

Sixty-ninth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1030

Introduced by

Legislative Management

(Judiciary Committee)

1 A BILL for an Act to amend and reenact subdivision i of subsection 1 of section 12.1-32-02,
2 sections 15.1-19-13 and 19-03.1-23, subsection 6 of section 19-03.4-03, subsection 17 of
3 section 27-20.2-01, subsection 26 of section 27-20.4-01, subdivision c of subsection 4 of
4 section 27-20.4-17, subsection 4 of section 27-20.4-26, subsection 5 of section 29-26-22,
5 section 39-06-36.1, subsection 9 of section 39-06.1-11, subdivision f of subsection 5 of section
6 39-08-01, and sections 39-08-01.5 and 54-12-27.1 of the North Dakota Century Code relating to
7 changing drug court to treatment court.

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

9 **SECTION 1. AMENDMENT.** Subdivision i of subsection 1 of section 12.1-32-02 of the North
10 Dakota Century Code is amended and reenacted as follows:

11 i. ~~Drug Treatment~~ court program. A ~~drug treatment~~ court is a district court supervised
12 treatment program approved by the supreme court which combines judicial
13 supervision with alcohol and drug testing and substance use disorder treatment
14 in a licensed treatment program. The supreme court may adopt rules, including
15 rules of procedure, for ~~drug treatment~~ court programs.

16 **SECTION 2. AMENDMENT.** Section 15.1-19-13 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **15.1-19-13. Alcohol or controlled substance - Use or possession by student -**
19 **Notification of principal - Exception.**

20 If a teacher knows or has reason to believe that a student is using, is in possession of, or is
21 delivering alcohol or a controlled substance while the student is on school property, involved in
22 a school-related activity, or in attendance at a school-sponsored event, the teacher shall notify
23 the student's principal. The notification requirement in this section does not apply to a teacher or
24 administrator who participates in a juvenile ~~drug treatment~~ court program and receives

1 confidential information regarding a student as a result of participation in the program. This
2 section does not prevent a teacher or any other school employee from reporting to a law
3 enforcement agency any violation of law occurring on school property, at a school-related
4 activity, or at a school-sponsored event.

5 **SECTION 3. AMENDMENT.** Section 19-03.1-23 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **19-03.1-23. Prohibited acts - Penalties.**

- 8 1. Except as authorized by this chapter, it is unlawful for a person to willfully, as defined
9 in section 12.1-02-02, manufacture, deliver, or possess with intent to manufacture or
10 deliver, a controlled substance, or to deliver, distribute, or dispense a controlled
11 substance by means of the internet, but a person who violates section 12-46-24 or
12 12-47-21 may not be prosecuted under this subsection. A person who violates this
13 subsection with respect to:
 - 14 a. A controlled substance classified in schedule I or II which is a narcotic drug, or
15 methamphetamine, is guilty of a class B felony.
 - 16 b. Any other controlled substance classified in schedule I, II, or III, or a controlled
17 substance analog, except marijuana or tetrahydrocannabinol is guilty of a class B
18 felony.
 - 19 c. Marijuana, tetrahydrocannabinol, or a substance classified in schedule IV, is
20 guilty of a class C felony.
 - 21 d. A substance classified in schedule V, is guilty of a class A misdemeanor.
- 22 2. A prior misdemeanor conviction under subsection 7 or a prior conviction under
23 subsection 3 or 4 of section 19-03.4-03 may not be considered a prior offense under
24 subsection 1.
- 25 3. Except as authorized by this chapter, it is unlawful for any person to willfully, as
26 defined in section 12.1-02-02, create, deliver, distribute, or dispense a counterfeit
27 substance by means of the internet or any other means, or possess with intent to
28 deliver, a counterfeit substance by means of the internet or any other means, but any
29 person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this
30 subsection. Any person who violates this subsection with respect to:

- 1 a. A counterfeit substance classified in schedule I, II, or III, is guilty of a class B
2 felony.
- 3 b. A counterfeit substance classified in schedule IV, is guilty of a class C felony.
- 4 c. A counterfeit substance classified in schedule V, is guilty of a class A
5 misdemeanor.
- 6 4. A person at least eighteen years of age who solicits, induces, intimidates, employs,
7 hires, or uses a person under eighteen years of age to aid or assist in the
8 manufacture, delivery, or possession with intent to manufacture or deliver a controlled
9 substance for the purpose of receiving consideration or payment for the manufacture
10 or delivery of any controlled substance is guilty of a class B felony. It is not a defense
11 to a violation of this subsection that the defendant did not know the age of a person
12 protected under this subsection.
- 13 5. Except for a prior conviction equivalent to a misdemeanor violation of subsection 7 or
14 a prior conviction under subsection 3 or 4 of section 19-03.4-03, a violation of this title
15 or a law of another state or the federal government which is equivalent to an offense
16 with respect to the manufacture, delivery, or intent to deliver a controlled substance
17 under this title committed while the offender was an adult and which resulted in a plea
18 or finding of guilt must be considered a prior offense under subsection 1. The prior
19 offense must be alleged in the complaint, information, or indictment. The plea or
20 finding of guilt for the prior offense must have occurred before the date of the
21 commission of the offense or offenses charged in the complaint, information, or
22 indictment.
- 23 6. It is unlawful for a person to willfully, as defined in section 12.1-02-02:
24 a. Serve as an agent, intermediary, or other entity that causes the internet to be
25 used to bring together a buyer and seller to engage in the delivery, distribution, or
26 dispensing of a controlled substance in a manner not authorized by this chapter;
27 or
28 b. Offer to fill or refill a prescription for a controlled substance based solely on a
29 consumer's completion of an online medical questionnaire.
30 A person who violates this subsection is guilty of a class C felony.

- 1 7. a. It is unlawful for any person to willfully, as defined in section 12.1-02-02, possess
2 a controlled substance or a controlled substance analog unless the substance
3 was obtained directly from, or pursuant to, a valid prescription or order of a
4 practitioner while acting in the course of the practitioner's professional practice, or
5 except as otherwise authorized by this chapter, but any person who violates
6 section 12-46-24 or 12-47-21 may not be prosecuted under this subsection.
- 7 b. Except as otherwise provided in this subsection, any person who violates this
8 subsection is guilty of a class A misdemeanor for the first offense under this
9 subsection and a class C felony for a second or subsequent offense under this
10 subsection.
- 11 c. If, at the time of the offense the person is in or on the real property comprising a
12 public or private elementary or secondary school or a public career and technical
13 education school, the person is guilty of a class B felony, unless the offense
14 involves marijuana or tetrahydrocannabinol.
- 15 d. A person who violates this subsection by possessing:
- 16 (1) Marijuana:
- 17 (a) In an amount of less than one-half ounce [14.175 grams] is guilty of
18 an infraction.
- 19 (b) At least one-half ounce [14.175 grams] but not more than 500 grams
20 of marijuana is guilty of a class B misdemeanor.
- 21 (c) More than 500 grams of marijuana is guilty of a class A misdemeanor.
- 22 (2) Tetrahydrocannabinol:
- 23 (a) In an amount less than two grams is guilty of an infraction.
- 24 (b) At least two grams but not more than six grams of
25 tetrahydrocannabinol is guilty of a class B misdemeanor.
- 26 (c) More than six grams of tetrahydrocannabinol is guilty of a class A
27 misdemeanor.
- 28 e. If an individual is sentenced to the legal and physical custody of the department
29 of corrections and rehabilitation under this subsection, the department may place
30 the individual in a drug and alcohol treatment program designated by the
31 department. Upon the successful completion of the drug and alcohol treatment

- 1 program, the department shall release the individual from imprisonment to begin
2 any court-ordered period of probation.
- 3 f. If the individual is not subject to any court-ordered probation, the court shall order
4 the individual to serve the remainder of the sentence of imprisonment on
5 supervised probation subject to the terms and conditions imposed by the court.
- 6 g. Probation under this subsection may include placement in another facility,
7 treatment program, ~~drug~~treatment court, mental health court, or veterans
8 treatment docket. If an individual is placed in another facility or treatment
9 program upon release from imprisonment, the remainder of the sentence must be
10 considered as time spent in custody.
- 11 h. An individual incarcerated under this subsection as a result of a second probation
12 revocation is not eligible for release from imprisonment upon the successful
13 completion of treatment.
- 14 i. A person who violates this subsection regarding possession of five or fewer
15 capsules, pills, or tablets of a schedule II, III, IV, or V controlled substance or
16 controlled substance analog is guilty of a class A misdemeanor.
- 17 8. Except as provided by section 19-03.1-45, a court may order a person who violates
18 this chapter or chapter 19-03.4 to undergo a drug addiction evaluation by a licensed
19 addiction counselor. The evaluation must indicate the prospects for rehabilitation and
20 whether addiction treatment is required. If ordered, the evaluation must be submitted
21 to the court before imposing punishment for a felony violation or a misdemeanor
22 violation.
- 23 9. If a person pleads guilty or is found guilty of a first offense regarding possession of
24 one ounce [28.35 grams] or less of marijuana or two grams or less of
25 tetrahydrocannabinol and a judgment of guilt is entered, a court, upon motion, shall
26 seal the court record of that conviction if the person is not subsequently convicted
27 within two years of a further violation of this chapter. Once sealed, the court record
28 may not be opened even by order of the court.
- 29 10. Upon successful completion of a ~~drug~~treatment court program, mental health court
30 program, or veterans treatment docket, a person who has been convicted of a felony

under this section and sentenced to ~~drug~~treatment court, mental health court, or veterans treatment docket is deemed to have been convicted of a misdemeanor.

11. If a person convicted of a misdemeanor under this section is sentenced to ~~drug~~treatment court, mental health court, or veterans treatment docket and successfully completes a ~~drug~~treatment court program, mental health court, or veterans treatment docket, the court shall dismiss the case and seal the file in accordance with section 12.1-32-07.2.

12. If an individual under the age of twenty-one pleads guilty or is found guilty of a first offense regarding possession of one-half ounce [14.175 grams] or less of marijuana, the court also may sentence the individual to an evidence-based alcohol and drug education program operated under rules adopted by the department of health and human services under section 50-06-44. For a second or subsequent offense regarding possession of one-half ounce [14.175 grams] or less of marijuana, the court also shall sentence the individual to an evidence-based alcohol and drug education program operated under rules adopted by the department of health and human services under section 50-06-44.

SECTION 4. AMENDMENT. Subsection 6 of section 19-03.4-03 of the North Dakota Century Code is amended and reenacted as follows:

6. Probation under this section may include placement in another facility, treatment program, or ~~drug~~treatment court. If the person is placed in another facility or treatment program upon release from imprisonment, the remainder of the sentence must be considered as time spent in custody.

SECTION 5. AMENDMENT. Subsection 17 of section 27-20.2-01 of the North Dakota Century Code is amended and reenacted as follows:

17. "Juvenile ~~drug~~treatment court" means a program established by the supreme court which is a post-petition or post-adjudication program aimed at intervening in substance use disorders through intense supervision and participation in recovery services.

SECTION 6. AMENDMENT. Subsection 26 of section 27-20.4-01 of the North Dakota Century Code is amended and reenacted as follows:

- 1 26. "Juvenile drugtreatment court" means a program established by the supreme court
2 which is a post-petition or post-adjudication program aimed at intervening in substance
3 use disorders through intense supervision and participation in recovery services.

4 **SECTION 7. AMENDMENT.** Subdivision c of subsection 4 of section 27-20.4-17 of the
5 North Dakota Century Code is amended and reenacted as follows:

- 6 c. Order the child's participation in a juvenile drugtreatment court program.

7 **SECTION 8. AMENDMENT.** Subsection 4 of section 27-20.4-26 of the North Dakota
8 Century Code is amended and reenacted as follows:

- 9 4. If the juvenile court requires the child to participate in a juvenile drugtreatment court
10 program, the juvenile court may waive the participation in the twenty-four seven
11 sobriety program requirements of this section.

12 **SECTION 9. AMENDMENT.** Subsection 5 of section 29-26-22 of the North Dakota Century
13 Code is amended and reenacted as follows:

- 14 5. Upon successful completion of an approved adult drugtreatment court program, a
15 court may waive all unpaid fines, fees, and costs imposed in the criminal judgment
16 sentencing the defendant to the drugtreatment court program, except for restitution.
17 For purposes of this subsection, "approved drugtreatment court program" means a
18 district court-supervised treatment program approved by the supreme court.

19 **SECTION 10. AMENDMENT.** Section 39-06-36.1 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **39-06-36.1. Restoration of revoked or suspended licenses - Successful completion of**
22 **drugtreatment court.**

23 Upon an individual's successful completion of an approved adult drugtreatment court
24 program, if ordered by the district court, the director shall reinstate the driving privileges of the
25 individual for any noncommercial license suspension or revocation imposed under law. A
26 reinstatement fee is not required for reinstatement of driving privileges under this section.

27 **SECTION 11. AMENDMENT.** Subsection 9 of section 39-06.1-11 of the North Dakota
28 Century Code is amended and reenacted as follows:

- 29 9. If an offender is participating in an approved drugtreatment court program, the court
30 may order issuance of a temporary restricted license. Upon application by the

offender, the director shall issue a temporary restricted license to the participant subject to conditions specified by the court.

a. The application must be accompanied by proof of financial responsibility, the court's order, and the designated reinstatement fee.

b. For purposes of this subsection, "approved ~~drug~~treatment court program" means a district court-supervised treatment program approved by the supreme court.

SECTION 12. AMENDMENT. Subdivision f of subsection 5 of section 39-08-01 of the North Dakota Century Code is amended and reenacted as follows:

f. If the offense is subject to subdivision a or b, a municipal court or district court may not suspend a sentence, but may convert each day of a term of imprisonment to ten hours of community service for an offense subject to paragraph 2 of subdivision a. If the offense is subject to subdivision c, the district court may suspend a sentence, except for sixty days' imprisonment, under subsection 3 of section 12.1-32-02 on the condition that the defendant first undergo and complete an evaluation for alcohol and substance abuse treatment and rehabilitation. If the offense is subject to subdivision d, the district court may suspend a sentence, except for one year's imprisonment, under subsection 3 of section 12.1-32-02 on the condition that the defendant first undergo and complete an evaluation for alcohol and substance abuse treatment and rehabilitation. If the defendant is found to be in need of alcohol and substance abuse treatment and rehabilitation, the district court may order the defendant placed under the supervision and management of the department of corrections and rehabilitation and is subject to the conditions of probation under section 12.1-32-07. The district court may require the defendant to complete alcohol and substance abuse treatment and rehabilitation under the direction of the ~~drug~~treatment court program as a condition of probation in accordance with rules adopted by the supreme court. The district court may terminate probation under this section when the defendant completes the drug treatment program. If the district court finds that a defendant has failed to undergo an evaluation or complete treatment or has violated any condition of probation, the district court

1 shall revoke the defendant's probation and shall sentence the defendant in
2 accordance with this subsection.

3 **SECTION 13. AMENDMENT.** Section 39-08-01.5 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **39-08-01.5. Partial suspension of sentence for ~~drug~~treatment court program, mental**
6 **health court program, or veterans treatment docket completion.**

7 1. Notwithstanding section 39-08-01:

8 a. All but ten days of the minimum mandatory sentence required for a defendant
9 charged with a third or subsequent violation of section 39-08-01 may be
10 suspended on the condition the defendant successfully completes a
11 ~~drug~~treatment court program, mental health court program, or veterans treatment
12 docket approved by the supreme court.

13 b. If the ~~drug~~treatment court determines a defendant participating in a
14 ~~drug~~treatment court program has substantially complied with the requirements of
15 the ~~drug~~treatment court program, the ~~drug~~treatment court may suspend the
16 defendant's electronic alcohol monitoring and sobriety breath testing requirement
17 under the twenty-four seven sobriety program for the six months preceding
18 completion of the ~~drug~~treatment court program.

19 2. Upon successful completion of a ~~drug~~treatment court program, mental health court
20 program, or veterans treatment docket, a defendant convicted of a felony under
21 section 39-08-01 and sentenced to ~~drug~~treatment court, mental health court, or
22 veterans treatment docket is deemed to have been convicted of a misdemeanor.

23 3. If a defendant convicted of a misdemeanor under section 39-08-01 is sentenced to
24 ~~drug~~treatment court, mental health court, or veterans treatment docket and
25 successfully completes a ~~drug~~treatment court program, mental health court, or
26 veterans treatment docket, the court shall dismiss the case and seal the file in
27 accordance with section 12.1-32-07.2.

28 **SECTION 14. AMENDMENT.** Section 54-12-27.1 of the North Dakota Century Code is
29 amended and reenacted as follows:

1 **54-12-27.1. Twenty-four seven sobriety program - Partial suspension for**
2 **drugtreatment court program participants.**

- 3 1. For purposes of this section, "approved ~~drug~~treatment court program" means a district
4 court-supervised treatment program approved by the supreme court.
- 5 2. A district court may suspend any ordered period of participation in the twenty-four
6 seven sobriety program, including mandatory participation required by law, for an
7 offender participating in an approved ~~drug~~treatment court program while under
8 supervised probation with the department of corrections and rehabilitation.
- 9 3. A district court suspending participation in the twenty-four seven sobriety program
10 shall issue a certificate of waiver of twenty-four seven sobriety program participation.
- 11 4. For purposes of issuance of a temporary restricted operator's license under section
12 39-06.1-11, the director of the department of transportation shall treat a court
13 certificate of waiver of twenty-four seven sobriety program participation as if the
14 offender was participating in the twenty-four seven sobriety program.