

**Sixty-first Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 6, 2009**

HOUSE BILL NO. 1238  
(Representatives Nelson, Hofstad, S. Meyer)  
(Senators Lyson, Triplett)

AN ACT to create and enact a new section to chapter 12-44.1 of the North Dakota Century Code, relating to the housing of out-of-state inmates by correctional facilities; to amend and reenact section 12-44.1-02 of the North Dakota Century Code, relating to the housing of out-of-state inmates by correctional facilities; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 12-44.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**12-44.1-02. Establishing correctional facilities - Correctional facility contracts - Regional corrections centers.**

1. For the confinement of lawfully committed persons, the governing body of a county or city shall ~~do or shall participate in the doing of, one of the following:~~
1. ~~a.~~ Establish and maintain Establish and maintain a correctional facility at county or city expense;:
2. ~~b.~~ Contract Contract for correctional facility services and use of correctional facilities with another county or city ~~maintaining that maintains~~ a correctional facility or with the state or federal government;: or
3. ~~c.~~ Establish and maintain Establish and maintain, pursuant to chapter 54-40 or 54-40.3 and this chapter, a correctional facility in conjunction with other counties and cities.
4. ~~2.~~ A county or city Subject to the requirements of section 2 of this Act, the governing body of a correctional facility may contract with a state or a regional correctional center, county, or city of another state for:
  - a. ~~The~~ the confinement of lawfully committed state, county, or city inmates from the other state;: ~~or,~~
  - b. ~~3.~~ The governing body of a correctional facility may contract with a state or a regional correctional center, county, or city of another state for the confinement of lawfully committed North Dakota inmates in a county, city, or regional correctional facility of another state.
  5. ~~4.~~ A city or county The governing body of a correctional facility may contract with another correctional facility in this state for correctional services for purposes of safety, security, health and medical reasons, or for correctional facility administration.
  6. ~~5.~~ A city or county The governing body of a correctional facility may contract for the confinement of inmates lawfully sentenced by a tribal court.
  7. ~~6.~~ A city or county The governing body of a correctional facility may contract for correctional facility services with a privately operated correctional facility. Contracts with private agencies ~~providing that provide~~ correctional facility services may be entered into for up to seven years.

**SECTION 2.** A new section to chapter 12-44.1 of the North Dakota Century Code is created and enacted as follows:

**Contracts for out-of-state inmates - Requirements.** The governing body of a correctional facility that contracts with another state or a regional correctional center, county, or city of another state for the confinement of lawfully committed state, county, or city inmates from the other state is subject to the following conditions:

1. Before a correctional facility may accept an out-of-state inmate, the governing body of the correctional facility shall approve and sign the contract that authorizes housing out-of-state inmates.
2. Before accepting an out-of-state inmate, the administrator of the correctional facility shall review the out-of-state inmate's file and request a nationwide criminal history background check. The administrator may not accept:
  - a. Any inmate with a history of escape or attempted escape from official detention as defined under section 12.1-08-06 or under an equivalent federal statute or statute of another state;
  - b. Any inmate with a history of institutional violence, including violence against staff or other inmates;
  - c. Any inmate who has pled guilty to, or has been convicted of, a crime of violence. For the purpose of this section, a crime of violence includes kidnapping and any violation of any state or federal law when the inmate knowingly or intentionally inflicted, attempted to inflict, or threatened serious bodily injury, or death, or when the inmate was armed with a firearm, dangerous weapon, or destructive device;
  - d. An inmate who has been convicted of aggravated assault involving substantial or serious bodily injury, and the offense is a felony under the laws of the sending state or under federal law, unless the administrator has obtained the approval of the department of corrections and rehabilitation in advance of the placement. The state of North Dakota and any officer or employee of the department is immune from any civil liability for damages for personal injury or property damage caused by an inmate placed in a correctional facility under this subsection;
  - e. Any inmate who has pled guilty to, or has been convicted of, a sexual offense in which the victim was a child under the age of fifteen years, or the inmate compelled, or attempted to compel, the victim to submit by force or by threat of imminent death, serious bodily injury, or kidnapping, or if in the course of the offense, the inmate inflicted serious or substantial bodily injury on the victim; or
  - f. Any inmate who has a documented affiliation as a member of a criminal street gang as defined under section 12.1-06.2-01 or equivalent statute of another state or under federal law.
3. Out-of-state inmates may not be permitted to leave the premises of the correctional facility except to comply with a court order or to receive medical care.
4. The correctional facility may not house out-of-state inmates in the same cells with inmates of the department of corrections and rehabilitation.
5. A contract under this section must include a requirement that if an out-of-state inmate is charged with committing a crime while in the custody of the correctional facility, the sending state shall take custody of the inmate upon the request of the correctional facility and the written consent of the state's attorney of the county where the correctional facility is located. If the sending state takes custody of the inmate and the state's attorney

requests the inmate be returned to this state for prosecution, the correctional facility is responsible for the cost of returning the inmate to this state for prosecution. If an out-of-state inmate is convicted and sentenced to the legal and physical custody of the department of corrections and rehabilitation for a crime committed while in the custody of the correctional facility, the correctional facility shall reimburse the department for its costs to confine the inmate until completion of the term of imprisonment.

6. The department of corrections and rehabilitation may not assume custody of an out-of-state inmate placed in a correctional facility in this state under a contract between the governing body of a correctional facility and a sending state except under a lawful sentence and judgment of a district court of this state and after notice to the sending state.
7. If the state or a political subdivision of this state incurs any cost in the investigation or prosecution of an offense committed by an out-of-state inmate while in the custody of a contracting correctional facility, the correctional facility shall reimburse the state or political subdivision for the costs incurred.
8. A contract under this section must include a requirement that the sending state shall notify the correctional facility of the expiration date of the out-of-state inmate's imprisonment when the sending state transfers the out-of-state inmate to the correctional facility and that the sending state shall retake the out-of-state inmate before the expiration date of the out-of-state inmate's imprisonment.
9. For purposes of this section, "out-of-state inmate" means an individual who is convicted of a crime in a state other than North Dakota; "sending state" means another state and includes a city, county, or regional correctional center of another state; and "correctional facility" means a facility subject to this chapter.
10. The correctional facility shall defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers, and employees from and against claims for personal injury or property damage caused by an out-of-state inmate placed in a correctional facility under this section.

**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Chief Clerk of the House

\_\_\_\_\_  
Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-first Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1238 and that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote:      Yeas          90                  Nays          0                  Absent      4

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
Chief Clerk of the House

This certifies that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote:      Yeas          47                  Nays          0                  Absent      0

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Secretary of the Senate

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2009.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2009.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2009,  
at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State