

Sixty-first
Legislative Assembly
of North Dakota

SENATE BILL NO. 2115

Introduced by

Judiciary Committee

(At the request of the Department of Corrections and Rehabilitation)

1 A BILL for an Act to amend and reenact section 12.1-32-02 and subsection 2 of section
2 62.1-02-01 of the North Dakota Century Code, relating to sentencing alternatives and
3 possession of firearms.

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

5 **SECTION 1. AMENDMENT.** Section 12.1-32-02 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **12.1-32-02. Sentencing alternatives - Credit for time in custody - Diagnostic**
8 **testing.**

- 9 1. Every person convicted of an offense who is sentenced by the court must be
10 sentenced to one or a combination of the following alternatives, unless the
11 sentencing alternatives are otherwise specifically provided in the statute defining
12 the offense or sentencing is deferred under subsection 4:
- 13 a. Payment of the reasonable costs of the person's prosecution.
 - 14 b. Probation.
 - 15 c. A term of imprisonment, including intermittent imprisonment:
 - 16 (1) In a state correctional facility in accordance with section 29-27-07, in a
17 regional corrections center, or in a county jail, if convicted of a felony or
18 a class A misdemeanor.
 - 19 (2) In a county jail or in a regional corrections center, if convicted of a
20 class B misdemeanor.
 - 21 (3) In a facility or program deemed appropriate for the treatment of the
22 individual offender, including available community-based programs.
 - 23 (4) In the case of persons convicted of an offense who are under eighteen
24 years of age at the time of sentencing, the court is limited to sentencing

the minor defendant to a term of imprisonment in the custody of the
department of corrections and rehabilitation.

- d. A fine.
- e. Restitution for damages resulting from the commission of the offense.
- f. Restoration of damaged property or other appropriate work detail.
- g. Commitment to an appropriate licensed public or private institution for
treatment of alcoholism, drug addiction, or mental disease or defect.
- h. Commitment to a sexual offender treatment program.

Except as provided by section 12.1-32-06.1, sentences imposed under this
subsection may not exceed in duration the maximum sentences of imprisonment
provided by section 12.1-32-01, section 12.1-32-09, or as provided specifically in a
statute defining an offense. This subsection does not permit the unconditional
discharge of an offender following conviction. A sentence under subdivision e or f
must be imposed in the manner provided in section 12.1-32-08.

- 2. Credit against any sentence to a term of imprisonment must be given by the court
to a defendant for all time spent in custody as a result of the criminal charge for
which the sentence was imposed or as a result of the conduct on which such
charge was based. "Time spent in custody" includes time spent in custody in a jail
or mental institution for the offense charged, whether that time is spent prior to trial,
during trial, pending sentence, or pending appeal. The total amount of credit the
defendant is entitled to for time spent in custody must be stated in the criminal
judgment.
- 3. A court may suspend the execution of all or a part of the sentence imposed. The
court shall place the defendant on probation during the term of suspension.
- 4. A court, upon application or its own motion, may defer imposition of sentence. The
court must place the defendant on probation during the period of deferment. An
order deferring imposition of sentence is reviewable upon appeal from a verdict or
judgment. In any subsequent prosecution, for any other offense, the prior
conviction for which imposition of sentence is deferred may be pleaded and
proved, and has the same effect as if probation had not been granted or the
information or indictment dismissed under section 12.1-32-07.1.

- 1 5. A court may, prior to imposition of sentence, order the convicted offender
2 committed to an appropriate licensed public or private institution for diagnostic
3 testing for such period of time as may be necessary, but not to exceed thirty days.
4 The court may, by subsequent order, extend the period of commitment for not to
5 exceed thirty additional days. The court may also order such diagnostic testing
6 without ordering commitment to an institution. Validity of a sentence must not be
7 challenged on the ground that diagnostic testing was not performed pursuant to
8 this subsection.
- 9 6. All sentences imposed must be accompanied by a written statement by the court
10 setting forth the reasons for imposing the particular sentence. The statement must
11 become part of the record of the case.
- 12 7. If an offender is sentenced to a term of imprisonment, that term of imprisonment
13 commences at the time of sentencing, unless, upon motion of the defendant, the
14 court orders the term to commence at some other time.
- 15 8. Unless otherwise specifically authorized in the statute defining the offense, a court
16 may not include a minimum term of imprisonment as part of its sentence.
- 17 9. ~~Except as provided in section 62.1-02-01, a person who is convicted of a felony~~
18 ~~and sentenced to imprisonment for not more than one year is deemed to have~~
19 ~~been convicted of a misdemeanor. However, if an order is entered revoking a~~
20 ~~probation imposed as a part of the sentence, the person is deemed to have been~~
21 ~~convicted of a felony. This subsection does not apply to a person convicted of~~
22 ~~violating subdivision a, b, or c of subsection 1 of section 19-03.1-23.~~
- 23 ~~10.~~ A court shall order a defendant to pay fifty dollars to the department of corrections
24 and rehabilitation at the time a presentence investigation is initiated to partially
25 defray the costs incurred by the department for the preparation of the presentence
26 report. The court may also order that any additional costs incurred by the
27 department relating to the presentence investigation and report be paid by the
28 defendant at a rate of payment up to the full costs of conducting the investigation
29 and preparing the report as established by the department.
- 30 ~~44.~~ 10. Before sentencing a defendant on a felony charge under section 12.1-20-03,
31 12.1-20-03.1, 12.1-20-11, 12.1-27.2-02, 12.1-27.2-03, 12.1-27.2-04, or

12.1-27.2-05, a court shall order the department of corrections and rehabilitation to conduct a presentence investigation and to prepare a presentence report. A presentence investigation for a charge under section 12.1-20-03 must include a risk assessment. A court may order the inclusion of a risk assessment in any presentence investigation. In all felony or class A misdemeanor offenses, in which force, as defined in section 12.1-01-04, or threat of force is an element of the offense or in violation of section 12.1-22-02, or an attempt to commit the offenses, a court, unless a presentence investigation has been ordered, must receive a criminal record report before the sentencing of the defendant. Unless otherwise ordered by the court, the criminal record report must be conducted by the department of corrections and rehabilitation after consulting with the prosecuting attorney regarding the defendant's criminal record. The criminal record report must be in writing, filed with the court before sentencing, and made a part of the court's record of the sentencing proceeding.

SECTION 2. AMENDMENT. Subsection 2 of section 62.1-02-01 of the North Dakota Century Code is amended and reenacted as follows:

2. For the purposes of this section, "conviction" means a determination that the person committed one of the above-mentioned crimes upon a verdict of guilt, a plea of guilty, or a plea of nolo contendere even though:
 - a. The court suspended execution of sentence in accordance with subsection 3 of section 12.1-32-02;
 - b. The court deferred imposition of sentence in accordance with subsection 4 of section 12.1-32-02;
 - c. The court placed the person on probation;
 - d. The person's conviction has been reduced in accordance with ~~subsection 9 of section 12.1-32-02 or~~ section 12.1-32-07.1;
 - e. Sentence dispositions, sentence reductions, or offense determinations equivalent to this section were imposed or granted by a court, board, agency, or law of another state or the federal government; or
 - f. The person committed an offense equivalent to an offense described in subdivision a or b of subsection 1 when that person was subject to juvenile

- 1 adjudication or proceedings and a determination of a court under chapter
- 2 27-20 or of a court of another state or the federal government was made that
- 3 the person committed the delinquent act or offense.