

Sixty-eighth  
Legislative Assembly  
of North Dakota

ENGROSSED SENATE BILL NO. 2107

Introduced by

Judiciary Committee

(At the request of the Attorney General)

1 A BILL for an Act to create and enact sections 12.1-17-14 and 62.1-02-15 of the North Dakota  
2 Century Code, relating to shooting offenses and drug trafficking; to amend and reenact sections  
3 12.1-08-02, 12.1-17-01, 12.1-32-02.1, 12.1-32-07.4, 39-10-71, and 62.1-02-01 of the North  
4 Dakota Century Code, relating to sentences for crimes committed with firearms and for fleeing  
5 law enforcement; and to provide a penalty.

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

7 **SECTION 1. AMENDMENT.** Section 12.1-08-02 of the North Dakota Century Code is  
8 amended and reenacted as follows:

9 **12.1-08-02. Preventing arrest or discharge of other duties.**

- 10 1. A person is guilty of a class A misdemeanor if, with intent to prevent a public servant  
11 from effecting an arrest of himself or another for a misdemeanor or infraction, or from  
12 discharging any other official duty, he creates a substantial risk of bodily injury to the  
13 public servant or to anyone except himself, or employs means justifying or requiring  
14 substantial force to overcome resistance to effecting the arrest or the discharge of the  
15 duty. A person is guilty of a class C felony if, with intent to prevent a public servant  
16 from effecting an arrest of himself or another for a class A, B, or C felony, he creates a  
17 substantial risk of bodily injury to the public servant or to anyone except himself, or  
18 employs means justifying or requiring substantial force to overcome resistance to  
19 effecting such an arrest.
- 20 2. It is a defense to a prosecution under this section that the public servant was not  
21 acting lawfully, but it is no defense that the defendant mistakenly believed that the  
22 public servant was not acting lawfully. A public servant executing a warrant or other  
23 process in good faith and under color of law shall be deemed to be acting lawfully.

1       3. A conviction under this section carries a presumption of a jail sentence of at least  
2       fourteen days and, if there is an underlying conviction, the presumed jail sentence may  
3       not be served concurrently to any jail sentence for the underlying conviction. If the  
4       sentencing court does not impose at least the presumed minimum term of  
5       imprisonment, the court shall justify the reason for a departure from the presumptive  
6       jail sentence within the judgment.

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

9       **12.1-17-01. Simple assault.**

- 10       1. A person is guilty of an offense if that person:
- 11           a. Willfully causes bodily injury to another human being; or
- 12           b. Negligently causes bodily injury to another human being by means of a firearm,
- 13                 destructive device, or other weapon, the use of which against a human being is
- 14                 likely to cause death or serious bodily injury.
- 15       2. The offense is:
- 16           a. A class C felony when the victim is a peace officer or correctional institution
- 17                 employee acting in an official capacity, which the actor knows to be a fact; an
- 18                 employee of the state hospital acting in the course and scope of employment,
- 19                 which the actor knows to be a fact, and the actor is an individual committed to or
- 20                 detained at the state hospital pursuant to chapter 25-03.3; a person engaged in a
- 21                 judicial proceeding; or a member of a municipal or volunteer fire department or
- 22                 emergency medical services personnel unit or emergency department worker in
- 23                 the performance of the member's duties.
- 24           b. A class B misdemeanor except as provided in subdivision a.
- 25       3. A conviction under subdivision a of subsection 2 of this section carries a presumption  
26       of a jail sentence of at least thirty days and if there is an underlying conviction the  
27       presumption may not be served concurrently to any jail sentence for the underlying  
28       conviction. If the sentencing court does not impose at least the presumptive minimum  
29       term of imprisonment, the court shall justify the reasoning for a departure from the  
30       presumptive jail sentence within the judgment.

1       **SECTION 3.** Section 12.1-17-14 of the North Dakota Century Code is created and enacted  
2 as follows:

3       **12.1-17-14. Shooting at inhabited dwelling or camper; or occupied structure, vehicle,**  
4 **or aircraft - Penalty.**

5       Any person who willfully discharges a firearm at an inhabited dwelling, occupied structure,  
6 occupied motor vehicle, occupied aircraft, or inhabited camper is guilty of a class B felony. As  
7 used in this section, "inhabited" means currently used for dwelling purposes, whether occupied  
8 or not.

9       **SECTION 4. AMENDMENT.** Section 12.1-32-02.1 of the North Dakota Century Code is  
10 amended and reenacted as follows:

11       **12.1-32-02.1. Mandatory prison terms for armed offenders.**

- 12       1. Notwithstanding any other provision of this title, a term of imprisonment must be  
13 imposed upon an offender and served without benefit of parole when:
- 14       a. In the course of committing an offense, the offender inflicts or attempts to inflict  
15 bodily injury upon another, threatens or menaces another with imminent bodily  
16 injury with a dangerous weapon, explosive, or destructive device, ~~or firearm~~; or  
17       b. The offender possesses or has within immediate reach and control a dangerous  
18 weapon, explosive, or destructive device, ~~or firearm~~ while in the course of  
19 committing any felony offense under subsection 1, 3, or 7 of section 19-03.1-23.
- 20       2. This requirement applies only when possession of a dangerous weapon, explosive, or  
21 destructive device, ~~or firearm~~ has been charged and admitted or found to be true in  
22 the manner provided by law, and must be imposed as follows:
- 23       a. If the offense for which the offender is convicted is a class AA, class A, or class B  
24 felony, the court shall impose a minimum sentence of four years' imprisonment.  
25       b. If the offense for which the offender is convicted is a class C felony, the court  
26 shall impose a minimum sentence of two years' imprisonment.
- 27       3. This section applies even when being armed is an element of the offense for which the  
28 offender is convicted.
- 29       4. An offender serving a sentence subject to this section may be eligible to participate in  
30 a release program under section 12-48.1-02 during the last six months of the  
31 offender's sentence.

1       **SECTION 5. AMENDMENT.** Section 12.1-32-07.4 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3       **12.1-32-07.4. Presumptive probation.**

- 4       1. The sentencing court shall sentence an individual who has pled guilty to, or has been  
5 found guilty of, a class C felony offense or class A misdemeanor offense to a term of  
6 probation at the time of initial sentencing, except for an offense involving domestic  
7 violence; an offense subject to registration under section 12.1-32-15; an offense  
8 involving a firearm or dangerous weapon, explosive, or incendiary device; an offense  
9 in violation of section 12.1-08-02, subdivision a of subsection 2 of section 12.1-17-01,  
10 or section 39-10-71; or if a mandatory term of incarceration is required by law.
- 11       2. The sentencing court may impose a sentence of imprisonment if the sentencing court  
12 finds there are aggravating factors present to justify a departure from presumptive  
13 probation. Aggravating factors include:
- 14       a. That the individual has pled guilty to, or has been found guilty of, a felony  
15 offense or class A misdemeanor offense prior to the date of the commission of  
16 the offense or offenses charged in the complaint, information, or indictment;
- 17       b. The age and vulnerability of the victim, whether the individual was in a position of  
18 responsibility or trust over the victim, or whether the individual abused a public  
19 position of responsibility or trust; or
- 20       c. If the individual used threats or coercion in the commission of the offense.
- 21       3. This section does not preclude the sentencing court from deferring imposition of  
22 sentence in accordance with subsection 4 of section 12.1-32-02 or sentencing an  
23 individual to a term of incarceration with credit for time spent in custody if execution of  
24 the sentence is suspended.

25       **SECTION 6. AMENDMENT.** Section 39-10-71 of the North Dakota Century Code is  
26 amended and reenacted as follows:

27       **39-10-71. Fleeing or attempting to elude a peace officer - Penalty.**

- 28       1. A driver of a motor vehicle who willfully fails or refuses to bring the vehicle to a stop, or  
29 who otherwise flees or attempts to elude, in any manner, a pursuing police vehicle or  
30 peace officer, when given a visual or audible signal to bring the vehicle to a stop, is  
31 guilty of a:

- 1           a.    Class A misdemeanor for a first offense and a class C felony for a subsequent  
2                    offense within three years;
- 3           b.    Class C felony if the driver violates this section while willfully fleeing during or  
4                    after the commission of a felony; or
- 5           c.    Class C felony if, at any time during the flight or pursuit, the driver willfully  
6                    operates the vehicle in a manner constituting an inherent risk of death or serious  
7                    bodily injury to a third person.
- 8        2.    A signal complies with this section if the signal is perceptible to the driver and:
  - 9           a.    If given from a vehicle, the signal is given by hand, voice, emergency light, or  
10                   siren, and the stopping vehicle is appropriately marked showing it to be an official  
11                   police vehicle; or
  - 12           b.    If not given from a vehicle, the signal is given by hand, voice, emergency light, or  
13                   siren, and the officer is in uniform or prominently displays the officer's badge of  
14                   office.
- 15        3.    A conviction under this section carries a presumption of a jail sentence of at least thirty  
16                   days and, if there is an underlying conviction, the presumed jail sentence may not be  
17                   served concurrently to any jail sentence for the underlying conviction. If the sentencing  
18                   court does not impose at least the presumptive minimum term of imprisonment, the  
19                   court shall justify the reason for a departure from the presumptive jail sentence within  
20                   the judgment.

21        **SECTION 7. AMENDMENT.** Section 62.1-02-01 of the North Dakota Century Code is  
22    amended and reenacted as follows:

23        **62.1-02-01. Persons who are not to possess firearms - Penalty.**

- 24        1.    a.    A person who has been convicted anywhere of a felony offense involving  
25                    violence or intimidation in violation of chapters 12.1-16 through 12.1-25 or an  
26                    equivalent felony offense of another state or the federal government is prohibited  
27                    from owning a firearm or having one in possession or under control from the date  
28                    of conviction and continuing for a period of ten years after the date of conviction  
29                    or the date of release from incarceration, parole, or probation, whichever is latest.
- 30        b.    A person who has been convicted anywhere of a felony offense of this or another  
31                    state or the federal government not provided for in subdivision a or who has been

1 convicted of a class A misdemeanor offense involving violence or intimidation in  
2 violation of chapters 12.1-16 through 12.1-25 or an equivalent offense of another  
3 state or the federal government and the offense was committed while using or  
4 possessing a firearm, a dangerous weapon, or, as defined in section 12.1-01-04,  
5 a destructive device or an explosive, is prohibited from owning a firearm or  
6 having one in possession or under control from the date of conviction and  
7 continuing for a period of five years after the date of conviction or the date of  
8 release from incarceration, parole, or probation, whichever is latest.

- 9 c. A person who is or has ever been diagnosed and confined or committed to a  
10 hospital or other institution in this state or elsewhere by a court of competent  
11 jurisdiction, other than a person who has had the petition that provided the basis  
12 for the diagnosis, confinement, or commitment dismissed under section  
13 25-03.1-17, 25-03.1-18, or 25-03.1-19, or equivalent statutes of another  
14 jurisdiction, as a person requiring treatment as defined in section 25-03.1-02, or  
15 as a mentally deficient individual, is prohibited from purchasing a firearm or  
16 having one in possession or under control. This limitation does not apply to a  
17 person who has not suffered from the disability for the previous three years or  
18 who has successfully petitioned for relief under section 62.1-02-01.2.
- 19 d. A person under the age of eighteen years may not possess a handgun except  
20 that such a person, while under the direct supervision of an adult, may possess a  
21 handgun for the purposes of firearm safety training, target shooting, or hunting.
- 22 e. A person who is a fugitive from justice is prohibited from owning a firearm or  
23 having a firearm in possession or under control.
- 24 f. A person who, being an alien, is illegally or unlawfully in the United States is  
25 prohibited from owning a firearm or having a firearm in possession or under  
26 control.
- 27 g. A person who has been convicted in any court of a misdemeanor crime of  
28 domestic violence is prohibited from owning a firearm or having a firearm in  
29 possession or under control. For the purposes of this section a "misdemeanor  
30 crime of domestic violence" means the willful infliction of bodily injury against an  
31 individual who:

- 1           (1) Is a current or former spouse or intimate partner of the victim, or individual  
2                     similarly situated to a spouse of the victim;
- 3           (2) Is cohabitating, or has cohabitated, with the victim as a spouse or intimate  
4                     partner; or
- 5           (3) Shares a child in common with the victim.
- 6        h. A person who has been discharged from the armed forces under dishonorable  
7             conditions is prohibited from owning a firearm or having a firearm in possession  
8             or under control.
- 9        i. A person is prohibited from owning a firearm or having a firearm in possession or  
10           under control if that person is subject to a court order that:
- 11           (1) Was issued after a hearing of which such person received actual notice, and  
12                     at which such person had an opportunity to participate;
- 13           (2) Restrains the person from harassing, stalking, or threatening an intimate  
14                     partner of the person or child of the intimate partner or person, or engaging  
15                     in other conduct that would place an intimate partner in reasonable fear of  
16                     bodily injury to the partner or child; and
- 17           (3) (a) Includes a finding the person represents a credible threat to the  
18                     physical safety of the intimate partner or child; or
- 19                 (b) By its terms explicitly prohibits the use, attempted use, or threatened  
20                     use of physical force against the intimate partner or child that would  
21                     reasonably be expected to cause bodily injury.
- 22        2. A person who violates subdivision a or b, e, f, g, h, or i of subsection 1 is guilty of a  
23             class C felony, and a person who violates subdivision c or d of subsection 1 is guilty of  
24             a class A misdemeanor.
- 25        3. A person who violates subdivision a or b of subsection 1 and has three or more prior  
26             felony convictions on separate occasions under any provisions in chapter 12.1-16,  
27             12.1-17, 12.1-18, or 12.1-20, section 12.1-21-01, chapter 12.1-22, subsection 1 of  
28             19-03.1-23, or a similar offense from another court in North Dakota or a court of record  
29             in the United States, is guilty of a class B felony, and the court shall impose a  
30             minimum sentence of five years' imprisonment.

- 1     ~~2.4.~~ For the purposes of this section, "conviction" means a determination that the person  
2           committed one of the above-mentioned crimes upon a verdict of guilt, a plea of guilty,  
3           or a plea of nolo contendere even though:
- 4           a. The court suspended execution of sentence in accordance with subsection 3 of  
5           section 12.1-32-02;
- 6           b. The court deferred imposition of sentence in accordance with subsection 4 of  
7           section 12.1-32-02;
- 8           c. The court placed the person on probation;
- 9           d. The person's conviction has been reduced in accordance with subsection 9 of  
10          section 12.1-32-02 or section 12.1-32-07.1;
- 11          e. Sentence dispositions, sentence reductions, or offense determinations equivalent  
12          to this section were imposed or granted by a court, board, agency, or law of  
13          another state or the federal government; or
- 14          f. The person committed an offense equivalent to an offense described in  
15          subdivision a or b of subsection 1 when that person was subject to juvenile  
16          adjudication or proceedings and a determination of a court under chapter 27-20.4  
17          or of a court of another state or the federal government was made that the  
18          person committed the delinquent act or offense.
- 19     ~~3.5.~~ For purposes of subsection 1, unless the pardon, expungement, or restoration of civil  
20           rights expressly provides that a person may not ship, transport, possess, or receive  
21           firearms, a person is not considered to have been convicted of a crime under  
22           subdivision a, b, or g of subsection 1 if:
- 23           a. The conviction has been expunged or set aside; or
- 24           b. The conviction is for an offense for which the person has been pardoned or has  
25           had civil rights restored if the law of the applicable jurisdiction provides for the  
26           loss of civil rights for the offense.
- 27     6. A felon who is not sentenced under section 12.1-32-09.1 may possess a rifle that has  
28           a barrel sixteen inches [40.72 centimeters] or longer or a shotgun that has a barrel  
29           eighteen inches [45.72 centimeters] or longer and which is one of the following:
- 30           a. A firearm, including any firearm with a matchlock, flintlock, percussion cap, or  
31           similar type of ignition system, manufactured before 1899.



- 1           b. A replica of any firearm described in subdivision a, if the replica is not designed  
2           or redesigned for using rimfire or conventional centerfire fixed ammunition or  
3           uses rimfire or conventional centerfire fixed ammunition that is no longer  
4           manufactured in the United States and which is not readily available in the  
5           ordinary channels of commercial trade.
- 6           c. A muzzleloading rifle or muzzleloading shotgun designed to use black powder or  
7           a black powder substitute and which cannot use fixed ammunition.

8           **SECTION 8.** Section 62.1-02-15 of the North Dakota Century Code is created and enacted  
9 as follows:

10           **62.1-02-15. Possession of a firearm in furtherance of a felony crime of violence or**  
11 **drug trafficking crime.**

- 12           1. Any person who, during and in relation to any felony crime of violence or drug  
13 trafficking crime, uses or carries a firearm, or who, in furtherance of any such crime,  
14 possesses a firearm, is guilty of a class B felony and, consecutive to the punishment  
15 provided for the felony crime of violence or drug trafficking crime:
- 16           a. Must be sentenced to a term of imprisonment of not less than three years;  
17           b. Must be sentenced to a term of imprisonment of not less than five years if the  
18 firearm is brandished; or
- 19           c. Must be sentenced to a term of imprisonment of not less than seven years if the  
20 firearm is discharged.
- 21           2. If the firearm possessed by a person convicted of a violation of this section is a short-  
22 barreled rifle, short-barreled shotgun, machine gun, submachine gun, or fully  
23 automatic rifle, the person must be sentenced to a term of imprisonment of not less  
24 than seven years.
- 25           3. For a violation of this section which occurs after a previous conviction under this  
26 section has become final, the person is guilty of a class A felony and must be  
27 sentenced to a term of imprisonment of not less than ten years.
- 28           4. Notwithstanding any other provision of law:
- 29           a. A term of imprisonment imposed on a person under this section may not run  
30 concurrently with any other term of imprisonment imposed on the person,  
31 including any term of imprisonment imposed for the felony crime of violence or

- 1                   drug trafficking crime during which the firearm was used, carried, or possessed;  
2                   and  
3                   b. An offender who is convicted of a crime under this section is not eligible for  
4                   release from confinement on any basis until eighty-five percent of the sentence  
5                   imposed by the court has been served or the sentence is commuted. For  
6                   purposes of this subsection, confinement does not include placement in a  
7                   halfway house, treatment facility, or other community placement.
- 8                   5. For purposes of this section, "drug trafficking crime" means a violation of subsection 1  
9                   or 3 of section 19-03.1-23.
- 10                  6. For the purpose of this section, "felony crime of violence" means a felony violation of  
11                  section 12.1-16-01, 12.1-16-02, 12.1-16-03, 12.1-17-01.2, 12.1-17-02, 12.1-17-03,  
12                  12.1-17-04, 12.1-17-12, 12.1-18-01, 12.1-18-02, 12.1-20-03, 12.1-20-04, 12.1-20-07,  
13                  12.1-20-12.3, 12.1-21-01, 12.1-21-02, 12.1-22-01, or 12.1-22-02.
- 14                  7. For purposes of this section, "brandish" means, with respect to a firearm, to display all  
15                  or part of the firearm, or otherwise make the presence of the firearm known to another  
16                  individual, in order to intimidate that individual, regardless of whether the firearm is  
17                  directly visible to that individual.