

Sixty-fourth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1367

Introduced by

Representatives Brabandt, K. Koppelman, Louser

Senator Burckhard

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 section 29-01-20 of the North Dakota Century Code, relating to court authority
3 to impose additional periods of probation, supervision of probation, and conditions of probation
4 and to address peace officer custody of stolen goods; 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 total length of the ~~period of~~ unsupervised
11 probation imposed in conjunction with a sentence to probation or a suspended
12 execution or deferred imposition of sentence may not extend for more than five years
13 for a felony and two years for a misdemeanor or infraction from the later of the date of:
14 a. The order imposing probation;
15 b. The defendant's release from incarceration; or
16 c. Termination of the defendant's parole.
- 17 2. Except as provided in this section, the total length of supervised probation imposed in
18 conjunction with a sentence of probation or a suspended execution or deferred
19 imposition of sentence may not extend for more than five years for a ~~class C~~ felony;
20 ~~ten~~ offense subject to section 12.1-32-09.1, a felony offense subject to section
21 12.1-32-02.1 which involves the use of a firearm or dangerous weapon, a second or
22 subsequent violation of section 12.1-17-07.1, a second or subsequent violation of any
23 domestic violence protection order, a violation of chapter 12.1-40, or a violation of
24 section 14-09-22; three years for ~~allany~~ other felony ~~offenses, and offense~~; two years

1 for a class A misdemeanor; and three hundred sixty days for a class B misdemeanor
2 offense from the later of the date of:

- 3 a. The order imposing probation;
4 b. The defendant's release from incarceration; or
5 c. Termination of the defendant's parole.

6 ~~2.3.~~ If the defendant has pled or been found guilty of an offense for which the court
7 imposes a sentence of restitution or reparation for damages resulting from the
8 commission of the offense, the court may, following a restitution hearing pursuant to
9 section 12.1-32-08, impose ~~an additional period~~periods of unsupervised probation not
10 to exceed five years for each additional period imposed.

11 ~~3.4.~~ If the defendant has pled or been found guilty of a felony sexual offense in violation of
12 chapter 12.1-20, the court shall impose at least five years but not more than ten years
13 of supervised probation to be served after sentencing or incarceration. If the defendant
14 has pled or been found guilty of a class AA felony sexual offense in violation of section
15 12.1-20-03 or 12.1-20-03.1, the court may impose lifetime supervised probation on the
16 defendant. If the defendant has pled or been found guilty of a misdemeanor sexual
17 offense in violation of chapter 12.1-20, the court may impose ~~an additional~~
18 ~~period~~periods of probation not to exceed two years for each additional period
19 imposed. If the unserved portion of the defendant's maximum period of incarceration is
20 less than one year, a violation of the probation imposed under this subsection is a
21 class A misdemeanor.

22 ~~4.5.~~ If the defendant has pled or been found guilty of abandonment or nonsupport of
23 spouse or children, the period of probation may be continued for as long as
24 responsibility for support continues.

25 ~~5.6.~~ In felony and misdemeanor cases, in consequence of violation of probation conditions,
26 the court may impose ~~an additional period~~periods of probation not to exceed five-
27 ~~years. The additional period of probation may follow a period of incarceration if the~~
28 ~~defendant has not served the maximum period of incarceration available at the time of~~
29 ~~initial sentencing or deferment.~~if the defendant has not served the maximum sentence
30 of imprisonment or probation available to the court at the time of initial sentencing or
31 deferment. The court shall allow the defendant credit for a sentence of probation from

1 the date the defendant began probation until the date a petition to revoke probation
2 was filed with the court. If the defendant is on supervised probation, the defendant is
3 not entitled to credit for a sentence of probation for any period the defendant has
4 absconded from supervision. The total amount of credit a defendant is entitled to for
5 time spent on probation must be stated in the criminal judgment or order of revocation
6 of probation.

7 ~~6-7.~~ The court may terminate a period of probation and discharge the defendant at any
8 time earlier than that provided in subsection 1 if warranted by the conduct of the
9 defendant and the ends of justice.

10 ~~7-8.~~ Notwithstanding the fact that a sentence to probation subsequently can be modified or
11 revoked, a judgment that includes such a sentence constitutes a final judgment for all
12 other purposes.

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

- 15 1. ~~When~~Whenever the court imposes probation upon conviction for a felony offense
16 subject to section 12.1-32-09.1 or 12.1-32-02.1, a second or subsequent violation of
17 section 12.1-17-07.1, a second or subsequent violation of any domestic violence
18 protection order, a violation of 12.1-40, a violation of 14-09-22, or a felony offense
19 under chapter 39-08, the court shall place the defendant under the supervision and
20 management of the department of corrections and rehabilitation. Whenever the court
21 imposes probation upon conviction or order of disposition in all other felony cases, the
22 court may place the defendant under the supervision and management of the
23 department of corrections and rehabilitation. In class A misdemeanor cases, the court
24 may place the defendant under the supervision and management of the department of
25 corrections and rehabilitation or other responsible party. In all other cases, the court
26 may place the defendant under the supervision and management of a community
27 corrections program other than the department of corrections and rehabilitation. ~~If an~~
28 ~~appropriate community corrections program is not reasonably available, the court may~~
29 ~~place the defendant under the supervision and management of the department of~~
30 ~~corrections and rehabilitation. The department of corrections and rehabilitation may~~
31 ~~arrange for the supervision and management of the defendant by a community~~

~~corrections program selected by the department of corrections and rehabilitation. A community corrections program means a program for the supervision of a defendant, including monitoring and enforcement of terms and conditions of probation set by the court or pursuant to a conditional release from the physical custody of a correctional facility or the department of corrections and rehabilitation.~~

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

3. The court shall provide as an explicit condition of every probation that the defendant may not possess a firearm, destructive device, or other dangerous weapon while the defendant is on probation. Except when the offense is a misdemeanor offense under 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 court may waive this condition of probation if the defendant has pled guilty to, or has been found guilty of, a misdemeanor or infraction offense, the misdemeanor or infraction is the defendant's first offense, and the court has made a specific finding on the record before imposition of a sentence or a probation that there is good cause to waive the condition. The court may not waive this condition of probation if the court places the defendant under the supervision and management of the department of corrections and rehabilitation. The court shall provide as an explicit condition of probation that the defendant may not willfully defraud a urine test administered as a condition of probation. Unless waived on the record by the court, the court shall also provide as a condition of probation that the defendant undergo various agreed-to community constraints and conditions as intermediate measures of the department of corrections and rehabilitation to avoid revocation, which may include:

- a. Community service;
- b. Day reporting;
- c. Curfew;
- d. Home confinement;
- e. House arrest;
- f. Electronic monitoring;
- g. Residential halfway house;
- h. Intensive supervision program; ~~or~~

1 i. Up to five non-successive periods of incarceration during any twelve-month
2 period, each of which may not exceed forty-eight consecutive hours; or

3 j. Participation in the twenty-four seven sobriety program.

4 **SECTION 4. AMENDMENT.** Section 29-01-20 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **29-01-20. Stolen property to be held by peace officer.**

7 ~~When~~ Except for consumer goods, as defined under section 41-09-02, whenever property
8 alleged to have been stolen or embezzled comes into the custody of a peace officer, the peace
9 officer shall hold it subject to the order of the magistrate authorized by section 29-01-21 to direct
10 the disposal thereof.