

**CHAPTER 12-44.1**  
**JAILS AND REGIONAL CORRECTION CENTERS**

**12-44.1-01. Definitions.**

As used in this chapter:

1. "Administrator" means the sheriff, chief of police, administrator, superintendent, director, or other individual serving as the chief executive officer of a correctional facility.
2. "Adult lockup" means a secure temporary-hold nonresidential facility that does not hold individuals overnight and includes a facility with cuffing rails or cuffing benches.
3. "Correctional facility" means a city or county jail or detention center, regional corrections center, or juvenile detention center for the detention or confinement of persons in accordance with law. The use of the term does not imply and may not be used to require the provision of services including treatment, counseling, career and technical education, or other educational services, except as may otherwise be required or provided for under this chapter.
4. "Correctional facility staff" means correctional personnel with titles such as jailer, deputy, counselor, correctional officer, or any other title, whose duties include the ongoing supervision of inmates in a correctional facility.
5. "Court holding facility" means a secure facility, other than an adult correctional facility or adult lockup, used to temporarily detain individuals before or after a detention hearing or other court proceedings, and is not used to detain individuals overnight.
6. "Individual justice planning" means a process to identify, accommodate, and develop appropriate consequences for behaviors caused by or related to an individual's mental or cognitive impairment.
7. "Inmate" means any individual, whether sentenced or unsentenced, who is detained or confined in a correctional facility. The term does not include an individual who is under the supervision of the correctional facility and is supervised under home detention, electronic monitoring, or a similar program that does not involve physical detention or confinement in the facility.
8. "Jail" means a correctional facility, including a county or city jail or a regional corrections center.
9. "Juvenile detention center" means a publicly maintained correctional facility for the detention of juveniles. The term does not include the North Dakota youth correctional center.
10. "Regional corrections center" means a correctional facility established and maintained by more than one county or city, or a combination of counties and cities, for the confinement of inmates.
11. "Trained correctional facility staff" means correctional personnel who have completed a course of training approved by the peace officer standards and training board.

**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:
  - a. Establish and maintain a correctional facility at county or city expense;
  - b. Contract for correctional facility services and use of correctional facilities with another county or city that maintains a correctional facility or with the state or federal government; or
  - c. 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.
2. Subject to the requirements of section 12-44.1-31, 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 state, county, or city inmates from the other state.

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.
4. 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.
5. The governing body of a correctional facility may contract for the confinement of inmates lawfully sentenced by a tribal court.
6. The governing body of a correctional facility may contract for correctional facility services with a privately operated correctional facility. Contracts with private agencies that provide correctional facility services may be entered into for up to seven years.

**12-44.1-03. Safety and sanitation.**

1. Each correctional facility shall comply with state and local fire, sanitation, safety, and health codes.
2. The administrator of a correctional facility, to ensure adequate fire protection, shall install firefighting equipment at appropriate locations throughout the correctional facility.
3. Each correctional facility shall have a smoke detection system approved by the state fire marshal and tested on a regular basis.
4. Designated exits must permit prompt evacuation of inmates and correctional facility staff in an emergency.

**12-44.1-04. Administration - Organization - Management.**

The administrator of each correctional facility shall:

1. Formulate an operations manual, available to all correctional facility staff, which delineates the written policies and procedures for operating and maintaining the correctional facility.
2. Review and update all policies and procedures in the operations manual at least annually.
3. Specify an administrator in the operations manual to whom all correctional facility staff are responsible. The operations manual shall include the administrator's duties, responsibilities, and authority for the management of the correctional facility staff, inmates, programs, and physical plant.
4. Ensure that correctional facility staff who work in direct and continuing contact with inmates receive correctional facility training as determined and approved by the peace officer standards and training board.

**12-44.1-05. Meal payments.**

An administrator or correctional facility staff member receiving lump sum monthly payments for providing inmate meals shall submit an itemized account of the meal expenses to the governing body of the correctional facility. Any amount of the monthly payment in excess of the itemized account shall be returned to the general operating fund or be given as salary to the person providing the meals, as determined by the governing body of the correctional facility.

**12-44.1-06. Grades of correctional facilities.**

1. The department of corrections and rehabilitation shall, following inspection pursuant to section 12-44.1-24, grade correctional facilities as to length of allowable inmate confinement based upon construction, size, and usage, as follows:
  - a. "Grade one" means a correctional facility for confining inmates not more than one year.
  - b. "Grade two" means a correctional facility for confining inmates not more than ninety days.

- c. "Grade three" means a correctional facility for confining inmates not more than ninety-six hours.
  - d. "Grade four" means an adult lockup or court holding facility in which individuals may not be detained overnight.
2. The length of confinement of a prisoner may be temporarily increased on a case-by-case basis in grade one and grade two correctional facilities upon the request of the administrator and the approval of the department of corrections and rehabilitation.

**12-44.1-06.1. Correctional facilities standards.**

Grade two and grade three correctional facilities do not need to provide outdoor recreation areas or exercise rooms separate from dayrooms. Correctional facilities may allow contact visitation subject to the safety, security, and administration requirements of the correctional facility.

**12-44.1-06.2. Female inmates in grade one correctional facilities.**

Expired under S.L. 2003, ch. 666, § 11.

**12-44.1-06.3. Female inmates in grade one correctional facilities.**

Expired under S.L. 2005, ch. 43, § 13.

**12-44.1-07. Who may be confined in correctional facilities.**

The following persons may be confined in a correctional facility:

1. Persons charged with offenses or ordered by a court to be detained for trial.
2. Persons committed by a court to confinement in order to secure their attendance as witnesses at the trial of any criminal cause.
3. Persons sentenced to imprisonment upon conviction of an offense and any other person committed or detained as authorized by law.

**12-44.1-07.1. Management of inmate population.**

1. The governing body of a correctional facility, in cooperation with law enforcement, state's attorneys, and the judiciary in the judicial district in which the correctional facility is located, shall develop an inmate population plan to prioritize admissions and inmate retention based on the correctional facility's authorized budget.
2. The inmate population plan must take into consideration:
  - a. The governing body's authorized budget;
  - b. The inmate's offense;
  - c. Whether the inmate has been charged, adjudicated, or sentenced;
  - d. Whether the inmate presents a risk of flight or is a danger to others or self;
  - e. The inmate's medical needs and mental and behavioral health needs; and
  - f. Whether the inmate is subject to mandatory incarceration.
3. The inmate population plan must include alternatives to physical custody of individuals under charge or conviction of an offense. Potential alternatives to physical custody include:
  - a. Placement in a community setting;
  - b. Work release;
  - c. Home detention;
  - d. Electronic home detention;
  - e. Global positioning system monitoring;
  - f. Medical, psychiatric, and drug and alcohol treatment;
  - g. Employment;
  - h. Pretrial risk assessment;
  - i. Pretrial supervision; and
  - j. Participation in the individual justice planning process.

4. This section does not apply when there are exigent circumstances that affect a correctional facility's operations and inmate population, including acts of God and mass arrests.
5. The department of corrections and rehabilitation shall provide technical assistance relating to the implementation of this section to the governing body of a correctional facility upon request from the governing body.

**12-44.1-08. Confinement of state and federal inmates.**

1. Grade one correctional facilities may contract for the confinement of offenders in the custody of the department of corrections and rehabilitation if sufficient room is not available at the penitentiary, for purposes of safety, security, discipline, medical care, or when the department of corrections and rehabilitation determines it may be in the best interests of the offender or the department of corrections and rehabilitation.
2. A correctional facility to which a person is sent or committed by legal process issued by or under the authority of the United States shall receive such person into custody for safe detention until discharged under federal law.
3. A correctional facility detaining or confining federal inmates is entitled to compensation in accordance with fee schedules established by the United States.
4. A grade one or grade two correctional facility may be used for the detention of a fugitive from justice in accordance with any act of Congress or the laws of another state. The correctional facility is entitled to reasonable compensation from the officer or jurisdiction regaining custody of the fugitive.

**12-44.1-09. Housing of inmates.**

Each correctional facility shall adopt a classification system for inmates to provide for the security, safety, and order of the correctional facility and for the safety and security of the community. If the correctional facility has adopted a classification system approved by the department of corrections and rehabilitation, the correctional facility is not required to comply with subsections 3, 4, and 5. In grade one and grade two correctional facilities and, where practicable, in grade three correctional facilities, the following groups of inmates must be housed separately from each other:

1. Female inmates from male inmates.
2. Juveniles from adults, except that an adult held under a delinquency proceeding may be held with juveniles and a juvenile transferred or waived to adult court on a felony criminal offense may be housed with adults in a jail or regional correctional facility.
3. Persons detained for hearing or trial from inmates under sentence of imprisonment, unless authorized to be housed together by the administrator for security, order, or rehabilitation.
4. Persons detained for hearing or trial or under sentence of imprisonment from persons otherwise detained by order of the court, unless authorized to be housed together by the administrator for security, order, or rehabilitation.
5. Inmates who may have special needs as determined by the correctional facility or whose behavior may present a serious threat to the safety or security of the correctional facility, the staff, the inmate, or other inmates.

**12-44.1-09.1. Restrooms and shower rooms exclusively for males or exclusively for females.**

1. In a correctional facility, a restroom or shower room accessible by multiple inmates at the same time must be designated for use exclusively for males or exclusively for females.
2. In a correctional facility, a restroom or shower room designated for one sex may be used only by members of that sex.
3. An administrator or correctional facility staff member shall provide a reasonable accommodation for an inmate, including a transgender or gender-nonconforming inmate, as deemed appropriate by the administrator.

**12-44.1-10. Detained witnesses and pretrial detainees.**

Detained witnesses and persons held in custody awaiting arraignment or trial may not be restricted in their activities to any extent greater than required to maintain order and security and to assure appearance at arraignment or trial. Witnesses and pretrial detainees shall not be required to do labor other than keeping their living areas clean nor shall they be required to participate in correctional facility programs.

**12-44.1-11. Commitment papers - Copies - Endorsement.**

When an inmate is confined by virtue of any process directed to the administrator and the process requires a return to the court from which it was issued, the administrator shall keep a copy of the process with the return made thereon. The copy, certified by the administrator, is prima facie evidence of the administrator's right to retain the inmate in custody. All instruments or copies by which an inmate is committed or released shall be endorsed and filed by the administrator. The file and its contents shall be delivered to the administrator's successor.

**12-44.1-12. Inmate personal property.**

A written, itemized inventory of all personal property taken from an inmate at the time of admission shall be made by correctional facility staff. The property, including money and other valuables, shall be secured and the inmate given a receipt for all property to be held until the inmate's release unless the inmate requests a different disposition in writing. Upon release, the items of inmate personal property shall be compared with the inventory list, and the inmate shall sign a receipt for the property's return. If the inmate is released for transfer to another correctional facility, the correctional officer transporting the inmate shall sign the receipt. The releasing correctional facility shall maintain a copy of the property receipt for its files.

**12-44.1-12.1. Establishment of inmate accounts - Withholding funds for inmate financial obligations - Health care costs - Payment of funds to inmate upon release.**

1. The correctional facility administrator shall establish an inmate account for each inmate. The correctional facility administrator may withdraw funds from an inmate's account to meet the inmate's legitimate financial obligations, including child support and restitution and for the inmate's medical, dental, and eye care costs, and establish an administrative procedure for an inmate to appeal the withdrawal of the funds.
2. The correctional facility administrator shall pay an inmate all funds in the inmate's account when the inmate is discharged from the correctional facility or when the inmate is transferred to another correctional facility, less the inmate's outstanding obligations to the correctional facility.
3. This section does not limit or alter the provisions of chapter 14-09 relating to income withholding orders for child support.

**12-44.1-13. Supervision of inmates.**

1. Inmates shall be supervised on a twenty-four-hour basis by trained correctional facility staff.
2. Correctional facility staff shall be located in proximity to inmate living areas to permit the staff to hear and respond promptly to calls for help.
3. Each correctional facility shall provide for the personal observation of inmates on an irregular but frequent schedule.
4. Each correctional facility shall maintain sufficient law enforcement officers with correctional training or trained correctional facility staff to perform all functions relating to the intake and booking, security, control, custody, and supervision of inmates.
5. A correctional facility female staff member shall be available at all times when a female inmate is confined in the correctional facility.
6. Inmates shall be prohibited from supervising, controlling, or exerting any authority over other inmates.
7. The correctional facility shall maintain a daily written record of information concerning inmates.

**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:
  - a. Ensure inmates have confidential access to attorneys and their authorized representatives.
  - b. Ensure that inmates are not subjected to discrimination based on race, national origin, color, creed, sex, economic status, or political belief.
  - c. Ensure equal access by male and female inmates to programs and services available through the correctional facility.
  - d. Ensure access to mail, telephone use, and visitors.
  - e. Ensure that inmates are properly fed, clothed, and housed.
  - 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.
  - 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.

**12-44.1-15. Searches.**

Searches of inmates may only be conducted:

1. Without undue or unnecessary force or indignity to the person searched.
2. When reasonably necessary to control contraband in the institution or to recover missing or stolen property.

**12-44.1-16. Annoyance of inmate prohibited - Penalty.**

Repealed by S.L. 1997, ch. 113, § 29.

**12-44.1-17. Inmate educational and counseling programs.**

A correctional facility may utilize the resources of the community to provide inmates with available educational, career and technical education, counseling, and work release opportunities. A correctional facility may, if possible, and subject to reasonable safety, security, discipline, and correctional facility administration requirements, provide opportunities for access to available religious, mental health, alcoholism, and addiction counseling by inmates desirous of such counseling.

#### **12-44.1-18. Inmate work programs.**

A correctional facility may maintain a written inmate work assignment plan that provides for inmate employment, subject to the number of work opportunities available and the maintenance of reasonable safety, security, discipline, and correctional facility administration requirements. The inmate work plan may provide for inmate employment in correctional facility maintenance and operation, in public works projects, or in community service projects.

#### **12-44.1-18.1. Inmate work release program.**

A correctional facility may provide for a work release program for inmates unless the court has ordered that an inmate may not receive work release. Work release projects may include public service and community service projects, and may utilize any particular skill or trade of participating inmates. The correctional facility shall take measures to maintain correctional facility security and safety and to protect the safety of the public.

#### **12-44.1-18.2. Work release program - Room and board costs to be paid by inmate.**

Any inmate who participates in a work release program shall pay the correctional facility for the room and board costs incurred by the inmate while confined in the correctional facility, residential halfway house, or similar alternative facility. The administrator shall determine the amount of meal and lodging costs to be paid by the inmate. The amount to be paid by the inmate while confined in a correctional facility may not exceed twenty dollars per day or the funds earned by the inmate, whichever is less. The amount to be paid by the inmate while placed in a residential halfway house or similar alternative facility may not exceed the actual cost per day or the funds earned by the inmate, whichever is less.

#### **12-44.1-19. Removal of inmate in emergency not an escape.**

If a correctional facility or any adjoining building shall be on fire or another emergency occurs, and the inmates may be exposed to danger, the correctional facility staff shall remove the inmates to a place of safety, and there confine them as long as necessary to avoid the danger. The removal and confinement shall not be deemed an escape of such inmates.

#### **12-44.1-20. Punishment of inmate.**

A correctional facility shall adopt rules for safety, security, discipline, and correctional facility administration. If an inmate violates any of the rules of a correctional facility, the correctional facility may impose disciplinary sanctions in accordance with its rules.

#### **12-44.1-21. Prohibited acts.**

1. It is unlawful for a person to willfully:
  - a. Manufacture, or possess with intent to manufacture, a controlled substance in a correctional facility.
  - b. Deliver, or possess with intent to deliver, a controlled substance in a correctional facility. This subsection does not apply to the possession or delivery of controlled substances in accordance with the orders or prescription of a licensed physician and the approval, except in emergency circumstances, of the correctional facility administrator.
  - c. A person who violates this subsection is guilty of a class A felony.
2. It is unlawful for an inmate detained in a correctional facility to possess any controlled substance except in accordance with the prescription or orders of a licensed physician, and the approval, except in emergency circumstances, of the correctional facility administrator. It is unlawful for an inmate in a correctional facility to possess alcohol or alcoholic beverages. If a correctional facility has adopted a rule banning the possession of tobacco in a correctional facility, it is unlawful for an inmate in a correctional facility to possess any tobacco except when the correctional facility administrator has authorized possession of tobacco for religious purposes or when on an authorized release from the correctional facility. An 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. It is unlawful for a person to willfully deliver alcohol or alcoholic beverages to an inmate in a correctional facility. It is unlawful for a person to willfully deliver tobacco to an inmate in a correctional facility that has adopted a rule banning the possession of tobacco except when the correctional facility administrator has authorized possession of tobacco for religious purposes or when the inmate is on an authorized release from the correctional facility. A person who violates this subsection by:
  - a. Delivery of alcohol or alcoholic beverages to an inmate in a correctional facility is guilty of a class A misdemeanor.
  - b. Delivery of tobacco to an inmate in a correctional facility is guilty of a class B misdemeanor.
4. It is unlawful for a person who is not an inmate to willfully possess a controlled substance in a correctional facility except in accordance with the orders or prescription of a licensed physician. A person who violates this subsection is guilty of a class B felony.
5. It is unlawful for an inmate in a correctional facility to willfully procure, make, or possess an object, including a shard made of any material or a weapon, firearm, ammunition, or explosive material, intended to be used for an assault on another person or to damage property. An inmate in a correctional facility 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 a person to deliver or provide to an inmate in a correctional facility an object intended to be used for an assault on another person or to damage property. A 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 section 19-03.1-01 and includes counterfeit substances as defined in 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. As used in this section, a wireless electronic communication device includes a cellular telephone, personal digital assistant, pager, mobile broadband card, internet router, digital camera, two-way radio, modem, or any other electronic device capable of wireless transmission, reception, interception, or storage of oral communications, text, electronic mail, video or photograph images, data signals, or radio communications, and also includes a component of a wireless electronic device, regardless whether the component itself is able to transmit, store, or receive oral communications, text, electronic mail, video or photograph images, data signals, or radio communications. A wireless electronic communications device does not include a medically prescribed device or any other device approved by the department.
8.
  - a. It is unlawful for an inmate in a correctional facility to willfully manufacture, possess, or use a wireless electronic communication device in a correctional facility except for law enforcement purposes.
  - b. It is unlawful for any person to willfully deliver, or possess with intent to deliver, a wireless electronic communication device to an inmate in a correctional facility or



to any person for redelivery to an inmate in a correctional facility, or to allow an inmate to possess or use a wireless electronic communication device in a correctional facility except for law enforcement purposes.

- c. A violation of this subsection is a class C felony.

**12-44.1-22. Correctional facility register - Contents.**

Each administrator is responsible for a correctional facility register in which must be entered such inmate information on such forms as the department of corrections and rehabilitation shall prescribe by rule.

**12-44.1-23. Jail report.**

Repealed by S.L. 1997, ch. 113, § 29.

**12-44.1-24. Correctional facility standards - Inspections.**

The department of corrections and rehabilitation shall:

1. Prescribe rules establishing minimum standards for the construction, operation, and maintenance of public or private correctional facilities.
2. Prescribe rules for the care and treatment of inmates.
3. Cause rules and regulations to be made available to inmates or be posted in at least one conspicuous place in each correctional facility.
4. Appoint a correctional facility inspector qualified by special experience, education, or training to inspect each correctional facility at least once each year to determine if the rules and regulations have been complied with. Inspection must include health and safety, fire and life safety, security, rehabilitation programs, recreation, treatment of persons confined, and personnel training.

**12-44.1-25. Inspection report - Notice of noncompliance - Hearing.**

1. The correctional facility inspector shall submit a written inspection report to the administrator of the correctional facility and the director of the department of corrections and rehabilitation within thirty days following each inspection.
2. The inspection report must specify when a correctional facility complies with, or is in violation of, required minimum standards, applicable state or federal law, or the department of corrections and rehabilitation rules for correctional facilities. If a correctional facility is in violation of any required minimum standards, applicable state or federal law, or department of corrections and rehabilitation rules for correctional facilities, the director of the department of corrections and rehabilitation may issue an order of noncompliance. The director shall identify the violation and required corrective measures in the order of noncompliance and specify the time limits within which the correctional facility shall correct the violations. The director shall consider the magnitude or seriousness of the violations and their potential effects on the health and safety of inmates, staff, law enforcement, and the public, the cost of correction, and other information the director considers relevant in establishing the time period for the correctional facility to correct the violations. If the director determines that the violations are limited and minor, the director may issue a letter of noncompliance to the correctional facility and identify the violations and required corrective measures and the correctional facility shall immediately correct the violations.
3. The director of the department of corrections and rehabilitation may assess the department's actual costs for inspection and monitoring the correctional facility upon issue of an order of noncompliance to the correctional facility.
4. If a correctional facility fails to complete required corrective action within the time specified in the order of noncompliance, the director of the department of corrections and rehabilitation may issue an order for full, partial, or temporary closure of the correctional facility. If the director determines that the extent of the noncompliance presents a danger to the health and safety of inmates, staff, law enforcement, visitors,

or the public, the director may issue an order of immediate full, partial, or temporary closure without a prior order of noncompliance.

5. Within thirty days after receipt of a notice or order of full, partial, or temporary closure, the administrator of a correctional facility may request a review of the determination by the department of corrections and rehabilitation pursuant to chapter 28-32. The review must be heard not more than forty-five days following the request, unless the period is extended at the request of the correctional facility. The department of corrections and rehabilitation may direct the correctional facility to pay to the department the reasonable and actual costs incurred by the department for any investigation and proceedings under this section.

**12-44.1-26. Correctional facility variances.**

1. A correctional facility shall comply with the requirements of the rules adopted by the department of corrections and rehabilitation unless a variance has been granted by the department of corrections and rehabilitation. Any request for a variance must be in writing and must cite the rule in question, the reasons for requesting the variance, the period of time for the variance, and an explanation of how the policy of the rule will be served without strict compliance with the rule.
2. The department of corrections and rehabilitation may grant a variance if it is determined that:
  - a. Compliance with the rule would cause extreme hardship as a result of circumstances which are unique to the correctional facility.
  - b. The correctional facility will substantially comply with the policy of the rule during the time of the variance from the rule.
3. The department of corrections and rehabilitation shall give written reasons for granting or denying a variance request.
4. In previously existing correctional facilities where specific rules cannot be complied with because of alleged difficulty or undue hardship, exception to specific physical plant rules must be made if the intent of the rule is met and security, supervision of prisoners, established programs, or the safe, healthful, or efficient operation of the correctional facility is not seriously affected.

**12-44.1-27. Corrective action - Enforcement.**

Repealed by S.L. 2007, ch. 110, § 6.

**12-44.1-28. Correctional facility files and records confidentiality.**

1. The medical, psychological, and treatment records of an inmate are confidential and may not be disclosed directly or indirectly to any person, organization, or agency, except as provided in this section. A court may order the inspection of the records, or parts of the records, upon an application to the court and a showing that there is a proper and legitimate purpose for the inspection and the provision of written authorization from the inmate for the inspection. Notwithstanding any other provision of law relating to privilege or confidentiality, except for the confidentiality requirements of federal drug and alcohol treatment and rehabilitation laws, medical, psychological, or treatment records may be inspected by or disclosed to the following persons, organizations, or agencies without prior authorization from the inmate or an order from the court:
  - a. A criminal justice agency as defined in subsection 4 of section 44-04-18.7.
  - b. A division, department, official, or employee of the department of corrections and rehabilitation.
  - c. A federal, state, regional, county, or municipal correctional facility receiving physical custody of an inmate from the original correctional facility.
  - d. A municipal or district court.
  - e. The department of health and human services, a public hospital or treatment facility, or a licensed private hospital or treatment facility.

2. a. A person, agency, or institution governed by statutory confidentiality requirements and receiving information or records under this section shall maintain the confidentiality requirements.
- b. Except as provided in subdivision a, a person, organization, or agency receiving confidential records under subsection 1 may not redisclose the records and must maintain the confidentiality of the records.
3. The employment or work release status of an inmate is an open record.
4. Records with respect to inmate identification, charges, criminal convictions, bail information, and intake and projected release dates are open records.
5. Records with respect to a sentenced inmate's institutional discipline and conduct and protective management are exempt records as defined under section 44-04-17.1.
6. Institutional discipline and conduct and protective management records of all other inmates are confidential records and may only be disclosed as provided in subsection 1.

**12-44.1-29. Provision of medication - Training requirements - Verification - Rules.**

1. A correctional facility may authorize an employee to provide medication to an inmate of a correctional facility if the employee is:
  - a. Licensed or registered under title 43 and is providing the medication within the scope of practice of the profession for which the individual is licensed or registered; or
  - b. A correctional facility staff member who has successfully completed a medication assistant I training and competency evaluation program approved by the department of health and human services under chapter 23-44. The requirements for a medication assistant I training and competency evaluation program must be met, except for the requirement a correctional facility staff member must be a nurse aide or certified nurse aide on the department registry prior to entry into the medication assistant I training and competency evaluation program or following successful completion of the program.
2. If a correctional facility uses a correctional facility staff member to provide medication to an inmate under subdivision b of subsection 1:
  - a. Upon successful completion of the department-approved medication assistant I training and competency evaluation program, the correctional facility staff member may provide medication administration to inmates consistent within the scope and limitations of medication administration included in the medication assistant I training and competency evaluation program; and
  - b. The correctional facility shall maintain records of all correctional facility staff members who have successfully completed the department-approved medication assistant I training and competency evaluation program, including verification of successful completion of the program. The department may periodically review the correctional facility's records to assure compliance with medication assistant I training and competency evaluation requirements.

**12-44.1-30. Correctional officers authorized to carry weapons.**

The administrator of a correctional facility may allow a qualified correctional officer to carry a weapon, including a firearm, during the transport of another governmental agency's prisoner if the correctional facility has a contract with the governmental agency to transport the agency's prisoners and that contract requires the officer doing the transport to be armed with a weapon. For purposes of this section, "governmental agency" means an agency or department of this state or of any political subdivision in this state, or another state or of a political subdivision of another state, or of the United States. The administrator of a correctional facility shall adopt a policy, approved by the director of the department of corrections and rehabilitation, which establishes the qualifications and training an officer must meet to carry a weapon under this section. Sections 62.1-02-05, 62.1-02-10, and 62.1-03-01 do not apply to the possession and use of a firearm by a qualified correctional officer acting in the course of employment as allowed by this section.

### **12-44.1-31. 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.

**12-44.1-32. Sentence reduction credit.**

An inmate sentenced to a correctional facility under this chapter is eligible to earn sentence reductions based upon criteria established by the administrator, including sentence reduction for good conduct. While incarcerated in a correctional facility, an offender may earn no more than a one-day sentence reduction per six days served.

**12-44.1-33. Inmate medical care costs.**

An inmate is financially responsible for the costs of medical or health care, except for an intake health care assessment and related testing for an examination of the inmate made at the request of the facility. The correctional facility may seek reimbursement from the inmate up to the total amount of incurred medical or health care costs. If the inmate has health insurance coverage, a medical or health care provider shall file a claim for reimbursement from the health insurance provider. If the inmate does not have health insurance coverage and the inmate's medical or health care costs are the responsibility of the correctional facility, the correctional facility's responsibility may not exceed the rates paid under the federal Medicare program. If elective medical or health care is allowed by a correctional facility policy, the inmate must arrange payment for elective medical or health care before receiving care.