

SENATE BILL NO. 2352

Introduced by

Senators Dever, Hogan, Magrum, Mathern

1 A BILL for an Act to create and enact a new subsection to section 54-23.3-04 of the North
2 Dakota Century Code, relating to authorization for children of inmates to reside at the Heart
3 River correctional center; and to amend and reenact section 32-12.2-02 of the North Dakota
4 Century Code, relating to limitation of liability for children residing at the Heart River correctional
5 center.

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

7 **SECTION 1. AMENDMENT.** Section 32-12.2-02 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **32-12.2-02. Liability of the state - Limitations - Statute of limitations. (Effective**
10 **through July 31, 2027)**

- 11 1. The state may only be held liable for money damages for an injury proximately caused
12 by the negligence or wrongful act or omission of a state employee acting within the
13 employee's scope of employment under circumstances in which the employee would
14 be personally liable to a claimant in accordance with the laws of this state, or an injury
15 caused from some condition or use of tangible property under circumstances in which
16 the state, if a private person, would be liable to the claimant. No claim may be brought
17 against the state or a state employee acting within the employee's scope of
18 employment except a claim authorized under this chapter or otherwise authorized by
19 the legislative assembly. The enactment of a law, rule, or regulation to protect any
20 person's health, safety, property, or welfare does not create a duty of care on the part
21 of the state, its employees, or its agents, if that duty would not otherwise exist.
- 22 2. The liability of the state under this chapter is limited to a total of three hundred
23 seventy-five thousand dollars per person and one million dollars for any number of
24 claims arising from any single occurrence. The state may not be held liable, or be

1 ordered to indemnify a state employee held liable, for punitive or exemplary damages.
2 Any amount of a judgment against the state in excess of the one million dollar limit
3 imposed under this subsection may be paid only if the legislative assembly adopts an
4 appropriation authorizing payment of all or a portion of that amount. A claimant may
5 present proof of the judgment to the director of the office of management and budget
6 who shall include within the proposed budget for the office of management and budget
7 a request for payment for the portion of the judgment in excess of the limit under this
8 section at the next regular session of the legislative assembly after the judgment is
9 rendered. The liability limits under this subsection must be adjusted annually as
10 follows:

- 11 a. On July 1, 2023, a total of four hundred six thousand two hundred and fifty dollars
12 per person and one million six hundred twenty-five thousand dollars for any
13 single occurrence.
- 14 b. On July 1, 2024, a total of four hundred thirty-seven thousand five hundred
15 dollars per person and one million seven hundred fifty thousand dollars for any
16 single occurrence.
- 17 c. On July 1, 2025, a total of four hundred sixty-eight thousand seven hundred fifty
18 dollars per person and one million eight hundred seventy-five thousand dollars
19 per occurrence.
- 20 d. On July 1, 2026, a total of five hundred thousand dollars per person and two
21 million dollars per occurrence.

- 22 3. Neither the state nor a state employee may be held liable under this chapter for any of
23 the following claims:
 - 24 a. A claim based upon an act or omission of a state employee exercising due care
25 in the execution of a valid or invalid statute or rule.
 - 26 b. A claim based upon a decision to exercise or perform or a failure to exercise or
27 perform a discretionary function or duty on the part of the state or its employees,
28 regardless of whether the discretion involved is abused or whether the statute,
29 order, rule, or resolution under which the discretionary function or duty is
30 performed is valid or invalid. Discretionary acts include acts, errors, or omissions

- 1 in the design of any public project but do not include the drafting of plans and
2 specifications that are provided to a contractor to construct a public project.
- 3 c. A claim resulting from the decision to undertake or the refusal to undertake any
4 legislative or quasi-legislative act, including the decision to adopt or the refusal to
5 adopt any statute, order, rule, or resolution.
- 6 d. A claim resulting from a decision to undertake or a refusal to undertake any
7 judicial or quasi-judicial act, including a decision to grant, to grant with conditions,
8 to refuse to grant, or to revoke any license, permit, order, or other administrative
9 approval or denial.
- 10 e. A claim relating to injury directly or indirectly caused by a person who is not
11 employed by the state.
- 12 f. A claim relating to injury directly or indirectly caused by the performance or
13 nonperformance of a public duty, including:
- 14 (1) Inspecting, licensing, approving, mitigating, warning, abating, or failing to so
15 act regarding compliance with or the violation of any law, rule, regulation, or
16 any condition affecting health or safety.
- 17 (2) Enforcing, monitoring, or failing to enforce or monitor conditions of
18 sentencing, parole, probation, or juvenile supervision.
- 19 (3) Providing or failing to provide law enforcement services in the ordinary
20 course of a state's law enforcement operations.
- 21 g. "Public duty" does not include action of the state or a state employee under
22 circumstances in which a special relationship can be established between the
23 state and the injured party. A special relationship is demonstrated if all of the
24 following elements exist:
- 25 (1) Direct contact between the state and the injured party.
- 26 (2) An assumption by the state, by means of promises or actions, of an
27 affirmative duty to act on behalf of the party who allegedly was injured.
- 28 (3) Knowledge on the part of the state that inaction of the state could lead to
29 harm.

- 1 (4) The injured party's justifiable reliance on the state's affirmative undertaking,
2 occurrence of the injury while the injured party was under the direct control
3 of the state, or the state action increases the risk of harm.
- 4 h. A claim resulting from the assessment and collection of taxes.
- 5 i. A claim resulting from snow or ice conditions, water, or debris on a highway or on
6 a public sidewalk that does not abut a state-owned building or parking lot, except
7 when the condition is affirmatively caused by the negligent act of a state
8 employee.
- 9 j. A claim resulting from any injury caused by a wild animal in its natural state.
- 10 k. A claim resulting from the condition of unimproved real property owned or leased
11 by the state.
- 12 l. A claim resulting from the loss of benefits or compensation due under a program
13 of public assistance.
- 14 m. A claim resulting from the reasonable care and treatment, or lack of care and
15 treatment, of a person at a state institution where reasonable use of available
16 appropriations has been made to provide care.
- 17 n. A claim resulting from damage to the property of a ~~patient~~resident or inmate of a
18 state institution.
- 19 o. A claim resulting from any injury to a resident or an inmate of a state institution if
20 the injury is caused by another resident or inmate of that institution.
- 21 p. A claim resulting from environmental contamination, except to the extent that
22 federal environmental law permits the claim.
- 23 q. A claim resulting from a natural disaster, an act of God, a military action, or an act
24 or omission taken as part of a disaster relief effort.
- 25 r. A claim for damage to property owned by the state.
- 26 s. A claim for liability assumed under contract, except this exclusion does not apply
27 to liability arising from a state employee's operation of a rental vehicle if the loss
28 is not covered by the state employee's personal insurance or by the vehicle rental
29 company.

1 t. A claim resulting from an injury to a child residing at the Heart River correctional
2 center, except when the injury is affirmatively caused by the negligent act of a
3 state employee.

4 4. An action brought under this chapter must be commenced within the period provided
5 in section 28-01-22.1.

6 5. This chapter does not create or allow any claim that does not exist at common law or
7 has not otherwise been created by law as of April 22, 1995.

8 **Liability of the state - Limitations - Statute of limitations. (Effective after July 31,**
9 **2027)**

10 1. The state may only be held liable for money damages for an injury proximately caused
11 by the negligence or wrongful act or omission of a state employee acting within the
12 employee's scope of employment under circumstances in which the employee would
13 be personally liable to a claimant in accordance with the laws of this state, or an injury
14 caused from some condition or use of tangible property under circumstances in which
15 the state, if a private person, would be liable to the claimant. No claim may be brought
16 against the state or a state employee acting within the employee's scope of
17 employment except a claim authorized under this chapter or otherwise authorized by
18 the legislative assembly. The enactment of a law, rule, or regulation to protect any
19 person's health, safety, property, or welfare does not create a duty of care on the part
20 of the state, its employees, or its agents, if that duty would not otherwise exist.

21 2. The liability of the state under this chapter is limited to a total of two hundred fifty
22 thousand dollars per person and one million dollars for any number of claims arising
23 from any single occurrence. The state may not be held liable, or be ordered to
24 indemnify a state employee held liable, for punitive or exemplary damages. Any
25 amount of a judgment against the state in excess of the one million dollar limit
26 imposed under this subsection may be paid only if the legislative assembly adopts an
27 appropriation authorizing payment of all or a portion of that amount. A claimant may
28 present proof of the judgment to the director of the office of management and budget
29 who shall include within the proposed budget for the office of management and budget
30 a request for payment for the portion of the judgment in excess of the limit under this

1 section at the next regular session of the legislative assembly after the judgment is
2 rendered.

3 3. Neither the state nor a state employee may be held liable under this chapter for any of
4 the following claims:

5 a. A claim based upon an act or omission of a state employee exercising due care
6 in the execution of a valid or invalid statute or rule.

7 b. A claim based upon a decision to exercise or perform or a failure to exercise or
8 perform a discretionary function or duty on the part of the state or its employees,
9 regardless of whether the discretion involved is abused or whether the statute,
10 order, rule, or resolution under which the discretionary function or duty is
11 performed is valid or invalid. Discretionary acts include acts, errors, or omissions
12 in the design of any public project but do not include the drafting of plans and
13 specifications that are provided to a contractor to construct a public project.

14 c. A claim resulting from the decision to undertake or the refusal to undertake any
15 legislative or quasi-legislative act, including the decision to adopt or the refusal to
16 adopt any statute, order, rule, or resolution.

17 d. A claim resulting from a decision to undertake or a refusal to undertake any
18 judicial or quasi-judicial act, including a decision to grant, to grant with conditions,
19 to refuse to grant, or to revoke any license, permit, order, or other administrative
20 approval or denial.

21 e. A claim relating to injury directly or indirectly caused by a person who is not
22 employed by the state.

23 f. A claim relating to injury directly or indirectly caused by the performance or
24 nonperformance of a public duty, including:

25 (1) Inspecting, licensing, approving, mitigating, warning, abating, or failing to so
26 act regarding compliance with or the violation of any law, rule, regulation, or
27 any condition affecting health or safety.

28 (2) Enforcing, monitoring, or failing to enforce or monitor conditions of
29 sentencing, parole, probation, or juvenile supervision.

30 (3) Providing or failing to provide law enforcement services in the ordinary
31 course of a state's law enforcement operations.

- 1 g. "Public duty" does not include action of the state or a state employee under
2 circumstances in which a special relationship can be established between the
3 state and the injured party. A special relationship is demonstrated if all of the
4 following elements exist:
- 5 (1) Direct contact between the state and the injured party.
6 (2) An assumption by the state, by means of promises or actions, of an
7 affirmative duty to act on behalf of the party who allegedly was injured.
8 (3) Knowledge on the part of the state that inaction of the state could lead to
9 harm.
10 (4) The injured party's justifiable reliance on the state's affirmative undertaking,
11 occurrence of the injury while the injured party was under the direct control
12 of the state, or the state action increases the risk of harm.
- 13 h. A claim resulting from the assessment and collection of taxes.
- 14 i. A claim resulting from snow or ice conditions, water, or debris on a highway or on
15 a public sidewalk that does not abut a state-owned building or parking lot, except
16 when the condition is affirmatively caused by the negligent act of a state
17 employee.
- 18 j. A claim resulting from any injury caused by a wild animal in its natural state.
- 19 k. A claim resulting from the condition of unimproved real property owned or leased
20 by the state.
- 21 l. A claim resulting from the loss of benefits or compensation due under a program
22 of public assistance.
- 23 m. A claim resulting from the reasonable care and treatment, or lack of care and
24 treatment, of a person at a state institution where reasonable use of available
25 appropriations has been made to provide care.
- 26 n. A claim resulting from damage to the property of a ~~patient~~resident or inmate of a
27 state institution.
- 28 o. A claim resulting from any injury to a resident or an inmate of a state institution if
29 the injury is caused by another resident or inmate of that institution.
- 30 p. A claim resulting from environmental contamination, except to the extent that
31 federal environmental law permits the claim.

- 1 q. A claim resulting from a natural disaster, an act of God, a military action, or an act
2 or omission taken as part of a disaster relief effort.
- 3 r. A claim for damage to property owned by the state.
- 4 s. A claim for liability assumed under contract, except this exclusion does not apply
5 to liability arising from a state employee's operation of a rental vehicle if the loss
6 is not covered by the state employee's personal insurance or by the vehicle rental
7 company.
- 8 t. A claim resulting from an injury to a child residing at the Heart River correctional
9 center, except when the injury is affirmatively caused by the negligent act of a
10 state employee.
- 11 4. An action brought under this chapter must be commenced within the period provided
12 in section 28-01-22.1.
- 13 5. This chapter does not create or allow any claim that does not exist at common law or
14 has not otherwise been created by law as of April 22, 1995.

15 **SECTION 2.** A new subsection to section 54-23.3-04 of the North Dakota Century Code is
16 created and enacted as follows:

17 To employ personnel and establish policies and procedures to authorize a child of a
18 female inmate to reside at the Heart River correctional center under the care and
19 general control of the female inmate.