

**HOUSE BILL NO. 1410**

Introduced by

Representatives Vetter, Damschen, Karls, Klemin, B. Koppelman, K. Koppelman, Pollert,  
Satrom

Senators Kannianen, Meyer, Vedaa

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

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

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

13 **12-44.1-14. Inmate rights.**

- 14 1. Subject to reasonable safety, security, discipline, and correctional facility  
15 administration requirements, the administrator of each correctional facility shall:
- 16 4. a. Ensure inmates have confidential access to attorneys and their authorized  
17 representatives.
- 18 2. b. Ensure that inmates are not subjected to discrimination based on race, national  
19 origin, color, creed, sex, economic status, or political belief.
- 20 3. c. Ensure equal access by male and female inmates to programs and services  
21 available through the correctional facility.
- 22 4. d. Ensure access to mail, telephone use, and visitors.
- 23 5. e. Ensure that inmates are properly fed, clothed, and housed.

- 1       6.   f.   Ensure that inmates have adequate medical care. Adequate medical care means  
2            necessary treatment for a medical or health condition for which serious pain or  
3            hardship would occur if care is not given. A correctional facility may not deny  
4            adequate medical care to an inmate who does not have health insurance or does  
5            not have the ability to pay the costs of the medical or health care.
- 6       7.   g.   Ensure that inmates may reasonably exercise their religious beliefs.
- 7       2.   Correctional facility staff or an administrator of a correctional facility may not:
- 8           a.   Substantially burden the exercise of religion by an offender in the custody of the  
9           correctional facility unless the burden is in furtherance of a compelling  
10           governmental interest and is the least restrictive means of furthering that  
11           compelling governmental interest;
- 12           b.   Treat religious conduct more restrictively than any comparable secular conduct of  
13           reasonably comparable risk, unless the correctional facility demonstrates through  
14           clear and convincing scientific evidence that a particular religious activity poses  
15           an extraordinary health risk the disparate treatment is necessary to further a  
16           compelling penological interest and is the least restrictive means of furthering  
17           that compelling penological interest; or
- 18           c.   Deny clergy access to an offender in the custody of the correctional facility for the  
19           purpose of providing religious services unless the correctional facility  
20           demonstrates through clear and convincing scientific evidence that the provision  
21           of the religious service poses an extraordinary health risk and the denial of  
22           access is the least restrictive means of addressing the extraordinary health risk  
23           the denial is necessary to further a compelling penological interest and is the  
24           least restrictive means of furthering that compelling penological interest.
- 25       3.   An offender in the custody of a correctional facility claiming to be aggrieved by a  
26           violation of subsection 2 may assert, after exhausting appropriate administrative  
27           remedies, that violation as a claim or defense in a judicial proceeding and obtain  
28           appropriate relief, including costs and reasonable attorney's fees.

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

1 **12-47-26. Uniform kindly treatment of inmates.**

2 1. The warden and all officers of the penitentiary uniformly shall treat the inmates  
3 thereof of the penitentiary with kindness, and the warden shall require of the officers  
4 and guards that, in the execution of theirthe officers' and guards' respective duties,  
5 theythe officers and guards in all cases shall refrain from boisterous and unbecoming  
6 language in giving their orders and commands. No corporalCorporal or other painful or  
7 unusual punishment shallmay not be inflicted upon the inmates of the penitentiary for  
8 violation of the rules and regulations thereofof the penitentiary.

9 2. A facility under the control of the department of corrections and rehabilitation may not:

10 a. Substantially burden the exercise of religion by an offender in the custody of the  
11 facility unless the burden is in furtherance of a compelling governmental interest  
12 and is the least restrictive means of furthering that compelling governmental  
13 interest;

14 b. Treat religious conduct more restrictively than any comparable secular conduct of  
15 ~~reasonably comparable risk,~~ unless the facility demonstrates ~~through clear and~~  
16 ~~convincing scientific evidence that a particular religious activity poses an~~  
17 ~~extraordinary health risk~~the disparate treatment is necessary to further a  
18 compelling penological interest and is the least restrictive means of furthering  
19 that compelling penological interest; or

20 c. Deny clergy access to an offender in the custody of the facility for the purpose of  
21 providing religious services unless the facility demonstrates ~~through clear and~~  
22 ~~convincing scientific evidence that the provision of the religious service poses an~~  
23 ~~extraordinary health risk and the denial of access is the least restrictive means of~~  
24 ~~addressing the extraordinary health risk~~the denial is necessary to further a  
25 compelling penological interest and is the least restrictive means of furthering  
26 that compelling penological interest.

27 3. An offender in the custody of a facility claiming to be aggrieved by a violation of  
28 subsection 2 may assert that violation as a claim or defense in a judicial proceeding  
29 and obtain appropriate relief, including costs and reasonable attorney's fees.

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

1       12. Issue any orders relating to disease control measures deemed necessary to prevent  
2       the spread of communicable disease. Disease control measures may include special  
3       immunization activities and decontamination measures. Written orders issued under  
4       this section shall have the same effect as a physician's standing medical order. The  
5       state health officer may apply to the district court in a judicial district where a  
6       communicable disease is present for an injunction canceling public events or closing  
7       places of business. On application of the state health officer showing the necessity of  
8       such cancellation, the court may issue an ex parte preliminary injunction, pending a  
9       full hearing.

10       a. Notwithstanding any other provision of law, an order issued pursuant to this  
11       subsection may not:

12           (1) Substantially burden a person's exercise of religion unless the order is in  
13           furtherance of a compelling governmental interest and is the least restrictive  
14           means of furthering that compelling governmental interest;

15           (2) Treat religious conduct more restrictively than any secular conduct of  
16           reasonably comparable risk, unless the government demonstrates through  
17           clear and convincing ~~scientific~~ evidence that a particular religious activity  
18           poses an extraordinary health risk; or

19           (3) Treat religious conduct more restrictively than comparable secular conduct  
20           because of alleged economic need or benefit.

21       b. A person claiming to be aggrieved by a violation of subdivision a may assert,  
22       after exhausting appropriate administrative remedies, that violation as a claim or  
23       defense in a judicial proceeding and obtain appropriate relief, including costs and  
24       reasonable attorney's fees.

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

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

29       1. The department of human services may not:

30           a. Substantially burden the exercise of religion by patient or resident under the  
31           department's care unless the burden is in furtherance of a compelling

- 1                   governmental interest and is the least restrictive means of furthering that  
2                   compelling governmental interest;
- 3           b. Treat religious conduct more restrictively than any ~~comparable~~ secular conduct ~~of~~  
4                   ~~reasonably comparable risk,~~ unless the department demonstrates ~~through clear~~  
5                   ~~and convincing scientific evidence that a particular religious activity poses an~~  
6                   ~~extraordinary health risk~~the disparate treatment is necessary to further a  
7                   compelling penological interest and is the least restrictive means of furthering  
8                   that compelling penological interest; or
- 9           c. Deny clergy access to a patient or resident for the purpose of providing religious  
10                   services unless the department demonstrates ~~through clear and convincing~~  
11                   ~~scientific evidence that the provision of the religious service poses an~~  
12                   ~~extraordinary health risk and the denial of access is the least restrictive means of~~  
13                   ~~addressing the extraordinary health risk~~the denial is necessary to further a  
14                   compelling penological interest and is the least restrictive means of furthering  
15                   that compelling penological interest.
- 16           2. A patient or resident of the department of human services claiming to be aggrieved by  
17                   a violation of this section, may assert, ~~after exhausting appropriate administrative~~  
18                   ~~remedies,~~ that violation as a claim or defense in a judicial proceeding and obtain  
19                   appropriate relief, including costs and reasonable attorney's fees.

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

22           **37-17.1-05. The governor and disasters or emergencies - Penalty.**

- 23           1. The governor is responsible to minimize or avert the adverse effects of a disaster or  
24                   emergency.
- 25           2. Under this chapter, the governor may issue executive orders and proclamations, and  
26                   amend or rescind them. Executive orders, proclamations, and regulations have the  
27                   force of law.
- 28           3. A disaster or emergency must be declared by executive order or proclamation of the  
29                   governor if the governor determines a disaster has occurred or a state of emergency  
30                   exists. The state of disaster or emergency shall continue until the governor determines  
31                   that the threat of an emergency has passed or the disaster has been dealt with to the

1 extent that emergency conditions no longer exist. The legislative assembly by  
2 concurrent resolution may terminate a state of disaster or emergency at any time. All  
3 executive orders or proclamations issued under this subsection must indicate the  
4 nature of the disaster or emergency, the area or areas threatened, the conditions  
5 which have brought it about or which make possible termination of the state of disaster  
6 or emergency. An executive order or proclamation must be disseminated promptly by  
7 means calculated to bring its contents to the attention of the general public, unless the  
8 circumstances attendant upon the disaster or emergency prevent or impede such  
9 dissemination, and it must be promptly filed with the department of emergency  
10 services, the secretary of state, and the county or city auditor of the jurisdictions  
11 affected.

- 12 4. An executive order or proclamation of a state of disaster or emergency shall activate  
13 the state and local operational plans applicable to the political subdivision or area in  
14 question and be authority for the deployment and use of any forces to which the plan  
15 or plans apply and for use or distribution of any supplies, equipment, and materials  
16 and facilities assembled, stockpiled, or arranged to be made available pursuant to this  
17 chapter or any other provision of law relating to a disaster or emergency.
- 18 5. During the continuance of any state of disaster or emergency declared by the  
19 governor, the governor is commander in chief of the emergency management  
20 organization and of all other forces available for emergency duty. To the greatest  
21 extent practicable, the governor shall delegate or assign command authority by prior  
22 arrangement embodied in appropriate executive orders or emergency operational  
23 plans, but nothing herein restricts the governor's authority to do so by orders issued at  
24 the time of the disaster or emergency.
- 25 6. In addition to any other powers conferred upon the governor by law, the governor may:  
26 a. Suspend the provisions of any regulatory statute prescribing the procedures for  
27 conduct of state business, or the orders, rules, or regulations of any state agency,  
28 if strict compliance with the provisions of any statute, order, rule, or regulation  
29 would in any way prevent, hinder, or delay necessary action in managing a  
30 disaster or emergency.

- 1           b. Utilize all available resources of the state government as reasonably necessary
- 2           to manage the disaster or emergency and of each political subdivision of the
- 3           state.
- 4           c. Transfer the direction, personnel, or functions of state departments and agencies
- 5           or units thereof for the purpose of performing or facilitating emergency
- 6           management activities.
- 7           d. Subject to any applicable requirements for compensation under section
- 8           37-17.1-12, commandeer or utilize any private property if the governor finds this
- 9           necessary to manage the disaster or emergency.
- 10          e. Direct and compel the evacuation of all or part of the population from any stricken
- 11          or threatened area within the state if the governor deems this action necessary
- 12          for the preservation of life or other disaster or emergency mitigation, response, or
- 13          recovery.
- 14          f. Prescribe routes, modes of transportation, and destinations in connection with an
- 15          evacuation.
- 16          g. Control ingress and egress in a designated disaster or emergency area, the
- 17          movement of persons within the area, and the occupancy of premises therein.
- 18          h. Suspend or limit the sale, dispensing, or transportation of alcoholic beverages,
- 19          explosives, and combustibles, not including ammunition.
- 20          i. Make provision for the availability and use of temporary emergency housing.
- 21          j. Make provisions for the control, allocation, and the use of quotas for critical
- 22          shortages of fuel or other life and property sustaining commodities.
- 23          k. Designate members of the highway patrol, North Dakota national guard, or others
- 24          trained in law enforcement, as peace officers.
- 25      7. Any person who willfully violates any provision of an executive order or proclamation
- 26      issued by the governor pursuant to this chapter is guilty of an infraction.
- 27      8. ~~Authorize~~The governor may authorize the adjutant general to recall to state active
- 28      duty, on a volunteer basis, former members of the North Dakota national guard. Those
- 29      recalled must possess the qualifications required by the disaster or emergency. Recall
- 30      under this subsection is effective only for the duration of the disaster or emergency
- 31      and recalled personnel will be released from state active duty upon competent

- 1 authority that the requirement of their service under this subsection has passed.  
2 Compensation for personnel recalled under this subsection will be based upon section  
3 37-07-05.
- 4 9. Notwithstanding any other provision of law, an order, proclamation, rule, or regulation  
5 issued pursuant to this section may not:
- 6 a. Substantially burden a person's exercise of religion unless the order is in  
7 furtherance of a compelling governmental interest and is the least restrictive  
8 means of furthering that compelling governmental interest;
- 9 b. Treat religious conduct more restrictively than any secular conduct of reasonably  
10 comparable risk, unless the government demonstrates through clear and  
11 convincing ~~scientific~~ evidence that a particular religious activity poses an  
12 extraordinary health risk; or
- 13 c. Treat religious conduct more restrictively than comparable secular conduct  
14 because of alleged economic need or benefit.
- 15 10. A person claiming to be aggrieved by a violation of subsection 9 may assert that  
16 violation as a claim or defense in a judicial proceeding and obtain appropriate relief,  
17 including costs and reasonable attorney's fees.