

**Sixty-seventh Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 5, 2021**

HOUSE BILL NO. 1410

(Representatives Vetter, Damschen, Karls, Klemin, B. Koppelman, K. Koppelman, Pollert, Satrom)  
(Senators Kannianen, Meyer, Vedaa)

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

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

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

**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:
  4. a. Ensure inmates have confidential access to attorneys and their authorized representatives.
  2. b. Ensure that inmates are not subjected to discrimination based on race, national origin, color, creed, sex, economic status, or political belief.
  3. c. Ensure equal access by male and female inmates to programs and services available through the correctional facility.
  4. d. Ensure access to mail, telephone use, and visitors.
  5. e. Ensure that inmates are properly fed, clothed, and housed.
  6. 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.
  7. 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.

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

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

1. The warden and all officers of the penitentiary uniformly shall treat the inmates thereof the penitentiary with kindness, and the warden shall require of the officers and guards that, in the execution of theirthe officers' and guards' respective duties, theythe officers and guards in all cases shall refrain from boisterous and unbecoming language in giving their orders and commands. No corporalCorporal or other painful or unusual punishment shallmay not be inflicted upon the inmates of the penitentiary for violation of the rules and regulations thereof the penitentiary.
2. A facility under the control of the department of corrections and rehabilitation may not:
  - a. Substantially burden the exercise of religion by an offender in the custody of the 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 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 facility for the purpose of providing religious services unless the 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 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.

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

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

- a. Notwithstanding any other provision of law, an order issued pursuant to this subsection may not:
  - (1) Substantially burden a person's exercise of religion unless the order is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest;
  - (2) Treat religious conduct more restrictively than any secular conduct of reasonably comparable risk, unless the government demonstrates through clear and convincing evidence that a particular religious activity poses an extraordinary health risk; or
  - (3) Treat religious conduct more restrictively than comparable secular conduct because of alleged economic need or benefit.
- b. A person claiming to be aggrieved by a violation of subdivision a may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief, including costs and reasonable attorney's fees.

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

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

1. The department of human services may not:
  - a. Substantially burden the exercise of religion by patient or resident under the department's care 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 department demonstrates the disparate treatment is necessary to further a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest; or
  - c. Deny clergy access to a patient or resident for the purpose of providing religious services unless the department demonstrates the denial is necessary to further a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest.
2. A patient or resident of the department of human services claiming to be aggrieved by a violation of this section, may assert, after exhausting appropriate administrative remedies, that violation as a claim or defense in a judicial proceeding and obtain appropriate relief, including costs and reasonable attorney's fees.

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

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

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

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

4. An executive order or proclamation of a state of disaster or emergency shall activate the state and local operational plans applicable to the political subdivision or area in question and be authority for the deployment and use of any forces to which the plan or plans apply and for use or distribution of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to this chapter or any other provision of law relating to a disaster or emergency.
5. During the continuance of any state of disaster or emergency declared by the governor, the governor is commander in chief of the emergency management organization and of all other forces available for emergency duty. To the greatest extent practicable, the governor shall delegate or assign command authority by prior arrangement embodied in appropriate executive orders or emergency operational plans, but nothing herein restricts the governor's authority to do so by orders issued at the time of the disaster or emergency.
6. In addition to any other powers conferred upon the governor by law, the governor may:
  - a. Suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business, or the orders, rules, or regulations of any state agency, if strict compliance with the provisions of any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in managing a disaster or emergency.
  - b. Utilize all available resources of the state government as reasonably necessary to manage the disaster or emergency and of each political subdivision of the state.
  - c. Transfer the direction, personnel, or functions of state departments and agencies or units thereof for the purpose of performing or facilitating emergency management activities.
  - d. Subject to any applicable requirements for compensation under section 37-17.1-12, commandeer or utilize any private property if the governor finds this necessary to manage the disaster or emergency.
  - e. Direct and compel the evacuation of all or part of the population from any stricken or threatened area within the state if the governor deems this action necessary for the preservation of life or other disaster or emergency mitigation, response, or recovery.
  - f. Prescribe routes, modes of transportation, and destinations in connection with an evacuation.
  - g. Control ingress and egress in a designated disaster or emergency area, the movement of persons within the area, and the occupancy of premises therein.
  - h. Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, explosives, and combustibles, not including ammunition.
  - i. Make provision for the availability and use of temporary emergency housing.

- j. Make provisions for the control, allocation, and the use of quotas for critical shortages of fuel or other life and property sustaining commodities.
  - k. Designate members of the highway patrol, North Dakota national guard, or others trained in law enforcement, as peace officers.
7. Any person who willfully violates any provision of an executive order or proclamation issued by the governor pursuant to this chapter is guilty of an infraction.
8. ~~Authorize~~The governor may authorize the adjutant general to recall to state active duty, on a volunteer basis, former members of the North Dakota national guard. Those recalled must possess the qualifications required by the disaster or emergency. Recall under this subsection is effective only for the duration of the disaster or emergency and recalled personnel will be released from state active duty upon competent authority that the requirement of their service under this subsection has passed. Compensation for personnel recalled under this subsection will be based upon section 37-07-05.
9. Notwithstanding any other provision of law, an order, proclamation, rule, or regulation issued pursuant to this section may not:
- a. Substantially burden a person's exercise of religion unless the order 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 secular conduct of reasonably comparable risk, unless the government demonstrates through clear and convincing evidence that a particular religious activity poses an extraordinary health risk; or
  - c. Treat religious conduct more restrictively than comparable secular conduct because of alleged economic need or benefit.
10. A person claiming to be aggrieved by a violation of subsection 9 may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief, including costs and reasonable attorney's fees.

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Speaker of the House

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President of the Senate

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Chief Clerk of the House

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Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-seventh Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1410.

House Vote:    Yeas 83            Nays 10            Absent 1

Senate Vote:    Yeas 46            Nays 1            Absent 0

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Chief Clerk of the House

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2021.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2021.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2021,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

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Secretary of State