

HOUSE BILL NO. 1393

Introduced by

Representatives Heinert, Hanson, K. Koppelman

Senators Bakke, D. Larson, Myrdal

1 A BILL for an Act to create and enact section 12.1-17-01.2 of the North Dakota Century Code,
2 relating to domestic violence; to amend and reenact subsection 4 of section 12-60-16.4, section
3 12.1-17-01, subsection 6 of section 12.1-17-07.1, sections 12.1-17-13 and 12.1-32-07, and
4 subsection 3 of section 12.1-38-01 of the North Dakota Century Code, relating to simple
5 assault; and to provide a penalty.

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

7 **SECTION 1. AMENDMENT.** Subsection 4 of section 12-60-16.4 of the North Dakota
8 Century Code is amended and reenacted as follows:

9 4. Class B misdemeanor offenses in sections 12.1-17-01, 12.1-17-01.2, 12.1-20-12.1,
10 12.1-21-05, 12.1-21-06, 12.1-22-03, 12.1-23-05, and 12.1-29-03.

11 **SECTION 2. AMENDMENT.** Section 12.1-17-01 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **12.1-17-01. Simple assault.**

14 1. A person is guilty of an offense if that person:

15 a. Willfully causes bodily injury to another human being; or

16 b. Negligently causes bodily injury to another human being by means of a firearm,
17 destructive device, or other weapon, the use of which against a human being is
18 likely to cause death or serious bodily injury.

19 2. The offense is:

20 a. A class C felony when the victim is a peace officer or correctional institution
21 employee acting in an official capacity, which the actor knows to be a fact; an
22 employee of the state hospital acting in the course and scope of employment,
23 which the actor knows to be a fact, and the actor is an individual committed to or
24 detained at the state hospital pursuant to chapter 25-03.3; a person engaged in a

1 judicial proceeding; or a member of a municipal or volunteer fire department or
2 emergency medical services personnel unit or emergency department worker in
3 the performance of the member's duties.

4 b. ~~A class B misdemeanor for the first offense when the victim is an actor's family or~~
5 ~~household member as defined in subsection 4 of section 14-07.1-01 and a~~
6 ~~class A misdemeanor for a second or subsequent offense when the victim is an~~
7 ~~actor's family or household member as defined in subsection 4 of section~~
8 ~~14-07.1-01 and the actor has a prior conviction for simple assault under this~~
9 ~~section or an assault offense under section 12.1-17-01.1 or 12.1-17-02 involving~~
10 ~~the commission of domestic violence as defined in subsection 2 of section~~
11 ~~14-07.1-01. For purposes of this subdivision, a prior conviction includes a~~
12 ~~conviction of any assault offense in which a finding of domestic violence was~~
13 ~~made under a law or ordinance of another state which is equivalent to this~~
14 ~~subdivision.~~

15 e. A class B misdemeanor except as provided in subdivision a or b.

16 **SECTION 3.** Section 12.1-17-01.2 of the North Dakota Century Code is created and
17 enacted as follows:

18 **12.1-17-01.2. Domestic violence.**

19 1. For purposes of this section "family or household member" means family or household
20 member as defined in section 14-07.1-01.

21 2. A person is guilty of an offense if that person willfully causes:

22 a. Bodily injury to the actor's family or household member;

23 b. Substantial bodily injury to the actor's family or household member; or

24 c. Serious bodily injury to the actor's family or household member.

25 3. The offense is:

26 a. A class A misdemeanor for the first offense under subdivision a of subsection 2
27 and a class C felony for a second or subsequent offense under this section or
28 sections 12.1-17-01, 12.1-17-01.1, or 12.1-17-02 involving the commission of
29 domestic violence, as defined in section 14-07.1-01. For purposes of this
30 subdivision, a prior conviction includes a conviction of any assault offense in

1 which a finding of domestic violence was made under a law or ordinance of
2 another state which is equivalent to this section.

3 b. A class C felony for an offense under subdivision b or c of subsection 2.

4 **SECTION 4. AMENDMENT.** Subsection 6 of section 12.1-17-07.1 of the North Dakota
5 Century Code is amended and reenacted as follows:

6 6. a. A person who violates this section is guilty of a class C felony if:

7 (1) The person previously has been convicted of violating section 12.1-17-01,
8 12.1-17-01.1, 12.1-17-01.2, 12.1-17-02, 12.1-17-04, 12.1-17-05, or
9 12.1-17-07, or a similar offense from another court in North Dakota, a court
10 of record in the United States, or a tribal court, involving the victim of the
11 stalking;

12 (2) The stalking violates a court order issued under chapter 14-07.1 protecting
13 the victim of the stalking, if the person had notice of the court order; or

14 (3) The person previously has been convicted of violating this section.

15 b. If subdivision a does not apply, a person who violates this section is guilty of a
16 class A misdemeanor.

17 **SECTION 5. AMENDMENT.** Section 12.1-17-13 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **12.1-17-13. Mandated treatment of domestic violence offenders.**

20 The sentence for an offense under section 12.1-17-01, 12.1-17-01.1, 12.1-17-01.2,
21 12.1-17-02, 12.1-17-03, 12.1-17-04, or 12.1-17-05 against an actor's family or household
22 member, as defined in subsection 4 of section 14-07.1-01, must include an order to complete a
23 domestic violence offender evaluation and treatment program as determined by the court. A
24 court may not order the offender to attend anger management classes or individual counseling
25 unless a domestic violence offender treatment program is not reasonably available to the
26 defendant and the court makes findings for the record explaining why an order to complete a
27 domestic violence offender treatment program would be inappropriate.

28 **SECTION 6. AMENDMENT.** Section 12.1-32-07 of the North Dakota Century Code is
29 amended and reenacted as follows:

1 **12.1-32-07. Supervision of probationer - Conditions of probation - Revocation.**

2 1. When the court imposes probation upon conviction for a felony offense subject to
3 section 12.1-32-09.1 or 12.1-32-02.1, a second or subsequent violation of section
4 12.1-17-07.1, a second or subsequent violation of any domestic violence protection
5 order, a violation of chapter 12.1-41, a violation of section 14-09-22, or a felony
6 offense under chapter 39-08, the court shall place the defendant under the supervision
7 and management of the department of corrections and rehabilitation. When the court
8 imposes probation upon conviction or order of disposition in all other felony cases, the
9 court may place the defendant under the supervision and management of the
10 department of corrections and rehabilitation. In class A misdemeanor cases, the court
11 may place the defendant under the supervision and management of the department of
12 corrections and rehabilitation or other responsible party. In all other cases, the court
13 may place the defendant under the supervision and management of a community
14 corrections program other than the department of corrections and rehabilitation. A
15 community corrections program means a program for the supervision of a defendant,
16 including monitoring and enforcement of terms and conditions of probation set by the
17 court.

18 2. The conditions of probation must be such as the court in its discretion deems
19 reasonably necessary to ensure that the defendant will lead a law-abiding life or to
20 assist the defendant to do so. The court shall provide as an explicit condition of every
21 probation that the defendant not commit another offense during the period for which
22 the probation remains subject to revocation. The court shall order supervision costs
23 and fees of not less than fifty-five dollars per month unless the court makes a specific
24 finding on record that the imposition of fees will result in an undue hardship. If the
25 offender has not paid the full amount of supervision fees and costs before completion
26 or termination of probation, the court may issue an order, after opportunity for hearing,
27 to determine the amount of supervision fees and costs that are unpaid. The order may
28 be filed, transcribed, and enforced by the department of corrections and rehabilitation
29 in the same manner as civil judgments rendered by a district court of this state.

30 3. The court shall provide as an explicit condition of every probation that the defendant
31 may not possess a firearm, destructive device, or other dangerous weapon while the

1 defendant is on probation. Except when the offense is a misdemeanor offense under
2 section 12.1-17-01, 12.1-17-01.1, 12.1-17-01.2, 12.1-17-05, or 12.1-17-07.1, or
3 chapter 14-07.1, the court may waive this condition of probation if the defendant has
4 pled guilty to, or has been found guilty of, a misdemeanor or infraction offense, the
5 misdemeanor or infraction is the defendant's first offense, and the court has made a
6 specific finding on the record before imposition of a sentence or a probation that there
7 is good cause to waive the condition. The court may not waive this condition of
8 probation if the court places the defendant under the supervision and management of
9 the department of corrections and rehabilitation. The court shall provide as an explicit
10 condition of probation that the defendant may not willfully defraud a urine test
11 administered as a condition of probation. Unless waived on the record by the court,
12 the court shall also provide as a condition of probation that the defendant undergo
13 various agreed-to community constraints and conditions as intermediate measures of
14 the department of corrections and rehabilitation to avoid revocation, which may
15 include:

- 16 a. Community service;
- 17 b. Day reporting;
- 18 c. Curfew;
- 19 d. Home confinement;
- 20 e. House arrest;
- 21 f. Electronic monitoring;
- 22 g. Residential halfway house;
- 23 h. Intensive supervision program;
- 24 i. Up to five nonsuccessive periods of incarceration during any twelve-month
25 period, each of which may not exceed forty-eight consecutive hours;
- 26 j. Participation in the twenty-four seven sobriety program; or
- 27 k. One period of incarceration during a period of probation not to exceed thirty
28 consecutive days in lieu of a petition for revocation of probation.

- 29 4. When imposing a sentence to probation, probation in conjunction with imprisonment,
30 or probation in conjunction with suspended execution or deferred imposition of

- 1 sentence, the court may impose such conditions as it deems appropriate and may
2 include any one or more of the following:
- 3 a. Work faithfully at a suitable employment or faithfully pursue a course of study or
4 of career and technical education training that will equip the defendant for
5 suitable employment.
 - 6 b. Undergo available medical or psychiatric treatment and remain in a specified
7 institution if required for that purpose.
 - 8 c. Attend or reside in a facility established for the instruction, recreation, or
9 residence of persons on probation.
 - 10 d. Support the defendant's dependents and meet other family responsibilities.
 - 11 e. Make restitution or reparation to the victim of the defendant's conduct for the
12 damage or injury which was sustained or perform other reasonable assigned
13 work. When restitution, reparation, or assigned work is a condition of probation,
14 the court shall proceed as provided in subsection 1 or 2, as applicable, of section
15 12.1-32-08.
 - 16 f. Pay a fine imposed after consideration of the provisions of section 12.1-32-05.
 - 17 g. Refrain from excessive use of alcohol or any use of narcotics or of another
18 dangerous or abusable drug without a prescription.
 - 19 h. Permit the probation officer to visit the defendant at reasonable times at the
20 defendant's home or elsewhere.
 - 21 i. Remain within the jurisdiction of the court, unless granted permission to leave by
22 the court or the probation officer.
 - 23 j. Answer all reasonable inquiries by the probation officer and promptly notify the
24 probation officer of any change in address or employment.
 - 25 k. Report to a probation officer at reasonable times as directed by the court or the
26 probation officer.
 - 27 l. Submit to a medical examination or other reasonable testing for the purpose of
28 determining the defendant's use of narcotics, marijuana, or other controlled
29 substance whenever required by a probation officer.
 - 30 m. Refrain from associating with known users or traffickers in narcotics, marijuana,
31 or other controlled substances.

- 1 n. Submit the defendant's person, place of residence, or vehicle to search and
2 seizure by a probation officer at any time of the day or night, with or without a
3 search warrant.
- 4 o. Serve a term of imprisonment of up to one-half of the maximum term authorized
5 for the offense of which the defendant was convicted.
- 6 p. Reimburse the costs and expenses determined necessary for the defendant's
7 adequate defense when counsel is appointed or provided at public expense for
8 the defendant. When reimbursement of indigent defense costs and expenses is
9 imposed as a condition of probation, the court shall proceed as provided in
10 subsection 4 of section 12.1-32-08.
- 11 q. Provide community service for the number of hours designated by the court.
- 12 r. Refrain from any subscription to, access to, or use of the internet.
- 13 5. When the court imposes a sentence to probation, probation in conjunction with
14 imprisonment, or probation in conjunction with suspended execution or deferred
15 imposition of sentence, the defendant must be given a certificate explicitly setting forth
16 the conditions on which the defendant is being released.
- 17 6. The court, upon notice to the probationer and with good cause, may modify or enlarge
18 the conditions of probation at any time prior to the expiration or termination of the
19 period for which the probation remains conditional. If the defendant violates a
20 condition of probation at any time before the expiration or termination of the period, the
21 court may continue the defendant on the existing probation, with or without modifying
22 or enlarging the conditions, or may revoke the probation and impose any other
23 sentence that was available under section 12.1-32-02 or 12.1-32-09 at the time of
24 initial sentencing or deferment. In the case of suspended execution of sentence, the
25 court may revoke the probation and cause the defendant to suffer the penalty of the
26 sentence previously imposed upon the defendant.
- 27 7. The court may continue or modify probation conditions or revoke probation for a
28 violation of probation conditions occurring before the expiration or termination of the
29 period of probation notwithstanding that the order of the court is imposed after the
30 expiration or termination has occurred. The petition for revocation must be issued
31 within sixty days of the expiration or termination of probation.

1 8. Jurisdiction over a probationer may be transferred from the court that imposed the
2 sentence to another court of this state with the concurrence of both courts. Retransfers
3 of jurisdiction may also occur in the same manner. The court to which jurisdiction has
4 been transferred under this subsection may exercise all powers permissible under this
5 chapter over the defendant.

6 9. Notwithstanding any other provision of law, the court may authorize the defendant to
7 assist law enforcement officers in an investigation of a criminal offense upon the terms
8 and conditions as the court may require by written order. The court shall hold a
9 hearing in camera before issuing an order under this subsection. The order must be
10 sealed and is subject to inspection only upon order of the court.

11 **SECTION 7. AMENDMENT.** Subsection 3 of section 12.1-38-01 of the North Dakota
12 Century Code is amended and reenacted as follows:

13 3. "Crime" includes an offense named in section 12.1-16-01, 12.1-16-02, 12.1-16-03,
14 12.1-17-01, 12.1-17-01.1, 12.1-17-01.2, 12.1-17-02, 12.1-17-03, 12.1-17-04,
15 chapter 12.1-18, section 12.1-20-03, 12.1-20-04, 12.1-20-05, 12.1-20-07,
16 chapter 12.1-21, section 12.1-22-01, 12.1-22-02, or 12.1-22-03, or an attempt to
17 commit any of these offenses. The term includes a crime in other states which would
18 have been within this definition if the crime had been committed in this state.