

**LETTER OPINION
2020-L-03**

June 10, 2020

Ms. Haley L. Wamstad
Grand Forks County State's Attorney's Office
124 South 4th Street
PO Box 5607
Grand Forks, ND 58206-5607

Dear Ms. Wamstad:

Thank you for asking my opinion on whether a county may contract with the North Dakota Department of Corrections and Rehabilitation (DOCR) to confine a pre-trial detainee. It is my opinion that N.D.C.C. § 12-44.1-02 allows a county to contract with the DOCR to confine a pre-trial detainee.

ANALYSIS

Section 12-44.1-02, N.D.C.C., provides for the establishment of correctional facilities by a county or city. Under this section, a county must establish its own correctional facility or “[c]ontract 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.”¹ Additionally, “[t]he 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.”²

You explain that Grand Forks County has an inmate with medical needs that exceed the capabilities the Grand Forks County Correctional Center is able to provide. The North Dakota State Penitentiary may be equipped to handle these unique medical needs but is unsure if it can take a pre-trial detainee.

¹ N.D.C.C. § 12-44.1-02(1)(b).

² N.D.C.C. § 12-44.1-02(4).

An “inmate” in chapter 12-44.1, N.D.C.C., is defined as “any person, whether sentenced or unsentenced, who is detained or confined in a correctional facility.”³ 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 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.⁴

The person in question has been charged with an offense and ordered by a court to be detained for trial. Therefore, pursuant to N.D.C.C. § 12-44.1-07, he is lawfully committed to a correctional facility. I appreciate that there is a legal distinction between a pre-trial detainee and a convicted inmate. However, this distinction does not preclude a contract as anticipated by N.D.C.C. § 12-44.1-02. Any concerns about special accommodations may be contractually addressed. The decision to enter into a contract to accept a pre-trial detainee is one of policy as there is no statutory prohibition against accepting such inmates.

Sincerely,

Wayne Stenehjem
Attorney General

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.⁵

³ N.D.C.C. § 12-44.1-01(4).

⁴ N.D.C.C. § 12-44.1-07.

⁵ See *State ex rel. Johnson v. Baker*, 21 N.W.2d 355 (N.D. 1946).