

Sixty-fourth  
Legislative Assembly  
of North Dakota

## ENGROSSED HOUSE BILL NO. 1367

Introduced by

Representatives Brabandt, K. Koppelman, Louser

Senator Burckhard

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 section 29-01-20 of the North Dakota Century Code, relating to court authority  
3 to impose additional periods of probation, supervision of probation, and conditions of probation  
4 and to address peace officer custody of stolen goods; 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 total length of the ~~period of~~ unsupervised  
11 probation imposed in conjunction with a sentence to probation or a suspended  
12 execution or deferred imposition of sentence may not extend for more than five years  
13 for a felony and two years for a misdemeanor or infraction from the later of the date of:  
14 a. The order imposing probation;  
15 b. The defendant's release from incarceration; or  
16 c. Termination of the defendant's parole.
- 17 2. Except as provided in this section, the total length of supervised probation imposed in  
18 conjunction with a sentence of probation or a suspended execution or deferred  
19 imposition of sentence may not extend for more than five years for a ~~class C~~ felony;  
20 ten offense subject to section 12.1-32-09.1, a felony offense subject to section  
21 12.1-32-02.1 which involves the use of a firearm or dangerous weapon, a second or  
22 subsequent violation of section 12.1-17-07.1, a second or subsequent violation of any  
23 domestic violence protection order, a violation of chapter 12.1-40, or a violation of  
24 section 14-09-22; three years for ~~allany~~ other felony ~~offenses, and offense~~; two years

1 for a class A misdemeanor; and three hundred sixty days for a class B misdemeanor  
2 offense from the later of the date of:

- 3 a. The order imposing probation;  
4 b. The defendant's release from incarceration; or  
5 c. Termination of the defendant's parole.

6 ~~2.3.~~ If the defendant has pled or been found guilty of an offense for which the court  
7 imposes a sentence of restitution or reparation for damages resulting from the  
8 commission of the offense, the court may, following a restitution hearing pursuant to  
9 section 12.1-32-08, impose an additional ~~period~~periods of unsupervised probation not  
10 to exceed five years for each additional period imposed.

11 ~~3.4.~~ If the defendant has pled or been found guilty of a felony sexual offense in violation of  
12 chapter 12.1-20, the court shall impose at least five years but not more than ten years  
13 of supervised probation to be served after sentencing or incarceration. If the defendant  
14 has pled or been found guilty of a class AA felony sexual offense in violation of section  
15 12.1-20-03 or 12.1-20-03.1, the court may impose lifetime supervised probation on the  
16 defendant. If the defendant has pled or been found guilty of a misdemeanor sexual  
17 offense in violation of chapter 12.1-20, the court may impose an additional  
18 ~~period~~periods of probation not to exceed two years for each additional period  
19 imposed. If the unserved portion of the defendant's maximum period of incarceration is  
20 less than one year, a violation of the probation imposed under this subsection is a  
21 class A misdemeanor.

22 ~~4.5.~~ If the defendant has pled or been found guilty of abandonment or nonsupport of  
23 spouse or children, the period of probation may be continued for as long as  
24 responsibility for support continues.

25 ~~5.6.~~ In felony and misdemeanor cases, in consequence of violation of probation conditions,  
26 the court may impose an additional ~~period~~periods of probation ~~not to exceed five-~~  
27 ~~years.~~The additional period of probation may follow a period of incarceration if the  
28 ~~defendant has not served the maximum period of incarceration available at the time of~~  
29 ~~initial sentencing or deferment.~~if the defendant has not served the maximum sentence  
30 of imprisonment or probation available to the court at the time of initial sentencing or  
31 deferment. The court shall allow the defendant credit for a sentence of probation from

1 the date the defendant began probation until the date a petition to revoke probation  
2 was filed with the court. If the defendant is on supervised probation, the defendant is  
3 not entitled to credit for a sentence of probation for any period the defendant has  
4 absconded from supervision. The total amount of credit a defendant is entitled to for  
5 time spent on probation must be stated in the criminal judgment or order of revocation  
6 of probation.

7 ~~6-7.~~ The court may terminate a period of probation and discharge the defendant at any  
8 time earlier than that provided in subsection 1 if warranted by the conduct of the  
9 defendant and the ends of justice.

10 ~~7-8.~~ Notwithstanding the fact that a sentence to probation subsequently can be modified or  
11 revoked, a judgment that includes such a sentence constitutes a final judgment for all  
12 other purposes.

13 **SECTION 2. AMENDMENT.** Subsection 1 of section 12.1-32-07 of the North Dakota  
14 Century Code is amended and reenacted as follows:

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

**SECTION 3. AMENDMENT.** Subsection 3 of section 12.1-32-07 of the North Dakota Century Code is amended and reenacted as follows:

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 4. AMENDMENT.** Section 29-01-20 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6           **29-01-20. Stolen property to be held by peace officer.**

7           ~~When~~ Except for consumer goods, as defined under section 41-09-02, whenever property  
8 alleged to have been stolen or embezzled comes into the custody of a peace officer, the peace  
9 officer shall hold it subject to the order of the magistrate authorized by section 29-01-21 to direct  
10 the disposal thereof.