

HOUSE BILL NO. 1122

Introduced by

Representatives Heinert, D. Anderson, Dockter, Ista, Meier, Mock, Porter, Schauer

Senators Dever, Dwyer

1 A BILL for an Act to create and enact section 12.1-16-01.1 of the North Dakota Century Code,
2 relating to mass murder; to amend and reenact subsection 1 of section 12-48.1-02, section
3 12.1-32-09.1, subsection 3 of section 12.1-38-01, subsection 5 of section 15.1-13-26,
4 subsection 3 of section 27-20.3-01, subsection 3 of section 27-20.3-21, and sections 29-04-01
5 and 29-04-02 of the North Dakota Century Code, relating to conditions of eligibility for release
6 programs, sentencing of violent offenders, assumption of risk in crimes, revocation of teacher's
7 license due to a crime against a child, child welfare definitions, petition for termination of
8 parental rights, and the statute of limitations for felonies except murder or mass murder; and to
9 provide a penalty.

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

11 **SECTION 1. AMENDMENT.** Subsection 1 of section 12-48.1-02 of the North Dakota
12 Century Code is amended and reenacted as follows:

13 1. An offender, except an offender sentenced to a penalty of life imprisonment without
14 the opportunity for parole as the result of conviction of a class AA felony under section
15 12.1-20-03 ~~or of~~, murder under section 12.1-16-01, or mass murder under section
16 12.1-16-01.1, may be eligible for programs outside facilities under the control of the
17 department of corrections and rehabilitation when the department determines the
18 offender is not a high security risk, not likely to commit a crime of violence, and is likely
19 to be rehabilitated by such program. An offender may apply to the director of the
20 department for permission to participate in such programs.

21 **SECTION 2.** Section 12.1-16-01.1 of the North Dakota Century Code is created and
22 enacted as follows:

1 **12.1-16-01.1. Mass murder - Facilitating mass murder - Minimum sentencing.**

2 1. A person is guilty of mass murder, a class AA felony, if the person intentionally or
3 knowingly:

4 a. Causes the death of four or more human beings, or causes the death of at least
5 one human being and serious bodily injury to three other human beings:

6 b. Uses a dangerous weapon or firearm to cause the death or serious bodily injury;
7 and

8 c. Causes the death or serious bodily injury at an individual's home, public location,
9 workplace, or a school.

10 2. A person is guilty of a class B felony if that person intentionally or knowingly facilitates,
11 aids, or otherwise provides materials, logistics, or ~~support~~substantial assistance to an
12 individual ~~charged with~~intending to commit mass murder under subsection 1 and that
13 individual, in fact, commits mass murder.

14 3. A person who has pled guilty or nolo contendere to, or has been found guilty of an
15 offense under subsection 1, must be sentenced to a minimum sentence of thirty years
16 imprisonment, with lifetime parole or supervised probation to follow the incarceration.

17 **SECTION 3. AMENDMENT.** Section 12.1-32-09.1 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **12.1-32-09.1. Sentencing of violent offenders.**

20 1. Except as provided under section 12-48.1-02 and pursuant to rules adopted by the
21 department of corrections and rehabilitation, an offender who is convicted of a crime in
22 violation of section 12.1-16-01, ~~subsection 1 of section 12.1-16-01.1,~~ 12.1-16-02,
23 subsection 2 of section 12.1-17-02, section 12.1-18-01, subdivision a of subsection 1
24 or subdivision b of subsection 2 of section 12.1-20-03, section 12.1-22-01,
25 subdivision b of subsection 2 of section 12.1-22-02, or an attempt to commit the
26 offenses, and who receives a sentence of imprisonment is not eligible for release from
27 confinement on any basis until eighty-five percent of the sentence imposed by the
28 court has been served or the sentence is commuted.

29 2. In the case of an offender who is sentenced to a term of life imprisonment with
30 opportunity for parole under subsection 1 of section 12.1-32-01, the term "sentence
31 imposed" means the remaining life expectancy of the offender on the date of

1 sentencing. The remaining life expectancy of the offender must be calculated on the
2 date of sentencing, computed by reference to a recognized mortality table as
3 established by rule by the supreme court.

4 3. Notwithstanding this section, an offender sentenced under subsection 1 of section
5 12.1-32-01 may not be eligible for parole until the requirements of that subsection
6 have been met.

7 4. An offender who is convicted of a class C felony in violation of section 12.1-17-02, or
8 an attempt to commit the offense, and who has received a sentence of imprisonment
9 or a sentence of imprisonment upon revocation of probation before August 1, 2015, is
10 eligible to have the offender's sentence considered by the parole board.

11 5. Notwithstanding subsection 4, this section does not apply to a sentence imposed upon
12 revocation of probation.

13 **SECTION 4. AMENDMENT.** Subsection 3 of section 12.1-38-01 of the North Dakota
14 Century Code is amended and reenacted as follows:

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

21 **SECTION 5. AMENDMENT.** Subsection 5 of section 15.1-13-26 of the North Dakota
22 Century Code is amended and reenacted as follows:

23 5. As used in this section:

24 a. "Conviction" means a finding of guilt, a guilty plea, a plea of no contest, a plea of
25 nolo contendere, a judgment of conviction even though the court suspended
26 execution of sentence in accordance with subsection 3 of section 12.1-32-02, or
27 a deferred imposition of sentence in accordance with subsection 4 of section
28 12.1-32-02 or an equivalent statute. The term does not include a finding of guilt
29 overturned on appeal.

30 b. "Crime against a child" means violation of section 12.1-16-01, 12.1-16-01.1,
31 12.1-16-02, 12.1-16-03, 12.1-16-04, 12.1-17-01.1, 12.1-17-02, 12.1-17-03,

- 1 12.1-17-04, 12.1-17-05, 12.1-17-06, 12.1-17-07, 12.1-17-07.1, 12.1-17-10,
2 12.1-18-01, 12.1-18-02, 12.1-18-03, 12.1-29-01, 12.1-29-02, or 12.1-29-03, or an
3 equivalent ordinance, in which the victim is a minor or is otherwise of the age
4 required for the act to be a crime or an attempt to commit these offenses.
- 5 c. "Sexual offense" means a violation of section 12.1-20-03, 12.1-20-03.1,
6 12.1-20-04, 12.1-20-05, 12.1-20-06, 12.1-20-07, 12.1-20-11, or 12.1-20-12.2, or
7 chapter 12.1-27.2, or an equivalent ordinance.

8 **SECTION 6. AMENDMENT.** Subsection 3 of section 27-20.3-01 of the North Dakota
9 Century Code is amended and reenacted as follows:

- 10 3. "Aggravated circumstances" means circumstances in which a parent:
- 11 a. Abandons, tortures, chronically abuses, or sexually abuses a child;
- 12 b. Fails to make substantial, meaningful efforts to secure treatment for the parent's
13 addiction, mental illness, behavior disorder, or any combination of those
14 conditions for one year;
- 15 c. Engages in conduct prohibited under sections 12.1-20-01 through 12.1-20-08 or
16 chapter 12.1-27.2, in which a child is the victim or intended victim;
- 17 d. Engages in conduct that constitutes one of the following crimes, or of an offense
18 under the laws of another jurisdiction which requires proof of substantially similar
19 elements:
- 20 (1) A violation of section 12.1-16-01, 12.1-16-01.1, 12.1-16-02, 12.1-16-03, or
21 14-09-22 in which the victim is another child of the parent;
- 22 (2) Aiding, abetting, attempting, conspiring, or soliciting a violation of section
23 12.1-16-01, 12.1-16-01.1, 12.1-16-02, or 12.1-16-03 in which the victim is a
24 child of the parent; or
- 25 (3) A violation of section 12.1-17-02 in which the victim is a child of the parent
26 and has suffered serious bodily injury;
- 27 e. Engages or attempts to engage in conduct, prohibited under sections 12.1-17-01
28 through 12.1-17-04, in which a child is the victim or intended victim;
- 29 f. In the case of a child age nine or older, has been incarcerated under a sentence
30 for which the latest release date is after the child's age of majority;

- 1 g. Subjects the child to prenatal exposure to chronic or severe use of alcohol or any
2 controlled substance as defined in chapter 19-03.1 in a manner not lawfully
3 prescribed by a practitioner; or
4 h. Allows the child to be present in an environment subjecting the child to exposure
5 to a controlled substance, chemical substance, or drug paraphernalia as
6 prohibited by section 19-03.1-22.2.

7 **SECTION 7. AMENDMENT.** Subsection 3 of section 27-20.3-21 of the North Dakota
8 Century Code is amended and reenacted as follows:

9 3. Except as provided in subsection 4, a petition for termination of parental rights must be
10 filed:

- 11 a. If the child has been in foster care, in the custody of the department, human
12 service zone, or, in cases arising out of an adjudication by the court of a child in
13 need of services, the division of juvenile services, for at least four hundred fifty
14 out of the previous six hundred sixty nights;
15 b. Within sixty days after the court has found the child to be an abandoned infant; or
16 c. Within sixty days after the court has convicted the child's parent of one of the
17 following crimes, or of an offense under the laws of another jurisdiction which
18 requires proof of substantially similar elements:

- 19 (1) A violation of section 12.1-16-01, 12.1-16-01.1, 12.1-16-02, or 12.1-16-03,
20 or subsection 1 of section 14-09-22 in which the victim is another child of
21 the parent;
22 (2) Aiding, abetting, attempting, conspiring, or soliciting a violation of section
23 12.1-16-01, 12.1-16-01.1, 12.1-16-02, or 12.1-16-03 in which the victim is a
24 child of the parent; or
25 (3) A violation of section 12.1-17-02 in which the victim is a child of the parent
26 and has suffered serious bodily injury.

27 **SECTION 8. AMENDMENT.** Section 29-04-01 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **29-04-01. Prosecution for murder or mass murder not limited.**

30 There is no limitation of the time within which a prosecution for murder or mass murder
31 must be commenced. It may be commenced at any time after the death of the person killed.

1 **SECTION 9. AMENDMENT.** Section 29-04-02 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **29-04-02. Prosecution for felony other than murder or mass murder within three**
4 **years.**

5 Except as otherwise provided by law, a prosecution for any felony other than murder or
6 mass murder must be commenced within three years after its commission. Prosecution of
7 felony offenses under chapter 12.1-23 or 50-24.8 must be commenced within the later of three
8 years of commission of the last act that is an element of the offense, three years of discovery of
9 the stolen property, or three years of discovery of the loss of the property or services. Nothing in
10 this section prevents a person prosecuted for murder from being found guilty of any included
11 offense and punished accordingly.