

Introduced by

Legislative Management

(Commission on Alternatives to Incarceration)

1 A BILL for an Act to amend and reenact section 12.1-32-06.1, subsections 1 and 3 of section
2 12.1-32-07, and subdivision c of subsection 5 of section 39-08-01 of the North Dakota Century
3 Code, relating to length and termination of probation, supervision of probation, and conditions of
4 probation; and to provide a penalty.

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

6 **SECTION 1. AMENDMENT.** Section 12.1-32-06.1 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **12.1-32-06.1. Length and termination of probation - Additional probation for violation**
9 **of conditions - Penalty.**

- 10 1. Except as provided in this section, the length of the period of probation imposed in
11 conjunction with a sentence to probation or a suspended execution or deferred
12 imposition of sentence may not extend for more than five years for a felony offense
13 subject to section 12.1-32-09.1, a felony offense subject to section 12.1-32-02.1 which
14 involves the use of a firearm or dangerous weapon, a second or subsequent violation
15 of section 12.1-17-07.1, a second or subsequent violation of any domestic violence
16 protection order, a violation of chapter 12.1-40, or a violation of section 14-09-22; three
17 years for any other felony offense; ~~and two years for a class A misdemeanor offense;~~
18 and three hundred sixty days for a class B misdemeanor or infraction offense from the
19 later of the date of:
- 20 a. The order imposing probation;
 - 21 b. The defendant's release from incarceration; or
 - 22 c. Termination of the defendant's parole.
- 23 2. If the defendant has pled or been found guilty of an offense for which the court
24 imposes a sentence of restitution or reparation for damages resulting from the

1 commission of the offense, the court may, following a restitution hearing pursuant to
2 section 12.1-32-08, impose an additional period of probation not to exceed five years.

- 3 3. If the defendant has pled or been found guilty of a felony sexual offense in violation of
4 chapter 12.1-20 or 12.1-27.2, the court shall impose at least five years but not more
5 than ten years of supervised probation to be served after sentencing or incarceration.
6 If the defendant has pled or been found guilty of a class AA felony sexual offense in
7 violation of section 12.1-20-03 or 12.1-20-03.1, the court may impose lifetime
8 supervised probation on the defendant. If the defendant has pled or been found guilty
9 of a misdemeanor sexual offense in violation of chapter 12.1-20, the court may impose
10 an additional period of probation not to exceed two years. If the unserved portion of
11 the defendant's maximum period of incarceration is less than one year, a violation of
12 the probation imposed under this subsection is a class A misdemeanor.

- 13 4. If the defendant has pled or been found guilty of abandonment or nonsupport of
14 spouse or children, the period of probation may be continued for as long as
15 responsibility for support continues.

- 16 5. In ~~felony cases~~, in consequence of violation of probation conditions, the court may
17 impose an additional period of probation not to exceed five years in felony cases and
18 not to exceed ~~three hundred sixty days~~ two years in misdemeanor cases. The
19 additional period of probation may follow a period of incarceration if the defendant has
20 not served the maximum period of incarceration available at the time of initial
21 sentencing or deferment.

- 22 6. Upon petition by the defendant, no sooner than eighteen months from the time of
23 sentence, the court shall provide a hearing to determine if the defendant should be
24 discharged from probation. The court may terminate a period of probation and
25 discharge the defendant at any time earlier than that provided in subsection 1 if
26 warranted by the conduct of the defendant and the ends of justice. A defendant may
27 not petition for an early discharge from probation within twelve months of a previous
28 hearing on a request for discharge from probation. Unless waived by the state's
29 attorney, the state's attorney must be provided notice of a petition for discharge from
30 probation and must be provided an opportunity to object to the petition.

1 7. ~~Except for an offense under chapter 12.1-20 or 12.1-27.2 and unless otherwise~~
2 ~~ordered by the court, when the court imposes probation under the supervision and~~
3 ~~management of the department of corrections and rehabilitation for a felony offense,~~
4 ~~the department may terminate probation no sooner than eighteen months after the~~
5 ~~defendant commenced probation if the defendant has complied with the conditions of~~
6 ~~probation imposed by the court. The department shall notify the sentencing court and~~
7 ~~the state's attorney of the county in which the defendant was prosecuted when the~~
8 ~~department terminates probation under this subsection.~~

9 ~~8.~~ Notwithstanding the fact that a sentence to probation subsequently can be modified or
10 revoked, a judgment that includes such a sentence constitutes a final judgment for all
11 other purposes.

12 **SECTION 2. AMENDMENT.** Subsections 1 and 3 of section 12.1-32-07 of the North Dakota
13 Century Code are amended and reenacted as follows:

14 1. When the court imposes probation upon conviction for a felony ~~offense under chapter~~
15 ~~12.1-20 or 12.1-27.2, a felony offense~~ subject to section 12.1-32-09.1, ~~a felony offense~~
16 ~~subject to section~~ 12.1-32-02.1 ~~which involves the use of a firearm or dangerous~~
17 ~~weapon, a second or subsequent violation of section 12.1-17-07.1, a second or~~
18 ~~subsequent violation of any domestic violence protection order, a violation of chapter~~
19 ~~12.1-40, a violation of section 14-09-22, or a felony offense under chapter 39-08, the~~
20 court shall place the defendant under the supervision and management of the
21 department of corrections and rehabilitation. ~~When the court imposes probation upon~~
22 ~~conviction or order of disposition in all other felony cases, the court may place the~~
23 ~~defendant under the supervision and management of the department of corrections~~
24 ~~and rehabilitation.~~ In class A misdemeanor cases, the court may place the defendant
25 under the supervision and management of the department of corrections and
26 rehabilitation or other responsible party. In all other cases, the court may place the
27 defendant under the supervision and management of a community corrections
28 program other than the department of corrections and rehabilitation. ~~If an appropriate~~
29 ~~community corrections program is not reasonably available, the court may place the~~
30 ~~defendant under the supervision and management of the department of corrections~~
31 ~~and rehabilitation. The department of corrections and rehabilitation may arrange for~~

~~the supervision and management of the defendant by a community corrections program selected by the department of corrections and rehabilitation.~~ A community corrections program means a program for the supervision of a defendant, including monitoring and enforcement of terms and conditions of probation set by the court ~~or pursuant to a conditional release from the physical custody of a correctional facility or the department of corrections and rehabilitation.~~

3. The court shall provide as an explicit condition of every probation that the defendant may not possess a firearm, destructive device, or other dangerous weapon while the defendant is on probation. Except when the offense is a misdemeanor offense under section 12.1-17-01, 12.1-17-01.1, 12.1-17-05, or 12.1-17-07.1, or chapter 14-07.1, the court may waive this condition of probation if the defendant has pled guilty to, or has been found guilty of, a misdemeanor or infraction offense, the misdemeanor or infraction is the defendant's first offense, and the court has made a specific finding on the record before imposition of a sentence or a probation that there is good cause to waive the condition. The court may not waive this condition of probation if the court places the defendant under the supervision and management of the department of corrections and rehabilitation. The court shall provide as an explicit condition of probation that the defendant may not willfully defraud a urine test administered as a condition of probation. Unless waived on the record by the court, the court shall also provide as a condition of probation that the defendant undergo various agreed-to community constraints and conditions as intermediate measures of the department of corrections and rehabilitation to avoid revocation, which may include:
- a. Community service;
 - b. Day reporting;
 - c. Curfew;
 - d. Home confinement;
 - e. House arrest;
 - f. Electronic monitoring;
 - g. Residential halfway house;
 - h. Intensive supervision program; ~~or~~

1 i. Up to five non-successive periods of incarceration during any twelve-month
2 period, each of which may not exceed forty-eight consecutive hours; or

3 j. Participation in the twenty-four seven sobriety program.

4 **SECTION 3. AMENDMENT.** Subdivision c of subsection 5 of section 39-08-01 of the North
5 Dakota Century Code is amended and reenacted as follows:

6 c. For a third offense within seven years, the sentence must include at least one
7 hundred twenty days' imprisonment; a fine of at least two thousand dollars; an
8 order for addiction evaluation by an appropriate licensed addiction treatment
9 program; at least ~~one year's~~three hundred sixty day's supervised probation; and
10 participation in the twenty-four seven sobriety program under chapter 54-12 as a
11 mandatory condition of probation.