

Proposed Attorney General Amendments to Reengrossed SB2107

SB2107, as amended, remains a narrowly targeted solution to the statistically dramatic statewide increase in gun violence and violence toward law enforcement.

The Attorney General and Chief Deputy Attorney General have met with and/or phone conferenced with many state's attorneys and assistant state's attorneys in order to now offer these amendments. Several members of the House Judiciary Committee have also collaborated with the Attorney General in devising amendments to the reengrossed bill, as have officials from DOCR. Several Senators have also been consulted regarding proposed amendments to the version of the bill passed by the State Senate, 41-6.

The Sheriffs Association, Chiefs of Police Association, and ND Peace Officers Association remain adamant in their support of this legislation.

As a result of discussions with stakeholders, the Attorney General offers additional amendments to reengrossed SB2107:

- **Section 1, 2, and 7:** clarifies that sentences in this provision are **discretionary to the court** and replaces the word “jail” with “incarceration,” to avoid any arguable confusion regarding placement during incarceration. (*Amendment at suggestion of DOCR*)
- **Section 4:** Removes amending language from the Attorney General's original proposal and will leave current law (NDCC 12.1-32-02.1) unchanged. (*Amendment at the suggestion of several state's attorneys and assistant state's attorneys.*)
- **Section 6:** Technical clarification, per collaboration with other stakeholders.
- **Section 8:** Clarifies that the statute applies only to those who “knowingly possess” (either on their person or within their proximity) or “use” a firearm “during or in relation to any felony crime of violence or drug trafficking.” (*In response to suggestions from a handful of state's attorneys.*)
 - Proposed amendment also removes unnecessary language from SB2107, per collaborative discussions with stakeholders.
- **Section 9:** Scraps the original proposal that added categories of people who are not permitted to lawfully carry firearms in North Dakota, opting for a study of that topic, and calls for input from a wide array of stakeholders in the criminal justice system. (*At the suggestion of a handful of state's attorneys.*)
- **The term “presumptive mandatory minimum”** signals that the legislature leaves the sentencing discretion to the courts but directs the court to explain in writing if they elect to sentence below the legislative presumption.

- Here are the **presumptive** mandatory sentences in SB2107:
 - If someone is committing a felony crime of violence or felony drug trafficking offense **and**:
 - Has a firearm in their physical or proximate possession while doing so: the bill provides that the defendant **should** get at least an additional 3 years on their sentence;
 - Brandishes a firearm while committing the offense: the bill provides that the defendant **should** get at least an additional 5 years on their sentence; or
 - Discharges a firearm – or has an illegal firearm (such as a fully automatic machine gun) while committing the offense: the bill provides that the defendant **should** get at least an additional 7 years on their sentence.
- Under the current version of SB2107, it is presumed these sentences are served **consecutively, not concurrently**, with the sentences for the underlying offenses.
 - If a court doesn't make the sentence consecutive, then the court must put their reasons in writing.
- Under SB2107, defendants must serve at least 85% of the sentence of incarceration handed down by the court and must serve that time incarcerated, not in a halfway house or community center.

The amended bill still protects our law enforcement officers:

- Provides a presumptive 14-day sentence for defendants who resist arrest and create a substantial risk of bodily injury to the peace officer.
- Provides a presumptive 30-day sentence for defendants assaulting or fleeing from a peace officer.
 - Same sentencing presumptions as for the violent crime provisions of SB2107, regarding the presumption of the sentence being served consecutively to any other sentence, and defendants must serve at least 85% incarcerated.
 - If a judge chooses not to impose these sentences, the judge must then provide an explanation in writing. This sunshine provision is an important policy aspect of this bill. Judges should have daylight on their decisions, just as legislators and executive branch officials already do.