

**HOUSE BILL NO. 1028**

Introduced by

Legislative Management

(Commission on Alternatives to Incarceration)

1 A BILL for an Act to amend and reenact sections 12-48.1-02, 12.1-32-02.1, and 12.1-32-09.1 of  
2 the North Dakota Century Code, relating to offender eligibility for release programs.

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

4 **SECTION 1. AMENDMENT.** Section 12-48.1-02 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6 **12-48.1-02. Conditions of eligibility for release programs.**

7 1. An offender, except an offender sentenced to a penalty of life imprisonment without  
8 the opportunity for parole as the result of conviction of a class AA felony under section  
9 12.1-20-03 or of murder under section 12.1-16-01, may be eligible for programs  
10 outside facilities under the control of the department of corrections and rehabilitation  
11 when the department determines the offender is not a high security risk, not likely to  
12 commit a crime of violence, and is likely to be rehabilitated by such program. An  
13 offender may apply to the director of the department for permission to participate in  
14 such programs.

15 2. The director of the department may authorize participation in outside programs for an  
16 offender who has been committed to ten years or less to the legal and physical  
17 custody of the department. The parole board, with the approval of the director of the  
18 department, may authorize participation in outside programs for offenders who have  
19 been committed to the legal and physical custody of the department for more than ten  
20 years.

21 3. The offender shall submit a signed application which must include a statement that the  
22 offender agrees to abide by all terms and conditions of the particular plan adopted for  
23 the offender, and must include such other information as the parole board or the  
24 director of the department may require.

1       4. The parole board may approve, disapprove, or defer action on an application  
2           approved by the director of the department. The director of the department or the  
3           parole board may revoke approval of the application at any time after granting the  
4           application. The department shall prescribe rules of conduct and treatment for all  
5           offenders on release programs.

6       5. The director of the department may grant short leaves, not to exceed seventy-two  
7           hours, to offenders who have been committed to the legal and physical custody of the  
8           department for ten years or less. The parole board, upon the approval of the director  
9           of the department, may grant short leaves, not to exceed seventy-two hours, to  
10          offenders committed to the legal and physical custody of the department for more than  
11          ten years.

12       6. All rules adopted by the parole board and the director of the department relating to  
13          release programs and short leaves must conform, to the extent allowable by law, with  
14          executive order no. 11755 issued by the President of the United States.

15       **SECTION 2. AMENDMENT.** Section 12.1-32-02.1 of the North Dakota Century Code is  
16   amended and reenacted as follows:

17       **12.1-32-02.1. Mandatory prison terms for armed offenders.**

18       1. Notwithstanding any other provision of this title, a term of imprisonment must be  
19          imposed upon an offender and served without benefit of parole when, in the course of  
20          committing an offense, the offender inflicts or attempts to inflict bodily injury upon  
21          another, threatens or menaces another with imminent bodily injury with a dangerous  
22          weapon, explosive, destructive device, or firearm, or possesses or has within  
23          immediate reach and control a dangerous weapon, explosive, destructive device, or  
24          firearm while in the course of committing an offense under subsection 1, 2, or, except  
25          for the simple possession of marijuana, 6 of section 19-03.1-23. This requirement  
26          applies only when possession of a dangerous weapon, explosive, destructive device,  
27          or firearm has been charged and admitted or found to be true in the manner provided  
28          by law, and must be imposed as follows:

29       4. a. If the offense for which the offender is convicted is a class A or class B felony, the  
30          court shall impose a minimum sentence of four years' imprisonment.

1       2. b. If the offense for which the offender is convicted is a class C felony, the court  
2               shall impose a minimum sentence of two years' imprisonment.

3       2. This section applies even when being armed is an element of the offense for which the  
4               offender is convicted.

5       3. An offender serving a sentence subject to this section may be eligible to participate in  
6               a release program under section 12-48.1-02 during the last six months of the  
7               offender's sentence.

8       **SECTION 3. AMENDMENT.** Section 12.1-32-09.1 of the North Dakota Century Code is  
9       amended and reenacted as follows:

10       **12.1-32-09.1. Sentencing of violent offenders.**

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

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