

HOUSE BILL NO. 1336

Introduced by

Representatives Satrom, Grueneich, Ostlie

Senators Conley, Dwyer

1 A BILL for an Act to amend and reenact section 12.1-31.2-02, subsection 1 of section
2 12.1-32-02, and subdivision h of subsection 5 of section 39-08-01 of the North Dakota Century
3 Code, relating to orders prohibiting contact and use of orders prohibiting contact as an
4 alternative to sentencing.

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

6 **SECTION 1. AMENDMENT.** Section 12.1-31.2-02 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **12.1-31.2-02. Order prohibiting contact.**

- 9 1. a. If an individual ~~who~~ is charged with ~~or~~, arrested for, or subject to a sentence or
10 order deferring imposition of sentence for a crime of violence or threat of
11 violence, stalking, harassment, or a sex offense ~~is released from custody before~~
12 ~~arraignment or trial~~, the court authorizing the release of the individual, imposing a
13 sentence, or issuing an order deferring imposition of sentence, shall consider and
14 may issue an order prohibiting the individual from having contact with the victim.
15 The order must contain the court's directives and must inform the individual that
16 any violation of the order constitutes a criminal offense. The state's attorney shall
17 provide a copy of the order to the victim. ~~The court shall determine at the time of~~
18 ~~the individual's arraignment whether an order issued pursuant to this section will~~
19 ~~be extended. If the court issues an order pursuant to this section before the time~~
20 ~~the individual is charged, the order expires at the individual's arraignment or~~
21 ~~within seventy-two hours of issuance if charges against the individual are not filed~~
22 b. A party or victim may file a written request with the court to modify or terminate
23 an order issued under this section. If requested, the court shall hold a hearing to
24 determine whether to grant or deny the request to modify or terminate an order.

1 c. If an order prohibiting contact is issued upon a charge or arrest, the order
2 terminates upon dismissal, acquittal, sentence, or order deferring imposition of
3 sentence. Upon sentence or order deferring imposition of sentence, the court
4 may issue a new order under this subsection.

5 2. If the court has probable cause to believe that the individual ~~charged or~~
6 ~~arrested~~ subject to an order under subsection 1 is likely to use, display, or threaten to
7 use a firearm or dangerous weapon as defined in section 12.1-01-04 in any further act
8 of violence, the court shall require that the individual surrender for safekeeping any
9 firearm or specified dangerous weapon in or subject to the individual's immediate
10 possession or control, to the sheriff of the county or chief of police of the city in which
11 the individual resides.

12 3. ~~Whenever~~ If an order prohibiting contact is issued, modified, extended, or terminated
13 under this section, the clerk of court shall forward a copy of the order within one
14 business day to the appropriate law enforcement agency specified in the order. Upon
15 receipt of the copy of the order, the law enforcement agency shall enter the order in
16 the central warrant information system and the national crime information center
17 database provided by the federal bureau of investigation, or its successor agency.

18 a. Once the bureau, after consultation with the state court administrator, determines
19 and implements a method to transmit electronically to the bureau an order
20 prohibiting contact, the court electronically shall send the full text of the order as
21 issued, modified, ~~extended~~, or terminated in accordance with this section and any
22 data fields identified by the bureau. This electronic submission will fulfill the law
23 enforcement agency's requirement to enter the order in the central warrant
24 information system, but will not fulfill its requirement to enter, maintain, and
25 respond to inquiries regarding the order in the national crime information center
26 database provided by the federal bureau of investigation, or its successor
27 agency.

28 b. Once the bureau, after consultation with the state court administrator, determines
29 and implements an electronic method to notify law enforcement about the order,
30 the clerk of court's requirement to forward the order to the law enforcement
31 agency will be satisfied.

1 c. Once the bureau, after consultation with the director of state radio, determines
2 and implements a method to enter the order into the national crime information
3 center database provided by the federal bureau of investigation, or its successor
4 agency, the bureau shall enter the order electronically in the national crime
5 information center database provided by the federal bureau of investigation, or its
6 successor agency. This electronic entry will fulfill the law enforcement agency's
7 requirement to enter the order in the national crime information center database
8 provided by the federal bureau of investigation, or its successor agency, but will
9 not fulfill its requirement to maintain and respond to inquiries regarding the order
10 in the national crime information center database provided by the federal bureau
11 of investigation, or its successor agency.

12 4. An individual who violates a court order issued under this section is guilty of a class A
13 misdemeanor.

14 5. A law enforcement officer shall arrest an individual without a warrant if the officer
15 determines there is probable cause that the individual has committed the offense of
16 violating an order prohibiting contact under this section, whether or not the violation
17 was committed in the presence of the officer. A law enforcement officer who acts in
18 good faith on probable cause and without malice is immune from any civil or criminal
19 liability for making an arrest under this subsection.

20 **SECTION 2. AMENDMENT.** Subsection 1 of section 12.1-32-02 of the North Dakota
21 Century Code is amended and reenacted as follows:

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

- 1 (2) (b) In a county jail or in a regional corrections center, if convicted of a
2 class B misdemeanor.
- 3 (3) (c) In a facility or program deemed appropriate for the treatment of the
4 individual offender, including available community-based or
5 faith-based programs.
- 6 (4) (d) In the case of persons convicted of an offense who are under
7 eighteen years of age at the time of sentencing, the court is limited to
8 sentencing the minor defendant to a term of imprisonment in the
9 custody of the department of corrections and rehabilitation.
- 10 d. (4) A fine.
- 11 e. (5) Restitution for damages resulting from the commission of the offense.
- 12 f. (6) Restoration of damaged property or other appropriate work detail.
- 13 g. (7) Commitment to an appropriate licensed public or private institution for
14 treatment of alcoholism, drug addiction, or mental disease or defect.
- 15 h. (8) Commitment to a sexual offender treatment program.
- 16 i. (9) Drug court program. A drug court is a district court supervised treatment
17 program approved by the supreme court which combines judicial
18 supervision with alcohol and drug testing and substance use disorder
19 treatment in a licensed treatment program. The supreme court may adopt
20 rules, including rules of procedure, for drug court programs.
- 21 j. (10) Veterans treatment docket. A veterans treatment docket is a district court
22 supervised docket approved by the supreme court which combines judicial
23 supervision with licensed treatment programs to treat substance use
24 disorders, mental health conditions, behavioral health conditions, traumatic
25 brain injuries, military sexual trauma, and co-occurring disorders. The
26 supreme court may adopt rules, including rules of procedure, for veterans
27 treatment dockets.
- 28 k. (11) Completion of a restorative justice program. For purposes of this section,
29 "restorative justice program" means a system of justice which focuses on
30 the rehabilitation of offenders through reconciliation with victims and the
31 community at large.

1 †: (12) Mental health court program. A mental health court is a district court
2 supervised treatment program approved by the supreme court which
3 combines judicial supervision with mental health services and treatment in a
4 licensed treatment program. The supreme court may adopt rules, including
5 rules of procedure, for mental health court programs.

6 (13) An order prohibiting contact.

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

17 **SECTION 3. AMENDMENT.** Subdivision h of subsection 5 of section 39-08-01 of the North
18 Dakota Century Code is amended and reenacted as follows:

19 h. If the penalty mandated by this section includes imprisonment or placement upon
20 conviction of a violation of this section or equivalent ordinance, and if an
21 addiction evaluation has indicated that the defendant needs treatment, the court
22 may order the defendant to undergo treatment at an appropriate licensed
23 addiction treatment program under ~~subdivision g~~ of subsection 1 of section
24 12.1-32-02 and the time spent by the defendant in the treatment must be credited
25 as a portion of a sentence of imprisonment or placement under this section. A
26 court may not order the department of corrections and rehabilitation to be
27 responsible for the costs of treatment in a private treatment facility.