

**Fifty-sixth Legislative Assembly, State of North Dakota, begun in the
Capitol in the City of Bismarck, on Tuesday, the fifth day of January,
one thousand nine hundred and ninety-nine**

SENATE BILL NO. 2133
(Judiciary Committee)
(At the request of the Department of Corrections and
Rehabilitation)

AN ACT to amend and reenact sections 12-47-21 and 12-47-34 of the North Dakota Century Code, relating to contraband at the penitentiary and escapes from the penitentiary; and to repeal sections 12-47-03, 12-47-07, 12-47-19, 12-47-20, and 12-47-32 of the North Dakota Century Code, relating to service of process at the penitentiary, oath and bond of the warden, inmates' food, beds, and clothing at the penitentiary, and warrants for cash payments to inmates at the penitentiary.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-47-21 of the North Dakota Century Code is amended and reenacted as follows:

12-47-21. Alcoholic beverages and controlled substances prohibited - Physician's orders - Use of tobacco - Weapons and firearms - Penalty.

1. It is unlawful for any person to ~~deliver or administer, whether or not for a consideration, any alcoholic beverage or~~ willfully:
 - a. Manufacture or possess with intent to manufacture or deliver, a controlled substance, on or within any premises under the control of the department of corrections and rehabilitation or any of its divisions.
 - b. Deliver a controlled substance to any inmate of the penitentiary, or to any other person for redelivery to an inmate of the penitentiary. This subsection does not apply to the possession, delivery, or administration of controlled substances or alcoholic beverages by the penitentiary pharmacy or agent of the penitentiary pharmacy or in accordance with the orders or prescription of a duly licensed physician and the approval, except in emergency circumstances, of the warden. Any person who violates this subsection is guilty of a class A felony.
2. ~~No~~ It is unlawful for a penitentiary inmate may to possess any controlled substance or alcoholic beverage unless the substance or beverage was delivered to the inmate or was possessed except in accordance with the prescription or orders of a licensed physician. It is unlawful for a penitentiary inmate to possess alcohol or alcoholic beverages. It is unlawful for a penitentiary inmate to possess any tobacco except when the warden has authorized possession of tobacco for religious purposes or when on authorized release from the penitentiary. Any penitentiary inmate who violates this subsection with respect to:
 - a. Possession of a controlled substance is guilty of a class B felony.
 - b. Possession of alcohol or alcoholic beverages is guilty of a class A misdemeanor.
 - c. Possession of tobacco is guilty of a class B misdemeanor.
3. ~~Any person, other than an official or employee of the penitentiary, who violates subsection 1 by delivering or administering a controlled substance is guilty of a class B felony. Any official or employee of the penitentiary who violates subsection 1 by delivering or administering a controlled substance is guilty of a class A felony. It is unlawful for any person to willfully deliver alcohol or alcoholic beverages to a penitentiary inmate. It is~~

unlawful for any person to willfully deliver tobacco to an inmate except when the warden has authorized delivery of tobacco for religious purposes or when the inmate is on an authorized release from the penitentiary. Any person who violates this subsection 4 by delivering:

- a. Delivery of alcohol or alcoholic beverages to a penitentiary inmate is guilty of a class A misdemeanor.
 - b. Delivery of tobacco to a penitentiary inmate is guilty of a class B misdemeanor.
4. It is unlawful for any person other than a penitentiary inmate to willfully possess a controlled substance on or within any property under the control of the department of corrections and rehabilitation or any of its divisions except when the person is an authorized agent of the penitentiary pharmacy or except in accordance with the orders or prescription of a licensed physician. Any person who violates this subsection 2 by possessing a controlled substance is guilty of a class B felony. Any person who violates subsection 2 by possessing alcoholic beverages is guilty of a class A misdemeanor.
5. It is unlawful for a penitentiary inmate to willfully procure, make, or possess any object, including a shard made of any material or any weapon, firearm, ammunition, or explosive material, intended to be used for an assault on another person or to damage property. Any penitentiary inmate who violates this subsection with respect to:
- a. A shard or weapon that is not a dangerous weapon or firearm as defined in section 62.1-01-01 is guilty of a class B felony.
 - b. Ammunition, a knife of any length, a weapon that is a dangerous weapon or firearm as defined in section 62.1-01-01, or explosive material is guilty of a class A felony.
6. It is unlawful for any person to deliver or provide to a penitentiary inmate any object intended to be used for an assault on another person or to damage penitentiary property. Any person who violates this subsection with respect to:
- a. A shard or weapon that is not a dangerous weapon or firearm as defined in section 62.1-01-01 is guilty of a class B felony.
 - b. Ammunition, a knife of any length, a weapon that is a dangerous weapon or firearm as defined in section 62.1-01-01 or is an explosive or destructive device is guilty of a class A felony.
7. As used in this section, "controlled substance" is as defined in subsection 6 of section 19-03.1-01 and includes counterfeit substances as defined in subsection 7 of section 19-03.1-01. As used in this section, "willfully" is as defined in section 12.1-02-02. As used in this section, "alcohol" and "alcoholic beverage" are as defined in section 5-01-01. As used in this section, "tobacco" means any form of tobacco, including cigarettes, cigars, snuff, or tobacco in any form in which it may be used for smoking or chewing.

SECTION 2. AMENDMENT. Section 12-47-34 of the North Dakota Century Code is amended and reenacted as follows:

12-47-34. Escapes from warden's custody - Warden may offer reward for recapture - Payment of reward - Use of firearms.

1. The warden, with the approval of the director of the department of corrections and rehabilitation, may adopt measures necessary for the detection and capture of offenders escaping from the custody of the warden or the department of corrections and rehabilitation. If an offender in the custody of the warden or the department of corrections and rehabilitation escapes, the warden may use all lawful means for the apprehension of the offender. The warden may offer a reward not to exceed one thousand dollars and not less than one hundred dollars for information leading to apprehension of an offender who

has escaped from the custody of the warden or the department of corrections and rehabilitation.

2. The warden may authorize correctional officers trained in the use of firearms:
 - a. To carry firearms when in the course of their duties on penitentiary premises.
 - b. To carry firearms, including keeping and carrying loaded firearms in motor vehicles, when transporting offenders in the custody of the warden or the department of corrections and rehabilitation.
 - c. To carry firearms, including keeping and carrying loaded firearms in motor vehicles, for the prevention of escapes or for the apprehension of offenders who have escaped from the custody of the warden or the department of corrections and rehabilitation.
3. Sections 62.1-02-05, 62.1-02-10, and 62.1-03-01 do not apply to the possession and use of firearms by authorized and trained correctional officers acting in the course of their employment under this section.

SECTION 3. REPEAL. Sections 12-47-03, 12-47-07, 12-47-19, 12-47-20, and 12-47-32 of the North Dakota Century Code are repealed.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-sixth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2133.

Senate Vote: Yeas 48 Nays 0 Absent 1

House Vote: Yeas 97 Nays 0 Absent 1

Secretary of the Senate

Received by the Governor at _____ M. on _____, 1999.

Approved at _____ M. on _____, 1999.

Governor

Filed in this office this _____ day of _____, 1999,

at _____ o'clock _____ M.

Secretary of State