

Fifty-ninth  
Legislative Assembly  
of North Dakota

## ENGROSSED SENATE BILL NO. 2341

Introduced by

Senators Lyson, Nelson, Robinson

Representatives Carlisle, Delmore, Price

1 A BILL for an Act to create and enact a new section to chapter 19-03.1 of the North Dakota  
2 Century Code, relating to drug abuse treatment for first-time felons; to amend and reenact  
3 subsections 7 and 8 of section 19-03.1-23 and section 62.1-02-01 of the North Dakota Century  
4 Code, relating to drug abuse treatment for first-time felons; to repeal section 19-03.1-30 of the  
5 North Dakota Century Code, relating to conditional discharge for possession as first offense;  
6 and to provide an appropriation.

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

8 **SECTION 1.** A new section to chapter 19-03.1 of the North Dakota Century Code is  
9 created and enacted as follows:

10 **Mandatory drug abuse assessment and treatment - Presentence investigation -**  
11 **Certified drug abuse treatment programs.**

- 12 1. When a person located in Walsh, Pembina, or Grand Forks Counties has pled  
13 guilty or has been found guilty of a felony violation of subsection 6 of section  
14 19-03.1-23 and that person has not previously pled guilty or been found guilty of  
15 any offense involving the use, possession, manufacture, or delivery of a controlled  
16 substance or of any other felony offense of this or another state or the federal  
17 government, the court shall impose a period of probation of not less than eighteen  
18 months in conjunction with a suspended execution of a sentence of imprisonment,  
19 a sentence to probation, or an order deferring imposition of sentence.
- 20 2. Upon a plea or finding of guilt of a person subject to the provisions of subsection 1,  
21 the court shall order a presentence investigation to be conducted by the  
22 department. The presentence investigation shall include a drug and alcohol  
23 evaluation conducted by a licensed addiction counselor.

- 1           3. If the licensed addiction counselor recommends treatment, the court shall require  
2           the person to participate in an addiction program licensed by the department of  
3           human services as a condition of the probation. The court shall commit the person  
4           to treatment through a licensed addiction program until determined suitable for  
5           discharge by the court. The term of treatment shall not exceed eighteen months  
6           and may include an aftercare plan. During the commitment and while subject to  
7           probation, the person shall be supervised by the department.
- 8           4. If the person fails to participate in, or has a pattern of intentional conduct that  
9           demonstrates the person's refusal to comply with or participate in the treatment  
10           program, as established by judicial finding, the person shall be subject to  
11           revocation of the probation. Notwithstanding subsection 2 of section 12.1-32-02,  
12           the amount of time participating in the treatment program under this section is not  
13           "time spent in custody" and will not be a credit against any sentence to term of  
14           imprisonment.
- 15           5. The cost for all drug abuse assessments and certified drug abuse treatment  
16           programs shall be initially paid by the department. The court shall order the  
17           person to reimburse the department for the assessment and treatment expenses in  
18           accordance with the procedures of section 12.1-32-08. The department shall  
19           handle the collection of costs from the offenders in the same manner as it collects  
20           court costs, fees, and supervision fees.
- 21           6. In this section:
- 22           a. "Department" means the department of corrections and rehabilitation; and  
23           b. "Licensed addiction counselor" is a person licensed pursuant to section  
24           43-45-05.1.
- 25           7. The provisions of this section shall be implemented as a pilot project in Pembina,  
26           Walsh, and Grand Forks Counties effective three months from the date of receipt  
27           of a federal grant for methamphetamine treatment being applied for by the  
28           department of human services. The department shall collaborate management of  
29           the pilot project with the department of human services to ensure services under  
30           the federal grant program for one-half of the offenders mandated by the court to  
31           submit to mandatory treatment, not to exceed twenty-three individuals. The

1           department shall hire a program manager to manage the pilot project, collect  
2           statistics regarding the operation of the program, track participants in the program,  
3           and provide a report to the attorney general and legislative assembly by June 30,  
4           2007, detailing the number of participants in the program, the cost of the program,  
5           relapse statistics, and other data concerning the effectiveness of the program.

6           **SECTION 2. AMENDMENT.** Subsections 7 and 8 of section 19-03.1-23 of the North  
7 Dakota Century Code are amended and reenacted as follows:

- 8           7. A Except as provided by section 1 of this Act, a person who violates this chapter or  
9 chapter 19-03.4 must undergo a drug addiction evaluation by ~~an appropriate a~~  
10 licensed addiction ~~treatment program~~ counselor. The evaluation must indicate the  
11 prospects for rehabilitation and whether addiction treatment is required. The  
12 evaluation must be submitted to the court for consideration when imposing  
13 punishment for a felony violation of this chapter or chapter 19-03.4, and may be  
14 submitted before or after the imposing of punishment for a misdemeanor violation  
15 of this chapter or chapter 19-03.4.
- 16           8. ~~Notwithstanding section 19-03.1-30, whenever~~ When a person pleads guilty or is  
17 found guilty of a first offense regarding possession of one ounce [28.35 grams] or  
18 less of marijuana and a judgment of guilt is entered, a court, upon motion, shall  
19 expunge that conviction from the record if the person is not subsequently convicted  
20 within two years of a further violation of this chapter and has not been convicted of  
21 any other criminal offense.

22           **SECTION 3. AMENDMENT.** Section 62.1-02-01 of the North Dakota Century Code is  
23 amended and reenacted as follows:

24           **62.1-02-01. Persons who are not to possess firearms - Penalty.**

- 25           1. A person who has been convicted anywhere for a felony involving violence or  
26 intimidation, as defined in chapters 12.1-16 through 12.1-25, is prohibited from  
27 owning a firearm or having one in possession or under control from the date of  
28 conviction and continuing for a period of ten years after the date of conviction or  
29 release from incarceration or probation, whichever is latest.
- 30           2. A person who has been convicted of any felony not provided for in subsection 1 or  
31 has been convicted of a class A misdemeanor involving violence or intimidation

1           and that crime was committed while using or possessing a firearm or dangerous  
2           weapon, as defined in chapters 12.1-16 through 12.1-25, is prohibited from owning  
3           a firearm or having one in possession or under control from the date of conviction  
4           and continuing for a period of five years after the date of conviction or release from  
5           incarceration or probation, whichever is latest.

6           3. A person who is or has ever been diagnosed and confined or committed to a  
7           hospital or other institution in this state or elsewhere by a court of competent  
8           jurisdiction, other than a person who has had the petition that provided the basis  
9           for the diagnosis, confinement, or commitment dismissed under section  
10          25-03.1-17, 25-03.1-18, or 25-03.1-19, or equivalent statutes of another  
11          jurisdiction, as a mentally ill person as defined in section 25-03.1-02, or as a  
12          mentally deficient person as defined in section 25-01-01, is prohibited from  
13          purchasing a firearm or having one in possession or under control. This limitation  
14          does not apply to a person who has not suffered from the disability for the previous  
15          three years.

16          4. A person under the age of eighteen years may not possess a handgun except that  
17          such a person, while under the direct supervision of an adult, may possess a  
18          handgun for the purposes of firearm safety training, target shooting, or hunting.

19 A person who violates subsection 1 or 2 is guilty of a class C felony, and a person who violates  
20 subsection 3 or 4 is guilty of a class A misdemeanor. For the purposes of this section,  
21 "conviction" means determination by a jury or court that a person committed one of the  
22 above-mentioned crimes even though the court suspended execution of sentence in  
23 accordance with subsection 3 of section 12.1-32-02 or deferred imposition of sentence in  
24 accordance with subsection 4 of section 12.1-32-02, placed the defendant on probation,  
25 ~~granted a conditional discharge in accordance with section 19-03.1-30~~, the defendant's  
26 conviction has been reduced in accordance with subsection 9 of section 12.1-32-02 or section  
27 12.1-32-07.1, or a determination under chapter 27-20 that the person committed a delinquent  
28 act equivalent to the offenses provided in subsection 1 or 2.

29           **SECTION 4. REPEAL.** Section 19-03.1-30 of the North Dakota Century Code is  
30 repealed.

1           **SECTION 5. APPROPRIATION.** There is appropriated out of any moneys in the  
2 general fund in the state treasury, not otherwise appropriated, the sum of \$714,787, or so much  
3 of the sum as may be necessary, to the department of corrections and rehabilitation for the  
4 purpose of funding the mandatory treatment pilot project, for the biennium beginning July 1,  
5 2005, and ending June 30, 2007.

6           **SECTION 6. APPROPRIATION.** There is appropriated from special funds derived  
7 from federal funds and other income, the amount of \$448,471, or so much of the sum as may  
8 be necessary, to the department of human services for the purpose of funding the mandatory  
9 treatment pilot project, for the biennium beginning July 1, 2005, and ending June 30, 2007.