

**N.D.A.G. Letter to Riha (Feb. 20, 1989)**

February 20, 1989

Mr. Richard J. Riha  
Assistant Burleigh County  
State's Attorney  
Burleigh County Courthouse  
514 East Thayer Avenue  
Bismarck, ND 58501

Dear Mr. Riha:

Thank you for your January 31, 1989, letter concerning whether a person arrested and incarcerated on a warrant issued by a court for an alleged probation violation should be considered a pre-trial or sentenced prisoner.

N.D.C.C. § 12-44.1-09(3) provides that

In grade one and grade two jails and, where practicable, in grade three jails, the following groups of inmates must be housed separately from each other:

....

3. Persons detained for hearing or trial from inmates under sentence of imprisonment, unless authorized to be housed together by the jail administrator for security, order, or rehabilitation.

The issue here then is whether a person arrested for a suspected probation violation is a "person[ ] detained for hearing or trial" (and should be housed with pre-trial detainees) or "an inmate under sentence of imprisonment" (and should be housed with sentenced prisoners).

A person arrested for a suspected probation violation has, of course, already received a criminal sentence and could, therefore, be considered to be someone "under sentence." However, at the time of the arrest such a person is obviously not serving a "sentence of imprisonment." Also, a person accused of violating probation is entitled to a separate hearing, written notice of the alleged violation, and representation by retained or appointed counsel before probation is revoked. N.D.R. Crim. P. 32(f).

Because the person in question is clearly being detained for a hearing and is not serving a "sentence of imprisonment," the person should be considered to be a pre-trial detainee. As such, N.D.C.C. § 12-44.1-09(3) requires that such a person be housed separately from other inmates in the jail who are under a sentence of imprisonment.

I trust that this letter has answered your question. However, if you would like additional information, please feel free to contact me.

Sincerely,

Nicholas J. Spaeth

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