

Sixty-sixth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1211

Introduced by

Representatives Kading, Blum, Meier, Vetter

Senator Davison

1 A BILL ~~for an Act to amend and reenact sections 12-54.1-01, 12-54.1-03, 12-59-08,~~
2 ~~subsections 2 and 6 of section 12.1-32-06.1, subsection 1 of section 12.1-32-07, subsection 1-~~
3 ~~of section 15.1-09-33.4, and subsection 3 of section 62.1-01-01 of the North Dakota Century~~
4 ~~Code, relating to performance-based and meritorious sentence reduction credit, medical parole,~~
5 ~~length and supervision of probation, student misconduct, and definition of a firearm; and to~~
6 ~~repeal section 12.1-32-09.1 of the North Dakota Century Code, relating to sentencing violent~~
7 ~~offenders; and to provide for retroactive application.~~ for an Act to amend and reenact section
8 12.1-32-09.1 of the North Dakota Century Code, relating to sentencing violent offenders; and to
9 provide for retroactive application.

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

11 ~~— **SECTION 1. AMENDMENT.** Section 12-54.1-01 of the North Dakota Century Code is~~
12 ~~amended and reenacted as follows:~~

13 ~~— **12-54.1-01. Sentence reduction.**~~

14 ~~— Except as provided under section 12.1-32-09.1, an~~An ~~offender committed to the legal and~~
15 ~~physical custody of the department of corrections and rehabilitation is eligible to earn sentence~~
16 ~~reductions based upon performance criteria established through department and penitentiary~~
17 ~~rules. Performance criteria includes participation in court-ordered or staff-recommended~~
18 ~~treatment and education programs and good work performance. The department may credit an~~
19 ~~offender committed to the legal and physical custody of the department who is eligible for~~
20 ~~sentence reduction five days good time per month for each month of the sentence imposed.~~
21 ~~The department may credit an offender with sentence reduction for time spent in custody before~~
22 ~~sentencing and commitment to the legal and physical custody of the department. The~~
23 ~~department may not credit an offender with any sentence reduction for time spent on probation~~
24 ~~under the supervision and management of the department.~~

1 — **SECTION 2. AMENDMENT.** Section 12-54.1-03 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 — **12-54.1-03. Meritorious conduct sentence reduction.**

4 — Except as provided under section 12-1-32-09.1, offenders An offender committed to the
5 legal and physical custody of the department of corrections and rehabilitation may receive a
6 lump sum or a monthly rate of meritorious conduct sentence reduction for outstanding
7 performance or heroic acts or as a special control and security measure, as provided by
8 penitentiary and department rules and upon written recommendation of a department
9 multidisciplinary team. Meritorious sentence reductions are in addition to sentence reductions
10 under section 12-54.1-01 and may be made only after a written recommendation is made by the
11 warden and approved by the director of the department. Any sentence reduction for special
12 control or security measures may not exceed two days good time per month per offender.

13 — **SECTION 3. AMENDMENT.** Section 12-59-08 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 — **12-59-08. Medical paroles.**

16 — If an inmate, including an inmate whose sentence is subject to sections sentenced under
17 section 12-1-32-02.1 and 12-1-32-09.1, and an inmate sentenced under subsection 1 of section
18 12-1-32-01, has a serious or terminal medical condition, the parole board may grant the inmate
19 a medical parole. An inmate who receives a medical parole remains under the jurisdiction of the
20 parole board until the expiration of the maximum term or terms of imprisonment for which the
21 inmate was sentenced, less any sentence reduction the inmate has received.

22 — **SECTION 4. AMENDMENT.** Subsections 2 and 6 of section 12-1-32-06.1 of the North
23 Dakota Century Code is amended and reenacted as follows:

24 — 2. — Except as provided in this section, the length of supervised probation imposed in
25 conjunction with a sentence of probation or a suspended execution or deferred
26 imposition of sentence may not extend for more than five years for a felony offense
27 subject to section 12-1-32-09.1 in violation of section 12-1-16-01 or 12-1-16-02,
28 subsection 2 of section 12-1-17-02, section 12-1-18-01, subdivision a of subsection 1
29 or subdivision b of subsection 2 of section 12-1-20-03, section 12-1-22-01,
30 subdivision b of subsection 2 of section 12-1-22-02, or an attempt to commit those
31 offenses, 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 years for any other felony offense; two years for a class A misdemeanor; and three hundred sixty days for a class B misdemeanor offense from the later of the date of:

a. The order imposing probation;

b. The defendant's release from incarceration; or

c. Termination of the defendant's parole.

6. In felony and misdemeanor cases, in consequence of violation of probation conditions, the court may impose additional probation if the defendant has not served the maximum sentence of imprisonment available to the court at the time of initial sentencing or deferment or the total time on probation authorized under this section.

a. For class B and greater felony offenses, an offense subject to section 12.1-32-09.1 in violation of section 12.1-16-01 or 12.1-16-02, subsection 2 of section 12.1-17-02, section 12.1-18-01, subdivision a of subsection 1 or subdivision b of subsection 2 of section 12.1-20-03, section 12.1-22-01, subdivision b of subsection 2 of section 12.1-22-02, or an attempt to commit those offenses, 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. The court shall allow the defendant credit for a sentence of probation from the date the defendant began probation until the date a petition to revoke probation was filed with the court. If the defendant is on supervised probation, the defendant is not entitled to credit for a sentence of probation for any period the defendant has absconded from supervision. The total amount of credit a

defendant is entitled to for time spent on probation must be stated in the criminal judgment or order of revocation of probation.

SECTION 5. AMENDMENT. Subsection 1 of section 12.1-32-07 of the North Dakota Century Code is 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 in violation of section 12.1-16-01 or 12.1-16-02, subsection 2 of section 12.1-17-02, section 12.1-18-01, subdivision a of subsection 1 or subdivision b of subsection 2 of section 12.1-20-03, section 12.1-22-01, subdivision b of subsection 2 of section 12.1-22-02, or an attempt to commit those offenses, a felony offense subject to section 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. 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.

SECTION 7. AMENDMENT. Subsection 1 of section 15.1-09-33.4 of the North Dakota Century Code is amended and reenacted as follows:

1. The board of a school district shall prohibit a student from participating in any extracurricular activity if:

a. The student has pled guilty to or been convicted of a criminal offense and sentenced under section 12.1-32-02.1 or pled guilty or been convicted of a felony offense specified in subsection 1 of section 12.1-32-09.1 in violation of

~~section 12.1-16-01 or 12.1-16-02, subsection 2 of section 12.1-17-02, section 12.1-18-01, subdivision a of subsection 1 or subdivision b of subsection 2 of section 12.1-20-03, section 12.1-22-01, subdivision b of subsection 2 of section 12.1-22-02, or an attempt to commit those offenses;~~

~~b. The student has:~~

~~(1) An order prohibiting contact issued against the student at the request of another student or employee of the school under section 12.1-31.2-02;~~

~~(2) A disorderly conduct restraining order issued against the student at the request of another student or employee of the school under section 12.1-31.2-01, except a temporary restraining order under subsection 4 of section 12.1-31.2-01; or~~

~~(3) A protection order issued against the student at the request of another student or employee of the school, except a temporary protection order under section 14-07.1-03;~~

~~c. The principal of the school receives information pertaining to an offense or order included under this section as provided in subsection 2 of section 27-20-51; or~~

~~d. The victim of the offense or the subject of the order notifies the principal of the offense or order.~~

~~**SECTION 8. AMENDMENT.** Subsection 3 of section 62.1-01-01 of the North Dakota Century Code is amended and reenacted as follows:~~

~~3. "Firearm" or "weapon" means any device which will expel, or is readily capable of expelling, a projectile by the action of an explosive and includes any such device, loaded or unloaded, commonly referred to as a pistol, revolver, rifle, gun, machine gun, shotgun, bazooka, or cannon. For a felon who is not sentenced under section 12.1-32-09.1 for a violation of section 12.1-16-01 or 12.1-16-02, subsection 2 of section 12.1-17-02, section 12.1-18-01, subdivision a of subsection 1 or subdivision b of subsection 2 of section 12.1-20-03, section 12.1-22-01, subdivision b of subsection 2 of section 12.1-22-02, or an attempt to commit those offenses, the term does not include a firearm or weapon that is a rifle that has a barrel sixteen inches [40.64 centimeters] or longer or a shotgun that has a barrel eighteen inches [45.72 centimeters] or longer and which is one of the following:~~

~~a. A firearm, including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system, manufactured before 1899.~~

~~b. A replica of any firearm described in subdivision a, if the replica is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition or uses rimfire or conventional centerfire fixed ammunition that is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.~~

~~c. A muzzleloading rifle or muzzleloading shotgun that is designed to use black powder, or a black powder substitute, and cannot use fixed ammunition.~~

~~**SECTION 8. REPEAL.** Section 12.1-32-09.1 of the North Dakota Century Code is repealed.~~

~~**SECTION 9. RETROACTIVE APPLICATION.** Section 7 of this Act applies retroactively to judgments of conviction for offenses subject to section 12.1-32-09.1 entered after July 31, 1995.~~

SECTION 1. AMENDMENT. Section 12.1-32-09.1 of the North Dakota Century Code is amended and reenacted as follows:

12.1-32-09.1. Sentencing of violent offenders.

1. Except as provided under section 12-48.1-02 and pursuant to rules adopted by the department of corrections and rehabilitation, an offender who is convicted of a crime in violation of section 12.1-16-01, 12.1-16-02, subsection 2 of section 12.1-17-02, section 12.1-18-01, subdivision a of subsection 1 or subdivision b of subsection 2 of section 12.1-20-03, section 12.1-22-01, subdivision b of subsection 2 of section 12.1-22-02, or an attempt to commit the offenses, and who receives a sentence of imprisonment is not eligible for release from confinement on any basis until ~~eighty-five~~sixty-five percent of the sentence imposed by the court has been served or the sentence is commuted. If an offender is eligible for release under this subsection, the offender may be eligible for parole.
2. In the case of an offender who is sentenced to a term of life imprisonment with opportunity for parole under subsection 1 of section 12.1-32-01, the term "sentence imposed" means the remaining life expectancy of the offender on the date of sentencing. The remaining life expectancy of the offender must be calculated on the date of sentencing, computed by reference to a recognized mortality table as established by rule by the supreme court.

- 1 3. Notwithstanding this section, an offender sentenced under subsection 1 of section
- 2 12.1-32-01 may not be eligible for parole until the requirements of that subsection
- 3 have been met.
- 4 4. An offender who is convicted of a class C felony in violation of section 12.1-17-02, or
- 5 an attempt to commit the offense, and who has received a sentence of imprisonment
- 6 or a sentence of imprisonment upon revocation of probation before August 1, 2015, is
- 7 eligible to have the offender's sentence considered by the parole board.

8 **SECTION 2. RETROACTIVE APPLICATION.** Section 1 of this Act applies retroactively to

9 judgments of conviction for offenses subject to section 12.1-32-09.1 entered after July 31, 1995.