

Sixty-fourth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2027

Introduced by

Legislative Management

(Commission on Alternatives to Incarceration)

1 A BILL for an Act to amend and reenact section 12.1-32-06.1, subsections 1 and 3 of section
2 12.1-32-07, and subdivision c of subsection 5 of section 39-08-01 of the North Dakota Century
3 Code, relating to length and termination of probation, supervision of probation, and conditions of
4 probation; and to provide a penalty.

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

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

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

10 ~~1. Except as provided in this section, the length of the period of probation imposed in~~
11 ~~conjunction with a sentence to probation or a suspended execution or deferred~~
12 ~~imposition of sentence may not extend for more than five years for a felony offense~~
13 ~~subject to section 12.1-32-09.1, a felony offense subject to section 12.1-32-02.1 which~~
14 ~~involves the use of a firearm or dangerous weapon, a second or subsequent violation~~
15 ~~of section 12.1-17-07.1, a second or subsequent violation of any domestic violence~~
16 ~~protection order, a violation of chapter 12.1-40, or a violation of section 14-09-22; three~~
17 ~~years for any other felony offense; and two years for a class A misdemeanor offense;~~
18 ~~and three hundred sixty days for a class B misdemeanor or infraction offense from the~~
19 ~~later of the date of:~~

- 20 ~~a. The order imposing probation;~~
- 21 ~~b. The defendant's release from incarceration; or~~
- 22 ~~c. Termination of the defendant's parole.~~

23 ~~2. If the defendant has pled or been found guilty of an offense for which the court~~
24 ~~imposes a sentence of restitution or reparation for damages resulting from the~~

1 commission of the offense, the court may, following a restitution hearing pursuant to
2 section 12.1-32-08, impose an additional period of probation not to exceed five years.

3 ~~3. If the defendant has pled or been found guilty of a felony sexual offense in violation of~~
4 ~~chapter 12.1-20 or 12.1-27.2, the court shall impose at least five years but not more~~
5 ~~than ten years of supervised probation to be served after sentencing or incarceration.~~
6 ~~If the defendant has pled or been found guilty of a class AA felony sexual offense in~~
7 ~~violation of section 12.1-20-03 or 12.1-20-03.1, the court may impose lifetime~~
8 ~~supervised probation on the defendant. If the defendant has pled or been found guilty~~
9 ~~of a misdemeanor sexual offense in violation of chapter 12.1-20, the court may impose~~
10 ~~an additional period of probation not to exceed two years. If the unserved portion of~~
11 ~~the defendant's maximum period of incarceration is less than one year, a violation of~~
12 ~~the probation imposed under this subsection is a class A misdemeanor.~~

13 ~~4. If the defendant has pled or been found guilty of abandonment or nonsupport of~~
14 ~~spouse or children, the period of probation may be continued for as long as~~
15 ~~responsibility for support continues.~~

16 ~~5. In felony cases, in consequence of violation of probation conditions, the court may~~
17 ~~impose an additional period of probation not to exceed five years in felony cases and~~
18 ~~not to exceed two years in misdemeanor cases. The additional period of probation~~
19 ~~may follow a period of incarceration if the defendant has not served the maximum~~
20 ~~period of incarceration available at the time of initial sentencing or deferment.~~

21 ~~6. Upon petition by the defendant, no sooner than eighteen months from the time of~~
22 ~~sentence, the court shall provide a hearing to determine if the defendant should be~~
23 ~~discharged from probation. The court may terminate a period of probation and~~
24 ~~discharge the defendant at any time earlier than that provided in subsection 1 if~~
25 ~~warranted by the conduct of the defendant and the ends of justice. A defendant may~~
26 ~~not petition for an early discharge from probation within twelve months of a previous~~
27 ~~hearing on a request for discharge from probation. Unless waived by the state's~~
28 ~~attorney, the state's attorney must be provided notice of a petition for discharge from~~
29 ~~probation and must be provided an opportunity to object to the petition.~~

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

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

6 **12.1-32-06.1. Length and termination of probation - Additional probation for violation**
7 **of conditions - Penalty.**

- 8 1. Except as provided in this section, the total length of ~~the period of~~unsupervised
9 probation imposed in conjunction with a sentence to probation or a suspended
10 execution or deferred imposition of sentence may not extend for more than five years
11 for a felony and two years for a misdemeanor or infraction from the later of the date of:
12 a. The order imposing probation;
13 b. The defendant's release from incarceration; or
14 c. Termination of the defendant's parole.

- 15 2. Except as provided in this section, the total length of supervised probation imposed in
16 conjunction with a sentence of probation or a suspended execution or deferred
17 imposition of sentence may not extend for more than five years for a class C felony,
18 ten years for all other felony offenses, and two years for a class A misdemeanor from
19 the later of the date of:

- 20 a. The order imposing probation;
21 b. The defendant's release from incarceration; or
22 c. Termination of the defendant's parole.

- 23 3. If the defendant has pled or been found guilty of an offense for which the court
24 imposes a sentence of restitution or reparation for damages resulting from the
25 commission of the offense, the court may, following a restitution hearing pursuant to
26 section 12.1-32-08, impose ~~an~~ additional ~~period~~periods of unsupervised probation not
27 to exceed five years for each additional period imposed.

- 28 ~~3.4.~~ If the defendant has pled or been found guilty of a felony sexual offense in violation of
29 chapter 12.1-20, the court shall impose at least five years but not more than ten years
30 of supervised probation to be served after sentencing or incarceration. If the defendant
31 has pled or been found guilty of a class AA felony sexual offense in violation of section

1 12.1-20-03 or 12.1-20-03.1, the court may impose lifetime supervised probation on the
2 defendant. If the defendant has pled or been found guilty of a misdemeanor sexual
3 offense in violation of chapter 12.1-20, the court may impose ~~an~~ additional
4 ~~period~~periods of probation not to exceed two years for each additional period
5 imposed. If the unserved portion of the defendant's maximum period of incarceration is
6 less than one year, a violation of the probation imposed under this subsection is a
7 class A misdemeanor.

8 ~~4.5.~~ If the defendant has pled or been found guilty of abandonment or nonsupport of
9 spouse or children, the period of probation may be continued for as long as
10 responsibility for support continues.

11 ~~5.6.~~ In felony and misdemeanor cases, in consequence of violation of probation conditions,
12 the court may impose ~~an~~ additional ~~period~~periods of probation ~~not to exceed five-~~
13 ~~years. The additional period of probation may follow a period of incarceration if the~~
14 ~~defendant has not served the maximum period of incarceration available at the time of~~
15 ~~initial sentencing or deferment~~ if the defendant has not served the maximum sentence
16 of imprisonment or probation available to the court at the time of initial sentencing or
17 deferment. The court shall allow the defendant credit for a sentence of probation from
18 the date the defendant began probation until the date a petition to revoke probation
19 was filed with the court. If the defendant is on supervised probation, the defendant is
20 not entitled to credit for a sentence of probation for any period the defendant has
21 absconded from supervision. The total amount of credit a defendant is entitled to for
22 time spent on probation must be stated in the criminal judgment or order of revocation
23 of probation.

24 ~~6.7.~~ The court may terminate a period of probation and discharge the defendant at any
25 time earlier than that provided in subsection 1 if warranted by the conduct of the
26 defendant and the ends of justice.

27 ~~7.8.~~ Notwithstanding the fact that a sentence to probation subsequently can be modified or
28 revoked, a judgment that includes such a sentence constitutes a final judgment for all
29 other purposes.

30 **SECTION 2. AMENDMENT.** Subsections 1 and 3 of section 12.1-32-07 of the North Dakota
31 Century Code are amended and reenacted as follows:

- 1 1. When the court imposes probation upon conviction for a felony offense subject to
2 section 12.1-32-09.1 or 12.1-32-02.1, a second or subsequent violation of section
3 12.1-17-07.1, a second or subsequent violation of any domestic violence protection
4 order, a violation of chapter 12.1-40, a violation of section 14-09-22, or a felony
5 offense under chapter 39-08, the court shall place the defendant under the supervision
6 and management of the department of corrections and rehabilitation. ~~When the court~~
7 imposes probation upon conviction or order of disposition in all other felony cases, the
8 court may place the defendant under the supervision and management of the
9 department of corrections and rehabilitation. In class A misdemeanor cases, the court
10 may place the defendant under the supervision and management of the department of
11 corrections and rehabilitation or other responsible party. In all other cases, the court
12 may place the defendant under the supervision and management of a community
13 corrections program other than the department of corrections and rehabilitation. ~~If an~~
14 ~~appropriate community corrections program is not reasonably available, the court may~~
15 ~~place the defendant under the supervision and management of the department of~~
16 ~~corrections and rehabilitation. The department of corrections and rehabilitation may~~
17 ~~arrange for the supervision and management of the defendant by a community~~
18 ~~corrections program selected by the department of corrections and rehabilitation. A~~
19 community corrections program means a program for the supervision of a defendant,
20 including monitoring and enforcement of terms and conditions of probation set by the
21 court ~~or pursuant to a conditional release from the physical custody of a correctional~~
22 ~~facility or the department of corrections and rehabilitation.~~
- 23 3. The court shall provide as an explicit condition of every probation that the defendant
24 may not possess a firearm, destructive device, or other dangerous weapon while the
25 defendant is on probation. Except when the offense is a misdemeanor offense under
26 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
27 court may waive this condition of probation if the defendant has pled guilty to, or has
28 been found guilty of, a misdemeanor or infraction offense, the misdemeanor or
29 infraction is the defendant's first offense, and the court has made a specific finding on
30 the record before imposition of a sentence or a probation that there is good cause to
31 waive the condition. The court may not waive this condition of probation if the court

1 places the defendant under the supervision and management of the department of
2 corrections and rehabilitation. The court shall provide as an explicit condition of
3 probation that the defendant may not willfully defraud a urine test administered as a
4 condition of probation. Unless waived on the record by the court, the court shall also
5 provide as a condition of probation that the defendant undergo various agreed-to
6 community constraints and conditions as intermediate measures of the department of
7 corrections and rehabilitation to avoid revocation, which may include:

- 8 a. Community service;
9 b. Day reporting;
10 c. Curfew;
11 d. Home confinement;
12 e. House arrest;
13 f. Electronic monitoring;
14 g. Residential halfway house;
15 h. Intensive supervision program; or
16 i. Up to five non-successive periods of incarceration during any twelve-month
17 period, each of which may not exceed forty-eight consecutive hours; or
18 j. Participation in the twenty-four seven sobriety program.

19 **SECTION 3. AMENDMENT.** Subdivision c of subsection 5 of section 39-08-01 of the North
20 Dakota Century Code is amended and reenacted as follows:

- 21 c. For a third offense within seven years, the sentence must include at least one
22 hundred twenty days' imprisonment; a fine of at least two thousand dollars; an
23 order for addiction evaluation by an appropriate licensed addiction treatment
24 program; at least ~~one year's~~three hundred sixty ~~day's~~days' supervised probation;
25 and participation in the twenty-four seven sobriety program under chapter 54-12
26 as a mandatory condition of probation.