

Hearing date: January 27, 2025

House Judiciary Committee
2025 ND Legislature

Chairperson Lawrence Klemin
Committee Members

From: Rozanna C Larson
Ward County State's Attorney

RE: House Bill 1225

Chairperson Klemin and Members of the Committee,

This is my written testimony in favor of House Bill 1225 and ask the committee submits a DO PASS vote. I am the State's Attorney for Ward County and have been a prosecutor for 27 years.

House Bill 1225 has two amended sections for current statutes.

Section 1 Amendment amends the current Reckless Endangerment statute.

Currently the statute has two levels of offense, a class C felony if is proven the offender acted with extreme indifference to the value of human life, otherwise it is a class A misdemeanor. The NDSAA proposal is to elevate the offense to a Class B felony if a firearm is used in the commission of the offense. The State would still have to prove the element of extreme indifference to the value of human life, as well as prove beyond a reasonable doubt a firearm was used in the commission of the offense. These would be specific finding made by the fact finder.

The reason for this amendment is frankly due to the rise in offenses involving guns.

In Ward County we have had instances of guns being shot inside crowded bars, people shooting at each other inside hotels, and guns being fired on the streets with innocent people standing or milling about. There have also been instances of drive by shootings, where in the offender shoots into residences, apartment buildings, etc. This includes juvenile offenders as well as adult.

The question you may have, why can't we simply charge Attempted Murder in these cases. This is due to the legal culpability requirements for Attempted Murder. Any time "Attempted" is charged the culpability is intentional. The "intentional" culpability attaches to the elements of murder, not the act of shooting. In addition, to charge Attempted Murder there has to be a specific identified person the offender intended to murder. In most of these situations, the culpability of the offender is "willful." The offender is acting with extreme indifference to the value of any of the lives placed in danger.

Examples of Reckless Endangerment with a firearm include: shooting into a crowd, or inside a hotel room where bullets can go through walls of guests can be distinguish to other scenarios. Example without a firearm – driving 50 mph through town, blowing through traffic lights with others on the road, perhaps even causing collisions of other drivers.

This amendment would implicate another sentencing statute, NDCC 12.1-32-02.1. Specifically, if the offender is found guilty of the class B felony, there would be a mandatory minimum sentence of 4 years.

Section 2 Amendment relates to Dangerous/Habitual offender statute. NDCC 12.1-32-09. This is within the sentencing sections of the criminal code.

Currently prosecutors can file habitual offender on a defendant if they have two or more felony convictions in ay state or states or the Federal Government. The statute specifically defines felony as being at least a class C felony or equivalent wherein the offense was punishable by a maximum term of five years. This is consistent with ND law because the lowest level felony we have is a class C felony and the maximum punishment is five years.

As prosecutors we are dealing with offenders who may have a long criminal history of out-of-state felony convictions, but the maximum penalty may be less than five years. Essentially this limitation is allowing other states to define (and limit) what a habitual offender is when they come into our state and commit new felonies.

Example : I had an offender convicted of Robbery in the state of California, but the maximum punishment for that conviction was 3 years. I couldn't use that to allege habitual offender. We have that same scenario with convictions next door in Minnesota. Many states have different levels of offenses, including different maximum punishment including felonies. I don't know the reason for this expect for the possibility of different, more specific offender statutes. The other possibility may be in their efforts to control prison populations. Making this change treats all felons, lifetime ND residents and newcomers the same.

We are living in a time where people are more transient. This includes people with criminal records.

According to to West Law, this particular section of 12.1-32-09 was last amended in 1995. Prior law only allowed for filing habitual offender if there were two class B felony or above convictions, or one class B felony and two other offenses. The maximum term of imprisonment until 1995 was ten years. For thirty years this has remained as a maximum punishment of 5 years. It does not consider what other States determine for maximum punishment. By amending it to "punishable by more than three hundred sixty days" it tracks with our state law for what is a felony, sentences over 360 days. Class A misdemeanor has a maximum punishment of 360 days. This amendment would then address other State's felonies but protect those with convictions deemed misdemeanors in our state.

This amendment does not implicate any other sentencing statutes. It does not create a minimum mandatory sentence. This statute does allow the court to sentence above the maximum sentence.

A person charge with a class C felony could be sentence up to 10 years. For a class B felony a maximum of 20 years may be imposed and for a class A felony a maximum of life imprisonment may be imposed. Often there is a term of imprisonment along with a suspended portion of the sentence where in the defendant is on supervised probation.

Introduced by

Representatives Klemin, Karls, Lefor, Vetter

Senators Myrdal, Sickler, Larson

1 A BILL for an Act to amend and reenact sections 12.1-17-03 and 12.1-32-09 of the North
2 Dakota Century Code, relating to reckless endangerment and habitual offenders; and to provide
3 a penalty.

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

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

7 **12.1-17-03. Reckless endangerment.**

8 ~~A person~~An individual is guilty of an offense if ~~he~~the individual creates a substantial risk of
9 serious bodily injury or death to another. The offense is a class ~~C~~B felony if the
10 circumstances manifest ~~his~~the individual's extreme indifference to the value of human life.
11 Otherwise it is a class A misdemeanor. There is risk within the meaning of this section if the
12 potential for harm exists, whether or not a particular person's safety is actually jeopardized.

13 **SECTION 2. AMENDMENT.** Section 12.1-32-09 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **12.1-32-09. Dangerous special offenders - Habitual offenders - Extended sentences -**
16 **Procedure.**

- 17 1. A court may sentence a convicted offender to an extended sentence as a dangerous
18 special offender or a habitual offender in accordance with this section upon a finding of
19 any one or more of the following:
- 20 a. The convicted offender is a dangerous, mentally abnormal person whose conduct
21 has been characterized by persistent aggressive behavior and the behavior
22 makes the offender a serious danger to other persons.
 - 23 b. The convicted offender is a professional criminal who has substantial income or
24 resources derived from criminal activity.

- 1 c. The convicted offender is a habitual offender. The court may not make such a
2 finding unless the offender is an adult and has previously been convicted in any
3 state or states or by the United States of two felonies ~~of class C or above~~
4 committed at different times when the offender was an adult. For the purposes of
5 this subdivision, a ~~felony~~ conviction in another state or under the laws of the
6 United States is considered a felony ~~of class C or above~~ if it is punishable by a
7 ~~maximum term of imprisonment of five years or more~~ than three hundred sixty
8 days of imprisonment.
- 9 d. The offender was convicted of an offense that seriously endangered the life of
10 another person and the offender had previously been convicted of a similar
11 offense.
- 12 e. The offender is especially dangerous because the offender used a firearm,
13 dangerous weapon, or destructive device in the commission of the offense or
14 during the flight therefrom.

15 A conviction shown on direct or collateral review or at the hearing to be invalid or for
16 which the offender has been pardoned on the ground of innocence must be
17 disregarded for purposes of subdivision c. In support of findings under subdivision b, it
18 may be shown that the offender has had control of income or property not explained
19 as derived from a source other than criminal activity. For purposes of subdivision b, a
20 substantial source of income means a source of income which for any period of one
21 year or more exceeds the minimum wage, determined on the basis of a forty-hour
22 week and a fifty-week year, without reference to exceptions, under section 6(a)(1) of
23 the Fair Labor Standards Act of 1938, as amended, for an employee engaged in
24 commerce or in the production of goods for commerce, and which for the same period
25 exceeds fifty percent of the offender's declared adjusted gross income under chapter
26 57-38.

- 27 2. The extended sentence may be imposed in the following manner:
- 28 a. If the offense for which the offender is convicted is a class A felony, the court may
29 impose a sentence up to a maximum of life imprisonment.
- 30 b. If the offense for which the offender is convicted is a class B felony, the court may
31 impose a sentence up to a maximum of imprisonment for twenty years.

- 1 c. If the offense for which the offender is convicted is a class C felony, the court may
2 impose a sentence up to a maximum of imprisonment for ten years.
- 3 3. Whenever an attorney charged with the prosecution of a defendant in a court of this
4 state for an alleged felony committed when the defendant was over the age of
5 eighteen years has reason to believe that the defendant is a dangerous special
6 offender or a habitual offender, the attorney, at a reasonable time before trial or
7 acceptance by the court of a plea of guilty, may sign and file with the court, and may
8 amend, a notice specifying that the defendant is a dangerous special offender or a
9 habitual offender who upon conviction for the felony is subject to the imposition of a
10 sentence under subsection 2, and setting out with particularity the reasons why the
11 attorney believes the defendant to be a dangerous special offender or a habitual
12 offender. In no case may the fact that the prosecuting attorney is seeking sentencing
13 of the defendant as a dangerous special offender or a habitual offender be disclosed
14 to the jury before a verdict. If the court finds that the filing of the notice as a public
15 record may prejudice fair consideration of a pending criminal matter, the court may
16 order the notice sealed and the notice is not subject to subpoena or public inspection
17 during the pendency of the criminal matter, except on order of the court, but is subject
18 to inspection by the defendant alleged to be a dangerous special offender or a habitual
19 offender and the offender's counsel.
- 20 4. Upon any plea of guilty, or verdict or finding of guilt of the defendant of such felony, a
21 hearing must be held, before sentence is imposed, in accordance with this subsection
22 as follows:
- 23 a. By a jury, or the court if a jury is waived by the defendant, if the notice alleges
24 that the defendant is a dangerous special offender under subdivision a, b, d, or e
25 of subsection 1. The jury, or the court if a jury is waived, must find that the
26 defendant is a dangerous special offender under one or more of these
27 subdivisions by proof beyond a reasonable doubt. However, in the case of a
28 notice alleging only subdivision e of subsection 1, the trial jury, or the trial court if
29 a jury is waived, may make a special finding of proof of this subdivision without
30 an additional hearing subsequent to a verdict or finding of guilt.

- 1 b. By the court if the notice alleges that the defendant is a habitual offender under
2 subdivision c of subsection 1. The court must find that the defendant is a habitual
3 offender by a preponderance of the evidence.
- 4 5. Except in the most extraordinary cases, the court shall obtain a presentence report
5 and may receive a diagnostic testing report under subsection 5 of section 12.1-32-02
6 before holding a hearing under this subsection. The court shall fix a time for the
7 hearing and notice thereof must be given to the defendant and the prosecution at least
8 five days prior thereto. The court shall permit the prosecution and counsel for the
9 defendant, or the defendant if the defendant is not represented by counsel, to inspect
10 the presentence report sufficiently before the hearing as to afford a reasonable
11 opportunity for verification. In extraordinary cases, the court may withhold material not
12 relevant to a proper sentence, diagnostic opinion that might seriously disrupt a
13 program of rehabilitation, any source of information obtained on a promise of
14 confidentiality, and material previously disclosed in open court. A court withholding all
15 or part of a presentence report shall inform the parties of its action and place in the
16 record the reasons therefor. The court may require parties inspecting all or part of a
17 presentence report to give notice of any part thereof intended to be controverted. In
18 connection with the hearing, the defendant is entitled to compulsory process and
19 cross-examination of such witnesses as appear at the hearing. A duly authenticated
20 copy of a former judgment or commitment is prima facie evidence of such former
21 judgment or commitment. If the jury or the court finds, after hearing, one or more of the
22 grounds set forth in subsection 1, that the defendant is a dangerous special offender
23 or a habitual offender, the court shall sentence the defendant to imprisonment for an
24 appropriate term within the limits specified in subsection 2.

FISCAL NOTE
HOUSE BILL NO. 1225
LC# 25.0996.01000
01/17/2025

1 - State Fiscal Effect

Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.

	2023-2025 Biennium		2025-2027 Biennium		2027-2029 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures					\$13,618,039	
Appropriations					\$13,618,039	

2 - County, City, School District, and Township Fiscal Effect

Identify the fiscal effect on the appropriate political subdivision.

	2023-2025 Biennium	2025-2027 Biennium	2027-2029 Biennium
Counties			
Cities			
School Districts			
Townships			

3 - Bill and Fiscal Impact Summary

Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).

HB 1225 proposes increasing the penalty for Reckless Endangerment, elevating it from a Class C Felony to Class B Felony. Additionally the bill expands the range of offenses eligible for habitual offender designation allowing courts to include any felony punishable by imprisonment exceeding 360 days.

4 - Fiscal Impact Sections Detail

Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.

HB1225 may have an impact on the length of sentence imposed by the court for 12.1-17-03 Reckless Endangerment. Currently the average sentence for a class C felony is 3.83 years and the average sentence for a Class B felony is 5.49 years. We have an annual average of 188 inmates sentenced to the DOCR for Reckless Endangerment. There is no fiscal impact in the upcoming biennium. Assuming the courts will increase the sentence

length to that of average Class B felony we would anticipate and offenders serving a sentence for Reckless Endangerment to serve an additional 1.66 years increasing the cost. Due to the delayed nature of the impact of this bill, the fiscal impact will begin in FY2028 at \$1.7 million and will increase to an annual expense of \$16.8 million in FY 2030.

On average, the DOCR processes 59 offenders sentenced under the 12.1-32-09 Habitual Offender statute annually. Expanding the scope to encompass all felonies carrying sentences exceeding 360 days, as applied in other 49 states, introduces significant uncertainty. It is challenging to predict how courts will interpret and implement these changes or how they might affect sentence durations. Consequently, we are unable to accurately estimate the fiscal impact of this proposed modification.

5 - Revenues Detail

For information shown under state fiscal effect in 1 or 2, please explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

The DOCR will not expect any revenues from the changes proposed in HB 1225.

6 - Expenditures Detail

For information shown under state fiscal effect in 1 or 2, please explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

HB 1225 is expected to increase the length of incarceration, resulting in a corresponding rise in the overall inmate population. As a result, additional housing capacity will likely be required to accommodate inmates in county jails, regional correctional facilities, and out-of-state correctional facilities. Due to the delayed nature of the impact of this bill, the fiscal impact will begin in FY2028 at \$1.7 million and will increase to an annual expense of \$16.8 million in FY 2030.

7 - Appropriations Detail

For information shown under state fiscal effect in 1 or 2, please explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.

HB 1225 is expected to increase the length of incarceration, resulting in a corresponding rise in the overall inmate population. As a result, additional housing capacity will likely be required to accommodate inmates in county jails, regional correctional facilities, and out-of-state correctional facilities. Due to the delayed nature of the impact of this bill, the fiscal impact will begin in FY2028 at \$1.7 million and will increase to an annual expense of \$16.8 million in FY 2030.

Contact Information

Name: Michele Zander

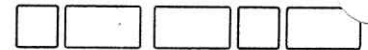
Agency: Corrections & Rehabilitation

Telephone: 7013286656

Date Prepared: 01/17/2025

VIOLENT OFFENDER SENTENCES—CONDUCT REDUCING SENTENCES...

1995 North Dakota Laws Ch. 136 (H.B. 1218) (Approx. 4 pages)



1995 North Dakota Laws Ch. 136 (H.B. 1218)

NORTH DAKOTA 1995 SESSION LAW SERVICE
REGULAR SESSION OF THE 54TH LEGISLATIVE ASSEMBLY

Additions are indicated by <<+ Text +>>; deletions by <<- Text ->>. Changes in tables are made but not highlighted.

CH. 136 (H.B. 1218)

West's No. 339

VIOLENT OFFENDER SENTENCES—CONDUCT REDUCING SENTENCES—HABITUAL OFFENDER EXTENDED SENTENCES

AN ACT to create and enact a new section to chapter 12.1-32 of the North Dakota Century Code, relating to sentencing of violent offenders; and to amend and reenact sections 12-54.1-01, 12-54.1-03, subsection 12 of section 12.1-32-02, and section 12.1-32-09 of the North Dakota Century Code, relating to sentence reductions for good or meritorious conduct, presentence investigations, and extended sentences for special dangerous or habitual offenders.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-54.1-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

<< ND ST 12-54.1-01 >>

§ 12-54.1-01. Performance based sentence reduction

<<-Offenders->> <<+Except as provided under section 5 of this Act, offenders+>> sentenced to the penitentiary or any of its affiliated facilities are eligible to earn sentence reductions based upon performance criteria established through penitentiary rules. Performance criteria includes participation in court-ordered or staff-recommended treatment and education programs and good work performance. While incarcerated in the penitentiary or any of its affiliated facilities, an inmate may earn five days good time per month except for any sentence where the incarceration time is six months or less.

SECTION 2. AMENDMENT. Section 12-54.1-03 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

<< ND ST 12-54.1-03 >>

§ 12-54.1-03. Meritorious conduct sentence reduction

<<-In addition to sentence reductions under section 12-54.1-01->> <<+ Except as provided under section 5 of this Act,+>> offenders sentenced to the state penitentiary or any of its affiliated facilities may be awarded, as provided by penitentiary rules <<-and regulations->> upon written recommendation of a penitentiary multidisciplinary team, lump-sum or a monthly rate of meritorious conduct sentence reductions for outstanding performance or heroic a or as a special control and security measure. Such sentence reductions <<+are in addition to sentence reductions

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under section 12-54.1-01 and+>> may be made only after a written recommendation is made by the warden, and approved by the director of the department of corrections and rehabilitation. Any sentence reduction for special control or security measures may not exceed two days good time per month per inmate.

SECTION 3. AMENDMENT. Subsection 12 of section 12.1-32-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

<< ND ST 12.1-32-02 >>

12. Before sentencing a defendant on a felony charge under section 12.1-20-03, 12.1-20-11, 12.1-27.2-02, 12.1-27.2-03, 12.1-27.2-04, or 12.1-27.2-05, a court shall order the department of corrections and rehabilitation to conduct a presentence investigation and to prepare a presentence report. <<+In all felony or class A misdemeanor offenses, in which force, as defined in section 12.1-01-04, or threat of force is an element of the offense or in violation of section 12.1-22-02, or an attempt to commit the offenses, a court, unless a presentence investigation has been ordered, must receive a criminal record report before the sentencing of the defendant. Unless otherwise ordered by the court, the criminal record report must be conducted by the department of corrections and rehabilitation after consulting with the prosecuting attorney regarding the defendant's criminal record. The criminal record report must be in writing, filed with the court before sentencing, and made a part of the court's record of the sentencing proceeding.+>>

SECTION 4. AMENDMENT. Section 12.1-32-09 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

<< ND ST 12.1-32-09 >>

§ 12.1-32-09. Dangerous special offenders, <<-extended->><<+—Habitual offenders—Extended+>> sentences—
Procedure

1. A court may sentence a convicted offender to an extended sentence as a dangerous special offender <<+or a habitual offender+>> in accordance with the provisions of this section upon a finding of any one or more of the following:
 - a. The convicted offender is a dangerous, mentally abnormal person. The court <<-shall->> <<+may+>> not make such a finding unless the presentence report, including a psychiatric examination, concludes that the offender's conduct has been characterized by persistent aggressive behavior, and that such behavior makes <<-him->> <<+the offender+>> a serious danger to other persons.
 - b. The convicted offender is a professional criminal. The court <<- shall->> <<+may+>> not make such a finding unless the offender is an adult and the presentence report shows that the offender has substantial income or resources derived from criminal activity.
 - c. The convicted offender is a <<-persistent->> <<+habitual+>> offender. The court <<-shall->> <<+may+>> not make such a finding unless the offender is an adult and has previously been convicted in any state or states or by the United States of two felonies of class <<- B->> <<+C+>> or above<<-, or of one class B felony or above plus two offenses potentially punishable by imprisonment classified below class B felony,->> committed at different times when the offender was an adult. For the purposes of this subdivision, a felony conviction in another state or under the laws of the United States shall be considered a felony of class <<-B->> <<+C+>> or above if it is punishable by a maximum term of imprisonment of <<-ten->> <<+five+>> years or more.
 - d. The offender was convicted of an offense which seriously endangered the life of another person, and the offender had previously been convicted of a similar offense.
 - e. The offender is especially dangerous because <<-he->> <<+the offender+>> used a firearm, dangerous weapon, or destructive device in the commission of the offense or during the flight therefrom.

A conviction shown on direct or collateral review or at the hearing to be invalid or for which the offender has been pardoned on the ground of innocence <<-shall->> <<+must+>> be disregarded for purposes of subdivision c. In support of findings under subdivision b, it may be shown that the offender has had <<-in his own name or under his->> control <<+of+>> income or property not explained as derived from a source other than criminal activity. For

purposes of subdivision b, a substantial source of income means a source of income which for any period of one year or more exceeds the minimum wage, determined on the basis of a forty-hour week and a fifty-week year, without reference to exceptions, under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, for an employee engaged in commerce or in the production of goods for commerce, and which for the same period exceeds fifty percent of the offender's declared adjusted gross income under chapter 57-38.

2. The extended sentence may be imposed in the following manner:

- a. If the offense for which the offender is convicted is a class A felony, the court may impose a sentence up to a maximum of life imprisonment.
- b. If the offense for which the offender is convicted is a class B felony, the court may impose a sentence up to a maximum of imprisonment for twenty years.
- c. If the offense for which the offender is convicted is a class C felony, the court may impose a sentence up to a maximum of imprisonment for ten years.

3. Whenever an attorney charged with the prosecution of a defendant in a court of this state for an alleged felony committed when the defendant was over the age of eighteen years has reason to believe that the defendant is a dangerous special offender <<+or a habitual offender+>>, <<-such->> <<+ the+>> attorney, at a reasonable time before trial or acceptance by the court of a plea of guilty, may sign and file with the court, and may amend, a notice specifying that the defendant is a dangerous special offender <<+or a habitual offender+>> who upon conviction for <<-such->> <<+the+>> felony is subject to the imposition of a sentence under subsection 2, and setting out with particularity the reasons why <<-such->> <<+the+>> attorney believes the defendant to be a dangerous special offender <<+or a habitual offender+>>. In no case <<-shall->> <<+may+>> the fact that the prosecuting attorney is seeking sentencing of the defendant as a dangerous special offender <<+or a habitual offender+>> be disclosed to the jury. If the court finds that the filing of the notice as a public record may prejudice fair consideration of a pending criminal matter, it may order the notice sealed and the notice shall not be subject to subpoena or public inspection during the pendency of such criminal matter, except on order of the court, but shall be subject to inspection by the defendant alleged to be a dangerous special offender <<+or a habitual offender+>> and <<- his->> <<+the offender's+>> counsel.

4. Upon any plea of guilty, or verdict or finding of guilt of the defendant of such felony, a hearing must be held, before sentence is imposed, by the court sitting without a jury. Except in the most extraordinary cases, the court shall obtain a presentence report and may receive a diagnostic testing report under subsection 5 of section 12.1-32-02 before holding a hearing under this subsection. The court shall fix a time for the hearing, and notice thereof must be given to the defendant and the prosecution at least five days prior thereto. The court shall permit the prosecution and counsel for the defendant, or the defendant if the defendant is not represented by counsel, to inspect the presentence report sufficiently prior to the hearing as to afford a reasonable opportunity for verification. In extraordinary cases, the court may withhold material not relevant to a proper sentence, diagnostic opinion which might seriously disrupt a program of rehabilitation, any source of information obtained on a promise of confidentiality, and material previously disclosed in open court. A court withholding all or part of a presentence report shall inform the parties of its action and place in the record the reasons therefor. The court may require parties inspecting all or part of a presentence report to give notice of any part thereof intended to be controverted. In connection with the hearing, the defendant is entitled to compulsory process, and cross-examination of such witnesses as appear at the hearing. A duly authenticated copy of a former judgment or commitment is prima facie evidence of such former judgment or commitment. If it appears by a preponderance of the information, including information submitted during the trial of such felony and the sentencing hearing and so much of the presentence report as the court relies upon, that the defendant is a dangerous special offender <<+or a habitual offender+>>, the court shall sentence the defendant to imprisonment for an appropriate term within the limits specified in subsection 2. The court shall place in the record its findings including an identification of the information relied upon in making such findings, and its reasons for the sentence imposed.

SECTION 5. A new section to chapter 12.1-32 of the North Dakota Century Code is created and enacted as follows:

<<+Any offender who is convicted of a crime in violation of section 12.1-16-01, 12.1-16-02, 12.1-17-02, 12.1-18-01, subdivision a of subsection 1 or subdivision b of subsection 2 of section 12.1-20-03, section 12.1-22-01, subdivision b of subsection 2 of section 12.1-22-02, or an attempt to commit the offenses, and who receives a sentence of imprisonment is not eligible for release from confinement on any basis until eighty-five percent of the sentence imposed by the court has been served or the sentence is commuted.+>>

Approved March 24, 1995. Filed March 27, 1995.

ND LEGIS 136 (1995)

End of Document

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