

SB 2178 Proposed Amendment – Sections Cited for Sentencing Violent Offenders

12.1-32-09.1. Sentencing of violent offenders. [originally enacted 1995]

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 percent of the sentence imposed by the court has been served or the sentence is commuted.

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.

3. Notwithstanding this section, an offender sentenced under subsection 1 of section 12.1-32-01 may not be eligible for parole until the requirements of that subsection have been met.

4. An offender who is convicted of a class C felony in violation of section 12.1-17-02, or an attempt to commit the offense, and who has received a sentence of imprisonment or a sentence of imprisonment upon revocation of probation before August 1, 2015, is eligible to have the offenders sentence considered by the parole board.

5. Notwithstanding subsection 4, this section does not apply to a sentence imposed upon revocation of probation.

12-48.1-02. Conditions of eligibility for release programs.

1. An offender, except an offender sentenced to a penalty of life imprisonment without the opportunity for parole as the result of conviction of a class AA felony under section 12.1-20-03 or of murder under section 12.1-16-01, may be eligible for programs outside facilities under the control of the department of corrections and rehabilitation when the department determines the offender is not a high security risk, not likely to commit a crime of violence, and is likely to be rehabilitated by such program. An offender may apply to the director of the department for permission to participate in such programs.

2. The director of the department may authorize participation in outside programs for an offender who has been committed to ten years or less to the legal and physical custody

of the department. The parole board, with the approval of the director of the department, may authorize participation in outside programs for offenders who have been committed to the legal and physical custody of the department for more than ten years.

12.1-16-01. Murder.

1. A person is guilty of murder, a class AA felony, if the person:

- a. Intentionally or knowingly causes the death of another human being;
- b. Causes the death of another human being under circumstances manifesting extreme indifference to the value of human life; or
- c. Acting either alone or with one or more other persons, commits or attempts to commit treason, robbery, burglary, kidnapping, felonious restraint, arson, gross sexual imposition, a felony offense against a child under section 12.1-20-03, 12.1-27.2-02, 12.1-27.2-03, 12.1-27.2-04, or 14-09-22, or escape and, in the course of and in furtherance of such crime or of immediate flight therefrom, the person or any other participant in the crime causes the death of any person. In any prosecution under this subsection in which the defendant was not the only participant in the underlying crime, it is an affirmative defense that the defendant:

(1) Did not commit the homicidal act or in any way solicit, command, induce, procure, counsel, or aid the commission thereof;

(2) Was not armed with a firearm, destructive device, dangerous weapon, or other weapon which under the circumstances indicated a readiness to inflict serious bodily injury;

(3) Reasonably believed that no other participant was armed with such a weapon; and

(4) Reasonably believed that no other participant intended to engage in conduct likely to result in death or serious bodily injury.

Subdivisions a and b are inapplicable in the circumstances covered by subsection 2.

2. A person is guilty of murder, a class A felony, if the person causes the death of another human being under circumstances which would be class AA felony murder, except that the person causes the death under the influence of extreme emotional disturbance for which there is reasonable excuse. The reasonableness of the excuse must be determined from the viewpoint of a person in that person's situation under the circumstances as that person believes them to be. An extreme emotional disturbance is excusable, within the meaning of this subsection only, if it is occasioned by substantial provocation, or a serious event, or situation for which the offender was not culpably responsible.

12.1-16-02. Manslaughter.

A person is guilty of manslaughter, a class B felony, if he recklessly causes the death of another human being.

12.1-17-02. Aggravated assault.

1. Except as provided in subsection 2, a person is guilty of a class C felony if that person:

- a. Willfully causes serious bodily injury to another human being;
- b. Knowingly causes bodily injury or substantial bodily injury to another human being with a dangerous weapon or other weapon, the possession of which under the circumstances indicates an intent or readiness to inflict serious bodily injury;
- c. Causes bodily injury or substantial bodily injury to another human being while attempting to inflict serious bodily injury on any human being; or
- d. Fires a firearm or hurls a destructive device at another human being.

2. The person is guilty of a class B felony if the person violates subsection 1 and the victim:

- a. Is under twelve years of age;
- b. Is a peace officer or correctional institution employee acting in an official capacity, which the actor knows to be a fact; or
- c. Suffers permanent loss or impairment of the function of a bodily member or organ.

12.1-18-01. Kidnapping.

1. A person is guilty of kidnapping if he abducts another or, having abducted another, continues to restrain him with intent to do the following:

- a. Hold him for ransom or reward;
- b. Use him as a shield or hostage;
- c. Hold him in a condition of involuntary servitude;
- d. Terrorize him or a third person;
- e. Commit a felony or attempt to commit a felony; or
- f. Interfere with the performance of any governmental or political function.

2. Kidnapping is a class A felony unless the actor voluntarily releases the victim alive and in a safe place prior to trial, in which case it is a class B felony.

12.1-20-03. Gross sexual imposition Penalty.

1. A person who engages in a sexual act with another, or who causes another to engage in a sexual act, is guilty of an offense if:

a. That person compels the victim to submit by force or by threat of imminent death, serious bodily injury, or kidnapping, to be inflicted on any human being;

b. That person or someone with that persons knowledge has substantially impaired the victims power to appraise or control the victims conduct by administering or employing without the victims knowledge intoxicants, a controlled substance as defined in chapter 19-03.1, or other means with intent to prevent resistance;

c. That person knows or has reasonable cause to believe that the victim is unaware that a sexual act is being committed upon him or her;

d. The victim is less than fifteen years old; or

e. That person knows or has reasonable cause to believe that the other person suffers from a mental disease or defect which renders him or her incapable of understanding the nature of his or her conduct.

2. A person who engages in sexual contact with another, or who causes another to engage in sexual contact, is guilty of an offense if:

a. The victim is less than fifteen years old;

b. That person compels the victim to submit by force or by threat of imminent death, serious bodily injury, or kidnapping, to be inflicted on any human being; or

c. That person knows or has reasonable cause to believe that the victim is unaware that sexual contact is being committed on the victim.

3. a. An offense under this section is a class AA felony if in the course of the offense the actor inflicts serious bodily injury upon the victim, if the actors conduct violates subdivision a of subsection 1, or if the actors conduct violates subdivision d of subsection 1 and the actor was at least twenty-two years of age at the time of the offense. For any conviction of a class AA felony under subdivision a of subsection 1, the court shall impose a minimum sentence of twenty years imprisonment, with probation supervision to follow the incarceration. The court may deviate from the mandatory sentence if the court finds that the sentence would impose a manifest injustice and the defendant has accepted responsibility for the crime or cooperated with law enforcement. However, a defendant convicted of a class AA felony under this section may not be sentenced to serve less than five years of incarceration.

b. Otherwise the offense is a class A felony.

4. If, as a result of injuries sustained during the course of an offense under this section, the victim dies, the offense is a class AA felony, for which the maximum penalty of life imprisonment without parole must be imposed unless the defendant was a juvenile at the time of the offense.

12.1-22-01. Robbery.

1. A person is guilty of robbery if, in the course of committing a theft, he inflicts or attempts to inflict bodily injury upon another or threatens or menaces another with imminent bodily injury.

2. Robbery is a class A felony if the actor fires a firearm or explodes or hurls a destructive device or directs the force of any other dangerous weapon against another. Robbery is a class B felony if the robber possesses or pretends to possess a firearm, destructive device, or other dangerous weapon, or menaces another with serious bodily injury, or inflicts bodily injury upon another, or is aided by an accomplice actually present. Otherwise robbery is a class C felony.

3. In this section:

a. An act shall be deemed in the course of committing a theft if it occurs in an attempt to commit theft, whether or not the theft is successfully completed, or in immediate flight from the commission of, or an unsuccessful effort to commit, the theft.

b. Dangerous weapon means a weapon defined in subsection 6 of section 12.1-01-04 or a weapon the possession of which under the circumstances indicates an intent or readiness to inflict serious bodily injury.

12.1-22-02. Burglary.

1. A person is guilty of burglary if he willfully enters or surreptitiously remains in a building or occupied structure, or a separately secured or occupied portion thereof, when at the time the premises are not open to the public and the actor is not licensed, invited, or otherwise privileged to enter or remain as the case may be, with intent to commit a crime therein.

2. Burglary is a class B felony if:

a. The offense is committed at night and is knowingly perpetrated in the dwelling of another; or

b. In effecting entry or while in the premises or in immediate flight therefrom, the actor inflicts or attempts to inflict bodily injury or physical restraint on another, or menaces another with imminent serious bodily injury, or is armed with a firearm, destructive device, or other weapon the possession of which under the circumstances indicates an intent or readiness to inflict serious bodily injury.

Otherwise burglary is a class C felony.

12.1-32-01. Classification of offenses Penalties.

Offenses are divided into seven classes, which are denominated and subject to maximum penalties, as follows:

1. Class AA felony, for which a maximum penalty of **life imprisonment** without parole may be imposed. The court must designate whether the life imprisonment sentence imposed is **with or without an opportunity for parole**. Notwithstanding the provisions of section 12-59-05, a person found guilty of a class AA felony and who receives a sentence of life imprisonment with parole, shall not be eligible to have that person's sentence considered by the parole board for **thirty years**, less sentence reduction earned for good conduct, after that person's admission to the penitentiary.

2. Class A felony, for which a maximum penalty of **twenty years imprisonment**, a fine of twenty thousand dollars, or both, may be imposed.

3. Class B felony, for which a maximum penalty of **ten years imprisonment**, a fine of twenty thousand dollars, or both, may be imposed.

4. Class C felony, for which a maximum penalty of **five years imprisonment**, a fine of ten thousand dollars, or both, may be imposed.

5. Class A misdemeanor, for which a maximum penalty of imprisonment for three hundred sixty days, a fine of three thousand dollars, or both, may be imposed.

6. Class B misdemeanor, for which a maximum penalty of thirty days imprisonment, a fine of one thousand five hundred dollars, or both, may be imposed.

7. Infraction, for which a maximum fine of one thousand dollars may be imposed. Any person convicted of an infraction who, within one year before commission of the infraction of which the person was convicted, has been convicted previously at least twice of the same offense classified as an infraction may be sentenced as though convicted of a class B misdemeanor. If the prosecution contends that the infraction is punishable as a class B misdemeanor, the complaint must specify the offense is a misdemeanor.

This section shall not be construed to forbid sentencing under section 12.1-32-09, relating to extended sentences.

ND Constitution, Article I, Declaration of Rights

Section 25. [Rights of crime victims] [Marsy's Law]

1. To preserve and protect the right of crime victims to justice, to ensure crime victims a meaningful role throughout the criminal and juvenile justice systems, and to ensure that crime victims' rights and interests are respected and protected by law in a manner no less

vigorous than the protections afforded to criminal defendants and delinquent children, all **victims shall be entitled to the following rights**, beginning at the time of their victimization:

g. The right to reasonable, accurate, and **timely notice** of, and to be present at, all proceedings involving the criminal or delinquent conduct, including release, plea, sentencing, adjudication, and disposition, and any proceeding during which a right of the victim is implicated.

i. The right to be heard in any proceeding involving release, plea, sentencing, adjudication, disposition, or **parole**, and any proceeding during which a right of the victim is implicated.

12-59-10. Notice of parole review.

The department of corrections and rehabilitation shall provide **written notice to the district court and state's attorney's office** in the county or counties where judgment of conviction was entered against the inmate when the parole board is reviewing whether an inmate may be released on parole. The notice must include the name of the inmate, and docket number of the criminal judgment, and the date and place for the parole boards meeting to review whether an inmate may be released on parole.