

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO FIRST ENGROSSMENT

ENGROSSED HOUSE BILL NO. 1225

Introduced by

Representatives Klemin, Karls, Lefor, Vetter

Senators Myrdal, Sickler, Larson

1 A BILL for an Act to amend and reenact sections 12.1-17-03 and 12.1-32-09 of the North
2 Dakota Century Code, relating to reckless endangerment and habitual offenders; and to provide
3 a penalty.

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

5 **SECTION 1. AMENDMENT.** Section 12.1-17-03 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **12.1-17-03. Reckless endangerment.**

8 ~~A person~~An individual is guilty of an offense if ~~he~~the individual creates a substantial risk of
9 serious bodily injury or death to another. The offense is a class ~~G felony~~B felony if the individual
10 uses a firearm~~-or other dangerous weapon~~. The offense is a class C felony if the circumstances
11 manifest ~~his~~the individual's extreme indifference to the value of human life. Otherwise it is a
12 class A misdemeanor. There is risk within the meaning of this section if the potential for harm
13 exists, whether or not a particular person's safety is actually jeopardized.

14 **SECTION 2. AMENDMENT.** Section 12.1-32-09 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **12.1-32-09. Dangerous special offenders - Habitual offenders - Extended sentences -**
17 **Procedure.**

18 1. A court may sentence a convicted offender to an extended sentence as a dangerous
19 special offender or a habitual offender in accordance with this section upon a finding of
20 any one or more of the following:

- a. The convicted offender is a dangerous, mentally abnormal person whose conduct has been characterized by persistent aggressive behavior and the behavior makes the offender a serious danger to other persons.
- b. The convicted offender is a professional criminal who has substantial income or resources derived from criminal activity.
- c. The convicted offender is a habitual offender. The court may not make such a finding unless the offender is an adult and has previously been convicted in any state or states or by the United States of two felonies ~~of class C or above~~ committed at different times when the offender was an adult. For the purposes of this subdivision, a **felony** conviction in another state or under the laws of the United States is considered a felony ~~of class C or above~~ ~~if it is punishable by a maximum term of imprisonment of five years or~~ more than three hundred sixty days of imprisonment.
- d. The offender was convicted of an offense that seriously endangered the life of another person and the offender had previously been convicted of a similar offense.
- e. The offender is especially dangerous because the offender used a firearm, dangerous weapon, or destructive device in the commission of the offense or during the flight therefrom.

A conviction shown on direct or collateral review or at the hearing to be invalid or for which the offender has been pardoned on the ground of innocence must be disregarded for purposes of subdivision c. In support of findings under subdivision b, it may be shown that the offender has had control of income or property not explained as derived from a source other than criminal activity. For purposes of subdivision b, a substantial source of income means a source of income which for any period of one year or more exceeds the minimum wage, determined on the basis of a forty-hour week and a fifty-week year, without reference to exceptions, under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, for an employee engaged in commerce or in the production of goods for commerce, and which for the same period exceeds fifty percent of the offender's declared adjusted gross income under chapter 57-38.

- 1 2. The extended sentence may be imposed in the following manner:
 - 2 a. If the offense for which the offender is convicted is a class A felony, the court may
 - 3 impose a sentence up to a maximum of life imprisonment.
 - 4 b. If the offense for which the offender is convicted is a class B felony, the court may
 - 5 impose a sentence up to a maximum of imprisonment for twenty years.
 - 6 c. If the offense for which the offender is convicted is a class C felony, the court may
 - 7 impose a sentence up to a maximum of imprisonment for ten years.
- 8 3. Whenever an attorney charged with the prosecution of a defendant in a court of this
- 9 state for an alleged felony committed when the defendant was over the age of
- 10 eighteen years has reason to believe that the defendant is a dangerous special
- 11 offender or a habitual offender, the attorney, at a reasonable time before trial or
- 12 acceptance by the court of a plea of guilty, may sign and file with the court, and may
- 13 amend, a notice specifying that the defendant is a dangerous special offender or a
- 14 habitual offender who upon conviction for the felony is subject to the imposition of a
- 15 sentence under subsection 2, and setting out with particularity the reasons why the
- 16 attorney believes the defendant to be a dangerous special offender or a habitual
- 17 offender. In no case may the fact that the prosecuting attorney is seeking sentencing
- 18 of the defendant as a dangerous special offender or a habitual offender be disclosed
- 19 to the jury before a verdict. If the court finds that the filing of the notice as a public
- 20 record may prejudice fair consideration of a pending criminal matter, the court may
- 21 order the notice sealed and the notice is not subject to subpoena or public inspection
- 22 during the pendency of the criminal matter, except on order of the court, but is subject
- 23 to inspection by the defendant alleged to be a dangerous special offender or a habitual
- 24 offender and the offender's counsel.
- 25 4. Upon any plea of guilty, or verdict or finding of guilt of the defendant of such felony, a
- 26 hearing must be held, before sentence is imposed, in accordance with this subsection
- 27 as follows:
 - 28 a. By a jury, or the court if a jury is waived by the defendant, if the notice alleges
 - 29 that the defendant is a dangerous special offender under subdivision a, b, d, or e
 - 30 of subsection 1. The jury, or the court if a jury is waived, must find that the
 - 31 defendant is a dangerous special offender under one or more of these

1 subdivisions by proof beyond a reasonable doubt. However, in the case of a
2 notice alleging only subdivision e of subsection 1, the trial jury, or the trial court if
3 a jury is waived, may make a special finding of proof of this subdivision without
4 an additional hearing subsequent to a verdict or finding of guilt.

5 b. By the court if the notice alleges that the defendant is a habitual offender under
6 subdivision c of subsection 1. The court must find that the defendant is a habitual
7 offender by a preponderance of the evidence.

8 5. Except in the most extraordinary cases, the court shall obtain a presentence report
9 and may receive a diagnostic testing report under subsection 5 of section 12.1-32-02
10 before holding a hearing under this subsection. The court shall fix a time for the
11 hearing and notice thereof must be given to the defendant and the prosecution at least
12 five days prior thereto. The court shall permit the prosecution and counsel for the
13 defendant, or the defendant if the defendant is not represented by counsel, to inspect
14 the presentence report sufficiently before the hearing as to afford a reasonable
15 opportunity for verification. In extraordinary cases, the court may withhold material not
16 relevant to a proper sentence, diagnostic opinion that might seriously disrupt a
17 program of rehabilitation, any source of information obtained on a promise of
18 confidentiality, and material previously disclosed in open court. A court withholding all
19 or part of a presentence report shall inform the parties of its action and place in the
20 record the reasons therefor. The court may require parties inspecting all or part of a
21 presentence report to give notice of any part thereof intended to be controverted. In
22 connection with the hearing, the defendant is entitled to compulsory process and
23 cross-examination of such witnesses as appear at the hearing. A duly authenticated
24 copy of a former judgment or commitment is prima facie evidence of such former
25 judgment or commitment. If the jury or the court finds, after hearing, one or more of the
26 grounds set forth in subsection 1, that the defendant is a dangerous special offender
27 or a habitual offender, the court shall sentence the defendant to imprisonment for an
28 appropriate term within the limits specified in subsection 2.