

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-year~~three hundred sixty days for a misdemeanor  
17 ~~or infraction~~ 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 cases. The additional period of probation may  
17          follow a period of incarceration if the defendant has not served the maximum period of  
18          incarceration available at the time of initial sentencing or deferment.
- 19          6. The court may terminate a period of probation and discharge the defendant at any  
20          time earlier than that provided in subsection 1 if warranted by the conduct of the  
21          defendant and the ends of justice.
- 22          7. Except for an offense under chapter 12.1-20 or 12.1-27.2, when the court imposes  
23          probation under the supervision and management of the department of corrections  
24          and rehabilitation for a felony offense, the court may authorize the department to  
25          terminate probation no sooner than eighteen months after the defendant commenced  
26          probation if the defendant has complied with the conditions of probation imposed by  
27          the court. The authority to terminate probation must be stated in the judgment of  
28          conviction or order of disposition. The department shall notify the sentencing court and  
29          the state's attorney of the county in which the defendant was prosecuted when the  
30          department 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.