

CHAPTER 54-23.3
DEPARTMENT OF CORRECTIONS AND REHABILITATION

54-23.3-01. Department of corrections and rehabilitation - Creation - Duties - Programs.

There is hereby created a department of corrections and rehabilitation that is responsible to the governor. The department is responsible for the direction and general administrative supervision, guidance, and planning of adult and juvenile correctional facilities and programs within the state. The department includes a division of adult services, a division of juvenile services, and such other divisions as are determined necessary for the effective and efficient operation of the department. Programs and facilities included in the department are the North Dakota state penitentiary or any of its affiliated facilities, parole and probation for adult offenders, North Dakota youth correctional center, community programs and services for juvenile offenders under the division of juvenile services, and any other programs developed by the department.

54-23.3-01.1. Definitions.

As used in this chapter:

1. "Director" means the director of the department of corrections and rehabilitation. The director may designate officers of the department to assist in carrying out the director's duties.
2. "Inmate" means an offender who the district court has committed to the legal and physical custody of the department of corrections and rehabilitation and who is confined in the North Dakota state penitentiary or its affiliated facilities or is confined in another state's correctional facility, a federal correctional facility, a county correctional facility or regional corrections center, a private correctional facility, or has been placed in a community placement program, treatment facility, or transitional center by the department.
3. "Juvenile offender" means an offender who is supervised by an officer of the juvenile court or has been adjudicated unruly or delinquent by the juvenile court and placed in the custody of the division of juvenile services.
4. "Offender" means a person who has been committed to the legal and physical custody of the department of corrections and rehabilitation, or placed under the supervision and management of the department by a district court, by the parole board, or through the interstate compact for the supervision of adult offenders.
5. "Parolee" means an offender who has been placed under the supervision and management of the department of corrections and rehabilitation by the parole board or through the interstate compact for the supervision of adult offenders.
6. "Probationer" means an offender who has been placed under the supervision and management of the department of corrections and rehabilitation by a district court or through the interstate compact for the supervision of adult offenders.

54-23.3-02. Purpose.

The purpose of the department of corrections and rehabilitation is:

1. To develop a statewide correctional philosophy that will provide direction, goals, and standards for corrections.
2. To provide for the care, custody, discipline, training, and treatment of persons committed to state correctional facilities and programs.
3. To coordinate and provide a continuum of correctional services to both adult and juvenile clients.
4. To promote and develop close communication and mutual understanding of corrections issues and concerns between the courts and the department.
5. To provide joint training of staff and career opportunities for corrections staff.

6. To work with local and state entities to develop alternatives to conventional incarceration for those offenders who can be dealt with more effectively in less restrictive, community-based facilities and programs.

54-23.3-03. Director - Appointment - Qualifications - Compensation.

The chief administrative officer of the department is the director of the department of corrections and rehabilitation, who must be appointed by the governor. The position of director is not a classified position and the director shall serve at the pleasure of the governor. The person appointed as director must hold at least a bachelor's degree from an accredited college or university and must have held a management position in correctional or related work for at least five years. The governor shall set the salary of the director within the limits of legislative appropriations.

54-23.3-04. Director - Powers and duties.

The director of the department of corrections and rehabilitation has the following powers and duties:

1. To manage and control all institutions and programs within the department and to administer and enforce the laws with which the department is charged.
2. To promote a unified criminal justice system and develop a statewide correctional philosophy in cooperation with the courts, law enforcement, and other entities in the criminal justice system.
3. To develop necessary programs and services for adult and juvenile offenders, within legislative appropriations, to provide for their treatment and rehabilitation and to recognize their special needs.
4. To develop, maintain, and revise as required a comprehensive master plan for the state's correctional system which must indicate the system's needs and resources.
5. To establish policies and procedures necessary to carry out the responsibilities of the department.
6. To organize the department into an adult services division, a juvenile services division, and such other divisions that will enable it to function most effectively and efficiently.
7. To exercise general supervisory and appointing authority over all department employees, subject to any applicable personnel laws and rules.
8. To employ and remove the director of the division of juvenile services, the director of the division of adult services, and other division directors and personnel who may be deemed necessary by the director of the department. Until the director of the department of corrections and rehabilitation has been granted the full-time equivalent positions within the department's budget for the division director positions, or when the positions are vacant, the responsibilities of these positions must be assumed by the director of the department of corrections and rehabilitation or by the director's designee.
9. To delegate authority to subordinates as necessary and appropriate, clearly delineating the delegated authority and limitations.
10. To promote 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.
11. To contract 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. The director shall reimburse the entity at an amount based upon the services required for the housing and treatment of inmates. The director may also contract to provide services, without cost to the state, for persons held by any of the jurisdictions mentioned in this section. If a treaty is in effect between the United States and a foreign country for the transfer and exchange of offenders, the director of the department of corrections and rehabilitation, upon recommendation of the warden and the approval of the governor,

- may on behalf of the state under the terms of the treaty transfer or exchange offenders and take any action necessary for the state to participate in the treaty.
12. To lease land owned by the state under the jurisdiction of the department of corrections and rehabilitation. A lease by the director is not subject to the conditions of this subsection. The director may sell or exchange, with the governor's approval, selected portions of land owned by the state under the jurisdiction of the department of corrections and rehabilitation and may sell, trade, lease, or grant mining easements to extract and remove any resources found on, in, or under said department of corrections and rehabilitation lands, including clay, coal, oil, gas, gravel, sand, dirt, and sod, under the following conditions:
 - a. Any such sale, exchange, or transaction must allow for the submission of bids pursuant to a notice published in at least one official county newspaper. The sale, exchange, or transaction is exempt from the provisions of sections 54-01-05.2 and 54-01-05.5.
 - b. Any such sale, exchange, or transaction may not be made for less than the appraised value, and the state reserves the right to reject any and all bids.
 - c. The commissioner of university and school lands or the commissioner's designee shall provide technical assistance and advice to the director of the department of corrections and rehabilitation in any transaction.
 - d. All legal documents, papers, and instruments required by any transaction must be reviewed and approved as to form and legality by the attorney general.
 - e. Any of these transactions can be entered into on any terms and conditions permitted by law and approved by the governor.
 - f. All funds and proceeds realized from any of these transactions must be placed in an interest-bearing fund in the state treasury, designated as the North Dakota state penitentiary land fund to be used for the acquisition of additional land and facilities; to maintain, expand, or develop affiliated facilities; to relocate the Missouri River correctional center and the farming and ranching operations of the North Dakota state penitentiary; or for penitentiary renovation.
 13. To provide meals at a fair value or without a charge to officers and employees of the department as required by their job assignments.
 14. To accept property forfeited or seized in accordance with law.
 15. To collect costs and fees from persons on correctional supervision for the supervision services, control devices, and programs as implemented by the department to assist in making community corrections an effective alternative to incarceration. A person on active supervision is presumed able to pay assessed fees unless the director, giving due consideration to the fiscal obligations and resources of the probationer, determines otherwise. A person with the ability to pay assessed fees who refuses to pay must be returned to the court for a judicial determination. In addition to any other remedies allowed by law, the department may enforce and collect any unpaid supervision costs and fees imposed as a condition of parole, probation, or under a program implemented under this section in a civil judgment entered by a district court of this state and may employ licensed collection agencies to enforce and collect any unpaid supervision costs and fees.
 16. To collect the costs of any presentence investigation and report incurred under subsection 11 of section 12.1-32-02, giving due consideration to the financial obligations and resources of the defendant.
 17. To employ personnel and to establish policies and procedures to supervise sexually dangerous individuals released to community placement on an outpatient basis in accordance with section 25-03.3-24.

54-23.3-05. Appointment and removal of officers.

The director of the department of corrections and rehabilitation with the approval of the governor may appoint a director of the division of juvenile services, a director of the division of adult services, and other division directors and personnel as deemed necessary for the effective and efficient operation of the department. The director of the division of juvenile services, the

director of the division of adult services, and other division directors who may be appointed shall meet qualifications as established for the classified service. All other officers and employees of each division must be appointed and removed by the director of the department of corrections and rehabilitation. All officers and employees of the department of corrections and rehabilitation are subject to the provisions of the state personnel policies.

54-23.3-06. Salaries of division directors and other officers.

The director of the department of corrections and rehabilitation shall determine the salary of each division director within the limits of legislative appropriations and within the salary range of the classified position as established by North Dakota human resource management services for the position. All other officers and employees shall receive salaries determined by their division director and approved by the director of the department.

54-23.3-07. Confidentiality of selected information pertaining to department of corrections and rehabilitation employees.

Repealed by S.L. 1995, ch. 428, § 3.

54-23.3-07.1. Exemption of certain internal investigation records.

Notwithstanding subsection 6 of section 44-04-18.1 and except as required under subsection 1 of section 44-04-18.11, records relating to the department of corrections and rehabilitation's internal investigations are exempt if:

1. The records could reasonably be used to identify victims, witnesses, employees providing investigative information, or individuals providing information as correctional confidential informants; and
2. Disclosure would cause a credible threat of violence or other harm.

54-23.3-08. Authority to lease land under the jurisdiction of the department.

The department of corrections and rehabilitation may lease land under the jurisdiction of the department for the purpose of the construction and operation of a prerelease center. Subsection 12 of section 54-23.3-04 does not apply to the lease authorized by this section. The lease expires when the leased property is no longer used for a prerelease center, when the lease operator breaches any material part of the lease, or twenty years after the date of the lease, whichever occurs first, and all rights, title, and interest in any buildings, fixtures, and improvements vest and remain with the state.

54-23.3-09. Reports regarding new programs.

Repealed by S.L. 2017, ch. 373, § 4.

54-23.3-10. Community behavioral health program - Reports to legislative management and governor. (Effective through August 31, 2022)

1. The department of corrections and rehabilitation shall establish and implement a community behavioral health program to provide comprehensive community-based services for individuals who have serious behavioral health conditions, as a term and condition of parole under chapter 12-59, and as a sentencing alternative under section 12.1-32-02.
2. In developing the program under this section, the department of corrections and rehabilitation shall collaborate with the department of human services to:
 - a. Establish a referral and evaluation process for access to the program.
 - b. Establish eligibility criteria that includes consideration of recidivism risk and behavioral health condition severity.
 - c. Establish discharge criteria and processes, with a goal of establishing a seamless transition to postprogram services to decrease recidivism.
 - d. Develop program oversight, auditing, and evaluation processes that must include:
 - (1) Oversight of case management services through the department of human services;

- (2) Outcome and provider reporting metrics; and
- (3) Annual reports to the legislative management and the governor on the status of the program.
- e. Establish a system through which:
 - (1) The department of human services:
 - (a) Contracts with and pays behavioral health service providers; and
 - (b) Supervises, supports, and monitors referral caseloads and the provision of services by contract behavioral health service providers.
 - (2) Contract behavioral health service providers accept all eligible referrals, provide individualized care delivered through integrated multidisciplinary care teams, and continue services on an ongoing basis until discharge criteria are met.
 - (3) Contract behavioral health service providers receive payments on a per-month per-referral basis. The payment schedule must be based on a pay-for-performance model that includes consideration of identified outcomes and the level of services required.
 - (4) Contract behavioral health service providers bill third-parties for services and direct payment to the general fund.
- 3. The department of human services may adopt rules as necessary to implement this program.

Community behavioral health program - Reports to legislative management and governor. (Effective after August 31, 2022)

- 1. The department of corrections and rehabilitation shall establish and implement a community behavioral health program to provide comprehensive community-based services for individuals who have serious behavioral health conditions, as a term and condition of parole under chapter 12-59, and as a sentencing alternative under section 12.1-32-02.
- 2. In developing the program under this section, the department of corrections and rehabilitation shall collaborate with the department of health and human services to:
 - a. Establish a referral and evaluation process for access to the program.
 - b. Establish eligibility criteria that includes consideration of recidivism risk and behavioral health condition severity.
 - c. Establish discharge criteria and processes, with a goal of establishing a seamless transition to postprogram services to decrease recidivism.
 - d. Develop program oversight, auditing, and evaluation processes that must include:
 - (1) Oversight of case management services through the department of health and human services;
 - (2) Outcome and provider reporting metrics; and
 - (3) Annual reports to the legislative management and the governor on the status of the program.
 - e. Establish a system through which:
 - (1) The department of health and human services:
 - (a) Contracts with and pays behavioral health service providers; and
 - (b) Supervises, supports, and monitors referral caseloads and the provision of services by contract behavioral health service providers.
 - (2) Contract behavioral health service providers accept all eligible referrals, provide individualized care delivered through integrated multidisciplinary care teams, and continue services on an ongoing basis until discharge criteria are met.
 - (3) Contract behavioral health service providers receive payments on a per-month per-referral basis. The payment schedule must be based on a pay-for-performance model that includes consideration of identified outcomes and the level of services required.
 - (4) Contract behavioral health service providers bill third-parties for services and direct payment to the general fund.

3. The department of health and human services may adopt rules as necessary to implement this program.

54-23.3-11. Prioritization of admission of inmates - Report to legislative management.

1. The department of corrections and rehabilitation may refuse to admit inmates sentenced to the physical custody of the department when the admission of inmates will exceed the maximum operational capacity of the penitentiary and its affiliated facilities and result in the department exceeding its authorized legislative appropriation for contracting for housing inmates in other correctional facilities.
2. For purposes of this section, maximum operational capacity of the department means the total number of inmates that may be imprisoned at the same time in the penitentiary and its affiliated facilities.
3. The department shall develop a prison population management plan to prioritize admissions based on sentences and the availability of space in the penitentiary and its affiliated facilities. If the plan includes the use of a local jail or correctional facility, the department shall negotiate the terms of the agreement with each facility. An agreement under this section must include a minimum daily rate per inmate, including medical costs, to be paid by the department to the governing body of the jail or correctional facility beginning the day after the department receives notice from the district court of an order placing an individual in the care and custody of the department and ending on the admission date provided by the department.
4. The department shall report annually to the legislative management on the prison population management plan and inmate admissions and the number of inmates the department has not admitted after sentencing.

54-23.3-12. Faith-based programming. (Effective through August 31, 2022)

1. The department of corrections and rehabilitation, with contracts through the department of human services and through the implementation of the community behavioral health program, shall allow faith-based organizations to provide services to individuals who need addiction treatment services.
2. For purposes of this section "faith-based organization" means a nonprofit corporation or association operated by a religious or denominational organization, including an organization operated for religious, educational, or charitable purposes and which is operated, supervised, or controlled by or in connection with a religious organization, or an organization that has a mission statement, policies, or practices clearly demonstrating the organization is guided or motivated by faith.

Faith-based programming. (Effective after August 31, 2022)

1. The department of corrections and rehabilitation, with contracts through the department of health and human services and through the implementation of the community behavioral health program, shall allow faith-based organizations to provide services to individuals who need addiction treatment services.
2. For purposes of this section "faith-based organization" means a nonprofit corporation or association operated by a religious or denominational organization, including an organization operated for religious, educational, or charitable purposes and which is operated, supervised, or controlled by or in connection with a religious organization, or an organization that has a mission statement, policies, or practices clearly demonstrating the organization is guided or motivated by faith.