

Sixtieth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2320

Introduced by

Senators Wardner, Lyson

Representatives DeKrey, Klemin

1 A BILL for an Act to amend and reenact section 12.1-32-07 of the North Dakota Century Code,
2 relating to the revocation of probation.

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

4 **SECTION 1. AMENDMENT.** Section 12.1-32-07 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **12.1-32-07. Supervision of probationer - Conditions of probation - Revocation.**

7 1. When the court imposes probation upon conviction for a felony, the court shall
8 place the defendant under the supervision and management of the department of
9 corrections and rehabilitation. In class A misdemeanor cases, except for a
10 violation of subdivision b of subsection 2 of section 12.1-17-01, the court may
11 place the defendant under the supervision and management of the department of
12 corrections and rehabilitation or other responsible party. In all other cases, the
13 court may place the defendant under the supervision and management of a
14 community corrections program other than the department of corrections and
15 rehabilitation. If an appropriate community corrections program is not reasonably
16 available, the court may place the defendant under the supervision and
17 management of the department of corrections and rehabilitation. The department
18 of corrections and rehabilitation may arrange for the supervision and management
19 of the defendant by a community corrections program selected by the department
20 of corrections and rehabilitation. A community corrections program means a
21 program for the supervision of a defendant, including monitoring and enforcement
22 of terms and conditions of probation set by the court or pursuant to a conditional
23 release from the physical custody of a correctional facility or the department of
24 corrections and rehabilitation.

1 2. The conditions of probation must be such as the court in its discretion deems
2 reasonably necessary to ensure that the defendant will lead a law-abiding life or to
3 assist the defendant to do so. The court shall provide as an explicit condition of
4 every probation that the defendant not commit another offense during the period
5 for which the probation remains subject to revocation. The court shall order
6 supervision costs and fees of not less than forty dollars per month unless the court
7 makes a specific finding on record that the imposition of fees will result in an undue
8 hardship. If the offender has not paid the full amount of supervision fees and costs
9 before completion or termination of probation, the court may issue an order, after
10 opportunity for hearing, to determine the amount of supervision fees and costs that
11 are unpaid. The order may be filed, transcribed, and enforced by the department
12 of corrections and rehabilitation in the same manner as civil judgments rendered by
13 a district court of this state.

14 3. The court shall provide as an explicit condition of every probation that the
15 defendant may not possess a firearm, destructive device, or other dangerous
16 weapon while the defendant is on probation and that the defendant may not
17 willfully defraud a urine test administered as a condition of probation.

18 Unless waived on the record by the court, the court shall also provide as a
19 condition of probation that the defendant undergo various agreed-to community
20 constraints and conditions as intermediate measures of the department of
21 corrections and rehabilitation to avoid revocation, which may include:

- 22 a. Community service;
- 23 b. Day reporting;
- 24 c. Curfew;
- 25 d. Home confinement;
- 26 e. House arrest;
- 27 f. Electronic monitoring;
- 28 g. Residential halfway house; or
- 29 h. Intensive supervision program.

30 4. When imposing a sentence to probation, probation in conjunction with
31 imprisonment, or probation in conjunction with suspended execution or deferred

1 imposition of sentence, the court may impose such conditions as it deems
2 appropriate and may include any one or more of the following:

- 3 a. Work faithfully at a suitable employment or faithfully pursue a course of study
4 or of career and technical education training that will equip the defendant for
5 suitable employment.
- 6 b. Undergo available medical or psychiatric treatment and remain in a specified
7 institution if required for that purpose.
- 8 c. Attend or reside in a facility established for the instruction, recreation, or
9 residence of persons on probation.
- 10 d. Support the defendant's dependents and meet other family responsibilities.
- 11 e. Make restitution or reparation to the victim of the defendant's conduct for the
12 damage or injury which was sustained or perform other reasonable assigned
13 work. When restitution, reparation, or assigned work is a condition of
14 probation, the court shall proceed as provided in subsection 1 or 2, as
15 applicable, of section 12.1-32-08.
- 16 f. Pay a fine imposed after consideration of the provisions of section 12.1-32-05,
17 except when imposition of sentence is deferred.
- 18 g. Refrain from excessive use of alcohol or any use of narcotics or of another
19 dangerous or abusable drug without a prescription.
- 20 h. Permit the probation officer to visit the defendant at reasonable times at the
21 defendant's home or elsewhere.
- 22 i. Remain within the jurisdiction of the court, unless granted permission to leave
23 by the court or the probation officer.
- 24 j. Answer all reasonable inquiries by the probation officer and promptly notify
25 the probation officer of any change in address or employment.
- 26 k. Report to a probation officer at reasonable times as directed by the court or
27 the probation officer.
- 28 l. Submit to a medical examination or other reasonable testing for the purpose
29 of determining the defendant's use of narcotics, marijuana, or other controlled
30 substance whenever required by a probation officer.

- 1 m. Refrain from associating with known users or traffickers in narcotics,
- 2 marijuana, or other controlled substances.
- 3 n. Submit the defendant's person, place of residence, or vehicle to search and
- 4 seizure by a probation officer at any time of the day or night, with or without a
- 5 search warrant.
- 6 o. Serve a term of imprisonment of up to one-half of the maximum term
- 7 authorized for the offense of which the defendant was convicted or one year,
- 8 whichever is less.
- 9 p. Reimburse the costs and expenses determined necessary for the defendant's
- 10 adequate defense when counsel is appointed for the defendant. When
- 11 reimbursement of indigent defense costs and expenses is imposed as a
- 12 condition of probation, the court shall proceed as provided in subsection 4 of
- 13 section 12.1-32-08.
- 14 q. Provide community service for the number of hours designated by the court.
- 15 r. Refrain from any subscription to, access to, or use of the internet.
- 16 5. When the court imposes a sentence to probation, probation in conjunction with
- 17 imprisonment, or probation in conjunction with suspended execution or deferred
- 18 imposition of sentence, the defendant must be given a certificate explicitly setting
- 19 forth the conditions on which the defendant is being released.
- 20 6. The court, upon notice to the probationer and with good cause, may modify or
- 21 enlarge the conditions of probation at any time prior to the expiration or termination
- 22 of the period for which the probation remains conditional. If the defendant violates
- 23 a condition of probation at any time before the expiration or termination of the
- 24 period, the court may continue the defendant on the existing probation, with or
- 25 without modifying or enlarging the conditions, or may revoke the probation and
- 26 impose any other sentence that was available under section 12.1-32-02 or
- 27 12.1-32-09 at the time of initial sentencing or deferment. In the case of suspended
- 28 execution of sentence, the court may revoke the probation and cause the
- 29 defendant to suffer the penalty of the sentence previously imposed upon the
- 30 defendant.

1 7. If the court revokes the defendant's probation, before resentencing the defendant,
2 the court, unless waived by the defendant, shall order the department of
3 corrections and rehabilitation to conduct a new or updated presentence
4 investigation and prepare a new or updated presentence report for the
5 consideration of the court.

6 8. The court may continue or modify probation conditions or revoke probation for a
7 violation of probation conditions occurring before the expiration or termination of
8 the period of probation notwithstanding that the order of the court is imposed after
9 the expiration or termination has occurred. The petition for revocation must be
10 issued within sixty days of the expiration or termination of probation.

11 ~~8.~~ 9. Jurisdiction over a probationer may be transferred from the court that imposed the
12 sentence to another court of this state with the concurrence of both courts.
13 Retransfers of jurisdiction may also occur in the same manner. The court to which
14 jurisdiction has been transferred under this subsection may exercise all powers
15 permissible under this chapter over the defendant.

16 ~~9.~~ 10. Notwithstanding any other provision of law, the court may authorize the defendant
17 to assist law enforcement officers in an investigation of a criminal offense upon the
18 terms and conditions as the court may require by written order. The court shall
19 hold a hearing in camera before issuing an order under this subsection. The order
20 must be sealed and is subject to inspection only upon order of the court.