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Title.

Prepared by the Legislative Council
staff for Representative D. Johnston
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Sixty-ninth
Legislative Assembly
of North Dakota

**PROPOSED AMENDMENTS TO
SECOND ENGROSSMENT**

REENGROSSED SENATE BILL NO. 2128

Introduced by

Judiciary Committee

(At the request of the Attorney General)

1 A BILL for an Act to amend and reenact sections 12-44.1-01, 12-47-18.1, 12-48.1-01,
2 12-48.1-02, 12-54.1-01, 12-54.1-03, 12.1-08-02, 12.1-17-01, 12.1-32-02.1, 12.1-32-09.1, and
3 39-10-71 of the North Dakota Century Code, relating to transparent sentencing of criminal
4 offenders, transfer of persons between correctional facilities, work release eligibility and
5 conditions for criminal offenders, sentences for assaulting and fleeing from law enforcement
6 officers, and sentences for preventing arrest; to provide a legislative management report; to
7 provide a penalty; and to provide for application.

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

9 **SECTION 1. AMENDMENT.** Section 12-44.1-01 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **12-44.1-01. Definitions.**

12 As used in this chapter:

- 13 1. "Administrator" means the sheriff, chief of police, administrator, superintendent,
14 director, or other individual serving as the chief executive officer of a correctional
15 facility.
- 16 2. "Adult lockup" means a secure temporary-hold nonresidential facility that does not
17 hold individuals overnight and includes a facility with cuffing rails or cuffing benches.
- 18 3. "Correctional facility" means a city or county jail or detention center, regional
19 corrections center, or juvenile detention center for the detention or confinement of
20 persons in accordance with law. The use of the term does not imply and may not be

- 1 used to require the provision of services including treatment, counseling, career and
2 technical education, or other educational services, except as may otherwise be
3 required or provided for under this chapter. The term does not include transitional
4 facilities.
- 5 4. "Correctional facility staff" means correctional personnel with titles such as jailer,
6 deputy, counselor, correctional officer, or any other title, whose duties include the
7 ongoing supervision of inmates in a correctional facility.
- 8 5. "Court holding facility" means a secure facility, other than an adult correctional facility
9 or adult lockup, used to temporarily detain individuals before or after a detention
10 hearing or other court proceedings, and is not used to detain individuals overnight.
- 11 6. "Individual justice planning" means a process to identify, accommodate, and develop
12 appropriate consequences for behaviors caused by or related to an individual's mental
13 or cognitive impairment.
- 14 7. "Inmate" means any individual, whether sentenced or unsentenced, who is detained or
15 confined in a correctional facility. The term does not include an individual who is under
16 the supervision of the correctional facility and is supervised under home detention,
17 electronic monitoring, or a similar program that does not involve physical detention or
18 confinement in the facility.
- 19 8. "Jail" means a correctional facility, including a county or city jail or a regional
20 corrections center.
- 21 9. "Juvenile detention center" means a publicly maintained correctional facility for the
22 detention of juveniles. The term does not include the North Dakota youth correctional
23 center.
- 24 10. "Regional corrections center" means a correctional facility established and maintained
25 by more than one county or city, or a combination of counties and cities, for the
26 confinement of inmates.
- 27 11. "Trained correctional facility staff" means correctional personnel who have completed
28 a course of training approved by the peace officer standards and training board.
- 29 12. "Transitional facility" means a halfway house, assessment center, re-entry facility,
30 transitional living facility, or similar facility, operating under contract, in partnership
31 with, or under the direction of the department of corrections and rehabilitation or a

1 correctional facility, which offers education, counseling, or other programs, with
2 unsecured or minimum security housing, for offenders.

3 **SECTION 2. AMENDMENT.** Section 12-47-18.1 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **12-47-18.1. Transfer of persons between correctional facilities.**

6 ~~The~~Subject to statutory limitations, the director of the department of corrections and
7 rehabilitation may transfer an offender to any facility under the department's control or contract
8 to transfer an offender to another correctional facility for purposes of safety, security, discipline,
9 or medical care, or when the director determines it may be in the best interests of the public, the
10 ~~offender, or the department.~~

11 **SECTION 3. AMENDMENT.** Section 12-48.1-01 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **12-48.1-01. ~~Director may provide certain~~Work release and education or rehabilitation**
14 **services for offenders.**

15 1. The director of the department of corrections and rehabilitation may participate in
16 programs in which ~~offenders~~an offender committed to the legal and physical custody
17 of the department may be gainfully employed in, or on the grounds of, a facility under
18 the control of the department which has a security level that is the same as or higher
19 than the security level of the facility in which the offender resides, or participate in an
20 educational or other rehabilitation program ~~either in or outside facilities~~in the facility
21 under the control of the department in which the offender resides. ~~The~~For eligible
22 offenders, the director may obtain or contract with separate facilities with minimum
23 security for housing offenders granted release privileges. In areas where facilities are
24 not within reasonable proximity of the place of employment or training of an eligible
25 offender so released, the director may arrange for the housing of the offender in local
26 confinement facilities.

27 2. For purposes of this chapter, an "eligible offender" means an offender who:

28 a. In accordance with section 12.1-32-09.1, has served eighty-five percent of the
29 offender's sentence of imprisonment or had the offender's ~~sentence~~sentence
30 commuted and has served the commuted sentence; or

31 b. Is serving a sentence only for one or more violations of ~~section:~~

- 1 (1) Section 12.1-06.1-08, 12.1-11-01, ~~12.1-11-07~~, 12.1-15-02, or 12.1-15-03;
2 subdivision c of subsection 1 of section 12.1-21-02; section 12.1-21-03.1;
3 subdivision b of subsection 1 of section 12.1-21-05; section 12.1-21-06.1,
4 ~~12.1-22-05~~, 12.1-23-02, 12.1-23-04, 12.1-23-07, 12.1-23-08, ~~or~~ 12.1-24-01;
5 or 14-09-22.1; subsection 7 of section 19-03.1-23; ~~or~~ section 19-03.4-03 or
6 39-08-01; or
- 7 (2) Any section for which the offender is guilty of a misdemeanor, except an
8 offender serving a sentence for a violation of chapter 12.1-17, 12.1-17.1,
9 12.1-20, 12.1-25, or 12.1-27.1 is not an eligible offender.
- 10 3. For purpose of subdivision b of subsection 2, a conviction reduced pursuant to
11 subsection 9 of section 12.1-32-02 is not a misdemeanor.
- 12 4. The department of corrections and rehabilitation shall provide to the attorney general
13 and the legislative council each quarter a report, including the names, locations, and
14 sentences of each individual who meets the criteria in subdivision b of subsection 2.

15 **SECTION 4. AMENDMENT.** Section 12-48.1-02 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **12-48.1-02. Conditions of eligibility for participation in release programs.**

- 18 1. An eligible offender, except an offender sentenced to a penalty of life imprisonment
19 without the opportunity for parole as the result of conviction of a class AA felony under
20 section 12.1-20-03 or of murder under section 12.1-16-01, may ~~be eligible for~~
21 ~~programs~~ participate in a program outside ~~facilities~~ a facility under the control of the
22 department of corrections and rehabilitation when the department determines, with a
23 high degree of reliability, the eligible offender is not a high security risk, not likely to
24 commit a crime of violence, not likely to escape, and is likely to be rehabilitated by
25 such program. An eligible offender may apply to the director of the department for
26 permission to participate in such programs.
- 27 2. The director of the department may authorize participation in outside programs for an
28 eligible offender who has ten years or less remaining on a sentence and has been
29 committed to the legal and physical custody of the department. The parole board, with
30 the approval of the director of the department, may authorize participation in outside
31 programs for eligible offenders who have more than ten years remaining on a

- 1 sentence and have been committed to the legal and physical custody of the
2 department.
- 3 3. The offender shall submit a signed application which must include a statement that the
4 eligible offender agrees to abide by all terms and conditions of the particular plan
5 adopted for the eligible offender, and must include such other information as the
6 parole board or the director of the department may require.
- 7 4. The parole board may approve, disapprove, or defer action on an application
8 approved by the director of the department. The director of the department or the
9 parole board may revoke approval of the application at any time after granting the
10 application. The department shall prescribe rules of conduct and treatment for all
11 eligible offenders on release programs and shall prescribe objective and subjective
12 criteria for which revocation of approval to participate in release programs is
13 mandatory. A rule violation indicating the eligible offender likely will commit a crime of
14 violence or is likely to attempt to escape must result in revocation of approval to
15 participate in release programs. The department shall document all violations of the
16 rules of conduct and treatment.
- 17 5. The director of the department may grant short leaves, not to exceed seventy-two
18 hours, to eligible offenders who have been committed to the legal and physical
19 custody of the department for ten years or less. The parole board, upon the approval
20 of the director of the department, may grant short leaves, not to exceed seventy-two
21 hours, to offenders committed to the legal and physical custody of the department for
22 more than ten years. Short leaves granted under this subsection may not be granted
23 consecutively to the same individual.
- 24 6. All rules adopted by the parole board and the director of the department relating to
25 release programs and short leaves must conform, to the extent allowable by law, with
26 executive order no. 11755 issued by the President of the United States.

27 **SECTION 5. AMENDMENT.** Section 12-54.1-01 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **12-54.1-01. Sentence reduction for good time.**

30 ~~Except as provided under~~ Subject to the requirements of section 12.1-32-09.1, an offender
31 committed to the legal and physical custody of the department of corrections and rehabilitation

1 is eligible to earn sentence reductions based upon satisfactory fulfillment of performance criteria
2 established through department and penitentiary rules. Performance criteria ~~includes~~must
3 include participation in court-ordered or staff-recommended treatment and education programs
4 available to the offender, if any, and good work performance if the offender is employed. The
5 department may credit an offender committed to the legal and physical custody of the
6 department who is eligible for sentence reduction up to five days good time per month for each
7 month of the sentence ~~imposed~~served, up to a maximum of fifteen percent of the offender's
8 sentence. Sentence reductions may not be awarded before they are earned. The department
9 may credit an offender with sentence reduction for time spent in custody before sentencing and
10 commitment to the legal and physical custody of the department. The department may not credit
11 an offender with any sentence reduction for time spent on probation under the supervision and
12 management of the department.

13 **SECTION 6. AMENDMENT.** Section 12-54.1-03 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **12-54.1-03. Meritorious conduct sentence reduction.**

16 ~~Except as provided under section 12.1-32-09.1, offenders~~Offenders committed to the legal
17 and physical custody of the department of corrections and rehabilitation may receive a lump
18 sum or a monthly rate of meritorious conduct sentence reduction for outstanding performance
19 or heroic acts ~~or as a special control and security measure,~~ as provided by penitentiary and
20 department rules and upon written recommendation of a department multidisciplinary team.
21 Meritorious sentence reductions are in addition to sentence reductions under section
22 12-54.1-01 and may be made only after a written recommendation is made by the warden and
23 approved by the director of the department. Any sentence reduction ~~for special control or~~
24 security measures under this section may not exceed ~~two days~~one day good time per month per
25 offender.

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

28 **12.1-08-02. Preventing arrest or discharge of other duties.**

29 ~~4-~~ A person is guilty of a class A misdemeanor if, with intent to prevent a public servant
30 from effecting an arrest of himself or another for a misdemeanor or infraction, or from
31 discharging any other official duty, he creates a substantial risk of bodily injury to the public

1 servant or to anyone except himself, or employs means justifying or requiring substantial force
2 to overcome resistance to effecting the arrest or the discharge of the duty. A person is guilty of a
3 class C felony if, with intent to prevent a public servant from effecting an arrest of himself or
4 another for a class A, B, or C felony, he creates a substantial risk of bodily injury to the public
5 servant or to anyone except himself, or employs means justifying or requiring substantial force
6 to overcome resistance to effecting such an arrest.

7 ~~2.1.~~ It is a defense to a prosecution under this section that the public servant was not
8 acting lawfully, but it is no defense that the defendant mistakenly believed that the
9 public servant was not acting lawfully. A public servant executing a warrant or other
10 process in good faith and under color of law shall be deemed to be acting lawfully.

11 2. A sentence for a conviction under this section carries a penalty of at least fourteen
12 days' imprisonment and, if there is an underlying conviction, the imprisonment must be
13 consecutive to any sentence of imprisonment for thean underlying conviction.

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

16 **12.1-17-01. Simple assault.**

- 17 1. A person is guilty of an offense if that person:
- 18 a. Willfully causes bodily injury to another human being; or
 - 19 b. Negligently causes bodily injury to another human being by means of a firearm,
20 destructive device, or other weapon, the use of which against a human being is
21 likely to cause death or serious bodily injury.
- 22 2. The offense is:
- 23 a. A class C felony when the victim is a peace officer or correctional institution
24 employee acting in an official capacity, which the actor knows to be a fact; an
25 employee of the state hospital acting in the course and scope of employment,
26 which the actor knows to be a fact, and the actor is an individual committed to or
27 detained at the state hospital pursuant to chapter 25-03.3; a person engaged in a
28 judicial proceeding; or a member of a municipal or volunteer fire department or
29 emergency medical services personnel unit or emergency department worker in
30 the performance of the member's duties.
 - 31 b. A class B misdemeanor except as provided in subdivision a.

1 3. ~~A sentence for a conviction under subdivision a of subsection 2 carries a penalty of at~~
2 ~~least thirty days' imprisonment and, if there is an underlying conviction, the~~
3 ~~imprisonment must be consecutive to any sentence of imprisonment for the an~~
4 ~~underlying conviction.~~

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

7 **12.1-32-02.1. Mandatory prison terms for armed offenders.**

8 1. Notwithstanding any other provision of this title, a term of imprisonment must be
9 imposed upon an offender and served without benefit of parole when:

10 a. In the course of committing an offense, the offender inflicts or attempts to inflict
11 bodily injury upon another, threatens or menaces another with imminent bodily
12 injury with a dangerous weapon, explosive, destructive device, or firearm; or

13 b. An offender prohibited from possessing a firearm under section 62.1-02-01
14 possesses a firearm while in the course of committing any felony offense under
15 subsection 1, or 3, ~~or 7~~ of section 19-03.1-23.

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

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

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

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

25 4. This section applies even if the offender is prosecuted for a violation of section
26 62.1-02-01 for the same conduct.

27 5. An offender serving a sentence subject to this section ~~may be eligible to participate in~~
28 ~~a release program under section 12-48.1-02 during the last six months of the~~
29 ~~offender's sentence is not an eligible offender under subdivision b of subsection 2 of~~
30 section 12-48.1-01.

1 **SECTION 10. AMENDMENT.** Section 12.1-32-09.1 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **12.1-32-09.1. ~~Sentencing of violent offenders~~ Truth in sentencing.**

- 4 1. Except as provided under ~~section~~sections 12-48.1-01 and 12-48.1-02 ~~and pursuant to~~
5 ~~rules adopted by the department of corrections and rehabilitation, which exempt~~
6 eligible offenders from the requirements of this subsection, an offender who is
7 sentenced as a dangerous special offender or habitual offender under section
8 12.1-32-09, or is convicted of a crime in violation of section 12.1-16-01, 12.1-16-02,
9 subsection 2 of section 12.1-17-02, section 12.1-18-01, subdivision a of subsection 1
10 or subdivision b of subsection 2 of section 12.1-20-03, section 12.1-22-01,
11 subdivision b of subsection 2 of section 12.1-22-02, or an attempt to commit the
12 offenses, and who receives a sentence of imprisonment is not eligible for release from
13 confinement on any basis until eighty-five percent of the sentence imposed by the
14 court has been served or the sentence is commuted. All other offenders are not
15 eligible for release from confinement on any basis until:
- 16 a. Fifty percent of the sentence imposed by the court is served, not including any
17 time credited under section 12-54.1-01, and the offender is paroled;
- 18 b. The offender's sentence is commuted and the offender served the commuted
19 sentence;
- 20 c. Eighty-five percent of the sentence imposed by the court is served; or
- 21 d. The offender is pardoned.
- 22 2. In the case of an offender who is sentenced to a term of life imprisonment with
23 opportunity for parole under subsection 1 of section 12.1-32-01, the term "sentence
24 imposed" means the remaining life expectancy of the offender on the date of
25 sentencing. The remaining life expectancy of the offender must be calculated on the
26 date of sentencing, computed by reference to a recognized mortality table as
27 established by rule by the supreme court.
- 28 3. Notwithstanding this section, an offender sentenced under subsection 1 of section
29 12.1-32-01 may not be eligible for parole until the requirements of that subsection
30 have been met.

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- 1 4. ~~An offender who is convicted of a class C felony in violation of section 12.1-17-02, or~~
2 ~~an attempt to commit the offense, and who has received a sentence of imprisonment~~
3 ~~or a sentence of imprisonment upon revocation of probation before August 1, 2015, is~~
4 ~~eligible to have the offender's sentence considered by the parole board.~~
- 5 5. ~~Notwithstanding subsection 4, this section does not apply to a sentence imposed upon~~
6 ~~revocation of probation. For purposes of this section "confinement" does not include~~
7 ~~placement or residence in a transitional facility, halfway house, or similar facility,~~
8 ~~operating under contract, in partnership with, or under the direction of the department~~
9 ~~of corrections and rehabilitation or other correctional facility, with unsecured or~~
10 ~~minimum security housing.~~
- 11 5. Notwithstanding subsection 4, placement or residence at the James River correctional
12 center, Missouri River correctional center, Heart River correctional center, or Dakota
13 women's correctional and rehabilitation center, or county jail is "confinement" for
14 purposes of this section, provided the order to place the inmate in the center or jail is
15 approved by an identifiable employee of the department of corrections and
16 rehabilitation after the employee determines, with reasonable certainty, the placement
17 will not pose a danger to the public.

18 **SECTION 11. AMENDMENT.** Section 39-10-71 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **39-10-71. Fleeing or attempting to elude a peace officer - Penalty.**

- 21 1. A driver of a motor vehicle who willfully fails or refuses to bring the vehicle to a stop, or
22 who otherwise flees or attempts to elude, in any manner, a pursuing police vehicle or
23 peace officer, when given a visual or audible signal to bring the vehicle to a stop, is
24 guilty of a:
- 25 a. Class A misdemeanor for a first offense and a class C felony for a subsequent
26 offense within three years;
- 27 b. Class C felony if the driver violates this section while willfully fleeing during or
28 after the commission of a felony; or
- 29 c. Class C felony if, at any time during the flight or pursuit, the driver willfully
30 operates the vehicle in a manner constituting an inherent risk of death or serious
31 bodily injury to a third person.

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- 1 2. A signal complies with this section if the signal is perceptible to the driver and:
- 2 a. If given from a vehicle, the signal is given by hand, voice, emergency light, or
- 3 siren, and the stopping vehicle is appropriately marked showing it to be an official
- 4 police vehicle; or
- 5 b. If not given from a vehicle, the signal is given by hand, voice, emergency light, or
- 6 siren, and the officer is in uniform or prominently displays the officer's badge of
- 7 office.
- 8 3. ~~A sentence for a felony conviction under this section carries a penalty of at least thirty-~~
- 9 ~~days' imprisonment and, if there is an underlying conviction, the imprisonment must be~~
- 10 ~~consecutive to any sentence of imprisonment for thean underlying conviction.~~
- 11 4. Upon a motion by a state's attorney, a court may order that a motor vehicle used in the
- 12 commission of a violation of this section be impounded by a peace officer for up to six
- 13 months.

14 **SECTION 12. APPLICATION.** Sections 1, 2, 3, 4, 5, 6, 9, and 10 of this Act apply to

15 individuals who are charged after July 31, 2025, with violations subject to the provisions of this

16 Act.