Subsection 8 of section 12-60.1-04 of the North Dakota Century Code is amended and reenacted as follows:

8. Except as provided in this section and if good cause is shown, ~~if a petition is denied an individual a district court denying a petition may not file~~prohibit a petitioner from filing a subsequent petition to seal a criminal record for ~~at least~~up to three years following the denial. ~~The order denying the petition must provide the reasons establishing good cause for prohibiting the petition.~~

Approved March 25, 2021

Filed March 26, 2021

CHAPTER 100

HOUSE BILL NO. 1126

(Representatives Roers Jones, Buffalo, Heinert, Ista, Jones, Mock, Porter)
(Senators Bakke, Dwyer)

AN ACT to amend and reenact section 12-63-02.2 of the North Dakota Century Code, relating to tribal police officers; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-63-02.2 of the North Dakota Century Code is amended and reenacted as follows:

12-63-02.2. Tribal police officers.

1. A tribal police officer of a federally recognized Indian tribe in this state who meets the requirements of this chapter and the rules adopted by the board is eligible for a peace officer license or part-time peace officer license. The board may waive the training program required for licensure for a tribal police officer.
2. The board shall issue a peace officer license or part-time peace officer license to a tribal police officer who is eligible for a peace officer license or part-time peace officer license under this section and who has paid the prescribed license fee if:
 - a. The tribal police officer has been appointed as a special deputy in accordance with section 11-15-02;
 - b. The tribal police officer is employed by the state or a political subdivision;
or
 - c. There is an agreement between the state or a political subdivision and the tribe for tribal police officers to perform law enforcement services; or
 - d. The tribal police officer has completed the training program unless waived by the board.
3. A tribal police officer who is a member of a police force of a tribal government and who is licensed under this section may exercise the powers of a peace officer of this state within the exterior boundaries of the reservation, or off the reservation, in accordance with the terms and conditions of the special deputy appointment, the employment agreement, or the agreement between the state or political subdivision and the tribe.
4. A tribal police officer who has a peace officer license under this section is subject to this chapter and the rules adopted by the board, including requirements for license renewal or reinstatement, annual sidearm qualification, and continuing education.

5. The state or political subdivision is not liable for any act or omission of a tribal police officer exercising peace officer powers authorized by an agreement between the state or a political subdivision and a tribe.
6. Notwithstanding section 12-63-02, a tribal police officer is not required to be licensed in this state to provide emergency law enforcement services or to provide mutual aid to a law enforcement officer of the state or a political subdivision within the exterior boundaries of the reservation or off the reservation.
7. This section does not diminish or expand the jurisdiction of any tribe or the state.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 16, 2021

Filed March 16, 2021

CHAPTER 101

HOUSE BILL NO. 1122

(Representatives Roers Jones, Heinert, Porter)
(Senators Hogue, Larson)

AN ACT to create and enact section 12-63-02.3 of the North Dakota Century Code, relating to reserve peace officers; and to amend and reenact section 12-63-03 of the North Dakota Century Code, relating to peace officer duties or activities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 12-63-02.3 of the North Dakota Century Code is created and enacted as follows:

12-63-02.3. Reserve peace officer - License.

1. Except as otherwise provided in this section, all provisions of this chapter apply to licensed reserve peace officers and a licensed reserve peace officer has the same authority as a licensed peace officer.
2. The board shall issue a reserve peace officer license to an individual who is appointed by a criminal justice agency and meets the requirements of this chapter and the rules established by the board.
3. A criminal justice agency may appoint a licensed reserve peace officer to supplement and assist a licensed peace officer. If a criminal justice agency appoints a licensed reserve peace officer, the licensed reserve peace officer must be under the supervision of a licensed peace officer designated by the criminal justice agency.
4. A licensed reserve peace officer may not exercise reserve peace officer functions when off duty.
5. The board shall establish criteria for reserve licenses.

SECTION 2. AMENDMENT. Section 12-63-03 of the North Dakota Century Code is amended and reenacted as follows:

12-63-03. Persons and practices not affected.

This chapter does not prevent or restrict the practice of peace officer duties or activities of:

1. Auxiliary personnel such as members of organized groups for purposes such as posse, search and rescue, and security at dances, if the group operates personnel operate as adjunct to the police or sheriff's department, and doesdo not have arrest powers or peace officer authority delegated to its memberthe personnel by the department.

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- ~~2.~~ A reserve officer such as an individual used by a municipal, county, or state law enforcement agency to provide services to that jurisdiction on a nonsalaried basis and who is granted full arrest authority.
 3. A person who provides private investigative services in this state.
 - ~~4.3.~~ A person doing private security work or any private security agency.
 - ~~5.4.~~ A person performing peace officer duties in an official capacity as a federal officer.

Approved March 17, 2021

Filed March 18, 2021

CHAPTER 102

SENATE BILL NO. 2105

(Judiciary Committee)

(At the request of the Department of Corrections and Rehabilitation)

AN ACT to amend and reenact section 12-65-02 of the North Dakota Century Code, relating to warrant and probable cause requirements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-65-02 of the North Dakota Century Code is amended and reenacted as follows:

12-65-02. Custody and detention of offender for violation of terms and conditions of compact supervision - Hearing and waiver - Report to sending state.

1. Whenever it is alleged that an offender under compact supervision by the state has violated any terms and conditions of supervision under the compact for the supervision of adult offenders, the compact administrator may issue a warrant to take the offender into custody and detain the offender and request that the sending state retake the offender. The warrant must be entered into the national crime information center file with nationwide extradition and no bond amount. If there is probable cause to believe an offender has violated any of the terms or conditions of supervision under the compact for the supervision of adult offenders, a parole and probation officer or any peace officer directed by a parole and probation officer ~~may~~shall take the offender into custody and detain the offender in a correctional facility pending application for a warrant of arrest and authority to detain. The offender may not be released on bail pending the probable cause hearing under this chapter. The offender is entitled to a hearing to be held in accordance with this chapter within a reasonable time after being taken into custody to determine whether there is probable cause to find that the offender violated any of the terms and conditions of parole or probation while under compact supervision. The offender may waive the hearing and admit there is probable cause to find that the offender violated any of the terms and conditions of parole or probation while under compact supervision. As soon as practical after the hearing or waiver of the hearing, the compact administrator shall furnish a copy of the hearing record and make a report to the sending state with findings of fact regarding the violations of the terms and conditions of parole or probation while under compact supervision and shall make recommendations regarding the disposition of the offender. If it appears to the compact administrator that the sending state will retake the offender, the compact administrator may detain the offender for a reasonable period after the hearing or waiver in order for the sending state to arrange for retaking the offender.
2. Whenever a receiving state that is supervising an offender for the state issues a mandatory retaking of that offender, the parole board or the court with jurisdiction shall issue a warrant. The warrant must be entered into the national crime information center file with nationwide extradition and no bond

amount. If requested by the state, the receiving state shall establish probable cause when the offender is apprehended.

Approved March 22, 2021

Filed March 23, 2021

CHAPTER 103

SENATE BILL NO. 2106

(Judiciary Committee)

(At the request of the Department of Corrections and Rehabilitation)

AN ACT to amend and reenact section 12-65-08 of the North Dakota Century Code, relating to transfer fees and travel fees for adults under supervision.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-65-08 of the North Dakota Century Code is amended and reenacted as follows:

12-65-08. Interstate transfer or travel of probationers and parolees - Fees.

1. Upon the approval by the department of corrections and rehabilitation of a request of a probationer or parolee who is under the supervision of the department of corrections and rehabilitation to transfer residence to another state under the interstate compact for adult offender supervision, the probationer or parolee shall pay to the department an application fee of one hundred fifty dollars. The department may waive the offender's application fee. ~~If the department waives the offender's payment of the fee, the department shall pay the offender's application fee.~~ In addition to the application fee paid by the probationer ~~or the department~~, the county having jurisdiction over the probationer, upon approval of the application for transfer of that probationer, shall pay to the department a fee of one hundred fifty dollars. In addition to the application fee paid by the parolee, the department, upon approval of the application for transfer of that parolee, shall pay to the department a fee of one hundred fifty dollars. However, if the balance in the fund created pursuant to subsection 3 exceeds seventy-five thousand dollars on June thirtieth of the immediately preceding fiscal year, the department shall waive the entire fee otherwise required to be paid by the county or department.
2. Any probationer or parolee residing in the state who requests a travel permit to travel to another state shall pay to the department a travel permit fee of ten dollars. ~~In the case of illness or death in the probationer's family, the department may waive the travel permit fee for hardship, unless waived by the department.~~
3. The department shall transfer all funds collected or paid under this section to the state treasury for deposit in the probationer and parolee violation transportation fund. The funds deposited in this fund may be spent pursuant to legislative appropriation for the purpose of defraying the costs of returning to the state probationers and parolees who violate their conditions of supervision. The department may contract with a private entity to assist in the administration of the fund.
4. The department shall adopt rules for implementation of this section.

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