

STATE OF NORTH DAKOTA  
NORTH DAKOTA DEPARTMENT OF CORRECTIONS AND  
REHABILITATION

In the Matter of the Barnes County Corrections Facility,  
Valley City, North Dakota

**ORDER OF RECLASSIFICATION**

This Order is issued in accordance with N.D.C.C. § 12-44.1-25

**SUMMARY OF PROCEEDINGS**

In November of 2017, the North Dakota Department of Corrections and Rehabilitation (ND DOCR), through its facility inspectors, conducted an inspection of the Barnes County Corrections Facility (BCCF). The DOCR inspectors determined the BCCF failed to comply with the requirements of N.D.C.C. chapter 12-44.1, applicable federal law, namely the Prison Rape Elimination Act (PREA) and failed to show compliance with forty-five (45) North Dakota Correctional Facility Standards. The ND DOCR issued an Order of Reclassification and Order of Partial and Temporary Closure and Order Suspending Order of Temporary Closure effective December 19, 2017. It was a requirement that BCCF come into compliance with all applicable state and federal laws and North Dakota Correctional Facility Standards within the initial twelve (12) months of the order. The ND DOCR retained continuing jurisdiction over the matter.

The North Dakota Department of Corrections and Rehabilitation ("ND DOCR") now makes the following:

**FINDINGS OF FACT**

I.

The Barnes County Corrections Facility (BCCF) is currently a Grade one correctional facility under N.D.C.C. §.12-44.1-06. The BCCF is located at 491 2<sup>nd</sup> Ave. NW Valley City, North Dakota. The facility was constructed in 1908 with a renovation to part of the building in 1977. BCCF is comprised of a two-story building; the facility is located within the first and second floor of a two-floor building. BCCF is operated under the authority of the Barnes County Sheriff, Randy McClafin. The governing authority of the BCCF are the Barnes County Commissioners. BCCF has authorized employees including BCCF Administrator, Julie Forsman, ten full-time security staff, and five part-time security staff, and maintains employing levels of one employee to fifteen (15) offenders. The average length of stay for inmates is eight days. Five hundred eighty-four (584) offenders were processed for the year of 2017. BCCF maintains an active contractual agreement to house inmates from Dickey, LaMoure, Griggs, Ransom, Steele, Sargent Counties, and the City of Valley City.

## II.

BCCF does not have a vehicle sally port. The front entrance and the side entrances provide entrance and exit for the employees, law enforcement, offenders being released, and access for responding emergency personnel. There was sufficient artificial lighting level to observe a person approaching entrances, exits, and the entire exterior perimeter during hours of darkness.

## III.

BCCF's physical plant consists of eight housing units, booking area, control/supervisor room, supervisor's area, visiting room, kitchen, laundry, medical area, inmate library, storage room which stores inmate property, and inside recreation area located in the basement. BCCF also provides an outside recreation area. BCCF facility has a total inmate capacity of thirty (30) inmates. BCCF has one single-occupancy cell in Unit One North which is used primarily for observation/special needs/special management cell. This observation/special needs/special management cell is used temporarily for offenders who are under the influence of alcohol or drugs, display violent behavior, self-harm, or inability to exercise self-control. This cell is not located near the control/supervisor room. Personal visual observation is conducted by the correctional officers and by electronic camera(s) which are continuously monitored in the control room.

## IV.

BCCF is an older facility which has a dysfunctional layout and lacks security needs. The physical plant design of the BCCF does not meet the current needs of the county, jail employees, or inmates. The time it takes a BCCF employee to conduct a proper well-being check is lengthy due to multiple units. BCCF has a number of maintenance concerns and is challenging to maintain because of its age and deteriorating condition. The facility has numerous areas that present safety concerns for employees and inmates. Most of the fixed furnishings appear to be original equipment and are in need of updating. Upon inspection of the BCCF, there was painting in progress at one of the cell block areas. The kitchen, laundry, booking area, office space, visiting area, and lobby are not conducive to quality work environment. These areas are in need of expansion, repair, and painting. The offenders' bathrooms and showers were not maintained. Inspectors observed dripping faucets and leaking pipes dripping into a bucket. There is no acceptable unit in the BCCF to house special management or special needs inmates. The area designated is not conducive for special management/special needs inmates or the safety of the BCCF employees. All observation and special management/special needs inmates need to be housed in other facilities.

## V.

Inside recreation is located in the basement; a limited area that is fenced off with a chain link fence. The outside recreation area is a limited area surrounded with a chain link fence next to the jail facility. A public sidewalk is within five feet from the outside recreation area. The location of the outside recreation area is undesirable because of security concerns, and additional cameras that are needed.

## VI.

The facility lacks storage and support space. Every available space within the jail facility is utilized for storage. One room within the BCCF contains food storage for dry goods and frozen foods, two refrigerators and one chest freezer. This room also has a storage locker for chemicals, and a laundry area with a large washer and dryer. BCCF employees also maintain their duty belts and security equipment within this room. To gain access to this storage room, employees must go through a bathroom (one of two staff bathrooms within the facility). Whether storing food, separating dirty laundry, washing laundry, or mixing chemicals, there is the realistic possibility for contamination.

## VII.

The facility lacks adequate detention grade lighting in any of the units. The observation/special needs/special management cell light was not working, resulting in a poor ability to observe occupants. During the inspection, it was noted an offender was placed in observation/special needs/special management cell and the illumination was insufficient. All dayrooms at BCCF have access to natural lighting and illumination which was sufficient for comfortable reading. Illumination in the cell areas in Units One and Two South and One and Two North was insufficient.

## VIII.

The manual locks for the facility are outdated and replacement parts will be difficult to find in the event the locks break down. There are also many different locks in the jail, and employees must carry multiple sets of keys to get throughout the facility, which will hinder employees in the event of an emergency.

## IX.

In the overflow units, the room temperature was hot and the humidity was high. The humidity was the result of a valve on the steam heat radiator that was leaking steam. A BCCF employee indicated the heat is difficult to regulate and that this has been an ongoing problem. The BCCF employee indicated the BCCF was unable to control the temperature thermostatically. The offices for the jail administrator, control, and supervisor share the same small office area. The facility itself is not conducive to a quality work environment and is difficult to maintain because of the number of maintenance issues.

## X.

The corridors in Units One and Two South and the corridors in Units One and Two North are narrow and so are the entrances to the units. The showers and the cells in all of the units are not accessible for disabled persons. The BCCF does not meet many of the needs of disabled offenders or standards required by the Americans with Disabilities Act (ADA). These limitations may necessitate transporting inmates with certain disabilities to other facilities with the capabilities to provide for the inmate's particular disability.

## XI.

There are ten double occupancy cells in four different units. At the time of the inspection, Unit One South was used for female offenders. Each cell has a wash basin and a toilet with one private shower and a dayroom. The dayrooms in the four units have access to natural lighting and illumination. This is sufficient for comfortable reading in the living area and adequate and appropriate seating, television, and inmate telephone system. BCCF has four dorms; each dorm can have up to three beds. Each dorm is equipped with a private shower area with a curtain to allow for privacy, wash basins, and toilets. To the extent reasonably practicable, the offender's bathrooms contain modesty screens that preserve privacy and a door to the bathrooms which present a supervision issue. All inmates eat meals within the dayrooms of their unit or within the dorm. There are five phones in the entire jail; this does not pose a problem due to BCCF inmate population.

## XII.

The control/supervisor room monitors activities from forty-eight (48) cameras located throughout the facility and the courthouse. At the time of the inspection, there was one camera that was not operational. The correctional facility inspectors could not find where electronic surveillance was a substitute for periodic personal observations by facility employees. Video cameras are located at all entrances, exits, indoor recreation, hallways, single cells, booking, visiting room as well as the recreation areas. The video is maintained up to forty (40) days. BCCF has video cameras throughout the facility; however, there are still some blind spots. The facility's video monitoring system allows for approximately 85% coverage of the facility. The control/supervisors room is not centrally located within the facility and has no direct line of sight into the offender housing units. Each housing unit is equipped with an intercom system that only permits BCCF employees to communicate with offenders in the control room. The control room can listen to the housing units; however, the inmate cannot summons assistance in case of an emergency. It is imperative that offenders have a means of contacting BCCF employees at all times in case of an emergency. The jail lobby is monitored 24 hours a day from the control center. The control room does not control any entrance or exit of doors throughout the jail. The offenders are not always housed based upon needs and their respective level of classification. BCCF has handheld wands; however, staff were not aware that BCCF had such wands.

## XIII.

Fire protection is provided by means of fire and smoke detectors. There is an annunciation panel in the control room which is operated 24 hours a day. The facility is supported by the Valley City Fire Department. The facility has had a fire inspection by the local fire chief, and no violations were noted. The facility was able to provide documentation for the annual fire inspection. Testing of the fire detection system and fire drills were conducted. Jail Administrator Julie Forsman was interviewed and able to express what actions to take in the event of a fire within the facility.

#### XIV.

The level of sanitation and cleanliness is poor throughout the facility. The correctional facility inspectors did not find any disagreeable odors in the facility, and the inmates had access to hot and cold running water. The facility fails to hold offenders responsible for the cleanliness of their own living areas, even though the inmates are provided with equipment and materials necessary to clean their assigned areas on a daily basis. Cleaning supplies include, a broom, mop, dustpan, bucket, and cleaning and disinfecting agents, but there is no inventory system in place to account for cleaning supplies. Although the offenders had sufficient supplies and equipment to achieve sanitary standards and control, the offenders are not required to keep their housing areas clean. Supervisors and employees need to conduct weekly maintenance and sanitation inspections of all housing areas, note deficiencies, and take immediate corrective actions. The correctional facility inspectors found that waste and trash cans are not emptied at least once every day, or as often as necessary to maintain a professional image and to prevent infestation of pests or other unsanitary conditions. BCCF has retained a professional exterminator.

#### XV.

During and unannounced inspection on December 6, 2018, the facility inspectors observed that the kitchen freezer was dirty and there were undated perishable goods.

#### XVI

The BCCF was given permission to reopen its overflow and work release sections in July 16, 2018. The BCCF was reclassified as a Grade one correctional facility in May 22, 2018, and is presently classified as a Grade one correctional facility.

### **ADDITIONAL FINDINGS OF FACT WITH CONCLUSIONS OF LAW.**

#### I.

The DOCR conducted a full inspection of the BCCF on November 6, 2018, and subsequently conducted an unannounced inspection, on December 6, 2018. Following the November 6, 2018, inspection the BCCF was found non-compliant with nineteen (19) North Dakota Correctional Facility Standards.

- a. Plumbing throughout the BCCF requires attention. The offender's bathrooms and showers are not maintained. Inspectors observed dripping faucets and leaking pipes dripping into a bucket and wet towels placed outside of the showers to soak up water. One shower wall had holes in the wall and another shower had large areas of paint peeling from the wall. A few showers stalls appeared not to have been cleaned for a period of time. Various wash basins were in need of adjustments. Some wash basins had very little pressure and some would have water squirt over the top of the sink. Inspectors reviewed three (BCCF) weekly safety/hygiene inspections and with all three inspections the reports indicated that

everything is okay. The weekly safety/hygiene inspections are a paper exercise only and not a comprehensive maintenance and sanitation review.

1) The BCCF is in violation of Standard 18 of the Correctional Facility Standards.

b. BCCF's personal property inventory procedures are inadequate. The BCCF inventory sheets do not include all of an inmate's personal property and are not sufficiently descriptive of the property.

1) The BCCF is in violation of Standard 25 of the Correctional Facility Standards.

c. The BCCF only provides limited telephone services and does not maintain documentation of inmate phone calls.

1) The BCCF is in violation of Standard 26 of the Correctional Facility Standards.

d. The BCCF does not provide explanation of the inmate handbook during orientation, and BCCF does not have inmate handbooks in the housing areas and inmates are not advised of facility rules.

1) The BCCF is in violation of Standard 27 of the Correctional Facility Standards.

e. The BCCF does not conduct well-being checks as part of its suicide prevention plan in a timely manner and an observation cell is not available for female inmates who require additional observation.

1) The BCCF is in violation of Standard 31 of the Correctional Facility Standards.

f. The BCCF does not place offenders who require special observation in a reasonable level of care and does not follow its policies and procedures for inmate observation and it does not timely document significant events.

1) The BCCF is in violation of Standard 32 of the Correctional Facility Standards.

g. The BCCF only conducted six documented cell searches between January 2018 and October 2018.

1) The BCCF is in violation of Standard 35 of the Correctional Facility Standards.

h. The BCCF does not securely store all keys in a secure locker. Handcuff keys were not in the inventory. Facility keys on duty belts were not on the inventory. Kitchen

utensils and knives were not on the inventory. The security locker inventory for hand cuffs, belly chains, and leg irons did not match. BCCF has hand wands for searches, but employees did not know the BCCF had hand wands and did not know the location of the hand wands.

1) The BCCF is in violation of Standard 38 of the Correctional Facility Standards.

i. The BCCF does not utilize a restraint chair. Not all BCCF employees knew how to apply restraints or the proper application of each type of restraint.

1) The BCCF is in violation of Standard 43 of the Correctional Facility Standards.

j. The BCCF does not provide safety training nor access to personal protection equipment for work assignments.

1) The BCCF is in violation of Standard 47 of the Correctional Facility Standards.

k. The BCCF does not conduct medical screenings for inmates prior to work assignments.

1) The BCCF is in violation of Standard 56 of the Correctional Facility Standards.

l. The BCCF had accepted an inmate solely for intoxication management. The inmate had not been medically cleared by a licensed physician, nurse practitioner, or physician's assistant. The inmate was not within hearing distance of the officer's station or the control room. The BCCF did not conduct any breath or blood alcohol concentration testing. The BSSC did not supervise the offender to ensure safety and stability. BCCF employees failed to check on the inmate on one occasion for over 120 minutes and more than one hour had passed between well-being checks seven times during the inmate's incarceration.

1) The BCCF is in violation of Standard 59 of the Correctional Facility Standards.

m. The BCCF's emergency plan did not address an escape or attempted escape; riots, hunger strikes, hostages, and disturbances; and disruption of essential services.

1) The BCCF is in violation of Standard 63 of the Correctional Facility Standards.

n. The BCCF stored hazardous and toxic materials in an unsafe manner, including only having limited safety data sheets on hand, not properly labeling caustic and toxic chemicals, and storing the chemicals in an incorrect manner.

- 1) The BCCF is in violation of Standard 64 of the Correctional Facility Standards.
- o. The BCCF does not comply with the state of North Dakota's Infectious waste regulation, NDAC Section 33-20-12-01. There were ten full containers of biohazards (sharps) in the basement mechanical/storage room and the containers were not distinctly labeled.
  - 1) The BCCF is in violation of Standard 70 of the Correctional Facility Standards.
- p. The BCCF inmate handbook, which in the first place is not made available to inmates, does not contain any information about the inmate grievance and appeal process.
  - 1) The BCCF is in violation of Standard 91 of the Correctional Facility Standards.
- q. The BCCF has a two level disciplinary process; however, the BCCF does not issue the more severe level II disciplinary violations. There is no indication it follows due process procedures.
  - 1) The BCCF is in violation of Standard 96 of the Correctional Facility Standards.
- r. BCCF policy does not reflect that it uses restrictive housing.
  - 1) The BCCF is in violation of Standard 98 of the Correctional Facility Standards.
- s. BCCF employees are not properly trained on all security equipment and the use of emergency equipment.
  - 1) The BCCF is in violation of Standard 106 of the Correctional Facility Standards.

## II.

DOCR facilities inspectors found in an unannounced inspection on December 6, 2018, the BCCF was found non-compliant with two North Dakota Correctional Facility Standards.

- a. The BCCF onsite tool room inventory listed approximately twenty (20) tools and was last inspected by the facility on November 5, 2018. The tool room includes well over one-hundred (100) tools, including lock cutters.



- 1) The BCCF is in violation of Standard 38 of the Correctional Facility Standards.
- b. Neither the sheriff or the facility administrator had conducted weekly inspections of the facility from the date of the November 6, 2018, inspection through December 6, 2018, the date of the most recent unannounced facility inspection.
- 1) The BCCF is in violation of Standard 41 of the Correctional Facility Standards.

## **ADDITIONAL CONCLUSIONS OF LAW**

### **I.**

The Barnes County Corrections Facility is a regional corrections center subject to N.D.C.C. chapter 12-44.1.

### **II.**

N.D.C.C. § 12-44.1-24 requires the DOCR to prescribe rules establishing minimum standards for the construction, operation, and maintenance of county correctional facilities, prescribe rules for the care and treatment of inmates, cause the rules and regulations be made available to inmates, and to appoint a correctional facility inspector qualified by special experience, education, or training to inspect correctional facilities. Inspection must include health and safety, fire and life safety, security, rehabilitation programs, recreation, treatment of persons confined, and personnel training.

### **III.**

The DOCR has promulgated Correctional Facility Standards in accordance with Section 12-44.1-24 and has appointed a correctional facility inspector in accordance with the requirements of N.D.C.C. § 12-44.1-24.

### **IV.**

N.D.C.C. § 12.44.1-25 authorizes the Director of the DOCR to issue a report of non-compliance if a correctional facility is in violation of any required minimum standards, applicable state or federal law, or DOCR rules for correctional facilities.

### **V.**

When the DOCR determines that the nature and extent of deficiencies in a correctional facility subject to N.D.C.C. ch. 12-44.1 are such that an immediate order of full, partial, or temporary closure is necessary to protect the health and safety of the inmates, correctional facility staff, law enforcement, visitors, or the public, section 12-44.1-25 authorizes the Director of the DOCR to issue an order of full, partial, or temporary closure.

VII.

The BCCF has failed to comply with nineteen (19) out of one-hundred and eight (108) North Dakota Correctional Facility standards. The BCCF's non-compliance occurred during the one-year period from December 19, 2017, to December 18, 2018, in which it was ordered to comply with all applicable state and federal law and North Dakota Correctional Facility Standards. The extent of the BCCF's noncompliance with state and federal law and North Dakota Correctional Facility Standards presents a danger to the health and safety of inmates, staff, law enforcement, visitors, and the public and justifies an order for reclassification and of partial and temporary closure without issuance of a prior order of non-compliance.

**ORDER FOR RECLASSIFICATION**

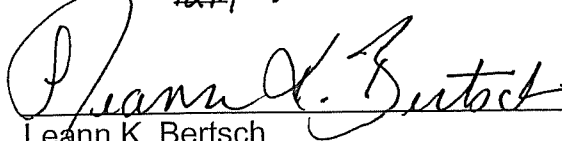
Based on the above Findings of Fact and Conclusions of Law, the DOCR issues this Order of Reclassification.

**IT IS ORDERED**, in accordance with N.D.C.C. § 12-44.1-06, that the BCCF is classified as a Grade three correctional facility effective December 20, 2018, and may not detain or confine inmates for more than ninety-six (96) hours. The BCCF shall submit a daily roster of inmates, including the inmate's name and identification number, to the DOCR Facility Inspector.

**IT IS FURTHER ORDERED THAT** upon determination by the DOCR that the BCCF has fully complied with all requirements of the DOCR, but not less than twelve months from the date of this order, the DOCR may vacate this order, subject to its continuing jurisdiction and authority under N.D.C.C. ch. 12-44.1 to continue to inspect the BCCF and establish conditions and requirements it determines are necessary for the safety of the staff, visitors, and the public based upon its inspections.

**IT IS FURTHER ORDERED THAT** in the event the Barnes County Correctional Center fails to comply with any of the requirements of this order, any of the requirements of the DOCR, or any of the requirements of the North Dakota Correctional Facility Rules and N.D.C.C. ch. 12-44.1, the DOCR may exercise its authority under N.D.C.C. § 12-44.1-25 and order the Barnes County Correctional Center be closed.

Dated this ~~12th~~ 12th day of December, 2018

A handwritten signature in black ink, appearing to read "Leann K. Bertsch", is written over a horizontal line.

Leann K. Bertsch  
Director

North Dakota Department of Corrections and Rehabilitation