

Sixty-eighth
Legislative Assembly
of North Dakota

REENGROSSED 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, 12.1-17-03, 12.1-32-02.1, and 12.1-32-07.4, 39-10-71, and 62.1-02-01~~ of
4 the North Dakota Century Code, relating to ~~sentences for crimes committed with firearms and~~
5 ~~for fleeing law enforcement~~ reckless endangerment, mandatory prison terms for armed
6 offenders, and presumptive probation; to provide for a legislative management study; and to
7 provide a penalty.

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

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

11 ~~**12.1-08-02. Preventing arrest or discharge of other duties.**~~

12 ~~1. A person is guilty of a class A misdemeanor if, with intent to prevent a public servant~~
13 ~~from effecting an arrest of himself or another for a misdemeanor or infraction, or from~~
14 ~~discharging any other official duty, he creates a substantial risk of bodily injury to the~~
15 ~~public servant or to anyone except himself, or employs means justifying or requiring~~
16 ~~substantial force to overcome resistance to effecting the arrest or the discharge of the~~
17 ~~duty. A person is guilty of a class C felony if, with intent to prevent a public servant~~
18 ~~from effecting an arrest of himself or another for a class A, B, or C felony, he creates a~~
19 ~~substantial risk of bodily injury to the public servant or to anyone except himself, or~~
20 ~~employs means justifying or requiring substantial force to overcome resistance to~~
21 ~~effecting such an arrest.~~

22 ~~2. It is a defense to a prosecution under this section that the public servant was not~~
23 ~~acting lawfully, but it is no defense that the defendant mistakenly believed that the~~

1 public servant was not acting lawfully. A public servant executing a warrant or other
2 process in good faith and under color of law shall be deemed to be acting lawfully.
3 ~~3. A conviction under this section carries a presumption of a jail sentence of at least~~
4 ~~fourteen days and, if there is an underlying conviction, the presumed jail sentence may~~
5 ~~not be served concurrently to any jail sentence for the underlying conviction. If the~~
6 ~~sentencing court does not impose at least the presumed minimum term of~~
7 ~~imprisonment, the court shall justify the reason for a departure from the presumptive~~
8 ~~jail sentence within the judgment.~~

9 ~~SECTION 2. AMENDMENT. Section 12.1-17-01 of the North Dakota Century Code is~~
10 ~~amended and reenacted as follows:~~

11 ~~12.1-17-01. Simple assault.~~

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

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

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

17 ~~2. The offense is:~~

18 ~~a. A class C felony when the victim is a peace officer or correctional institution~~
19 ~~employee acting in an official capacity, which the actor knows to be a fact; an~~
20 ~~employee of the state hospital acting in the course and scope of employment,~~
21 ~~which the actor knows to be a fact, and the actor is an individual committed to or~~
22 ~~detained at the state hospital pursuant to chapter 25-03.3; a person engaged in a~~
23 ~~judicial proceeding; or a member of a municipal or volunteer fire department or~~
24 ~~emergency medical services personnel unit or emergency department worker in~~
25 ~~the performance of the member's duties.~~

26 ~~b. A class B misdemeanor except as provided in subdivision a.~~

27 ~~3. A conviction under subdivision a of subsection 2 of this section carries a~~
28 ~~presumption of a jail sentence of at least thirty days and if there is an underlying~~
29 ~~conviction the presumption may not be served concurrently to any jail sentence for the~~
30 ~~underlying conviction. If the sentencing court does not impose at least the presumptive~~

1 ~~minimum term of imprisonment, the court shall justify the reasoning for a departure~~
2 ~~from the presumptive jail sentence within the judgment.~~

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

5 ~~— 12.1-17-14. Shooting at inhabited dwelling or camper, or occupied structure, vehicle,~~
6 ~~or aircraft – Penalty.~~

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

11 **SECTION 1. AMENDMENT.** Section 12.1-17-03 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **12.1-17-03. Reckless endangerment.**

14 A person is guilty of an offense if ~~he~~the person creates a substantial risk of serious bodily
15 injury or death to another. The offense is a class B felony if the offense is committed by
16 discharging a firearm, and a class C felony if the circumstances manifest histhe person's
17 extreme indifference to the value of human life. Otherwise it is a class A misdemeanor. There is
18 risk within the meaning of this section if the potential for harm exists, whether or not a particular
19 person's safety is actually jeopardized.

20 **SECTION 2. AMENDMENT.** Section 12.1-32-02.1 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **12.1-32-02.1. Mandatory prison terms for armed offenders.**

- 23 1. Notwithstanding any other provision of this title, a term of imprisonment must be
24 imposed upon an offender and served without benefit of parole when:
- 25 a. In the course of committing an offense, the offender inflicts or attempts to inflict
26 bodily injury upon another, threatens or menaces another with imminent bodily
27 injury with a dangerous weapon, explosive, ~~or~~ destructive device, ~~or~~ firearm; or
 - 28 b. The offender possesses or has within immediate reach and control a dangerous
29 weapon, explosive, ~~or~~ destructive device, ~~or~~ firearm while in the course of
30 committing any felony offense under subsection 1, 3, or 7 of section 19-03.1-23.

1 2. This requirement applies only when possession of a dangerous weapon, explosive, ~~or~~
2 destructive device, or firearm has been charged and admitted or found to be true in
3 the manner provided by law, and must be imposed as follows:

4 a. If the offense for which the offender is convicted is a class AA, class A, or class B
5 felony, the court shall impose a minimum sentence of four years' imprisonment.

6 b. If the offense for which the offender is convicted is a class C felony, the court
7 shall impose a minimum sentence of two years' imprisonment.

8 c. If the court finds the offender is a special dangerous or habitual offender under
9 subdivision a, b, c, or d of subsection 1 of section 12.1-32-09 and the offender
10 violates subsection 1 of this section, the court shall impose a minimum sentence
11 of ten years' imprisonment, if the offense is a class AA, class A, or class B felony.
12 If the offense is a class C felony, the court shall impose a minimum sentence of
13 seven years' imprisonment. An offender sentenced under this subdivision is not
14 eligible for parole any earlier than eighteen months before the expiration of the
15 mandatory sentence.

16 3. This section applies even when being armed is an element of the offense for which the
17 offender is convicted.

18 4. ~~An~~Unless the offender is sentenced under subdivision c of subsection 2, an offender
19 serving a sentence subject to this section may be eligible to participate in a release
20 program under section 12-48.1-02 during the last six months of the offender's
21 sentence.

22 **SECTION 3. AMENDMENT.** Section 12.1-32-07.4 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **12.1-32-07.4. Presumptive probation.**

25 1. The sentencing court shall sentence an individual who has pled guilty to, or has been
26 found guilty of, a class C felony offense or class A misdemeanor offense to a term of
27 probation at the time of initial sentencing, except for an offense involving domestic
28 violence; an offense subject to registration under section 12.1-32-15; an offense
29 involving a firearm or dangerous weapon, explosive, or incendiary device; an offense
30 in violation of section 12.1-08-02, subdivision a of subsection 2 of section 12.1-17-01,

- 1 section 12.1-17-03, or section 39-10-71; or if a mandatory term of incarceration is
2 required by law.
- 3 2. The sentencing court may impose a sentence of imprisonment if the sentencing court
4 finds there are aggravating factors present to justify a departure from presumptive
5 probation. Aggravating factors include:
- 6 a. That the individual has plead guilty to, or has been found guilty of, a felony
7 offense or class A misdemeanor offense prior to the date of the commission of
8 the offense or offenses charged in the complaint, information, or indictment;
- 9 b. The age and vulnerability of the victim, whether the individual was in a position of
10 responsibility or trust over the victim, or whether the individual abused a public
11 position of responsibility or trust; or
- 12 c. If the individual used threats or coercion in the commission of the offense.
- 13 3. This section does not preclude the sentencing court from deferring imposition of
14 sentence in accordance with subsection 4 of section 12.1-32-02 or sentencing an
15 individual to a term of incarceration with credit for time spent in custody if execution of
16 the sentence is suspended.

17 ~~SECTION 4. AMENDMENT. Section 39-10-71 of the North Dakota Century Code is~~
18 ~~amended and reenacted as follows:~~

19 ~~39-10-71. Fleeing or attempting to elude a peace officer - Penalty.~~

20 ~~1. A driver of a motor vehicle who willfully fails or refuses to bring the vehicle to a stop, or~~
21 ~~who otherwise flees or attempts to elude, in any manner, a pursuing police vehicle or~~
22 ~~peace officer, when given a visual or audible signal to bring the vehicle to a stop, is~~
23 ~~guilty of a:~~

24 ~~a. Class A misdemeanor for a first offense and a class C felony for a subsequent~~
25 ~~offense within three years;~~

26 ~~b. Class C felony if the driver violates this section while willfully fleeing during or~~
27 ~~after the commission of a felony; or~~

28 ~~c. Class C felony if, at any time during the flight or pursuit, the driver willfully~~
29 ~~operates the vehicle in a manner constituting an inherent risk of death or serious~~
30 ~~bodily injury to a third person.~~

31 ~~2. A signal complies with this section if the signal is perceptible to the driver and:~~

1 ~~a. If given from a vehicle, the signal is given by hand, voice, emergency light, or~~
2 ~~siren, and the stopping vehicle is appropriately marked showing it to be an official~~
3 ~~police vehicle; or~~

4 ~~b. If not given from a vehicle, the signal is given by hand, voice, emergency light, or~~
5 ~~siren, and the officer is in uniform or prominently displays the officer's badge of~~
6 ~~office.~~

7 ~~3. A conviction under this section carries a presumption of a jail sentence of at least~~
8 ~~thirty days and, if there is an underlying conviction, the presumed jail sentence may~~
9 ~~not be served concurrently to any jail sentence for the underlying conviction. If the~~
10 ~~sentencing court does not impose at least the presumptive minimum term of~~
11 ~~imprisonment, the court shall justify the reason for a departure from the presumptive~~
12 ~~jail sentence within the judgment.~~

13 ~~SECTION 5. AMENDMENT. Section 62.1-02-01 of the North Dakota Century Code is~~
14 ~~amended and reenacted as follows:~~

15 ~~62.1-02-01. Persons who are not to possess firearms - Penalty.~~

16 ~~1. a. A person who has been convicted anywhere of a felony offense involving~~
17 ~~violence or intimidation in violation of chapters 12.1-16 through 12.1-25 or an~~
18 ~~equivalent felony offense of another state or the federal government is prohibited~~
19 ~~from owning a firearm or having one in possession or under control from the date~~
20 ~~of conviction and continuing for a period of ten years after the date of conviction~~
21 ~~or the date of release from incarceration, parole, or probation, whichever is latest.~~

22 ~~b. A person who has been convicted anywhere of a felony offense of this or another~~
23 ~~state or the federal government not provided for in subdivision a or who has been~~
24 ~~convicted of a class A misdemeanor offense involving violence or intimidation in~~
25 ~~violation of chapters 12.1-16 through 12.1-25 or an equivalent offense of another~~
26 ~~state or the federal government and the offense was committed while using or~~
27 ~~possessing a firearm, a dangerous weapon, or, as defined in section 12.1-01-04,~~
28 ~~a destructive device or an explosive, is prohibited from owning a firearm or~~
29 ~~having one in possession or under control from the date of conviction and~~
30 ~~continuing for a period of five years after the date of conviction or the date of~~
31 ~~release from incarceration, parole, or probation, whichever is latest.~~

- 1 ~~e. A person who is or has ever been diagnosed and confined or committed to a~~
2 ~~hospital or other institution in this state or elsewhere by a court of competent~~
3 ~~jurisdiction, other than a person who has had the petition that provided the basis~~
4 ~~for the diagnosis, confinement, or commitment dismissed under section~~
5 ~~25-03.1-17, 25-03.1-18, or 25-03.1-19, or equivalent statutes of another~~
6 ~~jurisdiction, as a person requiring treatment as defined in section 25-03.1-02, or~~
7 ~~as a mentally deficient individual, is prohibited from purchasing a firearm or~~
8 ~~having one in possession or under control. This limitation does not apply to a~~
9 ~~person who has not suffered from the disability for the previous three years or~~
10 ~~who has successfully petitioned for relief under section 62.1-02-01.2.~~
- 11 ~~d. A person under the age of eighteen years may not possess a handgun except~~
12 ~~that such a person, while under the direct supervision of an adult, may possess a~~
13 ~~handgun for the purposes of firearm safety training, target shooting, or hunting.~~
- 14 ~~e. A person who is a fugitive from justice is prohibited from owning a firearm or~~
15 ~~having a firearm in possession or under control.~~
- 16 ~~f. A person who, being an alien, is illegally or unlawfully in the United States is~~
17 ~~prohibited from owning a firearm or having a firearm in possession or under~~
18 ~~control.~~
- 19 ~~g. A person who has been convicted in any court of a misdemeanor crime of~~
20 ~~domestic violence is prohibited from owning a firearm or having a firearm in~~
21 ~~possession or under control. For the purposes of this section a "misdemeanor~~
22 ~~crime of domestic violence" means the willful infliction of bodily injury against an~~
23 ~~individual who:~~
- 24 ~~(1) Is a current or former spouse or intimate partner of the victim, or individual~~
25 ~~similarly situated to a spouse of the victim;~~
- 26 ~~(2) Is cohabitating, or has cohabitated, with the victim as a spouse or intimate~~
27 ~~partner; or~~
- 28 ~~(3) Shares a child in common with the victim.~~
- 29 ~~h. A person who has been discharged from the armed forces under dishonorable~~
30 ~~conditions is prohibited from owning a firearm or having a firearm in possession~~
31 ~~or under control.~~

- 1 ~~i. A person is prohibited from owning a firearm or having a firearm in possession or~~
2 ~~under control if that person is subject to a court order that:~~
- 3 ~~(1) Was issued after a hearing of which such person received actual notice, and~~
4 ~~at which such person had an opportunity to participate;~~
- 5 ~~(2) Restrains the person from harassing, stalking, or threatening an intimate~~
6 ~~partner of the person or child of the intimate partner or person, or engaging~~
7 ~~in other conduct that would place an intimate partner in reasonable fear of~~
8 ~~bodily injury to the partner or child; and~~
- 9 ~~(3) (a) Includes a finding the person represents a credible threat to the~~
10 ~~physical safety of the intimate partner or child; or~~
- 11 ~~(b) By its terms explicitly prohibits the use, attempted use, or threatened~~
12 ~~use of physical force against the intimate partner or child that would~~
13 ~~reasonably be expected to cause bodily injury.~~
- 14 ~~2. A person who violates subdivision a or, b, e, f, g, h, or i of subsection 1 is guilty of a~~
15 ~~class C felony, and a person who violates subdivision c or d of subsection 1 is guilty of~~
16 ~~a class A misdemeanor.~~
- 17 ~~3. A person who violates subdivision a or b of subsection 1 and has three or more prior~~
18 ~~felony convictions on separate occasions under any provisions in chapter 12.1-16,~~
19 ~~12.1-17, 12.1-18, or 12.1-20, section 12.1-21-01, chapter 12.1-22, subsection 1 of~~
20 ~~19-03.1-23, or a similar offense from another court in North Dakota or a court of record~~
21 ~~in the United States, is guilty of a class B felony. A conviction under this subsection~~
22 ~~carries a presumptive minimum term of imprisonment of five years. If the sentencing~~
23 ~~court does not impose at least the presumptive minimum term of imprisonment for an~~
24 ~~offense under this section, the court shall justify the reasoning for a departure from the~~
25 ~~presumptive minimum sentence within the judgment.~~
- 26 ~~2.4. For the purposes of this section, "conviction" means a determination that the person~~
27 ~~committed one of the above mentioned crimes upon a verdict of guilt, a plea of guilty,~~
28 ~~or a plea of nolo contendere even though:~~
- 29 ~~a. The court suspended execution of sentence in accordance with subsection 3 of~~
30 ~~section 12.1-32-02;~~

- 1 ~~b. The court deferred imposition of sentence in accordance with subsection 4 of~~
2 ~~section 12.1-32-02;~~
- 3 ~~c. The court placed the person on probation;~~
- 4 ~~d. The person's conviction has been reduced in accordance with subsection 9 of~~
5 ~~section 12.1-32-02 or section 12.1-32-07.1;~~
- 6 ~~e. Sentence dispositions, sentence reductions, or offense determinations equivalent~~
7 ~~to this section were imposed or granted by a court, board, agency, or law of~~
8 ~~another state or the federal government; or~~
- 9 ~~f. The person committed an offense equivalent to an offense described in~~
10 ~~subdivision a or b of subsection 1 when that person was subject to juvenile~~
11 ~~adjudication or proceedings and a determination of a court under chapter 27-20.4~~
12 ~~or of a court of another state or the federal government was made that the~~
13 ~~person committed the delinquent act or offense.~~
- 14 ~~3.5. For purposes of subsection 1, unless the pardon, expungement, or restoration of civil~~
15 ~~rights expressly provides that a person may not ship, transport, possess, or receive~~
16 ~~firearms, a person is not considered to have been convicted of a crime under~~
17 ~~subdivision a, b, or g of subsection 1 if:~~
- 18 ~~a. The conviction has been expunged or set aside; or~~
- 19 ~~b. The conviction is for an offense for which the person has been pardoned or has~~
20 ~~had civil rights restored if the law of the applicable jurisdiction provides for the~~
21 ~~loss of civil rights for the offense.~~
- 22 ~~6. A felon who is not sentenced under section 12.1-32-09.1 may possess a rifle that has~~
23 ~~a barrel sixteen inches [40.72 centimeters] or longer or a shotgun that has a barrel~~
24 ~~eighteen inches [45.72 centimeters] or longer and which is one of the following:~~
- 25 ~~a. A firearm, including any firearm with a matchlock, flintlock, percussion cap, or~~
26 ~~similar type of ignition system, manufactured before 1899.~~
- 27 ~~b. A replica of any firearm described in subdivision a, if the replica is not designed~~
28 ~~or redesigned for using rimfire or conventional centerfire fixed ammunition or~~
29 ~~uses rimfire or conventional centerfire fixed ammunition that is no longer~~
30 ~~manufactured in the United States and which is not readily available in the~~
31 ~~ordinary channels of commercial trade.~~

1 ~~_____ c. A muzzleloading rifle or muzzleloading shotgun designed to use black powder or~~
2 ~~_____ a black powder substitute and which cannot use fixed ammunition.~~

3 ~~_____ SECTION 6. Section 62.1-02-15 of the North Dakota Century Code is created and enacted~~
4 ~~as follows:~~

5 ~~_____ 62.1-02-15. Possession of a firearm in furtherance of a felony crime of violence or~~
6 ~~drug trafficking crime.~~

7 ~~_____ 1. Any person who, during and in relation to any felony crime of violence or drug~~
8 ~~trafficking crime, uses or carries a firearm, or who, in furtherance of any such crime,~~
9 ~~possesses a firearm, is guilty of a class B felony. A conviction under this section~~
10 ~~carries a presumptive minimum term of imprisonment which may not run concurrently~~
11 ~~to the punishment provided for the felony crime of violence or drug trafficking crime.~~
12 ~~The presumptive minimum term of imprisonment is:~~

13 ~~_____ a. Not less than three years;~~

14 ~~_____ b. Not less than five years if the firearm is brandished; or~~

15 ~~_____ c. Not less than seven years if the firearm is discharged.~~

16 ~~_____ 2. If the firearm possessed by a person convicted of a violation of this section is a short-~~
17 ~~barreled rifle, short barreled shotgun, machine gun, submachine gun, or fully~~
18 ~~automatic rifle, the presumptive minimum term of imprisonment is not less than seven~~
19 ~~years.~~

20 ~~_____ 3. For a violation of this section which occurs after a previous conviction under this~~
21 ~~section has become final, the person is guilty of a class A felony and the presumptive~~
22 ~~minimum term of imprisonment is not less than ten years.~~

23 ~~_____ 4. Notwithstanding any other provision of law:~~

24 ~~_____ a. A term of imprisonment imposed on a person under this section may not run~~
25 ~~concurrently with any other term of imprisonment imposed on the person,~~
26 ~~including any term of imprisonment imposed for the felony crime of violence or~~
27 ~~drug trafficking crime during which the firearm was used, carried, or possessed;~~

28 ~~_____ b. An offender who is convicted of a crime under this section is not eligible for~~
29 ~~release from confinement on any basis until eighty-five percent of the sentence~~
30 ~~imposed by the court has been served or the sentence is commuted. For~~

1 ~~purposes of this subsection, confinement does not include placement in a~~
2 ~~halfway house, treatment facility, or other community placement; and~~
3 ~~c. If the sentencing court does not impose at least the presumptive minimum term~~
4 ~~of imprisonment for an offense under this section, the court shall justify the~~
5 ~~reasoning for a departure from the presumptive minimum sentence within the~~
6 ~~judgment.~~

7 ~~5. For purposes of this section:~~

8 ~~a. "Brandish" means, with respect to a firearm, to display all or part of the firearm, or~~
9 ~~otherwise make the presence of the firearm known to another individual, in order~~
10 ~~to intimidate that individual, regardless of whether the firearm is directly visible to~~
11 ~~that individual.~~

12 ~~b. "Drug trafficking crime" means a violation of subsection 1 or 3 of section~~
13 ~~19-03.1-23.~~

14 ~~c. "Felony crime of violence" means a felony violation of section 12.1-16-01,~~
15 ~~12.1-16-02, 12.1-16-03, 12.1-17-01.2, 12.1-17-02, 12.1-17-03, 12.1-17-04,~~
16 ~~12.1-17-12, 12.1-18-01, 12.1-18-02, 12.1-20-03, 12.1-20-04, 12.1-20-07,~~
17 ~~12.1-20-12.3, 12.1-21-01, 12.1-21-02, 12.1-22-01, or 12.1-22-02.~~

18 **SECTION 4. LEGISLATIVE MANAGEMENT STUDY - FIREARM POSSESSION.** During
19 the 2023-24 interim, the legislative management shall consider studying those provisions of the
20 North Dakota Century Code that prohibit certain individuals from possessing a firearm. The
21 study may include an examination of the state's firearm and weapon possession prohibitions as
22 compared to the federal regulations. The study must include an examination of whether the
23 category of individuals prohibited from possessing a firearm by statute should be maintained as
24 is, narrowed, or expanded. The study must include input from the attorney general, the supreme
25 court, the association of counties, the league of cities, the state's attorney association, the
26 association of criminal defense lawyers, and the peace officers association. The legislative
27 management shall report its findings and recommendations, together with any legislation
28 necessary to implement the recommendations, to the sixty-ninth legislative assembly.