

April 17, 2015

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1367

That the Senate recede from its amendments as printed on pages 1372-1374 of the House Journal and pages 1101-1103 of the Senate Journal and that Engrossed House Bill No. 1367 be amended as follows:

Page 1, line 1, after "12.1-32-06.1" insert ", subsections 1 and 3 of section 12.1-32-07, subsection 2 of section 19-03.4-03, and section 29-01-20"

Page 1, line 2, after the first "to" insert "drug paraphernalia, custody and return of stolen property, and"

Page 1, line 2, after "impose" insert "supervision, conditions, and"

Page 1, line 2, after "probation" insert "; to provide for a legislative management study; and to provide a penalty"

Page 1, line 8, remove "total"

Page 1, line 15, after "section" insert an underscored comma

Page 1, line 15, remove "total"

Page 1, line 17, remove "class C"

Page 1, line 17, remove the underscored comma

Page 1, line 18, replace "ten" with "offense subject to section 12.1-32-09.1, a felony offense subject to section 12.1-32-02.1, which involves the use of a firearm or dangerous weapon, a second or subsequent violation of section 12.1-17-07.1, a second or subsequent violation of any domestic violence protection order, a violation of chapter 12.1-41, or a violation of section 14-09-22; three"

Page 1, line 18, replace "all" with "any"

Page 1, line 18, replace "offenses, and" with "offense:"

Page 1, line 18 after "misdemeanor" insert "; and three hundred sixty days for a class B misdemeanor offense"

Page 2, line 19, remove "periods"

Page 2, line 19, overstrike "of"

Page 2, line 23, remove "or probation"

Page 2, line 24, after "deferment" insert "or the total time on probation authorized under this section"

Page 2, line 24, after the underscored period insert:

- "a. For class B and greater felony offenses, an offense subject to section 12.1-32-09.1, a felony offense subject to section 12.1-32-02.1, which involves the use of a firearm or dangerous weapon, a second or subsequent violation of section 12.1-17-07.1, a second or subsequent violation of any domestic violence protection order, a violation of

chapter 12.1-41, or a violation of section 14-09-22, the total time on probation may not exceed ten years.

b. For all other felony offenses, the total time on probation may not exceed five years.

c. For misdemeanor cases, the total time on probation may not exceed three years.

d."

Page 3, after line 6, insert:

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

1. When the court imposes probation upon conviction for a felony offense subject to section 12.1-32-09.1 or 12.1-32-02.1, a second or subsequent violation of section 12.1-17-07.1, a second or subsequent violation of any domestic violence protection order, a violation of chapter 12.1-41, a violation of section 14-09-22, or a felony offense under chapter 39-08, the court shall place the defendant under the supervision and management of the department of corrections and rehabilitation. When the court imposes probation upon conviction or order of disposition in all other felony cases, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation. In class A misdemeanor cases, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation or other responsible party. In all other cases, the court may place the defendant under the supervision and management of a community corrections program other than the department of corrections and rehabilitation. ~~If an appropriate community corrections program is not reasonably available, the court may place the defendant under the supervision and management of the department of corrections 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
- i. Up to five nonsuccessive periods of incarceration during any twelve-month period, each of which may not exceed forty-eight consecutive hours; or
- j. Participation in the twenty-four seven sobriety program.

**SECTION 3. AMENDMENT.** Subsection 2 of section 19-03.4-03 of the North Dakota Century Code, as amended in section 1 of Senate Bill No. 2030, as approved by the sixty-fourth legislative assembly, is amended and reenacted as follows:

2. A person may not use or possess with the intent to use drug paraphernalia to inject, ingest, inhale, or otherwise induce into the human body a controlled substance, other than marijuana, classified in schedule I, II, or III of chapter 19 - 03.1. A person violating this subsection is guilty of a class A misdemeanor. If a person previously has been convicted of an offense under this ~~chapter title~~, other than an offense related to marijuana, or an equivalent offense from another court in the United States, a violation of this subsection is a class C felony.

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

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

1. ~~When~~Except as provided in subsection 2, whenever property alleged to have been stolen or embezzled comes into the custody of a peace officer, the peace officer shall hold it subject to the order of the magistrate authorized by section 29-01-21 to direct the disposal thereof.
2. Subsection 1 does not apply to:
  - a. Consumer goods, as defined in section 41-09-02; and

- b. Goods covered by a certificate of title if proof of certificate of title is presented to the peace officer.

**SECTION 5. LEGISLATIVE MANAGEMENT STUDY - SEIZED PROPERTY.**

During the 2015-16 interim, the legislative management shall consider studying the return of property that comes into the custody of or is seized by peace officers across North Dakota. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fifth legislative assembly."

Renumber accordingly