STATE OF NORTH DAKOTA
NORTH DAKOTA DEPARTMENT OF CORRECTIONS AND
REHABILITATION

In the Matter of the Richland County Corrections Department,
Wahpeton, North Dakota

ORDER OF NONCOMPLIANCE

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

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

Findings of Fact

I.

The Richland County Corrections Department (RCCD) is a county correctional facility in Wahpeton, Richland County, North Dakota. On July 10, 2019, DOCR correctional facility inspectors inspected RCCD in accordance with N.D.C.C. §§ 12-44.1-24 and 12-44.1-25 and current North Dakota Correctional Facility Standards. DOCR facility inspectors previously inspected RCCD on September 27, 2018.

II.

RCCD is classified as a grade one correctional facility under N.D.C.C. §.12-44.1-06. The RCCD is located at 413 3rd Avenue North, Wahpeton, North Dakota. RCCD is operated under the authority of the Richland County Board of Commissioners; the Richland County Sheriff, Larry Leshovsky; and the RCCD Administrator, Todd Christie.

III.

RCCD is part of the law enforcement center, which was constructed in 1975. RCCD is located on the first floor of one two-story building. The law enforcement center also contains the sheriff’s office, various city and county offices on the second floor, and the dispatch center in the basement. RCCD’s physical plant consists of a vehicle sally port, seven (7) housing units, observation cells, a booking area, a control room, administrative offices, supervisors, kitchen, laundry, chemical storage closets, attorney visiting/interview room, property storage room, janitor closet, indoor/outdoor recreation yard, and restroom.

IV.

RCCD has a maximum capacity of thirty-three (33) inmates. RCCD’s operational design is to hold unclassified individuals and pretrial and convicted persons and allow for processing, classifying, and releasing individuals at all times. Services available to inmates include the following: GED services; narcotics anonymous; alcoholics anonymous; Set Free program; medical; commissary; food service; laundry; and a library.
Lunch and supper meals are prepared and provided by a food service contractor. Inmates eat meals within the cells or in the dayroom. The delivery of services within the facility is designed to reduce the likelihood of confrontations between inmates. The facility is designed to minimize inmate movement.

V.

Each housing unit consists of a one-tier housing unit. The first unit consists of six (6) single-bunk cells; a community bathroom, including a washbasin, toilet, and the shower unit; and a dayroom. The second unit consists of four (4) single-bunk cells with washbasin, a toilet in each cell, a shower unit, and a dayroom. The third unit consists of four (4) double-bunk cells; a community washbasin, toilet, and shower unit; and a dayroom. The fourth unit consists of three (3) double-bunk cells; a community bathroom, including a washbasin, toilet, and shower unit; and a dayroom. The fifth unit consists of three (3) double-bunk cells, with washbasin and a toilet in each cell, and a dayroom. The fifth unit does not have a shower unit; individuals housed in this unit must use the shower located right outside of their housing unit. The sixth unit consists of three (3) single cells with washbasin and a toilet in each cell, a shower unit, and a dayroom. The seventh unit is a single cell used as a safety/observation cell. The safety/observation cell does not have a washbasin, toilet, or a shower. The safety/observation cell contains a floor drain. The floor drain does not serve as a floor toilet. There are no controls to flush the drain. Individuals housed in this cell must use the washbasin, toilet, and shower located outside of this cell. The safety/observation cell is used temporarily for inmates who are under the influence of alcohol or drugs, display violent behavior, self-harm, or inability to exercise self-control. There is no visual observation from the control room or booking area into the safety cell. Personal visual observation is accomplished by electronic camera(s) that are continuously monitored in the control room and the dispatch duty station. Individuals assigned to a unit have limited contact with individuals in other pods during recreation. The design of each shower unit allows the inmates to have adequate privacy for showering. Each cell and dayroom is equipped with an intercom that allows inmates to communicate with staff. The control room has no direct line of sight into the housing units. Each unit has basic furnishings, television, phone, and dayroom areas. Dayrooms allow inmates to congregate, watch television, use the telephone system, and have access to tablets. All the units have adequate and appropriate seating for inmates. All furnishings are appropriate to the custody level of inmates assigned in each pod. Most of the fixed furnishings appeared to be original furnishing. All housing units have access to natural lighting, except for the sixth unit.

VI.

RCCD houses male and female inmates up to one (1) year. The average length of stay is seventeen (17) days. Five hundred ninety-four (594) male inmates and one hundred ninety-one (191) female inmates were processed during 2018. RCCD has two (2) administrative staff, nine (9) security staff, and one (1) part-time security staff. RCCD maintains staffing levels of one (1) employee to seven (7) inmates.

VII.
RCCD has agreements to house inmates from different jurisdictions, including the United States Marshals' Service, DOCR Parole and Probation, Ransom County, Sargent County, Dickey County, Walsh County, Sisseton/Wahpeton tribal jurisdiction, and the City of Wahpeton.

VIII.

RCCD's policies have several different ways in which care requirements for close supervision are described. The policies do not define relevant terms and do not provide a consistent, clear procedure for staff to follow. Inspectors could not determine whether staff actions were consistent with requirements because there was no documentation of RCCD providing close supervision.

IX.

RCCD failed to provide documentation of the completion of annual suicide prevention training. RCCD failed to provide documentation on the content of suicide prevention training. In addition, inspectors could not determine whether suicide prevention practices meet requirements because of the lack of any documented suicide prevention care.

X.

RCCD regularly uses its safety cell. However, RCCD does not document this use. At the time of the inspection, inspectors were not able to assess inmate observation practices because no documented examples were available.

XI.

RCCD staff admitted they concealed a toolbox in anticipation of the inspectors' arrival. The toolbox contents were accounted for through the inventory process only one time since the 2018 inspection. RCCD policy is inadequate because it does not indicate the frequency with which inventory checks shall be completed to maintain a current inventory of tools used in the facility. In addition, a bag of restraints and facility keys were showing as accounted for by the inventory process but staff were unable to locate these items for inspectors.

XII.

RCCD does not identify individuals with signs and symptoms of potential emergencies and does not take appropriate action to address the individuals' needs. Staff frequently use the safety cell; however, staff neither document its use nor the signs and symptoms of potential emergencies.

XIII.

Inspectors identified at least one example of admittance of a person identified as intoxicated without a medical discharge from a licensed medical provider. RCCD was not
able to produce any examples of handling intoxicated individuals in compliance with facility policy or standards.

XIV.

RCCD was not able to locate the equipment needed to execute its evacuation procedures.

XV.

RCCD did not store flammable chemicals in appropriate flammable storage lockers, as required by National Fire Protection Association (NFPA) and Occupational Safety and Health Administration (OSHA) regulations. In addition, the facility did not follow policy for chemical control.

XVI.

RCCD does not maintain a list of persons trained in the law.

XVII.

RCCD handbook indicates sanctions may include the requirement that an inmate pay monetary restitution for any level of offenses. However, due process is required for monetary sanctions, and RCCD does not include a hearing as part of the disciplinary financial sanctions and restitution process for all levels of offenses. In addition, inspectors were not able to inspect RCCD disciplinary practices because of a lack of facility documentation of rule violations.

XVIII.

RCCD failed to provide evidence of on-site staff orientation training provided to staff prior to independent assignment. Training records are incomplete disorganized and fail to provide records of complete training completions.

XIX.

RCCD failed to provide evidence to show staff received forty eight hours of continuing education in the prior three-year cycle. Correctional officer basic training appeared to be completed, but records were disorganized and fail to provide clear records of training completions.

XX.

RCCD security equipment was moved outside the secure perimeter of the facility.
Based on the above Findings of Fact, the DOCR makes the following:

**Conclusions of Law**

I.

RCCD is a county correctional 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 N.D.C.C. § 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, N.D.C.C. § 12-44.1-25 authorizes the Director of the DOCR to issue an order of closure.

VI.

Standard 22 of the North Dakota Correctional Facility Standards requires RCCD have a plan for housing an inmate with signs or symptoms of mental illness or emotional disturbance or who is detained pursuant to a court-ordered emergency commitment under N.D.C.C. chapter 25-03.1. Standard 22 requires that staff places the inmate under close staff supervision, up to and including direct personal observation. Standard 22 also requires staff documents the time, condition, and actions of the inmate in the designated log. RCCD is in violation of Standard 22 of the North Dakota Correctional Facility Standards because RCCD’s policies do not provide clear care requirements for close
supervision across the policies and staff could not demonstrate compliance with any policies. Inspectors could not determine whether staff actions were consistent with requirements because there was no documentation of RCCD providing close supervision. RCCD does not have documentation of the completion of annual suicide prevention training.

VII.

Standard 31 of the North Dakota Correctional Facility Standards requires RCCD have a written suicide prevention plan that includes: (a) identification of the warning signs and symptoms of suicidal behavior and mental illness; (b) proper response to suicide behavior or attempts; (c) referral procedures; (d) housing observation and suicide watch level procedures; (e) follow-up monitoring; and (f) annual training for staff with responsibility for inmate supervision. RCCD is in violation of Standard 31 of the North Dakota Correctional Facility Standards because RCCD does not have documentation on the content of suicide prevention training. In addition, inspectors could not determine whether suicide prevention practices meet requirements due to the lack of any documented suicide prevention care.

VIII.

Standard 32 of the North Dakota Correctional Facility Standards requires trained RCCD staff shall personally observe each inmate during each hourly period on an irregular basis and personally observe inmates who exhibit suicidal tendencies, self-destructive behavior, emotional distress, or have specialized medical problems at more frequent intervals as the inmate’s condition requires. Documentation of inmates in observation must include (a) reason for placement; (b) staff assigned to supervise; (c) location, date, time, activities, and condition of inmate at each check; (d) actions by the RCCD to provide specialized outside services for an inmate; and (e) reason for removal from observation. RCCD is in violation of Standard 32 of the North Dakota Correctional Facility Standards because RCCD does not document its use of the safety cell. At the time of the inspection, inspectors could not assess inmate observation practices because no documented examples were available.

IX.

Standard 38 of the North Dakota Correctional Facility Standards requires RCCD must have a written policy, procedure, and practice for maintaining a current inventory, security, control and use of keys, tools, culinary and medical supplies and equipment. RCCD is in violation of Standard 38 of the North Dakota Correctional Facility Standards because RCCD staff stated a toolbox was concealed in anticipation of the inspectors’ arrival. The toolbox contents were accounted for through the inventory process only one time since the 2018 inspection. RCCD policy is inadequate as it does not indicate a frequency in which inventory checks shall be completed to maintain a current inventory of tools used in the facility. In addition, a bag of restraints and facility keys were showing as accounted for by the inventory process, but staff were unable to locate these items for inspectors.
X.

Standard 52 of the North Dakota Correctional Facility Standards requires every facility must have a training program approved by the health care administrator that includes: (a) response to emergency health related situations; (b) recognition of signs and symptoms and knowledge of action required in potential emergencies; (c) administration of first aid and cardiopulmonary resuscitation; (d) methods of obtaining assistance; (e) recognition of signs and symptoms of mental illness, intellectual disability, emotional disturbance, and chemical dependency; (f) procedures for patient transfers to appropriate medical facilities or health care providers; (g) if medications are delivered to inmates by staff within the facility, staff must be trained and currently certified in accordance with N.D.C.C. § 12-44.1-29. RCCD is in violation of Standard 52 of the North Dakota Correctional Facility Standards because RCCD does not identify individuals with signs and symptoms of potential emergencies and does not take appropriate action to address the individuals’ needs. Staff frequently use the safety cell; however, the lack of documentation of its use and the lack of documentation of the signs and symptoms of potential emergencies necessitating its use show staff does not have necessary training to identify or manage people with signs and symptoms for potential emergencies.

XI.

Standard 59 of the North Dakota Correctional Facility Standards requires RCCD must have a written policy and procedure for intoxication management if the facility holds persons who appear intoxicated or under the influence of alcohol or controlled substances. Standard 59 requires, in relevant part, that “a licensed medical provider must provide a medical discharge from care signed by a physician...” before a facility may hold a person for intoxication. RCCD is in violation of Standard 59 of the North Dakota Correctional Facility Standards because inspectors identified at least one example of admittance of a person identified as intoxicated without a medical discharge from a licensed medical provider. RCCD was not able to produce any examples of handling intoxicated individuals in compliance with facility policy or standards.

XII.

Standard 62 of the North Dakota Correctional Facility Standards requires RCCD have a written evacuation plan prepared in case of fire or major emergency and supporting procedures. RCCD is in violation of Standard 62 of the North Dakota Correctional Facility Standards because RCCD was not able to locate the equipment needed to execute its evacuation procedures.

XIII.

Standard 64 of the North Dakota Correctional Facility Standards requires every facility must have a written policy, procedure, and practice governing the storage and use of hazardous, toxic, and caustic materials. These policies and procedures must be in accordance with all applicable laws and regulations. RCCD is in violation of Standard 64 of the North Dakota Correctional Facility Standards because RCCD did not store flammable chemicals in appropriate flammable storage lockers, as required by National
Fire Protection Association (NFPA) and Occupational Safety and Health Administration (OSHA) regulations.

IV.

Standard 86 of the North Dakota Correctional Facility Standards requires a list of persons trained in the law be available to the inmates. RCCD is in violation of Standard 86 of the North Dakota Correctional Facility Standards, because RCCD does not maintain a list of persons trained in the law.

XV.

Standard 93 of the North Dakota Correctional Facility Standards requires every facility shall have written policy, procedure, and practice that includes at least two levels of violations, sanctions for each level, and the use of pre-hearing detention. Minor rule violations do not require a formal hearing, and sanctions for minor rule violations may not include the use of restrictive housing, fines, fees, restitution, or impact the person’s release from custody. Sanctions for minor rule violations, including loss of privileges, restriction to quarters or work without pay may not exceed five days. Violations involving possible sanctions of fines, fees, restitution or impact on release date, the use of disciplinary detention or loss of privileges over five days require a formal hearing as outlined in Standard 96. Inmates accused of violating a correctional facility rule which may result in restrictive housing, fine, fee, restitution or loss of privileges over five days must receive a twenty-four-hour notice of the charges prior to the disciplinary hearing, unless the inmate waives the notice. RCCD is in violation of Standard 93 of the North Dakota Correctional Facility Standards, because the RCCD handbook indicates sanctions may include restitution for levels of offenses, which do not include a hearing as part of the process. In addition, inspectors were not able to inspect practice due to facility documentation of rule violations.

XVI.

Standard 103 of the North Dakota Correctional Facility Standards requires RCCD have a written policy and procedures requiring all correctional officers participate in a documented orientation-training program prior to independent assignment. RCCD is in violation of Standard 103 of the North Dakota Correctional Facility Standards, because RCCD was not able to provide evidence of on-site staff orientation training provided to staff prior to independent assignment. Training records are incomplete, disorganized, and fail to provide records of complete training completions.

VII.

Standard 104 of the North Dakota Correctional Facility Standards requires RCCD have all administrators and staff who work in direct and continuing contact with inmates within their first year of employment receive training determined and approved by the North Dakota Peace Officer Standards and Training Board and receive an additional forty-eight hours of training during every three year period following the first day of January after the date of
employment. RCCD is in violation of Standard 104 of the North Dakota Correctional Facility Standards, because RCCD was not able to provide evidence to support staff received forty-eight hours of continuing education in the prior three-year cycle. Correctional officer basic training appeared to be completed, but records were disorganized and failed to provide clear records of training completions.

VIII.

Standard 106 of the North Dakota Correctional Facility Standards requires RCCD must have a written policy, procedure, and practice covering the use, issuing, storage, training, inventory, and maintenance of security equipment, weapons, and firearms. RCCD is in violation of Standard 106 of the North Dakota Correctional Facility Standards because staff at RCCD moved security equipment outside the secure perimeter of the facility, which does not comply with facility policy and North Dakota Department of Corrections Standards.

IX.

RCCD has failed to comply with thirteen (13) out of one-hundred and eight (108) North Dakota Correctional Facility standards. RCCD’s violations of North Dakota Correctional Facility Standards present a danger to the health and safety of inmates, staff, law enforcement, visitors, and the public, and justify an order of monitoring.

ORDER OF NONCOMPLIANCE

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

IT IS ORDERED, in accordance with N.D.C.C § 12-44.1-25 that RCCD comply with the following requirements:

1. RCCD shall submit policy changes needed to remedy policy-based violations within thirty (30) days of service of this order.

2. RCCD shall submit all revised and new correctional facility operations and management policies and procedures and post orders to the DOCR for review and recommendation during the period in which the Order of Noncompliance is in effect.

3. RCCD shall provide documentation to the DOCR that its employees have completed all required orientation training within thirty (30) days of service of this order.

4. RCCD shall provide documentation to the DOCR that its employees have completed all required annual and ongoing training within ninety (90) days of service of this order.
5. RCCD shall remain subject to this Order of Non-compliance for a period of not less than eighteen months effective August 23rd, 2019. During the eighteen-month period, RCCD shall be subject to regular inspections and monitoring by DOCR correctional facility inspectors. The RCCD shall pay to the DOCR the reasonable and actual costs incurred by the DOCR for inspections and monitoring.

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

7. **IT IS FURTHER ORDERED THAT** if RCCD 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 RCCD be closed.

Dated this 23rd day of August, 2019

[Signature]

Learin K. Bertocci
Director
North Dakota Department of Corrections and Rehabilitation