

Sixty-first
Legislative Assembly
of North Dakota

ENGROSSED 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 of the North Dakota Century Code,
2 relating to sentencing alternatives.

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

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

6 **12.1-32-02. Sentencing alternatives - Credit for time in custody - Diagnostic**
7 **testing.**

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

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

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

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

15 2. Credit against any sentence to a term of imprisonment must be given by the court
16 to a defendant for all time spent in custody as a result of the criminal charge for
17 which the sentence was imposed or as a result of the conduct on which such
18 charge was based. "Time spent in custody" includes time spent in custody in a jail
19 or mental institution for the offense charged, whether that time is spent prior to
20 trial, during trial, pending sentence, or pending appeal. The total amount of credit
21 the defendant is entitled to for time spent in custody must be stated in the criminal
22 judgment.

23 3. A court may suspend the execution of all or a part of the sentence imposed. The
24 court shall place the defendant on probation during the term of suspension.

25 4. A court, upon application or its own motion, may defer imposition of sentence. The
26 court must place the defendant on probation during the period of deferment. An
27 order deferring imposition of sentence is reviewable upon appeal from a verdict or
28 judgment. In any subsequent prosecution, for any other offense, the prior
29 conviction for which imposition of sentence is deferred may be pleaded and
30 proved, and has the same effect as if probation had not been granted or the
31 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~~ 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 upon successful completion of the term of imprisonment and a term of probation
21 imposed as a part of the sentence, the person is deemed to have been convicted
22 of a felony. This subsection does not apply to a person convicted of violating
23 subdivision a, b, or c of subsection 1 of section 19-03.1-23.
- 24 10. A court shall order a defendant to pay fifty dollars to the department of corrections
25 and rehabilitation at the time a presentence investigation is initiated to partially
26 defray the costs incurred by the department for the preparation of the presentence
27 report. The court may also order that any additional costs incurred by the
28 department relating to the presentence investigation and report be paid by the
29 defendant at a rate of payment up to the full costs of conducting the investigation
30 and preparing the report as established by the department.

1 11. Before sentencing a defendant on a felony charge under section 12.1-20-03,
2 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
3 12.1-27.2-05, a court shall order the department of corrections and rehabilitation to
4 conduct a presentence investigation and to prepare a presentence report. A
5 presentence investigation for a charge under section 12.1-20-03 must include a
6 risk assessment. A court may order the inclusion of a risk assessment in any
7 presentence investigation. In all felony or class A misdemeanor offenses, in which
8 force, as defined in section 12.1-01-04, or threat of force is an element of the
9 offense or in violation of section 12.1-22-02, or an attempt to commit the offenses,
10 a court, unless a presentence investigation has been ordered, must receive a
11 criminal record report before the sentencing of the defendant. Unless otherwise
12 ordered by the court, the criminal record report must be conducted by the
13 department of corrections and rehabilitation after consulting with the prosecuting
14 attorney regarding the defendant's criminal record. The criminal record report
15 must be in writing, filed with the court before sentencing, and made a part of the
16 court's record of the sentencing proceeding.