

Introduced by

1 A BILL for an Act to amend and reenact section 12.1-32-06.1 and subsections 1 and 3 of
2 section 12.1-32-07 of the North Dakota Century Code, relating to length and termination of
3 probation, supervision of probation, and conditions of probation; and to provide a penalty.

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

5 **SECTION 1. AMENDMENT.** Section 12.1-32-06.1 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **12.1-32-06.1. Length and termination of probation - Additional probation for violation**
8 **of conditions - Penalty.**

- 9 1. Except as provided in this section, the length of the period of probation imposed in
10 conjunction with a sentence to probation or a suspended execution or deferred
11 imposition of sentence may not extend for more than five years for a felony offense
12 subject to section 12.1-32-09.1, a felony offense subject to section 12.1-32-02.1 which
13 involves the use of a firearm or dangerous weapon, a second or subsequent violation
14 of section 12.1-17-07.1, a second or subsequent violation of any domestic violence
15 protection order, a violation of chapter 12.1-40, or a violation of section 14-09-22; three
16 years for any other felony; and ~~two years~~ one year for a misdemeanor or infraction
17 from the later of the date of:
- 18 a. The order imposing probation;
 - 19 b. The defendant's release from incarceration; or
 - 20 c. Termination of the defendant's parole.
- 21 2. If the defendant has pled or been found guilty of an offense for which the court
22 imposes a sentence of restitution or reparation for damages resulting from the
23 commission of the offense, the court may, following a restitution hearing pursuant to
24 section 12.1-32-08, impose an additional period of probation not to exceed five years.

- 1 3. If the defendant has pled or been found guilty of a felony sexual offense in violation of
2 chapter 12.1-20 or 12.1-27.2, the court shall impose at least five years but not more
3 than ten years of supervised probation to be served after sentencing or incarceration.
4 If the defendant has pled or been found guilty of a class AA felony sexual offense in
5 violation of section 12.1-20-03 or 12.1-20-03.1, the court may impose lifetime
6 supervised probation on the defendant. If the defendant has pled or been found guilty
7 of a misdemeanor sexual offense in violation of chapter 12.1-20, the court may impose
8 an additional period of probation not to exceed two years. If the unserved portion of
9 the defendant's maximum period of incarceration is less than one year, a violation of
10 the probation imposed under this subsection is a class A misdemeanor.
- 11 4. If the defendant has pled or been found guilty of abandonment or nonsupport of
12 spouse or children, the period of probation may be continued for as long as
13 responsibility for support continues.
- 14 5. In ~~felony cases~~, in consequence of violation of probation conditions, the court may
15 impose an additional period of probation not to exceed five years in felony cases and
16 not to exceed one year in misdemeanor or infraction cases. The additional period of
17 probation may follow a period of incarceration if the defendant has not served the
18 maximum period of incarceration available at the time of initial sentencing or
19 deferment.
- 20 6. The court may terminate a period of probation and discharge the defendant at any
21 time earlier than that provided in subsection 1 if warranted by the conduct of the
22 defendant and the ends of justice.
- 23 7. Except for an offense under chapter 12.1-20 or 12.1-27.2, when the court imposes
24 probation under the supervision and management of the department of corrections
25 and rehabilitation for a felony offense, the court may authorize the department to
26 terminate probation eighteen months after the defendant commenced probation if the
27 defendant has complied with the conditions of probation imposed by the court. The
28 authority to terminate probation must be stated in the judgment of conviction or order
29 of disposition. The department shall notify the sentencing court and the state's
30 attorney of the county in which the defendant was prosecuted when the department
31 terminates probation under this subsection.

1 8. Notwithstanding the fact that a sentence to probation subsequently can be modified or
2 revoked, a judgment that includes such a sentence constitutes a final judgment for all
3 other purposes.

4 **SECTION 2. AMENDMENT.** Subsection 1 of section 12.1-32-07 of the North Dakota
5 Century Code is amended and reenacted as follows:

6 1. When the court imposes probation upon conviction for a felony offense under chapter
7 12.1-20 or 12.1-27.2, a felony offense subject to section 12.1-32-09.1, a felony offense
8 subject to section 12.1-32-02.1 which involves the use of a firearm or dangerous
9 weapon, a second or subsequent violation of section 12.1-17-07.1, a second or
10 subsequent violation of any domestic violence protection order, a violation of chapter
11 12.1-40, a violation of section 14-09-22, or a felony offense under chapter 39-08, the
12 court shall place the defendant under the supervision and management of the
13 department of corrections and rehabilitation. When the court imposes probation upon
14 conviction in all other felony cases, the court may place the defendant under the
15 supervision and management of the department of corrections and rehabilitation. In
16 class A misdemeanor cases, the court may place the defendant under the supervision
17 and management of the department of corrections and rehabilitation or other
18 responsible party. In all other cases, the court may place the defendant under the
19 supervision and management of a community corrections program other than the
20 department of corrections and rehabilitation. If an appropriate community corrections
21 program is not reasonably available, the court may place the defendant under the
22 supervision and management of the department of corrections and rehabilitation. The
23 department of corrections and rehabilitation may arrange for the supervision and
24 management of the defendant by a community corrections program selected by the
25 department of corrections and rehabilitation. A community corrections program means
26 a program for the supervision of a defendant, including monitoring and enforcement of
27 terms and conditions of probation set by the court or pursuant to a conditional release
28 from the physical custody of a correctional facility or the department of corrections and
29 rehabilitation.

30 **SECTION 3. AMENDMENT.** Subsection 3 of section 12.1-32-07 of the North Dakota
31 Century Code is amended and reenacted as follows:

- 1 3. The court shall provide as an explicit condition of every probation that the defendant
2 may not possess a firearm, destructive device, or other dangerous weapon while the
3 defendant is on probation. Except when the offense is a misdemeanor offense under
4 section 12.1-17-01, 12.1-17-01.1, 12.1-17-05, or 12.1-17-07.1, or chapter 14-07.1, the
5 court may waive this condition of probation if the defendant has pled guilty to, or has
6 been found guilty of, a misdemeanor or infraction offense, the misdemeanor or
7 infraction is the defendant's first offense, and the court has made a specific finding on
8 the record before imposition of a sentence or a probation that there is good cause to
9 waive the condition. The court may not waive this condition of probation if the court
10 places the defendant under the supervision and management of the department of
11 corrections and rehabilitation. The court shall provide as an explicit condition of
12 probation that the defendant may not willfully defraud a urine test administered as a
13 condition of probation. Unless waived on the record by the court, the court shall also
14 provide as a condition of probation that the defendant undergo various agreed-to
15 community constraints and conditions as intermediate measures of the department of
16 corrections and rehabilitation to avoid revocation, which may include:
- 17 a. Community service;
 - 18 b. Day reporting;
 - 19 c. Curfew;
 - 20 d. Home confinement;
 - 21 e. House arrest;
 - 22 f. Electronic monitoring;
 - 23 g. Residential halfway house;
 - 24 h. Intensive supervision program; or
 - 25 i. A period of incarceration not to exceed forty-eight consecutive hours; or
 - 26 j. Participation in the twenty-four seven sobriety program.