

HOUSE BILL NO. 1138

Introduced by

Representatives Satrom, Karls, Klemin, Schauer, Vigesaa

Senator Conley

1 A BILL ~~for an Act to create and enact a new section to chapter 27-05 of the North Dakota~~
2 ~~Century Code, relating to a mental health diversion pilot program in the southeast judicial~~
3 ~~district; to provide for a report to the legislative management; and to provide an expiration~~
4 ~~date.~~ for an Act to amend and reenact subsection 1 of section 12.1-32-02 and sections
5 19-03.1-23 and 39-08-01.5 of the North Dakota Century Code, relating to a mental health court
6 program.

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

8 **SECTION 1.** ~~A new section to chapter 27-05 of the North Dakota Century Code is created~~
9 ~~and enacted as follows:~~

10 ~~— **Southeast judicial district mental health diversion pilot program – Report to**~~
11 ~~**legislative management.**~~

12 ~~— 1. As used in this section:~~

13 ~~— a. "Eligible individual" means an individual who allegedly committed an eligible~~
14 ~~offense and has a prior diagnosis of mental illness or for whom a law~~
15 ~~enforcement officer or prosecutor has a reasonable belief the individual has a~~
16 ~~mental illness based on behaviors or symptoms exhibited during the commission~~
17 ~~of the offense, while in custody, or based on information provided by family~~
18 ~~members or associates during the investigation of the offense.~~

19 ~~— b. "Eligible offense" means a nonviolent misdemeanor offense or a nonviolent class~~
20 ~~C felony.~~

21 ~~— c. "Mental illness" means a mental disorder classified within the most recent edition~~
22 ~~of the American psychiatric association's diagnostic and statistical manual of~~
23 ~~mental disorders, including anxiety disorders, cognitive disorders, adjustment~~

1 ~~disorders, schizophrenia and other psychotic disorders, bipolar disorder,~~
2 ~~depression, and posttraumatic stress disorder.~~

3 ~~2. The southeast judicial district may establish a mental health diversion pilot program~~
4 ~~under which the district court diverts an eligible individual from the criminal justice~~
5 ~~system and into appropriate case management and mental health services as early as~~
6 ~~possible following an interaction with law enforcement in which the individual is alleged~~
7 ~~to have committed an eligible offense.~~

8 ~~3. A criminal case within the southeast judicial district involving an eligible individual~~
9 ~~charged with an eligible offense may be assigned or transferred to the mental health~~
10 ~~diversion pilot program before arraignment.~~

11 ~~a. A motion for transfer to the mental health diversion pilot program may be made~~
12 ~~by the eligible individual's defense attorney or the prosecutor. The motion must~~
13 ~~be accompanied by documentation or testimony in support of the transfer and the~~
14 ~~motion must be heard by the judge assigned to the mental health diversion pilot~~
15 ~~program who shall make the final determination of a defendant's eligibility.~~

16 ~~b. Unless specifically objected to by defense counsel and except for the providing of~~
17 ~~documentation relating to the defendant's mental health status and all available~~
18 ~~statements and police reports, any transfer of a defendant to the mental health~~
19 ~~diversion pilot program is deemed a waiver of the defendant's right to a speedy~~
20 ~~trial and formal discovery.~~

21 ~~c. If the assigned judge determines the defendant is mentally ill or disabled, the~~
22 ~~defendant is eligible for the mental health diversion pilot program.~~

23 ~~d. A defendant's right to a speedy trial may be reinstated upon written demand to~~
24 ~~the court of the defendant's voluntary withdrawal from the program.~~

25 ~~4. The court shall order an eligible defendant to enter a treatment facility certified by the~~
26 ~~department of health and human services as a voluntary admission patient or other~~
27 ~~appropriate treatment facility in the community for screening services and treatment.~~
28 ~~The court shall stay any further proceeding until the release of the defendant and~~
29 ~~facilitate the defendant's admission into an appropriate program.~~

30 ~~5. If a defendant willfully fails to comply with the terms of the court order issued for the~~
31 ~~defendant's treatment or care, the defendant must be returned to custody.~~

1 ~~6. Upon successful completion of the mental health diversion pilot program, a defendant~~
2 ~~convicted of a nonviolent class C felony and transferred to the mental health diversion~~
3 ~~pilot program is deemed to have been convicted of a misdemeanor.~~

4 ~~7. If a defendant convicted of a nonviolent misdemeanor is transferred to the mental~~
5 ~~health diversion pilot program and successfully completes the program, the court shall~~
6 ~~dismiss the case and seal the file in accordance with section 12.1-32-07.2.~~

7 ~~8. The supreme court may adopt rules necessary to implement this section.~~

8 ~~9. Before July first of each even-numbered year, the southeast judicial district shall report~~
9 ~~and make recommendations to the legislative management on the status,~~
10 ~~effectiveness, performance, and sustainability of the pilot program established under~~
11 ~~this section.~~

12 ~~**SECTION 2. EXPIRATION DATE.** This Act is effective through July 31, 2027, and after that~~
13 ~~date is ineffective.~~

14 **SECTION 1. AMENDMENT.** Subsection 1 of section 12.1-32-02 of the North Dakota
15 Century Code is amended and reenacted as follows:

- 16 1. Every person convicted of an offense who is sentenced by the court must be
17 sentenced to one or a combination of the following alternatives, unless the sentencing
18 alternatives are otherwise specifically provided in the statute defining the offense or
19 sentencing is deferred under subsection 4:
- 20 a. Payment of the reasonable costs of the person's prosecution.
 - 21 b. Probation.
 - 22 c. A term of imprisonment, including intermittent imprisonment:
 - 23 (1) In a state correctional facility in accordance with section 29-27-07, in a
24 regional corrections center, or in a county jail, if convicted of a felony or a
25 class A misdemeanor.
 - 26 (2) In a county jail or in a regional corrections center, if convicted of a class B
27 misdemeanor.
 - 28 (3) In a facility or program deemed appropriate for the treatment of the
29 individual offender, including available community-based or faith-based
30 programs.

1 (4) In the case of persons convicted of an offense who are under eighteen
2 years of age at the time of sentencing, the court is limited to sentencing the
3 minor defendant to a term of imprisonment in the custody of the department
4 of corrections and rehabilitation.

5 d. A fine.

6 e. Restitution for damages resulting from the commission of the offense.

7 f. Restoration of damaged property or other appropriate work detail.

8 g. Commitment to an appropriate licensed public or private institution for treatment
9 of alcoholism, drug addiction, or mental disease or defect.

10 h. Commitment to a sexual offender treatment program.

11 i. Drug court program. A drug court is a district court supervised treatment program
12 approved by the supreme court which combines judicial supervision with alcohol
13 and drug testing and substance use disorder treatment in a licensed treatment
14 program. The supreme court may adopt rules, including rules of procedure, for
15 drug court programs.

16 j. Veterans treatment docket. A veterans treatment docket is a district court
17 supervised docket approved by the supreme court which combines judicial
18 supervision with licensed treatment programs to treat substance use disorders,
19 mental health conditions, behavioral health conditions, traumatic brain injuries,
20 military sexual trauma, and co-occurring disorders. The supreme court may adopt
21 rules, including rules of procedure, for veterans treatment dockets.

22 k. Completion of a restorative justice program. For purposes of this section,
23 "restorative justice program" means a system of justice which focuses on the
24 rehabilitation of offenders through reconciliation with victims and the community
25 at large.

26 l. Mental health court program. A mental health court is a district court supervised
27 treatment program approved by the supreme court which combines judicial
28 supervision with mental health services and treatment in a licensed treatment
29 program. The supreme court may adopt rules, including rules of procedure, for
30 mental health court programs.

1 Except as provided by section 12.1-32-06.1, sentences imposed under this subsection
2 may not exceed in duration the maximum sentences of imprisonment provided by
3 section 12.1-32-01, section 12.1-32-09, or as provided specifically in a statute defining
4 an offense. This subsection does not permit the unconditional discharge of an offender
5 following conviction. A sentence under subdivision e or f must be imposed in the
6 manner provided in section 12.1-32-08. If the person is sentenced to a term of
7 imprisonment, the court may prohibit the person from contacting the victim during the
8 term of imprisonment. For purposes of this subsection, "victim" means victim as
9 defined in section 12.1-34-01.

10 **SECTION 2. AMENDMENT.** Section 19-03.1-23 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **19-03.1-23. Prohibited acts - Penalties.**

- 13 1. Except as authorized by this chapter, it is unlawful for a person to willfully, as defined
14 in section 12.1-02-02, manufacture, deliver, or possess with intent to manufacture or
15 deliver, a controlled substance, or to deliver, distribute, or dispense a controlled
16 substance by means of the internet, but a person who violates section 12-46-24 or
17 12-47-21 may not be prosecuted under this subsection. A person who violates this
18 subsection with respect to:
- 19 a. A controlled substance classified in schedule I or II which is a narcotic drug, or
20 methamphetamine, is guilty of a class B felony.
 - 21 b. Any other controlled substance classified in schedule I, II, or III, or a controlled
22 substance analog, except marijuana or tetrahydrocannabinol is guilty of a class B
23 felony.
 - 24 c. Marijuana, tetrahydrocannabinol, or a substance classified in schedule IV, is
25 guilty of a class C felony.
 - 26 d. A substance classified in schedule V, is guilty of a class A misdemeanor.
- 27 2. A prior misdemeanor conviction under subsection 7 or a prior conviction under
28 subsection 3 or 4 of section 19-03.4-03 may not be considered a prior offense under
29 subsection 1.
- 30 3. Except as authorized by this chapter, it is unlawful for any person to willfully, as
31 defined in section 12.1-02-02, create, deliver, distribute, or dispense a counterfeit

1 substance by means of the internet or any other means, or possess with intent to
2 deliver, a counterfeit substance by means of the internet or any other means, but any
3 person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this
4 subsection. Any person who violates this subsection with respect to:

5 a. A counterfeit substance classified in schedule I, II, or III, is guilty of a class B
6 felony.

7 b. A counterfeit substance classified in schedule IV, is guilty of a class C felony.

8 c. A counterfeit substance classified in schedule V, is guilty of a class A
9 misdemeanor.

10 4. A person at least eighteen years of age who solicits, induces, intimidates, employs,
11 hires, or uses a person under eighteen years of age to aid or assist in the
12 manufacture, delivery, or possession with intent to manufacture or deliver a controlled
13 substance for the purpose of receiving consideration or payment for the manufacture
14 or delivery of any controlled substance is guilty of a class B felony. It is not a defense
15 to a violation of this subsection that the defendant did not know the age of a person
16 protected under this subsection.

17 5. Except for a prior conviction equivalent to a misdemeanor violation of subsection 7 or
18 a prior conviction under subsection 3 or 4 of section 19-03.4-03, a violation of this title
19 or a law of another state or the federal government which is equivalent to an offense
20 with respect to the manufacture, delivery, or intent to deliver a controlled substance
21 under this title committed while the offender was an adult and which resulted in a plea
22 or finding of guilt must be considered a prior offense under subsection 1. The prior
23 offense must be alleged in the complaint, information, or indictment. The plea or
24 finding of guilt for the prior offense must have occurred before the date of the
25 commission of the offense or offenses charged in the complaint, information, or
26 indictment.

27 6. It is unlawful for a person to willfully, as defined in section 12.1-02-02:

28 a. Serve as an agent, intermediary, or other entity that causes the internet to be
29 used to bring together a buyer and seller to engage in the delivery, distribution, or
30 dispensing of a controlled substance in a manner not authorized by this chapter;

31 or

1 b. Offer to fill or refill a prescription for a controlled substance based solely on a
2 consumer's completion of an online medical questionnaire.

3 A person who violates this subsection is guilty of a class C felony.

4 7. a. It is unlawful for any person to willfully, as defined in section 12.1-02-02, possess
5 a controlled substance or a controlled substance analog unless the substance
6 was obtained directly from, or pursuant to, a valid prescription or order of a
7 practitioner while acting in the course of the practitioner's professional practice, or
8 except as otherwise authorized by this chapter, but any person who violates
9 section 12-46-24 or 12-47-21 may not be prosecuted under this subsection.

10 b. Except as otherwise provided in this subsection, any person who violates this
11 subsection is guilty of a class A misdemeanor for the first offense under this
12 subsection and a class C felony for a second or subsequent offense under this
13 subsection.

14 c. If, at the time of the offense the person is in or on the real property comprising a
15 public or private elementary or secondary school or a public career and technical
16 education school, the person is guilty of a class B felony, unless the offense
17 involves marijuana or tetrahydrocannabinol.

18 d. A person who violates this subsection by possessing:

19 (1) Marijuana:

20 (a) In an amount of less than one-half ounce [14.175 grams] is guilty of
21 an infraction.

22 (b) At least one-half ounce [14.175 grams] but not more than 500 grams
23 of marijuana is guilty of a class B misdemeanor.

24 (c) More than 500 grams of marijuana is guilty of a class A misdemeanor.

25 (2) Tetrahydrocannabinol:

26 (a) In an amount less than two grams is guilty of an infraction.

27 (b) At least two grams but not more than six grams of
28 tetrahydrocannabinol is guilty of a class B misdemeanor.

29 (c) More than six grams of tetrahydrocannabinol is guilty of a class A
30 misdemeanor.

- 1 e. If an individual is sentenced to the legal and physical custody of the department
2 of corrections and rehabilitation under this subsection, the department may place
3 the individual in a drug and alcohol treatment program designated by the
4 department. Upon the successful completion of the drug and alcohol treatment
5 program, the department shall release the individual from imprisonment to begin
6 any court-ordered period of probation.
- 7 f. If the individual is not subject to any court-ordered probation, the court shall order
8 the individual to serve the remainder of the sentence of imprisonment on
9 supervised probation subject to the terms and conditions imposed by the court.
- 10 g. Probation under this subsection may include placement in another facility,
11 treatment program, drug court, mental health court, or veterans treatment docket.
12 If an individual is placed in another facility or treatment program upon release
13 from imprisonment, the remainder of the sentence must be considered as time
14 spent in custody.
- 15 h. An individual incarcerated under this subsection as a result of a second probation
16 revocation is not eligible for release from imprisonment upon the successful
17 completion of treatment.
- 18 i. A person who violates this subsection regarding possession of five or fewer
19 capsules, pills, or tablets of a schedule II, III, IV, or V controlled substance or
20 controlled substance analog is guilty of a class A misdemeanor.
- 21 8. Except as provided by section 19-03.1-45, a court may order a person who violates
22 this chapter or chapter 19-03.4 to undergo a drug addiction evaluation by a licensed
23 addiction counselor. The evaluation must indicate the prospects for rehabilitation and
24 whether addiction treatment is required. If ordered, the evaluation must be submitted
25 to the court before imposing punishment for a felony violation or a misdemeanor
26 violation.
- 27 9. If a person pleads guilty or is found guilty of a first offense regarding possession of
28 one ounce [28.35 grams] or less of marijuana or two grams or less of
29 tetrahydrocannabinol and a judgment of guilt is entered, a court, upon motion, shall
30 seal the court record of that conviction if the person is not subsequently convicted

1 within two years of a further violation of this chapter. Once sealed, the court record
2 may not be opened even by order of the court.

3 10. Upon successful completion of a drug court program, mental health court program, or
4 veterans treatment docket, a person who has been convicted of a felony under this
5 section and sentenced to drug court, mental health court, or veterans treatment docket
6 is deemed to have been convicted of a misdemeanor.

7 11. If a person convicted of a misdemeanor under this section is sentenced to drug court,
8 mental health court, or veterans treatment docket and successfully completes a drug
9 court program, mental health court, or veterans treatment docket, the court shall
10 dismiss the case and seal the file in accordance with section 12.1-32-07.2.

11 12. If an individual under the age of twenty-one pleads guilty or is found guilty of a first
12 offense regarding possession of one-half ounce [14.175 grams] or less of marijuana,
13 the court also may sentence the individual to an evidence-based alcohol and drug
14 education program operated under rules adopted by the department of human
15 services under section 50-06-44. For a second or subsequent offense regarding
16 possession of one-half ounce [14.175 grams] or less of marijuana, the court also shall
17 sentence the individual to an evidence-based alcohol and drug education program
18 operated under rules adopted by the department of health and human services under
19 section 50-06-44.

20 **SECTION 3. AMENDMENT.** Section 39-08-01.5 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **39-08-01.5. Partial suspension of sentence for drug court program, mental health**
23 **court program, or veterans treatment docket completion.**

24 1. Notwithstanding section 39-08-01, all but ten days of the minimum mandatory
25 sentence required for a defendant charged with a third or subsequent violation of
26 section 39-08-01 may be suspended on the condition the defendant successfully
27 completes a drug court program, mental health court program, or veterans treatment
28 docket approved by the supreme court.

29 2. Upon successful completion of a drug court program, mental health court program, or
30 veterans treatment docket, a defendant convicted of a felony under section 39-08-01

1 | and sentenced to drug court, [mental health court](#), or veterans treatment docket is
2 | deemed to have been convicted of a misdemeanor.
3 | 3. If a defendant convicted of a misdemeanor under section 39-08-01 is sentenced to
4 | drug court, [mental health court](#), or veterans treatment docket and successfully
5 | completes a drug court program, [mental health court](#), or veterans treatment docket,
6 | the court shall dismiss the case and seal the file in accordance with section
7 | 12.1-32-07.2.