

Introduced by

Legislative Management

(Commission on Alternatives to Incarceration)

1 A BILL for an Act to create and enact a new section to chapter 12.1-32 of the North Dakota
2 Century Code, relating to exceptions from mandatory minimum sentences; to amend and
3 reenact subsection 19 of section 12.1-01-04, subdivision a of subsection 3 of section
4 12.1-20-03, and subsection 2 of section 12.1-32-07.1 of the North Dakota Century Code,
5 relating to the definition of manifest injustice.

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

7 **SECTION 1. AMENDMENT.** Subsection 19 of section 12.1-01-04 of the North Dakota
8 Century Code is amended and reenacted as follows:

9 19. ~~Repealed by S.L. 1975, ch. 116, § 33~~ "Manifest injustice" means a specific finding by
10 the court that the imposition of sentence is unreasonably harsh or shocking to the
11 conscience of a reasonable individual, with due consideration of the totality of
12 circumstances.

13 **SECTION 2. AMENDMENT.** Subdivision a of subsection 3 of section 12.1-20-03 of the
14 North Dakota Century Code is amended and reenacted as follows:

15 a. An offense under this section is a class AA felony if in the course of the offense
16 the actor inflicts serious bodily injury upon the victim, if the actor's conduct
17 violates subdivision a of subsection 1, or if the actor's conduct violates
18 subdivision d of subsection 1 and the actor was at least twenty-two years of age
19 at the time of the offense. For any conviction of a class AA felony under
20 subdivision a of subsection 1, the court shall impose a minimum sentence of
21 twenty years' imprisonment, with probation supervision to follow the
22 incarceration. The court may deviate from the mandatory sentence if the court
23 finds that the sentence would impose a manifest injustice ~~as defined in section-~~
24 ~~39-01-04~~ and the defendant has accepted responsibility for the crime or

1 cooperated with law enforcement. However, a defendant convicted of a class AA
2 felony under this section may not be sentenced to serve less than five years of
3 incarceration.

4 **SECTION 3. AMENDMENT.** Subsection 2 of section 12.1-32-07.1 of the North Dakota
5 Century Code is amended and reenacted as follows:

6 2. Whenever a person has been placed on probation pursuant to subsection 4 of section
7 12.1-32-02, the court at any time, when the ends of justice will be served, and when
8 reformation of the probationer warrants, may terminate the period of probation and
9 discharge the person so held. A person convicted of gross sexual imposition under
10 subdivision a of subsection 1 of section 12.1-20-03 is not entitled to early termination
11 of probation pursuant to this section, unless the court finds after at least eight years of
12 supervised probation that further supervision would impose a manifest injustice as-
13 defined in section ~~39-01-04~~. Every defendant who has fulfilled the conditions of
14 probation for the entire period, or who has been discharged from probation prior to
15 termination of the probation period, may at any time be permitted in the discretion of
16 the court to withdraw the defendant's plea of guilty. The court may in its discretion set
17 aside the verdict of guilty. In either case, the court may dismiss the information or
18 indictment against the defendant. The court may, upon its own motion or upon
19 application by the defendant and before dismissing the information or indictment,
20 reduce to a misdemeanor a felony conviction for which the plea of guilty has been
21 withdrawn or set aside. The defendant must then be released from all penalties and
22 disabilities resulting from the offense or crime of which the defendant has been
23 convicted except as provided by sections 12.1-32-15 and 62.1-02-01.

24 **SECTION 4.** A new section to chapter 12.1-32 of the North Dakota Century Code is created
25 and enacted as follows:

26 **Mandatory sentences - Exceptions.**

27 1. In addition to any other provision of law, when sentencing an individual convicted of a
28 violation for which there is a mandatory minimum sentence, the court may depart from
29 the applicable mandatory minimum sentence if the court, in giving due regard to the
30 nature of the crime, history and character of the defendant, and the defendant's
31 chances of successful rehabilitation, finds a compelling reason on the record that

- 1 imposition of the mandatory minimum sentence would result in manifest injustice to
2 the defendant and that the mandatory minimum sentence is not necessary for the
3 protection of the public.
- 4 2. Subsection 1 does not apply if:
- 5 a. The defendant willfully used, attempted to use, or threatened to use serious
6 physical force against another individual or caused serious bodily injury of
7 another individual;
- 8 b. The defendant intentionally used a firearm or other dangerous weapon in a
9 manner that caused bodily injury during the commission of the offense;
- 10 c. The defendant committed an offense that involved any sexual contact against a
11 minor; or
- 12 d. The defendant has been convicted of a substantially similar offense during the
13 five-year period before the commission of the offense.
- 14 3. Upon departing from a mandatory minimum sentence, a judge shall report to the state
15 court administrator who shall make available in electronic form and on the world wide
16 web an annual report by July 1 of each year on the total number of departures from
17 mandatory minimum sentences.