

**2015 HOUSE JUDICIARY**

**HB 1367**

# 2015 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Prairie Room, State Capitol

HB 1367  
2/9/2015  
23504

☐ Subcommittee  
☐ Conference Committee



## Explanation or reason for introduction of bill/resolution:

Relating to court authority to impose additional periods of probation.

## Minutes:

Testimony 1

**Vice Chairman Karls:** Opened the hearing on this bill with testimony in support.

**Rep. Brabandt:** Introduces bill. The reason for the bill was to give the court authority to impose additional periods of probation. At this point I would defer to Judge Bruce Haskell to testify and answer any questions that you have.

**Bruce Haskell, District Judge:** I am a district court judge in the south central judicial district. I have been a judge for about 20 years. Part of my duties included, up until recently, being on the drug court. The reason I bring that up is because I think it is a universal sentiment among judges that we prefer alternatives to incarceration and the current status of the law as it pertains to probationary periods is we are allowed to give one additional period of probation in addition to the original period of probation. What that means is if a person has been revoke and is again on probation and is having difficulties on probation we are basically stuck with two options; we can either incarcerate the person or we can basically end the probation and cut them loose. In many instances neither of those are particularly attractive alternatives. We would rather have the option of extending the probationary periods so that if people are in treatment, if people have restitution owed, if people have other issues that a longer term or probation would be appropriate we have that option. We have the discretion and I do want to stress that these periods of probation are discretionary, in other words it isn't mandatory that we impose certain periods of probation. In a DUI area I think is the only area where there is a mandatory period of probation. Obviously in each case we listen to the prosecutors, we listen to the defense attorney, in many cases we listen to treatment providers, we listen to the victims in cases where there is restitution and we try to tailor a period of probation that is appropriate for that. I know that there has been a lot of emphasis on alternatives to incarceration and a committee that is dealing with that and we certainly are looking at trying to do as much of that as possible. Obviously DOCR has concerns right now about their case load, they have concerns about the population of the prison and we certainly would try to do what we can to alleviate that. I would hope that additional periods of probation wouldn't impose an undue burden on the

department of corrections and rehabilitations. I know there are some representative's here that have some different ideas and we are certainly open to listen to those as well. At this point if you have any questions I would be happy to hear those. I should say that I am here representing the Judicial Conference.

**Rep. Brabandt:** Are the additional periods of probation, are they limited?

**Bruce Haskell:** The bill as written would be unlimited periods of probation. It is currently in most felony cases it is a five year period of probation with the additional one more five year period. The bill as written would allow for unlimited periods of probation. I would not however that's it's not typical that we impose even a five year period of probation. We try to tailor the probation to the shortest period that would accomplish the goals of the probation but to specifically answer your question yes it would be unlimited periods of probation.

**Rep. K. Wallman:** What percentage of people who might now be re-incarcerated would actually be on probation and is there be a fiscal note or is it all the same bucket?

**Bruce Haskell:** I don't know a percentage. I would say it is relatively small and I would just say from my own experience I don't have many cases where I'm at the point where I have to make the decision where we are out of probationary periods and we have to look at either incarceration or just cutting the person loose.

**Rep. L. Klemin:** In existing law right now you now have unlimited probation such as some of the sex offender cases and also number four for abandonment or not support of spouse or children it could be as long as responsibility for support to continue so I could be a very long time. Has there been any issue with those things in having that long probation.

**Bruce Haskell:** I am twenty years on the bench and I have had no one even convicted of none support. You are referring to AA felonies and sex offender cases and in my experience typically those people if they are not working on probation to start with we typically will sentence them to the penitentiary because they have the sex offender program and they make the decision that the parole end and what to do. There are those few instances in the current statute that allow for unlimited period of probation.

**Rep. Lois Delmore:** Is there a fiscal note on this bill?

**Bruce Haskell:** I don't know if there will be one. I certainly on the one end of the probation end I would assume that it may require more personal but as you pointed out it is considerably cheaper than incarcerating somebody.

**Chairman K. Koppelman:** When is the punishment for the crime over? While I support and I think a lot of us do the idea of more appropriate consequences for criminals in saying this one needs to be locked up for these reason, this one doesn't or doesn't for as long etc. and I think we support court discretion this open ended is maybe kind of concerning and in your view would there be a problem if there was some sort of outside limit and if so what brought that to be?

**Bruce Haskell:** I think it calls for some balancing. First of all as you pointed out the discretion of the judges, secondly what is the goal of the probation? Typically it's obviously rehabilitation, get the person back in society, get them employed, get them educated and the is usually going to be some sort of time that that is either accomplished or it is apparent that it won't be accomplished in which case you revoke the probation and impose the appropriate period of incarceration. I think you also need to look at what is preferable. Leaving the judges no choice but to cut the person loose or incarcerate them or allowing for open ended. I wouldn't think that putting some sort of limits on it would be undesirable but each person, each case is unique and it has been shown especially in the drug court context that the longer you can keep people under supervision in the treatment context the more likely you are to have success. Now does that mean you have 20 years of treatment, that is probably unrealistic but I do think you have to have some common sense and again getting back to my original comment each period of probation has a particular purpose or goal. Once that goal is reached or it is apparent that that goal is not going to be reached then the appropriate step is taken.

**Chairman K. Koppelman:** We do have a lot of respect and trust in the judiciary but you know we are putting things in law and there is a reason that sentences for certain classes of offenses are only so long and so it seems to me that maybe there would be wisdom in following those kinds of lines. In a practical sense when you talk about someone being sentenced for a crime for a particular period of time and of course as we all know those aren't always served in confinement and that's where probation or parole comes in. If they are on probation that means they haven't gone to prison. Parole means they have an they are release.

**Bruce Haskell:** No actually it can be one of two ways. For instance if I sentence someone to five years with two years suspended for three years then they will be on probation once their year period is completed. However the parole board can parole them and sometimes can do that early. It is not necessarily that they didn't go to prison if they are on probation.

**Chairman K. Koppelman:** Let's say there is a five year sentence for a crime; under this bill could you not have them on probation for 20 years?

**Bruce Haskell:** What you could do, from my reading of the bill, you could impose an original five year probationary period. Probationary period that is imposed cannot be longer than what the sentence would be. The first paragraph says; period of probation or deferred imposition of sentence may not extend for more than five years for a felony and two years for a misdemeanor. The way I read that is you can only impose a period of probation or deferment imposition of sentence for five years on a felony, two years on a misdemeanor. Then if you revoke the probation you can impose addition terms of five years or two years.

**Chairman K. Koppelman:** It says except as proved in this section the length of the period can't be longer than the sentence so if we are making exemptions here in this section of law then it sounds to me like the way it is written is open ended.

**Bruce Haskell:** I am reading that that is referring to subsections talking about felony, sexual offense, unlimited probation and the one having to do with none support that



Representative Klemin referred to earlier. Maybe that isn't as clear as it should be and maybe that language should be clarified so there isn't that question.

**Rep. L. Klemin:** On page 2, line 12 & 14; where it says and addition period of probation may follow a period of incarceration if the defendant has not served the maximum period of incarceration. So there is kind of an outside limit.

**Bruce Haskell:** The way I read that is line 10 there you cannot impose a period of probation exceeding five years for each additional period and as you pointed out Representative Klemin, if they have served all the time that they can serve then there can't be anymore imposed on that. Maybe that could be cleaned up a little bit so it is clarified but I think the intent is that it is five years at a time on a felony, two years on a misdemeanor and not exceeding what the total sentence could have been.

**Aaron Burst, Association of Counties:** We support this bill. SB 2027 also deals with the maximum terms of probation. I think at some point we can blend these together. From a prosecutor's stand point, there was number of prosecutors that would seek to revoke and then put back on supervised probation not send them to the pen. Then along came a Supreme Court case that limits it. We looked at the language and you are limited to the amount of times you can revoke and resentence someone. So this is an attempt to clarify. From the prosecutors stand point they clearly recognize there has to be some limit. I would agree with the judge on his interpretation but it probably should be cleaned up. The attempt is not to keep somebody on probation for forever. In blending the two bills together I think we could get this done.

Opposition: None

Neutral:

**Pat Bohn, Director for Transitional Planning Services, ND Department of Corrections & Rehabilitation:** (See testimony #1)

**Rep. Lois Delmore:** On the first page you talked about the one day count increasing 234 percent. What affect did the new DUI legislation have on that?

**Pat Bohn:** It certainly has had an impact on our growth. I'm not sure that is the stand alone, but certainly we have more people today in prison and the last number I saw was our new arrivals in prison for felony DUI APC or refusal to comply with a chemical test is up to about 10 percent of the new arrivals now.

**Rep. G. Paur:** In your example of the case life cycle with the felony theft, I'm assuming in your example that you believe they should be limited to five years but in the process there was at least three felonies committed. I am having trouble with this?

**Pat Bohn:** I was trying to give you a picture of what a case could look like. Certainly the new felonies, the drug paraphernalia, a DUI would be new crimes within themselves subject to all the maximum penalties currently available under law. I was just trying to illustrate the time line for which the impact of this bill would occur.

**Rep. K. Hawken:** How much work have you done at DOCR at getting them back into society and if that hasn't been accomplished isn't having someone there and maybe you would be better at doing these things than prison and I would think parole would be a much less expensive alternative to incarceration. Am I reading that wrong?

**Pat Bohn:** Yes probation and patrol are less costly than incarceration itself. However there are not unlimited resources out there in supervising people in this state. Much of the research would support the idea that about the maximum caseload for a probation officer should be about 45 to 60 people. If you really want to get to doing the work that you just spoke about in terms of employment and behavior change and behavior modification, motivation and all of those things. Our caseloads right now in some areas are upwards of 100 people and as we continue to grow we can't do behavior change we can't do all the things that you're talking about that are of caseloads of that size. As we grow that is some of the challenges where do we draw the line and say enough has been done where do we continue.

**Rep. K. Hawken:** I would think maybe that is what should have been included in the bill was getting more people to do those things. We have on occasion done maximum minimum sentencing, which now we are going back and saying that was probably not the best idea we ever had let's look at that again. So in your neutral testimony I'm a little concerned about the comment on there should be a maximum amount because that is sort of the same thing. One size doesn't fit all. If we put in a maximum what if there is that person that with just a little more help would make it.

**Rep. D. Larson:** Looking at the map on the last page of your handout I have been told that some people, even federal prisoners or incarcerated at the penitentiary here that often times their families move here and then when they get out of prison they remain in the community. Would that be the reason that we have so many more people on parole and probation than any other place in the state even though we are not the highest population.

**Pat Bohn:** First as to the federal piece of it; we are not boarding anybody other than exchanges between the states and the feds. We do and exchange for instance the feds may have somebody that they cannot safely house in one of their facilities, they maybe an informant, so they place them here in North Dakota and likewise. I don't know I have never heard that some of those federal people have their families moving here, is it possible absolutely. As for the numbers there is a lot of things that we try to look at in terms of what differentiates the Burleigh County numbers from maybe other areas of the state. We cannot point to the fact that it has to do with the number of people we discharge from here. The number of people we discharge from here is directly proportional to the number of people that come from here so I am not sure that it really has to do with people being released here because many of those people are being released here anyway. Similar to Cass County, we transition a number of people through Cass County. Most of those people are Cass County people but some of them come from the surrounding areas such as Wahpeton or Casselton. We haven't been able to pin point and say it has to do with the number of people relocating or coming out of prison to the facilities here. We really really do try and move people back to their home communities and not transplant them. Not to say that we are always successful with it, but we really do try and get people moved back

to where they are from. We are not trying to create a wheel here that relocates people with great frequency

**Rep. L. Klemin:** You said we should ask for a fiscal note? Who would prepare that?

**Pat Bohn:** Our business manager would prepare that. I really really think with that life cycle we are probably talking about that four to seven year range before these people would start coming into the fold per say.

**Rep. L. Klemin:** The effective date of the bill would be August 1, 2015, did you say that these additional periods of probation would only apply to people who are convicted after the effective date of this bill.

**Pat Bohn:** Yes I believe that to be true. This would essentially add more penalties available to an offender who committed his offense today for instance. Right now today that additional period of probation is not available to the court or as if you go the other way and create a lessening of the penalty then typically the court has seen it as something available to the offenders who committed their offense today and two years from now.

**Rep. L. Klemin:** In the current situation when they reach the end of the probation they either have to send them back to prison or cut them lose. You are saying for those people who have been convicted prior to August 1, 2015 that is going to remain the option available until they have reached the maximum sentence and this bill doesn't do anything for those people now as far as the ability of the court to impose an additional period of probation that you would have to send them back to jail.

**Pat Bohn:** That would be after two periods of probation. I believe that as this is written that the court would not be able to necessarily put somebody who is convicted today and go back to my "johnnie offender" on a third period of probation.

**Rep. L. Klemin:** Isn't a third period of probation something less than sending them to the prison again.

**Pat Bohn:** Probation is a punishment. I know it is an opportunity to not go to as serious of a punishment as jail or prison would be but to that extend it still is a punishment.

**Rep. L. Klemin:** So that for some period of time we will have two sets of rules, one for people who have been convicted prior to August 1, 2015 and one for people who have been convicted after that.

**Rep. P. Anderson:** Right now if you owe restitution you have to be on supervised probation?

**Pat Bohn:** No that is not the case, what it is, is if a person is convicted of a C felony or greater and the courts suspends a portion of the sentence as it currently is the individual must be placed on supervised probation. Actually Senate bill 2027 would go to changing that. It would give the court the authority and the digression to place somebody on

supervised probation in the case of a felony nonviolent offense. It would still require it for things such as aggravated assault, kidnapping robbery and those types of offenses.

**Rep. P. Anderson:** One of your recommendations was to provide for unsupervised probation. So that led me to believe right now that it is supervised probation if you have any outstanding restitution balances.

**Pat Bohn:** Many of these cases languish on because of the restitution issue and we run up against issues with this two periods of probation. That is why I think it could be viable to maybe look at option two that I spoke about or allowing the court even if they suspended a period of time yet to place them on unsupervised probation so that restitution could still stay active before the court in a criminal aspect.

**Rep. K. Wallman:** We have a boom in population, has the funding for the DOCR kept up with the population increase in North Dakota to this point?

**Pat Bohn:** We are lagging behind. When you look at those case load numbers that I cited to you and officers up in the Minot area that have a caseload of approximately 100 people right now, we need more boots on the ground to help manage the population that is growing out there. Not just because of oil, because if you look at this this has been a trend before the oil started to take an impact on us. To keep up with everything else is we add more penalties, more enhanced penalties and its more people in the cue for supervision.

**Rep. K. Wallman:** I don't know if it says anywhere in the bill that there is not retroactive effect of this, because it doesn't say there is no retroactive effect I'm curious as to why you assume there wouldn't be.

**Pat Bohn:** Again going off typically how things have happened with the court, not to say that I'm absolutely right because I am anticipating that this would not apply to those folks that are already on our caseload. I see it as being a penalty enhancement whereas before the court was limited to two periods in the case of a felony sentence. This would provide for unlimited periods of probation provided that the individual hasn't served the maximum sentence available under law for incarceration.

**Rep. K. Wallman:** When you talk about penalty enhancement. I'm not sure I understood your testimony correctly but what I thought I heard you say was that there would be accumulation effect to the probation. So if someone had multiple convictions the probation would not be allowed to extend longer than what would be from the original offense?

**Pat Bohn:** Each case is going to stand alone, meaning that this "johnnie offender" that I have here commits theft of property, at that point in time maximum sentence available to law would apply to that offender. Now johnnie offender gets that felony drug paraphernalia four years down the road he gets convicted of that. The court would sentence that individual on the felony drug paraphernalia. So we could have this left of property running and kick off this felony drug paraphernalia that would take on its own life as well. Each case still stands on its own and that is how we manage them.

**Rep. Lois Delmore:** As we look at that what becomes the risk to public safety and communities. We haven't helped that individual he's not on parole and probation, he is not incarcerated. If we go with that idea are we adding a risk, especially as our population is going if things are changing in our state?

**Pat Bohn:** Not everyone needs to be supervised. They don't always present a public safety risk. When I think about risk I think about high risk and lower or moderate risk. We have some people who are at higher risk to commit some offenses but they typically are going to reoffend at a lower level. Maybe it is misdemeanor offense, theft type of things verses those higher risk more dangerous individuals that are at risk that when they reoffend they are committing the domestic violence, doing robberies and aggravated assaults. If you supervise people who are low risk for too long of period of time it is much like the medical world, you can put someone on medication for period of time where it no longer becomes affective as it was at the beginning.

**Chairman K. Koppelman:** Why don't we have a fiscal note on this?

**Pat Bohn:** I guess it was late in the game so we thought we'd see if you would request one. We are more than willing to prepare one.

Hearing closed.

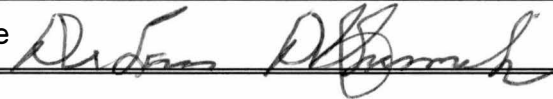
# 2015 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Prairie Room, State Capitol

HB 1367  
2/17/2015  
23963

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature



## Minutes:

Proposed amendment #1

**Chairman K. Koppelman:** This is the one that dealt with length of probation. (See proposed amendment #1) Went over the proposed amendment.( :24- 4:10) The effect of the amendment was you can't do unlimited periods of probation. DOCR has some concerns about the fiscal impact of that as well.

**Aaron Burst:** Explained the amendment. I looked this over along with the Attorney General's office and the effect is to keep the probation period so you could be revoked multiple times, but you can never go above that cap of ten years for the felonies.

**Rep. D. Larson:** You mean whatever the maximum sentence was for the offense that they committed?

**Aaron Burst:** Yes it means you couldn't be on probation indefinitely.

**Rep. Maragos moved the amendment; Seconded by Rep. Lois Delmore:**

**Voice vote carried.**

**Rep. Lois Delmore moved a Do Pass as Amended of HB 1367; Seconded Rep. Maragos**

Discussion: None

**Roll Call Vote: 12 Yes 0 No 1 Absent Carrier: Rep. Brabandt:**



February 17, 2015

SK  
2/17/15  
1/2

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1367

Page 1, line 8, after "the" insert "total"

Page 1, line 8, overstrike "the period of" and insert immediately thereafter "unsupervised"

Page 1, after line 14, insert:

"2. Except as provided in this section the total length of supervised probation imposed in conjunction with a sentence of probation or a suspended execution or deferred imposition of sentence may not extend for more than five years for a class C felony, ten years for all other felony offenses, and two years for a class A misdemeanor from the later of the date of:

- a. The order imposing probation;
- b. The defendant's release from incarceration; or
- c. Termination of the defendant's parole."

Page 1, line 15, overstrike "2." and insert immediately thereafter "3."

Page 1, line 18, after "of" insert "unsupervised"

Page 1, line 20, overstrike "3." and insert immediately thereafter "4."

Page 2, line 7, overstrike "4." and insert immediately thereafter "5."

Page 2, line 10, overstrike "5." and insert immediately thereafter "6."

Page 2, line 10, after "felony" insert "and misdemeanor"

Page 2, line 11, overstrike "not to exceed five years"

Page 2, line 11, remove "for each"

Page 2, line 12, remove "additional period imposed"

Page 2, line 12, overstrike the period

Page 2, line 12, remove "An"

Page 2, line 12, overstrike "additional period of probation may follow a period of"

Page 2, overstrike lines 13 and 14 and insert immediately thereafter "if the defendant has not served the maximum sentence of imprisonment or probation available to the court at the time of initial sentencing or deferment. The court shall allow the defendant credit for a sentence of probation from the date the defendant began probation until the date a petition to revoke probation was filed with the court. If the defendant is on supervised probation, the defendant is not entitled to credit for a sentence of probation for any period the defendant has absconded from supervision. The total amount of credit a defendant is entitled to for time spent on probation must be stated in the criminal judgment or order of revocation of probation."

Page 2, line 15, overstrike "6." and insert immediately thereafter "7."

Page 2, line 18, overstrike "7." and insert immediately thereafter "8."

Renumber accordingly

2/2



**2015 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL NO. HB 1367**

House JUDICIARY Committee

☐ Subcommittee ☐ Conference Committee

Amendment LC# or Description: 15.8192.01001

Recommendation: ☒ Adopt Amendment  
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☐ As Amended ☐ Rerefer to Appropriations  
Other Actions: ☐ Reconsider ☐

Motion Made By Rep. Maragos Seconded By Rep. Lois Delmore::

Representative	Yes	No	Representative	Yes	No
Chairman K. Koppelman			Rep. Pamela Anderson		
Vice Chairman Karls			Rep. Delmore		
Rep. Brabandt			Rep. K. Wallman		
Rep. Hawken					
Rep. Mary Johnson					
Rep. Klemin					
Rep. Kretschmar					
Rep. D. Larson					
Rep. Maragos					
Rep. Paur					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment: \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

**VOICE VOTE CARRIED.**

**2015 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL NO. HB 1367**

House JUDICIARY Committee

☐ Subcommittee ☐ Conference Committee

Amendment LC# or Description: 15.8192.01001

Recommendation: ☒ Adopt Amendment  
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☒ As Amended ☐ Rerefer to Appropriations  
Other Actions: ☐ Reconsider ☐

Motion Made By Rep. Lois Delmore: Seconded By Rep. Maragos

Representative	Yes	No	Representative	Yes	No
Chairman K. Koppelman	X		Rep. Pamela Anderson	X	
Vice Chairman Karls	X		Rep. Delmore	X	
Rep. Brabandt	X		Rep. K. Wallman	X	
Rep. Hawken	---				
Rep. Mary Johnson	X				
Rep. Klemin	X				
Rep. Kretschmar	X				
Rep. D. Larson	X				
Rep. Maragos	X				
Rep. Paur	X				

Total (Yes) 12 No 0

Absent 1

Floor Assignment: Rep. Brabandt:

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1367: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1367 was placed on the Sixth order on the calendar.

Page 1, line 8, after "the" insert "total"

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Page 1, after line 14, insert:

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**2015 SENATE JUDICIARY**

**HB 1367**

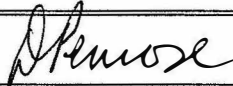
# 2015 SENATE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Fort Lincoln Room, State Capitol

HB 1367  
3/18/2015  
25061

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature



**Minutes:**

1,2

Ch. Hogue: We will open the hearing on HB 1367.

Rep. Roger Brabandt: Sponsor, support. This was introduced at the request of one of the judges in Minot. I have introduced the bill and someone familiar with periods of probation and any questions you may have.

Ch. Hogue: Thank you. Further testimony in support.

Aaron Birst, Association of Counties: Support the bill. The initial change was simple. Look on page 2, line 11, it essentially changed the word from "period" to "periods". There is a ND Supreme Court case that says you can't put somebody on continuous periods of probation because the word was singular. Originally the Judicial Conference came in and asked that it be changed to plural, for the concept that we might want to revoke a person multiple times or keep him on probation as opposed to sending him to jail or prison. That was the suggestion and we agreed with that. DOCR is offering an amendment they did in the House and there is another one coming. Essentially this bill is on a collision and I think we will work it out with the Senate 2027, so there will have to be conference committees on both HB 1367 and SB 2027. We are willing to help out. The DOCR wanted some assurances that you couldn't put someone on indefinite period of probation for the rest of their life. We're fine with that too.

Sen. Nelson: The amendments are longer than the bill.

Aaron Birst: I think it was just an attempt to try and merge these two bills together in one bill. We're going to continue work on this because the procedural mechanism needs to come together between the two bills.

Ch. Hogue: Thank you. Further testimony in support.

Patrick Bohn, Director, Transitional Planning Svcs, ND DOCR: Support (see attached #1) and suggested amendments (see attached #2).

Sen. Luick: What is the longest length of probation today on the worst case scenario?

Pat Bohn: There are some sex offenses that are eligible for lifetime supervision. Continuous sexual abuse of a child is AA felony; gross sexual imposition AA felony is eligible for lifetime supervision. The remainder of your felonies are two periods up to a maximum of 5 years of supervised probation and class A misdemeanors are two years and right now there is nothing in statute that would prevent unlimited periods of probation. It could go on and on. This would help clean that up.

Sen. Grabinger: Does HB 1367 and SB 2027 contradict each other. I don't know why we can't pass both and why we are trying to put them together.

Pat Bohn: There are a few contradictions. Right now, in 2027 there is an element of where the defendant now could petition the court and then there would be a required hearing and we don't have that in 1367. In 2027 we have the elements that I referenced in my testimony like #1 and the amendments on HB 1367 on page 2. These elements contained in #1 and #3, so there are a few things that are still muddy between the two. But we're close.

Ch. Hogue: Thank you. Further testimony in support. Testimony in opposition. Neutral testimony. We will close the hearing.



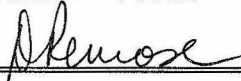
# 2015 SENATE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Fort Lincoln Room, State Capitol

HB 1367  
3/23/2015  
25295

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature



**Minutes:**

1

Ch. Hogue: Let's take a look at HB 1367.

Sen. Armstrong: This is going to be a competing bill to one we sent over to the House. These are dealing with probation terms and conditions. My question is, when we conference, we can't have them both because whichever one gets signed first is it. These amendments brought to make this bill more consistent with the Code. (#1)

Ch. Hogue: Well it depends on who kills whose bill first. If you're the first to kill, then they will feel obliged that they have to work on your bill and if it's a Senate bill and we don't concur, then it will be our bill. Maybe we should be the first to kill if there is something in the bill that you're concerned about.

Sen. Armstrong: The other bill came from Alternatives to Incarceration and Rep. Klemin is on the Judiciary Committee; there isn't a reason to have them both out there. The nice thing is that, at least, something that will pass somewhere. They need to be reconciled with each other, whether we do it now or later.

Ch. Hogue: Let's check the status of that other bill. We will table this.



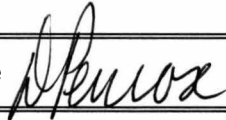
# 2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee  
Fort Lincoln Room, State Capitol

HB 1367  
3/30/2015  
25575

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature



Minutes:

1

Ch. Hogue: Let's take a look at HB 1367.

Sen. Armstrong: I don't remember the Senate Bill but essentially these (#1) amendments, after checking with Pat Bohn and Aaron Birst, is that they put this probation bill back together the way the probation bill we sent over to the House is. There are two options. There are two bills floating around. They have to be consolidated with each other. They haven't acted on the other bill. My point is that we need to have one of these bills move forward, given all the stakeholders involved. There aren't a lot of dramatic changes anymore. The changes that originally came through from Alternatives we pared down to some degree or another. At this point in time, I think are options are to kill the bill and deal with the other one that is on the House or make it look the same so we get in conference and we are only dealing with one version of what we're trying to do. The bill, as originally introduced to us, is very different; it was very small but it didn't match with what we sent over. These amendments came from DOCR to match the other bill, and then I ran through it and ran it by Aaron Birst just to make sure that we were all on the same page.

Sen. Casper: This matches what we kicked out.

Sen. Armstrong: This is completely consistent with what we sent over there; before they got to it.

Sen. Nelson: Is the Christmas tree the same as before.

Sen. Armstrong: Yes.

Ch. Hogue: Can you refresh our memory on what we did and what the objective is.

Sen. Armstrong: This left A misdemeanors still have two years of supervised probation. We delineated out the felonies that would be three years' probation vs. the five years. We left supervised probation in the discretion of the judge for non-violent offenses and we allowed a scenario where the defendant, on his own accord, could petition the court for probation reduction or termination of probation as opposed to making it come through the state's attorney. This is the one that DOCR wanted to petition the court directly and we all had trouble with that one because they aren't lawyers. They shouldn't be in the business of petitioning the court. However, if you write it as the defendant, the defendant can always petition the court on his own behalf, on his own case, or he could get a lawyer to do this. Then, if they do it and don't get their termination, we said that they can't do again for 18 months or 2 years.

Sen. Nelson: Are they eliminating cell block lawyers, basically. The guys that sit in their cells all day and read law books to see how they can work the system, we're eliminating that with this bill, because you can't do it again for a certain number of months.

Sen. Armstrong: Last session we had the sex offender bill, where that's all they did. They completely cycled through this. The intent is to allow for a petitioner to go in (a prosecutor's number 1 job in the world is not to get defendants off of probation). However between DOCR and the defendant, if they've matched up, say they've been on probation for 2 years, a non-violent theft charge and they are 44 years old and they've never been in trouble a day in their life and they stole a piece of equipment from work. They have a stellar probation record and DOCR and the defendant think it's time to ask the court to remove them from probation. Let's say that they have five year probation. So they petition the court and if the court denies it, they can't turn around and do it again right away. You don't get into the cycle of a defendant bogging down the court system. Hopefully, with the backend on it, what you do is creating a situation where DOCR and the defendant only go to court on cases where they should get off, because they know if they don't get it this time, they have to wait for that period to expire. And the section where DOCR could throw you in jail for two days without a court hearing. That's the one that is like an intermediate punishment so they don't have to do a contempt order, but there are immediate and unique consequences to being incarcerated mostly which is that there are bars on the windows and it's not very much fun. On page 3, they are striking out this community corrections language for class

B misdemeanors, which is obsolete and not something that is used at the district court level anyway. That's not something that DOCR should be involved with. It gives the court a little bit of discretion on a small amount of felonies. It lines out what the big ones are, the same as all the violence offenses still stay the same. It's the non-violents that move down a little bit. It looks like the bill we passed out before crossover, SB 2027.

Ch. Hogue: I think it makes good sense, since we have to pass a bill out regardless of what we do to it. We don't know the status of SB 2027. I think it makes good sense to amend this one to the way we had SB 2027. Ultimately the bill may have to be killed if the House acts favorably on SB 2027. What are the committee's wishes?

Sen. Luick: I move the Sen. Armstrong amendments to HB 1367.

Sen. Casper: Second the motion.

Ch. Hogue: Voice vote, motion carried.

Sen. Luick: I move a Do Pass as Amended.

Sen. Casper: Second the motion.

**6 YES 0 NO 0 ABSENT                      DO PASS AS AMENDED**

**CARRIER: Sen. Armstrong**

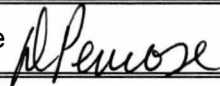
# 2015 SENATE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Fort Lincoln Room, State Capitol

HB 1367  
4/1/2015  
25680

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature



**Minutes:**

1

Ch. Hogue: We need to look at this bill again. We need to decide if we want HB 1367 or SB 2027 since they are identical.

Sen. Grabinger: I move that we reconsider our actions on HB 1367.

Sen. Armstrong: Second the motion.

Ch. Hogue: We will have Sen. Armstrong explain the amendments.

Sen. Armstrong: This bill was a probation bill brought over to us from the House and it now matches SB 2027.

Ch. Hogue: We heard from the House side of putting on the Hogue amendment for the stolen goods and they suggested putting it on HB 1367 and they will kill the Senate bill. I said that was fine. We will take a voice vote: motion carried. We now have the bill before us as amended.

Sen. Armstrong: I move to further amend HB 1367 with the Hogue Amendments (see attached #1) to be added to the 3/30/2015 Sen. Armstrong amendments.

Sen. Luick: Second the motion.

Sen. Nelson: I was wondering whether or not we should put something in regarding the personal use of a car. Should we put a limit of \$5,000.00 on personal possessions, so that it wouldn't include Dr. Johnson's Mercedes?

Ch. Hogue: When we were in front of the Political Subdivision's committee, they absolutely didn't want any dollars in the bill. I know Legislative Council frowns on dollars in NDCC because over time it quickly changes. The reason that I like incorporating this section 44-09-02.1Y is because there is case law out there that says that this is what consumer goods are and for cars, the statute uses the phrase "primarily for personal purposes", so it even defines if it is a mixed use piece of equipment, where you can use it in your home and also for your business. The thing to remember about motor vehicles is that is not going to be the issue, because motor vehicles are titled, there is a legal title owner on the vehicle and if there is a lienholder, that's on there as well. Motor vehicles actually don't really pertain to this amendment; they don't drive this type of dispute because they are titled and we know who the owner is. The police may know who owns the bike, Johnny and his parents said that is his bike or the purse, obviously if your ID is in the purse, even though it isn't titled, it is pretty strong evidence that it's your purse. As far as the car, that piece of property is titled and we know who the owner is because in order to drive it off the lot you have to apply for a motor vehicle registration and title.

Sen. Armstrong: If there was a dispute over a car it would be about equity. There is clear title to a car. You can't steal something that you have titled in your name. You can have a dispute about whether you owe somebody some money for it, but it's your car. The dispute becomes an issue of equity, not so much a dispute of theft.

Sen. Grabinger: We had a discussion in Political Subdivisions about putting in an amount. The problem is a \$2,000 car to one person might be a huge amount, to the next person a \$2,000 car is nothing. For us to set that figure we just could not reach a compromise.

Ch. Hogue: We will take a voice vote on the further amending of this bill to add the Hogue amendments. Motion carried. We now have the bill before us as amended.

Sen. Armstrong: I move a Do Pass as amended.

Sen. Luick: Second the motion.

**6 YES 0 NO 0 ABSENT**

**DO PASS AS AMENDED**

**CARRIER: Sen. Armstrong**

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1367

A BILL for an Act to amend and reenact section 12.1-32-06.1 and to amend and reenact subsections 1 and 3 of section 12.1-32-07 of the North Dakota Century Code, relating to court authority to impose additional periods of probation; supervision of probation, and conditions of probation; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 12.1-32-06.1 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-32-06.1. Length and termination of probation - Additional probation for violation of conditions - Penalty.**

1. Except as provided in this section, the total length of the ~~period of~~ unsupervised probation imposed in conjunction with a sentence to probation or a suspended execution or deferred imposition of sentence may not extend for more than five Years for a felony and two years for a misdemeanor or infraction from the later of the date of:
  - a. The order imposing probation;
  - b. The defendant's release from incarceration; or
  - c. Termination of the defendant's parole.
2. Except as provided in this section, the total length of supervised probation imposed in conjunction with a sentence of probation or a suspended execution or deferred imposition of sentence may not extend for more than five years for a class C felony, offense subject to section 12.1-32-09.1, a felony offense subject to section 12.1-32-02.1 which involves the use of a firearm or dangerous weapon, a second or subsequent violation of section 12.1-17-07.1, a second or subsequent violation of any domestic violence protection order, a violation of chapter 12.1-40, or a violation of section 14-09-22; ~~ten~~three years for all any other felony offenses, and offense; two years for a class A misdemeanor; and three hundred sixty days for a class B misdemeanor offense from the later of the date of:
  - a. The order imposing probation;
  - b. The defendant's release from incarceration; or



1           c.       Termination of the defendant's parole.

2       2.3.    If the defendant has pled or been found guilty of an offense for which the court  
3           imposes a sentence of restitution or reparation for damages resulting from the  
4           commission of the offense, the court may, following a restitution hearing pursuant  
5           to section 12.1-32-08, impose an additional ~~period~~periods of unsupervised  
6           probation not to exceed five years for each additional period imposed.

7       3.4.    If the defendant has pled or been found guilty of a felony sexual offense in  
8           violation of chapter 12.1-20, the court shall impose at least five years but not  
9           more than ten years of supervised probation to be served after sentencing or  
10          incarceration. If the defendant has pled or been found guilty of a class AA felony  
11          sexual offense in violation of section 12.1-20-03 or 12.1-20-03.1, the court may  
12          impose lifetime supervised probation on the defendant. If the defendant has pled  
13          or been found guilty of a misdemeanor sexual offense in violation of chapter  
14          12.1-20, the court may impose an additional ~~period~~periods of probation not to  
15          exceed two years for each additional period imposed. If the unserved portion of  
16          the defendant's maximum period of incarceration is less than one year, a  
17          violation of the probation imposed under this subsection is a class A  
18          misdemeanor.

19       4.5.    If the defendant has pled or been found guilty of abandonment or nonsupport of  
20          spouse or children, the period of probation may be continued for as long as  
21          responsibility for support continues.

22       5.6.    In felony and misdemeanor cases, in consequence of violation of probation  
23          conditions, the court may impose an additional ~~period~~periods of probation ~~not to~~  
24          ~~exceed five years. The additional period of probation may follow a period of~~  
25          ~~incarceration if the defendant has not served the maximum period of~~  
26          incarceration available at the time of initial sentencing or deferment. if the  
27          defendant has not served the maximum sentence of imprisonment or probation  
28          available to the court at the time of initial sentencing or deferment. The court  
29          shall allow the defendant credit for a sentence of probation from the date the  
30          defendant began probation until the date a petition to revoke probation was filed  
31          with the court. If the defendant is on supervised probation, the defendant is  
32          not entitled to credit for a sentence of probation for any period the defendant has  
33          absconded from supervision. The total amount of credit a defendant is entitled to  
34          for time spent on probation must be stated in the criminal judgment or order of



1 revocation of probation.

2 6-7. The court may terminate a period of probation and discharge the defendant at  
3 any time earlier than that provided in subsection 1 if warranted by the conduct of  
4 the defendant and the ends of justice.

5 7-8. Notwithstanding the fact that a sentence to probation subsequently can be  
6 modified or revoked, a judgment that includes such a sentence constitutes a final  
7 judgment for all other purposes.

8 **SECTION 2. AMENDMENT.** Subsections 1 and 3 of section 12.1-32-07 of the  
9 North Dakota Century Code is amended and reenacted as follows:

10 1. When the court imposes probation upon conviction for a felony offense  
11 subject to section 12.1-32-09.1 or 12.1-32-02.1, a subject or subsequent  
12 violation of section 12.1-17-07.1, a second or subsequent violation of any  
13 domestic violence protection order, a violation of chapter 12.1-40, a  
14 violation of section 14-09-22, or a felony offense under chapter 39-08, the  
15 court shall place the defendant under the supervision and management of  
16 the department of corrections and rehabilitation. When the court imposes  
17 probation upon conviction or order of disposition in all other felony cases,  
18 the court may place the defendant under the supervision and  
19 management of the department of corrections and rehabilitation. In class  
20 A misdemeanor cases, the court may place the defendant under the  
21 supervision and management of the department of corrections  
22 and rehabilitation or other responsible party. In all other cases, the court  
23 may place the defendant under the supervision and management of a  
24 community corrections program other than the department of corrections  
25 and rehabilitation. If an appropriate community corrections program is not  
26 reasonably available, the court may place the defendant under the  
27 supervision and management of the department of corrections and  
28 rehabilitation. The department of corrections and rehabilitation may  
29 arrange for the supervision and management of the defendant by a  
30 community corrections program selected by the department of corrections  
31 and rehabilitation. A community corrections program means a program for  
32 the supervision of a defendant, including monitoring and enforcement of  
33 terms and conditions of probation set by the court or pursuant to a  
34 conditional release from the physical custody of a correctional facility or



~~the department of corrections and rehabilitation.~~

3. The court shall provide as an explicit condition of every probation that the defendant may not possess a firearm, destructive device, or other dangerous weapon while the defendant is on probation. Except when the offense is a misdemeanor offense under section 12.1-17-01, 12.1-17-01.1, 12.1-17-05, or 12.1-17-07.1, or chapter 14-07.1, the court may waive this condition of probation if the defendant has pled guilty to, or has been found guilty of, a misdemeanor or infraction offense, the misdemeanor or infraction is the defendant's first offense, and the court has made a specific finding on the record before imposition of a sentence or a probation that there is good cause to waive the condition. The court may not waive this condition of probation if the court places the defendant under the supervision and management of the department of corrections and rehabilitation. The court shall provide as an explicit condition of probation that the defendant may not willfully defraud a urine test administered as a condition of probation. Unless waived on the record by the court, the court shall also provide as a condition of probation that the defendant undergo various agreed-to community constraints and conditions as intermediate measures of the department of corrections and rehabilitation to avoid revocation, which may include:

a. Community service;

b. Day reporting;

c. Curfew;

d. Home confinement;

e. House arrest;

f. Electronic monitoring;

g. Residential halfway house;

h. Intensive supervision program; ~~or~~

i. Up to non-successive periods of incarceration during any twelve-month period, each of which may not exceed forty-eight consecutive hours; or

i.i. Participation in the twenty-four seven sobriety program.

**PROPOSED AMENDMENTS TO HB ~~1328~~ 1367**  
**(Sen. Hogue)**

**SECTION 7.** Section 29-01-20 of the North Dakota Century Code is amended and reenacted as follows:

**29-01-20. Stolen property held by peace officer.**

Except for consumer goods as defined in section 44-09-02(1)(y), when property alleged to have been stolen or embezzled comes into the custody of a peace officer, the peace officer shall hold it subject to the order of the magistrate authorized by section 29-01-21 to direct the disposal thereof.



April 1, 2015

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1/4/15  
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PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1367

- Page 1, line 1, after "12.1-32-06.1" insert ", subsections 1 and 3 of section 12.1-32-07, and section 29-01-20"
- Page 1, line 2, after "probation" insert ", supervision of probation, and conditions of probation and to address peace officer custody of stolen goods; and to provide a penalty"
- Page 1, line 15, after "section" insert an underscored comma
- Page 1, line 17, remove "class C"
- Page 1, line 17, remove the underscored comma
- Page 1, line 18, replace "ten" with "offense subject to section 12.1-32-09.1, a felony offense subject to section 12.1-32-02.1 which involves the use of a firearm or dangerous weapon, a second or subsequent violation of section 12.1-17-07.1, a second or subsequent violation of any domestic violence protection order, a violation of chapter 12.1-40, or a violation of section 14-09-22; three"
- Page 1, line 18, replace "all" with "any"
- Page 1, line 18, replace "offenses, and" with "offense:"
- Page 1, line 18, after "misdemeanor" insert "; and three hundred sixty days for a class B misdemeanor offense"
- Page 3, after line 6, insert:

**"SECTION 2. AMENDMENT.** Subsection 1 of section 12.1-32-07 of the North Dakota Century Code is amended and reenacted as follows:

1. ~~When~~Whenever the court imposes probation upon conviction for a felony offense subject to section 12.1-32-09.1 or 12.1-32-02.1, a second or subsequent violation of section 12.1-17-07.1, a second or subsequent violation of any domestic violence protection order, a violation of 12.1-40, a violation of 14-09-22, or a felony offense under chapter 39-08, the court shall place the defendant under the supervision and management of the department of corrections and rehabilitation. Whenever the court imposes probation upon conviction or order of disposition in all other felony cases, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation. In class A misdemeanor cases, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation or other responsible party. In all other cases, the court may place the defendant under the supervision and management of a community corrections program other than the department of corrections and rehabilitation. ~~If an appropriate community corrections program is not reasonably available, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation. The department of corrections and rehabilitation may arrange for the supervision and management of the defendant by a community corrections program selected by the department of corrections and rehabilitation.~~ A community

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corrections program means a program for the supervision of a defendant, including monitoring and enforcement of terms and conditions of probation set by the court or pursuant to a conditional release from the physical custody of a correctional facility or the department of corrections and rehabilitation.

**SECTION 3. AMENDMENT.** Subsection 3 of section 12.1-32-07 of the North Dakota Century Code is amended and reenacted as follows:

3. The court shall provide as an explicit condition of every probation that the defendant may not possess a firearm, destructive device, or other dangerous weapon while the defendant is on probation. Except when the offense is a misdemeanor offense under section 12.1-17-01, 12.1-17-01.1, 12.1-17-05, or 12.1-17-07.1, or chapter 14-07.1, the court may waive this condition of probation if the defendant has pled guilty to, or has been found guilty of, a misdemeanor or infraction offense, the misdemeanor or infraction is the defendant's first offense, and the court has made a specific finding on the record before imposition of a sentence or a probation that there is good cause to waive the condition. The court may not waive this condition of probation if the court places the defendant under the supervision and management of the department of corrections and rehabilitation. The court shall provide as an explicit condition of probation that the defendant may not willfully defraud a urine test administered as a condition of probation. Unless waived on the record by the court, the court shall also provide as a condition of probation that the defendant undergo various agreed-to community constraints and conditions as intermediate measures of the department of corrections and rehabilitation to avoid revocation, which may include:
  - a. Community service;
  - b. Day reporting;
  - c. Curfew;
  - d. Home confinement;
  - e. House arrest;
  - f. Electronic monitoring;
  - g. Residential halfway house;
  - h. Intensive supervision program; or
  - i. Up to five non-successive periods of incarceration during any twelve-month period, each of which may not exceed forty-eight consecutive hours; or
  - j. Participation in the twenty-four seven sobriety program.

**SECTION 4. AMENDMENT.** Section 29-01-20 of the North Dakota Century Code is amended and reenacted as follows:

303

**29-01-20. Stolen property to be held by peace officer.**

~~When~~ Except for consumer goods, as defined under section 41-09-02,  
whenever property alleged to have been stolen or embezzled comes into the custody  
of a peace officer, the peace officer shall hold it subject to the order of the magistrate  
authorized by section 29-01-21 to direct the disposal thereof."

Renumber accordingly

Date: 3/30/2015  
Voice Vote # 1

2015 SENATE STANDING COMMITTEE  
VOICE VOTE  
BILL/RESOLUTION NO. 1367

Senate Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: Armstrong Amendment.

Recommendation: ☒ Adopt Amendment

☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation

☐ As Amended ☐ Rerefer to Appropriations

☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ \_\_\_\_\_

Seconded By

Motion Made By Sen. Luick

Sen. Casper

Senators	Yes	No	Senators	Yes	No
Ch. Hogue			Sen. Grabinger		
Sen. Armstrong			Sen. C. Nelson		
Sen. Casper					
Sen. Luick					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

Voice : Carried

Date: 3/30/2015  
Roll Vote # 2

2015 SENATE STANDING COMMITTEE

Roll Call VOTE  
BILL/RESOLUTION NO. 1367

Senate Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: Armstrong Amendments

Recommendation: ☐ Adopt Amendment

☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation

☒ As Amended ☐ Rerefer to Appropriations

☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ \_\_\_\_\_

Seconded By

Motion Made By Sen. Luick

Sen. Casper

Senators	Yes	No	Senators	Yes	No
Ch. Hogue	✓		Sen. Grabinger	✓	
Sen. Armstrong	✓		Sen. C. Nelson	✓	
Sen. Casper	✓				
Sen. Luick	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Armstrong

If the vote is on an amendment, briefly indicate intent:

Date: 4/1/2015  
Voice Vote # 1

2015 SENATE STANDING COMMITTEE  
VOICE VOTE  
BILL/RESOLUTION NO. 1367

Senate Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation: ☐ Adopt Amendment  
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☐ As Amended ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar

Other Actions: ☒ Reconsider ☐ \_\_\_\_\_

Seconded By

Motion Made By

Sen. Grabinger

Sen. Armstrong

Senators	Yes	No	Senators	Yes	No
Ch. Hogue			Sen. Grabinger		
Sen. Armstrong			Sen. C. Nelson		
Sen. Casper					
Sen. Luick					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

Voice Vote: Carried



Date: 4/1/15  
Voice Vote # 2

2015 SENATE STANDING COMMITTEE  
VOICE VOTE  
BILL/RESOLUTION NO. 1367

Senate Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: Hogue Amendment (att. #1)

Recommendation: ☒ Adopt Amendment

☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation

☐ As Amended ☐ Rerefer to Appropriations

☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ \_\_\_\_\_

Seconded By

Motion Made By Sen. Armstrong Sen. Luick

Senators	Yes	No	Senators	Yes	No
Ch. Hogue			Sen. Grabinger		
Sen. Armstrong			Sen. C. Nelson		
Sen. Casper					
Sen. Luick					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

Voice Vote: Carried

Date: 4/1/15  
Roll Vote # 3

2015 SENATE STANDING COMMITTEE

*Roll CALL* . VOTE  
BILL/RESOLUTION NO. 1367

Senate Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: 15.8192.02001 03000

Recommendation: ☐ Adopt Amendment

☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation

☒ As Amended ☐ Rerefer to Appropriations

☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ \_\_\_\_\_

Seconded By

Motion Made By

Sen. Armstrong

Sen. Luick

Senators	Yes	No	Senators	Yes	No
Ch. Hogue	✓		Sen. Grabinger	✓	
Sen. Armstrong	✓		Sen. C. Nelson	✓	
Sen. Casper	✓				
Sen. Luick	✓				

Total (Yes) 6 No 0

Absent 0

Floor  
Assignment

Sen. Armstrong

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

HB 1367, as engrossed: Judiciary Committee (Sen. Hogue, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1367 was placed on the Sixth order on the calendar.

Page 1, line 1, after "12.1-32-06.1" insert ", subsections 1 and 3 of section 12.1-32-07, and section 29-01-20"

Page 1, line 2, after "probation" insert ", supervision of probation, and conditions of probation and to address peace officer custody of stolen goods; and to provide a penalty"

Page 1, line 15, after "section" insert an underscored comma

Page 1, line 17, remove "class C"

Page 1, line 17, remove the underscored comma

Page 1, line 18, replace "ten" with "offense subject to section 12.1-32-09.1, a felony offense subject to section 12.1-32-02.1 which involves the use of a firearm or dangerous weapon, a second or subsequent violation of section 12.1-17-07.1, a second or subsequent violation of any domestic violence protection order, a violation of chapter 12.1-40, or a violation of section 14-09-22; three"

Page 1, line 18, replace "all" with "any"

Page 1, line 18, replace "offenses, and" with "offense;"

Page 1, line 18, after "misdemeanor" insert "; and three hundred sixty days for a class B misdemeanor offense"

Page 3, after line 6, insert:

**"SECTION 2. AMENDMENT.** Subsection 1 of section 12.1-32-07 of the North Dakota Century Code is amended and reenacted as follows:

1. ~~When~~Whenever the court imposes probation upon conviction for a felony offense subject to section 12.1-32-09.1 or 12.1-32-02.1, a second or subsequent violation of section 12.1-17-07.1, a second or subsequent violation of any domestic violence protection order, a violation of 12.1-40, a violation of 14-09-22, or a felony offense under chapter 39-08, the court shall place the defendant under the supervision and management of the department of corrections and rehabilitation. ~~Whenever the court imposes probation upon conviction or order of disposition in all other felony cases, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation. In class A misdemeanor cases, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation or other responsible party. In all other cases, the court may place the defendant under the supervision and management of a community corrections program other than the department of corrections and rehabilitation. If an appropriate community corrections program is not reasonably available, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation. The department of corrections and rehabilitation may arrange for the supervision and management of the defendant by a community corrections program selected by the department of corrections and rehabilitation. A community corrections program means a program for the supervision of a defendant, including monitoring and enforcement of terms and conditions of probation set by the court or~~



~~pursuant to a conditional release from the physical custody of a  
correctional facility or the department of corrections and rehabilitation.~~

**SECTION 3. AMENDMENT.** Subsection 3 of section 12.1-32-07 of the North Dakota Century Code is amended and reenacted as follows:

3. The court shall provide as an explicit condition of every probation that the defendant may not possess a firearm, destructive device, or other dangerous weapon while the defendant is on probation. Except when the offense is a misdemeanor offense under section 12.1-17-01, 12.1-17-01.1, 12.1-17-05, or 12.1-17-07.1, or chapter 14-07.1, the court may waive this condition of probation if the defendant has pled guilty to, or has been found guilty of, a misdemeanor or infraction offense, the misdemeanor or infraction is the defendant's first offense, and the court has made a specific finding on the record before imposition of a sentence or a probation that there is good cause to waive the condition. The court may not waive this condition of probation if the court places the defendant under the supervision and management of the department of corrections and rehabilitation. The court shall provide as an explicit condition of probation that the defendant may not willfully defraud a urine test administered as a condition of probation. Unless waived on the record by the court, the court shall also provide as a condition of probation that the defendant undergo various agreed-to community constraints and conditions as intermediate measures of the department of corrections and rehabilitation to avoid revocation, which may include:
  - a. Community service;
  - b. Day reporting;
  - c. Curfew;
  - d. Home confinement;
  - e. House arrest;
  - f. Electronic monitoring;
  - g. Residential halfway house;
  - h. Intensive supervision program; or
  - i. Up to five non-successive periods of incarceration during any twelve-month period, each of which may not exceed forty-eight consecutive hours; or
  - j. Participation in the twenty-four seven sobriety program.

**SECTION 4. AMENDMENT.** Section 29-01-20 of the North Dakota Century Code is amended and reenacted as follows:

**29-01-20. Stolen property to be held by peace officer.**

~~When~~Except for consumer goods, as defined under section 41-09-02,  
~~whenever~~ property alleged to have been stolen or embezzled comes into the custody of a peace officer, the peace officer shall hold it subject to the order of the magistrate authorized by section 29-01-21 to direct the disposal thereof."

Renumber accordingly

**2015 CONFERENCE COMMITTEE**

**HB 1367**

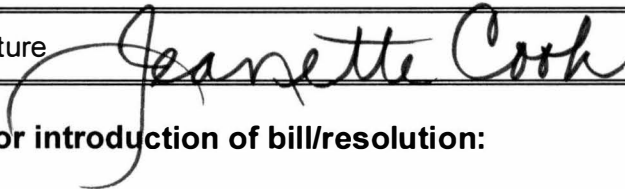
# 2015 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Prairie Room, State Capitol

HB 1367  
4/14/2015  
#26081

☐ Subcommittee  
☒ Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to court authority to impose additional periods of probation.

## Minutes:

Proposed amendment #1

**Chairman Brabandt:** Opened the conference committee on HB 1367. All committee members are present.

**Rep. K. Koppelman:** There has been a lot of discussion around this bill and SB 2027. We decided to amend this bill (HB 1367) and just kill SB 2027. The issue deals with the length of probation. There have been some differences of opinion between the DOCR, the States' Attorneys, and the law enforcement as they looked at this issue. They have been getting together to try to all get on the same page. The amendment that is being passed out is what they produced. (See proposed amendment #1) This part basically dealt with the forfeiture of property that comes into the hands of law enforcement. Went through the proposed amendments. (3:40-9:00)

**Senator Armstrong:** Our concern wasn't those issues that were being raised. Our concerns were both for defendants to make sure that property in dispute is being held until the criminal case is disposed of and also sometimes for victims 29-01-20 is the only way that you can get into court because you are alleging some things. I have had to deal with that with victims of stolen property, too. This very well may solve the problem. Because it was Chairman Hogue's amendment, I will run this buy him. We do want to solve the problem, and this may be a better way to do it. 29-01-20 is the only place where the word alleged occurs.

**Rep. K. Koppelman:** This is an example of how conference committee work can be good. We see different aspects of an issue in the House and the Senate and see the wisdom in both. Then we come up with something that solves the problem in all respects.

**Chairman Brabandt:** Any more questions?

**Rep. Lois Delmore:** Is the Senate going to have a problem putting an amendment on a bill they killed?



**Senator Armstrong:** We did put an amendment on the Chairman's bill after the other bill had died because we did really want to solve the problem. We didn't have an option to do it on the floor. We won't have a problem with that.

**Rep. Lois Delmore:** Do you prefer this amendment because it is more comprehensive?

**Senator Armstrong:** This is a better solution than the stand alone bill.

**Chairman Brabandt:** Any questions on any other portion of the bill?

**Senator Armstrong:** I do have a question. Both 2027 and 1367 as they came out of the chambers remain with the 24 months of probation on the A misdemeanor. I know there is some dispute between law enforcement and DOCR on that. One of the goals of defense attorneys is to keep people from being felons if possible, especially young people. One of the ways that we do that through the negotiating process is to reduce the C felony assault to an A misdemeanor assault, you can still put the person on supervised probation for two years. So, you get two years to watch over the guy, but I don't want to make a twenty-one year old college kid a felon unless we absolutely have to. When we reduce the 24 months to 18 months, I know it helps out the DOCR, but my concern is that it is going to give prosecutors cause for reductions through the negotiations. I don't want to do something good that turns out to have negative consequences with that. I would have a couple of questions as to how that works under the new draft for whoever could answer them.

**Rep. K. Koppelman:** The people that worked on these amendments are here in the room.

**Ken Sorenson, Attorney General's Office:** I worked on these amendments with Aaron Burst and Pat Bond, and the appropriate period of probation was a prolonged discussion point. Ultimately, the conclusion was that if we had the 18 months there and still allowed up to a total of 3 years on probation that would be the maximum term that would be available to the courts. The initial period would be 18 months, but if necessary the probation could be extended to a longer period.

**Senator Armstrong:** So, under both bills as they originally came through was it two and two? Now it is 18 months and three years. So I may need one more meeting to check out this stuff. As it was originally introduced it was one for alternatives for misdemeanors.

**Rep. K. Koppelman:** I just handed him the latest version which is everything he prepared, and the other items we were discussing and talked about resolving it. I know that Mr. Burst was going to visit with his colleagues? We left it that they were all in agreement.

**Senator Armstrong:** With those two issues, I may need one more meeting. Maybe there can be a compromise on the first or shortening the revocation.

**Senator Grabinger:** Can we step out for a minute?

Recess.

**Senator Armstrong:** If we were to reschedule this, can we do them at the same time? I would be comfortable acting on the next one. This should be the bill; I just want to check on those two things. I wouldn't need more than a day.

**Rep. K. Koppelman:** We are all of the same mind, which is to make 1367 the vehicle to accomplish all of these things. Since that is our general agreement, I see no objection to having another meeting on this. The other bill is scheduled for 11:00. I agree with Senator Armstrong.

Adjourned.

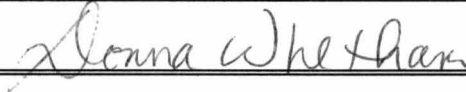
# 2015 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee  
Prairie Room, State Capitol

HB 1367  
4/15/2015  
26123

☐ Subcommittee  
☒ Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to court authority to impose additional periods of probation.

## Minutes:

Handout #1 Proposed amendment.

**Rep. Brabandt (Chair):** Opened the conference committee on HB 1367. All committee members were present.

**Senator Armstrong:** I have three issues after the meeting on the A Misdemeanor issue I think everyone is agreeable to move it from 18 to 24 months but leave the total at 3 years instead of 4 years. It seemed everyone was ok with that so I had that change. My second issue is on a paraphernalia bill that both chambers has passed out already and in discussing this bill with several attorney's it came to my attention when I submitted the bill to Legislative Council I said "any offense in this title" when it came back it said "any offense in this chapter". We thought about doing a correction to the journal, it is not in the title it is actually in the meat of the bill and as we work through the conference committee we talked about if you are only going to allow a misdemeanor and it was only going to be a first offense, it shouldn't just be a first offense for paraphernalia it should be any first offense drug. We discussed manufacturing, possession and all of those things in this jurisdiction or other. The difference between chapter and title is significant for that because title takes in all the manufacturing ones as we both passed it are excluded and I apologize for not catching it. All I want to do is put the word "title" instead of "chapter" in the bill. The third issue is the one we added and tried to fix and in discussing this bill with some lawyers, essentially the language that was provided does the same thing as the repeal. The problem is who is making these possessory determinations. When you use the word possessory different areas of law come into play and possessory liens are a factor also. In the attempt to solve the smaller scale things we are still causing the same problem with the bigger scale things. We are just doing it in a much different way. I know that the fix that Senate put on was not perfect, we knew that. It was a place holder to get us to get into this in more detail. There are different metrics involved but I was assured by people who deal with this in no uncertain terms that the amendment that we tried to fix the problem creates the same problem as if repealing the statute does. The issues that the amendment addresses if there is no indication of the ownership or possessory right and dispute the

problem with that language is, that is a legal determination to be made and in these bigger ticket items once they are disposed of and returned. There are different ways to do it. If the court does it the item is disposed of or if the police disposed of it they actually can keep it for use. There is very little remedy available to somebody to attempt to get their information back. The Senate's position is what we did is not perfect but it is better than the law now. This covers a lot of different areas of law in these large scale cases. I would also point out in these large scale cases there is usually felony complaint with it. There are two court proceedings that happen fairly immediately in a felony proceeding which is an initial appearance and a preliminary hearing and under court of law there is no determination that you have to have a separate hearing for these types of issues. They have the ability to be in court with the judge very early on in the process because they are required to as the criminal process goes. Those issues can be addressed at that level, it would just take Judicial intervention and oftentimes the Judiciary is just a rubber stamp because the prosecutor and the defense have agreed to those types of things. If the House doesn't like our language I can tell you the Senate's really not comfortable with the House's language. I am not sure I can come up with a solution. (See Handout #1).

**Rep. K. Koppelman:** In the language you referred there is no indication the ownership or possessory right is in dispute and satisfactory proof of ownership is provided. A peace officer may return directly to the owner. The concern is we have two potential solutions here the Senate solution is only apply this to consumer goods. We have already talked about why that isn't a really perfect solution. You are saying this doesn't work because your putting law enforcement in the position of making that decision. I can understand that from a legal standpoint in the practical world it seems to me that law enforcement will be pretty reasonable and fair and if somebody comes in and there is a dispute, there is some requirement to show that it is yours and it doesn't mandate, it says "a peace officer may return it". I am trying to envision circumstances where nobody raises a question or comes forward and says this is mine not his or hers and yet for some reason we want police to hang on to it until a judge looks at it and says yes it is his or hers. It seems to me that could clog the courts needlessly if you follow that to the letter.

**Senator Armstrong:** I don't think anyone has a problem with that solution I think the problem is the way the wording is, number 2 swallows number 1. The reason is because possessory right and dispute are things that need to be arbitrated. If nobody comes forward and those types of things and I would also make the point when there is nobody the reality is it gets returned now.

**Rep. K. Koppelman:** But our law doesn't provide for that does it? That's the point.

**Senator Armstrong:** That is the point but the problem is by addressing that issue you create a problem with the other issue and one of the problems is the difficulty in dealing with property rights on a large scale, whether it is a boat or etc., there is no limit to this. I know they struggled with that on our side in Political Subs about a dollar amount and I don't think that would solve one of the issues which is an entire set of tools. I don't think the clogging of the criminal system is an accurate depiction because first of all there are two different issues here. One they have to log the evidence and then it gets to that issue, if it is a diminuous thing they don't have to log the evidence and then none of this applies. Secondly when you get into possessory right on large scale items you are talking about

things that are often above the purview of defense attorneys. I know defense attorney's that will consult property lawyers on these large scale issues because of possessory liens and title is beyond what defense attorney's do. The language in Subsection 2 includes that for everything. I do think there are already avenues in place for those rare occasions to get into court early on in the process and there is an initial and preliminary hearing. I know what we are trying to solve, but I don't want to create a big ticket problem on the other end because there are these issues going on. In western North Dakota they are going on quite often with equipment and with the down turn of oil it may be going on more. I have had a couple PI's call me trying to find property out in the western part of the state and if it gets out of the state of North Dakota it is impossible to get back.

**Rep. K. Koppelman:** That is a circumstance where what you have just described I think the bill covers it. If I had something stolen from my business and I have alerted law enforcement, they are trying to find it, someone else has it on its face there is a dispute of ownership or if the thief claims ownership there is a dispute. Doesn't the bill cover that now?

**Senator Armstrong:** The problem with that is you are letting the officer make the determination? Whether they do it right or wrong isn't the point, by using this language in Subsection 2 you are allowing an officer to make the determination. Will they make the right one most of the time? I hope so but are they trained or qualified to make that decision? I would say almost never it is just not their purview.

**Rep. K. Koppelman:** If it would be returned to their owner that wouldn't be a scenario would it?

**Senator Armstrong:** The problem when you are dealing with possessory right, yes, but if it is returned to the wrong owner then it is a big problem. That is why in my opinion we need court intervention on those types of issues, at least a rubber stamp on those larger scale items.

**Rep. Lois Delmore:** As I look at the amendments I am not sure what purpose this better serves. I think they are offering you a chance to make that determination and next time you want a more detailed bill filling that out I will sign on with you. When we are adding it to there could be problems with it in one house or the other, I don't want to see this bill die, there are a lot of good things in here. Including the correction you are making.

**Rep. K. Koppelman:** My question is when we discussed this yesterday you said this language would solve this and you wanted to talk to Senator Hogue first.

**Senator Armstrong:** I was on the phone with a criminal and civil lawyer trying to get my head around this. There are a lot of different scenarios that occur in this that are very problematic and I think one of the problems is from the standpoint of the victims getting returned the diminuous items I know our amendment does solve that. It doesn't solve all of it but it solves a very big portion of it and when you talk about the bigger ticket items if you are not going to put a dollar amount in here which I don't think anyone would be comfortable with and second it doesn't really address some of the complaints. I think there needs to be more to this part of it would be a discussion on what is the remedy against

somebody who improperly does this. The only reason some of this is coming to light is either through communications from people and also there is a pending contempt case from a different agency than from the people who brought this bill. These issues get complicated but the remedy for you against law enforcement or the state in general is very difficult to get to. When you are dealing with \$200,000 to \$300,000 pieces of equipment or a \$60,000 boat or things of that nature, not usually titled property, it is difficult. If I show you title to that pay loader and some other man is running it, that doesn't mean you gave permission and there may be a lien on it by a third party.

**Rep. K. Koppelman:** Let me ask you then when you, based on that and you use the example of a titled piece of property that is not a consumer goods, such as a van and it is owned by a business, you are saying that is not really an issue because it is titled but now you are describing a set of facts where it is an issue. How would this statute if it became law the way the Senate amended it govern in that kind of case?

**Senator Armstrong:** The first question would be do they need to log the item into evidence if they don't the problem is solved and if they do log it into evidence I think my recommendation would be to make sure you address this at the initial appearance which is going to happen within 48 hours. Whose is going to police them if not a judge because once the item is gone it is gone. I understand the van issue from the business and I don't think our amendment adequately covers that situation. The problem is in order to try to adequately cover those situations I think Subsection 2 precludes Subsection 1 in its entirety.

**Rep. K. Koppelman:** If I am understanding you, if something like this occurs and what the amendment before us would say, you are saying, Subsection 2 precludes Subsection 1? I am having difficulty understanding because in most of these cases you are describing there is a clear question from the beginning. So if that is the case why doesn't Subsection 1 apply?

**Senator Armstrong:** Maybe that is not the best example but what Subsection 2 does is creates a legal determination to be made by a non-legally trained person. There may be no indication late at night of ownership of the item where there may be a strong indication on Monday morning but by then it may be too late.

**Rep. K. Koppelman:** The officers I have talked to about this say if there is any question they would err on the side of caution and not give it back. What they have appealed to us for is the right to give it back, which current law doesn't really allow at all. My question then is if we were to go with the language the Senate inserted, there are some pieces of this amendment that I proposed that I still like and maybe it is applying Subsection 2 to consumer goods if that is the imperfect solution we are driving at here. Under law now what we heard in testimony is still is not legally the way they are supposed to do it. Under law now as I read it if that frozen pizza is stolen from the Convenience store he is supposed to write a letter to the Convenience store and ask is this your pizza we have reason to believe it is, could you bring us proof that this is yours. If you do we will return it but by then it is moldy and useless. What we tried to craft is a three prong approach, the first when there is no question, give it back. Second prong being if there is clear indication then write the letter and require proof of ownership and the third option when there is this dispute,



yes, judges should decide. My concern with going with the Senate language is that we eliminate the way most people do it now, which we should give them a way to do that. Even we would apply it to only consumer goods. We should find a common sense way part of our statute.

**Senator Armstrong:** I will give an analogy of a common sense way we can put it on the ballot that you have to live in the district to vote in and often a common sense easy way to get to is significantly harder to do because of the fact ownership is not always a clear issue. That is probably where we are in the difference. Law enforcement has a tough enough job dealing with some of these issues but I don't know if this problem is being raised in a very wide spread area. I have dealt with it from victims standpoints too and usually my problem is the prosecutor not the cop. The reason is he says I need it for evidence and trying to get something released from evidence is hard and I have also had to deal with it for my defendants in a different scenario where they impound the car and my client pleads guilty to stealing the car and the car is worth \$2500 and the impound fee is \$12,000. Then they try to tack that on to the defendant and they question is why didn't they return it and the cops are saying the prosecutor made me hold it for evidence. So there are other factors that play here. We haven't even talked about the relationship between prosecutors and law enforcement in this issue because there are real issues whether or not they should be doing this based on their internal chain of command.

**Rep. K. Koppelman:** I have a suggestion. We believe that the original bill and I think we reached an agreement on that and will confer and insure that's the case with those who negotiated that agreement and then if Senator Armstrong and I can discuss this further and visit with Legislative Council to see if there is some way to find a middle ground or to apply some of this language that they crafted to what we are doing and then come back and have something for the committee to ponder.

**Senator Armstrong:** My only recommendation would be let's skip tomorrow and do this Friday? So we could have some time and hopefully we could come to a resolution by then and by that time we would be pretty clear.

**Rep. Brabandt (Chair):** hearing on HB 1367 adjourned.

# 2015 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Prairie Room, State Capitol

HB 1367  
4/17/2015  
26209

☐ Subcommittee  
☒ Conference Committee

Committee Clerk Signature

*Donna Whetstone*

## Explanation or reason for introduction of bill/resolution:

Relating to court authority to impose additional periods of probation.

## Minutes:

Attachments # 1-2.

**Rep. Brabandt, Chair:** Opened the conference committee meeting on HB 1367. All members were present. Senator Armstrong has passed out an amendment.

**Senator Armstrong:** After our last Conference Committee hearing Rep K. Koppelman and I got together and discussed this and one thing we did agree on was if you can provide title than at least it is ownership. There is no dispute of it. Somebody might have an interest in it but title is title and it is ownership and it would at least account for work vehicles that wouldn't qualify under consumer goods so it would be an expansion of what could happen. So we added that. The rest of it I have spent a lot of time on in the last 24 hours and a lot of our issues aren't only in 29.01.20 they are in 29.31.102 and how law enforcement has to return seized property which is by US mail, certified mail and is incredibly laborious process in that statute. However I will say none of the amendments either as the bill was originally introduced or through here really dealt with that. At this point in time we discussed possibly tacking a study on to this. The Senate's position would be that is absolutely fine because I think a lot of this should be rewritten. They interact with a lot of different areas of code and there are different things involved. This expands it even more than it originally started. It is not perfect but I think from the Senate's position this is as far as we can get at this point. (See Attachments 1&2).

**Rep. K. Koppelman:** I agree with Senator Armstrong, we did discuss it at length and while we could have gone farther I think if you do you create issues for some people. I think what we have here is probably something that everyone can agree too and that is what compromise is all about. We should add a study to this once we approve this amendment and look at this in the interim. Because those two Sections of law I think do need to be looked at. Hopefully by next session by having looked at it in the interim we would be in a better position to do something more comprehensive, which is difficult to do at this stage. The only other thing I would ask Senator Armstrong to review for us is the paraphernalia

correction and I know it is difficult to summarize the rest briefly but if you could Senator, that would be helpful.

**Senator Armstrong:** The paraphernalia amendment into this bill is a drafting error and an oversight on my part in the paraphernalia bill that both parties. As it left Senate it was all drug paraphernalia is a misdemeanor, personally used paraphernalia manufacturing was still going to be a felony. As it came back to the Senate to the House it was only your first offense paraphernalia would be a misdemeanor and your second paraphernalia would be a felony. In Conference Committee in understanding what the House was attempting to do we agreed if you are going to get a misdemeanor it is really going to be your first time in the drug world. That means that the misdemeanor shouldn't raise to a felony only for a prior paraphernalia conviction it should be any felon drug conviction. So when we drafted that amendment, which everyone in the Conference was in agreement, we put the word "chapter" in to cover 19.1 and we meant to put the title in to cover all of 19.1 because it is only drug crimes. So by the error in drafting we omitted all of the manufacturing crimes, this amendment changes it to title so it will bring all the manufacturing crimes back in. This amendment it is more inclusive as to what will cause you to lose that misdemeanor not less inclusive. I talked to Rep. Kretschmar, we all proceeded in that Conference Committee under the understanding of this language and I think we are honoring what that Conference Committee did and it is a good bill to do it in because it is the same parties Senate and House Judiciary and I think it will have support. The rest of the bill is on a never ending list of how we incarcerate people and what we do with them. There is some Judicial discretion in here so you have 5 years for essentially your most violent felonies and 3 years for all other C felonies. There is an exception in that there are a couple of felonies that there would be Judicial discretion on. There is 2 years for the A misdemeanor, what we do is back off on 1 year of the total. Before this bill came into place quite honestly you could be on probation for a misdemeanor forever. Now with this rewrite the total time you can be on probation for a Class A misdemeanor is three years instead of four. Then we moved it back up to 24 months but the total is still the same. Class B misdemeanor moves to 360 days we get the DOCR out of dealing with Class B misdemeanors. In a lot of ways that is cleanup language. It is only in rare cases that I have ever seen the DOCR involved in a B Misdemeanor. So that language is good. There is intermediate measures DOCR can take before you have to file a revocation. They can do 2 days incarceration up to 5 times a year in a non- successive periods. That is kind of an interesting one because there is kind of a lack of due process there. At the same time you have some immediacy, there is some punishment and then they can deal with probation in a more effective way without having to get the courts involved in revocations all the time. We allow the defendant to petition the court to have his probation terminated earlier. Last session we had that same type of bill for sex offenders and they keep petitioning and petitioning so we did put a back stop on that saying if they did petition you can't do it for a period of time. It cleans it up and there is still discretion involved for everybody and it still keeps the violent things where it needs to be and we are not backing off. I think everybody is comfortable with the final product.

**Rep. K. Koppelman:** On the repeated periods of probation the bottom line then is they still can exceed the full length of sentence for that offense, is that correct?

**Senator Armstrong:** Absolutely and they have tools in place. There is a backstop to it at a point and we did another clean-up in the DUI about probation but one of the things you will notice about recidivism is if you max out sentences your likelihood of recidivism goes up by

700 to 800%. So this allows for some supervising but it also cleans it up to give the courts and DOCR some discretion. The argument is always the good and bad actors, the good actors should probably be released right around that 18 month line. That is really when probation settles in. That is where the conflict between judges and states attorneys comes into play. But at the same time this allows for some different mechanisms for them to approach the court. Yet you can go past.

**Rep. K. Koppelman:** Do you remember the bill number on the paraphernalia bill?

**Senator Armstrong:** SB 2030.

**Rep. Brabandt, Chair:** Any other questions or comments on HB 1367.

**Senator Casper:** I move that the Senate recede from the Senate amendments as printed on pages 1372 to 1374 of the House Journal and pages 1101-1103 of the Senate Journal and then engrossed HB 1367 be further amended with proposed amendment 15.8192.02006.

**Rep. K. Koppelman:** seconded.

**Roll call vote taken:** Yes: 6 No: 0 Absent: 0 Motion carried.

**Rep. K. Koppelman:** If the committee is ok with Senator Armstrong and I crafting the wording for this **I Move Committee that we further amend HB 1367 that the Legislative Management would consider studying the return of property in custody.**

**Senator Armstrong: seconded.** We have a temporary fix in place and the problem with this issue relative to current law is that you have to go before a judge or you need to have this paper blizzard of we send you an letter and you come back and prove it is yours and it doesn't really happen in the real world now anyway. That is why we had the other bill where the police were in talking about what do you do when a bike is stolen and it is at the end of the block and you want to get back and we wouldn't have to jump through those hoops. We need to get a system in law that makes that clear. So we weren't able to put something together in this bill at this time but we have made good movement toward a more logical process and it is something we need to study.

**Rep. Brabandt, Chair:** Is there any other discussion? Seeing none the clerk will take the roll.

**Roll call vote taken:** Yes: 6 No: 0 Absent: 0 Motion carried.

**Rep. K. Koppelman:** I move the Senate recede from the Senate Amendments and further amend HB 1367.

**Senator Armstrong:** seconded.

**Roll call vote taken:** Yes: 6 No: 0 Absent: 0 Motion carried.

House Judiciary Committee

HB 1367

April 17, 2015

Page 4

**Rep. Brabandt, Chair: Adjourned hearing on HB 1367.**

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1367

That the Senate recede from its amendments as printed on pages 1372-1374 of the House Journal and pages 1101-1103 of the Senate Journal and that Engrossed House Bill No. 1367 be amended as follows:

Page 1, line 1, after "12.1-32-06.1" insert ", subsection 2 of section 19-03.4-03, subsections 1 and 3 of section 12.1-32-07, and section 29-01-20"

Page 1, line 2, after the first "to" insert "drug paraphernalia, custody and return of stolen property, and"

Page 1, line 2, after "impose" insert "supervision, conditions, and"

Page 1, line 2, after "probation" insert "; and to provide a penalty"

Page 1, line 8, remove "total"

Page 1, line 15, after "section" insert an underscored comma

Page 1, line 15, remove "total"

Page 1, line 17, remove "class C"

Page 1, line 17, remove the underscored comma

Page 1, line 18, replace "ten" with "offense subject to section 12.1-32-09.1, a felony offense subject to section 12.1-32-02.1, which involves the use of a firearm or dangerous weapon, a second or subsequent violation of section 12.1-17-07.1, a second or subsequent violation of any domestic violence protection order, a violation of chapter 12.1-41, or a violation of section 14-09-22; three"

Page 1, line 18, replace "all" with "any"

Page 1, line 18, replace "offenses, and" with "offense;"

Page 1, line 18 after "misdemeanor" insert "; and three hundred sixty days for a class B misdemeanor offense"

Page 2, line 19, remove "periods"

Page 2, line 19, overstrike "of"

Page 2, line 23, remove "or probation"

Page 2, line 24, after "deferment" insert "or the total time on probation authorized under this section"

Page 2, line 24, after the underscored period insert:

- "a. For class B and greater felony offenses, an offense subject to section 12.1-32-09.1, a felony offense subject to section 12.1-32-02.1, which involves the use of a firearm or dangerous weapon, a second or subsequent violation of section 12.1-17-07.1, a second or subsequent violation of any domestic violence protection order, a violation of



chapter 12.1-41, or a violation of section 14-09-22, the total time on probation may not exceed ten years.

b. For all other felony offenses, the total time on probation may not exceed five years.

c. For misdemeanor cases, the total time on probation may not exceed three years.

d."

Page 3, after line 6, insert:

**"SECTION 2. AMENDMENT.** Subsections 1 and 3 of section 12.1-32-07 of the North Dakota Century Code are amended and reenacted as follows:

1. When the court imposes probation upon conviction for a felony offense subject to section 12.1-32-09.1 or 12.1-32-02.1, a second or subsequent violation of section 12.1-17-07.1, a second or subsequent violation of any domestic violence protection order, a violation of chapter 12.1-41, a violation of section 14-09-22, or a felony offense under chapter 39-08, the court shall place the defendant under the supervision and management of the department of corrections and rehabilitation. When the court imposes probation upon conviction or order of disposition in all other felony cases, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation. In class A misdemeanor cases, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation or other responsible party. In all other cases, the court may place the defendant under the supervision and management of a community corrections program other than the department of corrections and rehabilitation. ~~If an appropriate community corrections program is not reasonably available, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation. The department of corrections and rehabilitation may arrange for the supervision and management of the defendant by a community corrections program selected by the department of corrections and rehabilitation. A community corrections program means a program for the supervision of a defendant, including monitoring and enforcement of terms and conditions of probation set by the court or pursuant to a conditional release from the physical custody of a correctional facility or the department of corrections and rehabilitation.~~
3. The court shall provide as an explicit condition of every probation that the defendant may not possess a firearm, destructive device, or other dangerous weapon while the defendant is on probation. Except when the offense is a misdemeanor offense under section 12.1-17-01, 12.1-17-01.1, 12.1-17-05, or 12.1-17-07.1, or chapter 14-07.1, the court may waive this condition of probation if the defendant has pled guilty to, or has been found guilty of, a misdemeanor or infraction offense, the misdemeanor or infraction is the defendant's first offense, and the court has made a specific finding on the record before imposition of a sentence or a probation that there is good cause to waive the condition. The court may not waive this condition of probation if the court places the defendant under the supervision and management of the department of corrections and



rehabilitation. The court shall provide as an explicit condition of probation that the defendant may not willfully defraud a urine test administered as a condition of probation. Unless waived on the record by the court, the court shall also provide as a condition of probation that the defendant undergo various agreed-to community constraints and conditions as intermediate measures of the department of corrections and rehabilitation to avoid revocation, which may include:

- a. Community service;
- b. Day reporting;
- c. Curfew;
- d. Home confinement;
- e. House arrest;
- f. Electronic monitoring;
- g. Residential halfway house;
- h. Intensive supervision program; or
- i. Up to five nonsuccessive periods of incarceration during any twelve-month period, each of which may not exceed forty-eight consecutive hours; or
- j. Participation in the twenty-four seven sobriety program.

**SECTION 3. AMENDMENT.** Subsection 2 of section 19-03.4-03 of the North Dakota Century Code, as amended in section 1 of Senate Bill No. 2030, as approved by the sixty-fourth legislative assembly, is amended and reenacted as follows:

2. A person may not use or possess with the intent to use drug paraphernalia to inject, ingest, inhale, or otherwise induce into the human body a controlled substance, other than marijuana, classified in schedule I, II, or III of chapter 19 - 03.1. A person violating this subsection is guilty of a class A misdemeanor. If a person previously has been convicted of an offense under this ~~chapter~~title, other than an offense related to marijuana, or an equivalent offense from another court in the United States, a violation of this subsection is a class C felony.

**SECTION 4. AMENDMENT.** Section 29-01-20 of the North Dakota Century Code is amended and reenacted as follows:

**29-01-20. Stolen property to be held by peace officer.**

1. ~~When~~Except as provided in subsection 2, whenever property alleged to have been stolen or embezzled comes into the custody of a peace officer, the peace officer shall hold it subject to the order of the magistrate authorized by section 29-01-21 to direct the disposal thereof.
2. Subsection 1 does not apply to:
  - a. Consumer goods, as defined in section 41-09-02; and

- b. Goods covered by a certificate of title if proof of certificate of title is presented to the peace officer."

Renumber accordingly

SK  
4/17/15  
4/14

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1367

That the Senate recede from its amendments as printed on pages 1372-1374 of the House Journal and pages 1101-1103 of the Senate Journal and that Engrossed House Bill No. 1367 be amended as follows:

Page 1, line 1, after "12.1-32-06.1" insert ", subsections 1 and 3 of section 12.1-32-07, subsection 2 of section 19-03.4-03, and section 29-01-20"

Page 1, line 2, after the first "to" insert "drug paraphernalia, custody and return of stolen property, and"

Page 1, line 2, after "impose" insert "supervision, conditions, and"

Page 1, line 2, after "probation" insert "; to provide for a legislative management study; and to provide a penalty"

Page 1, line 8, remove "total"

Page 1, line 15, after "section" insert an underscored comma

Page 1, line 15, remove "total"

Page 1, line 17, remove "class C"

Page 1, line 17, remove the underscored comma

Page 1, line 18, replace "ten" with "offense subject to section 12.1-32-09.1, a felony offense subject to section 12.1-32-02.1, which involves the use of a firearm or dangerous weapon, a second or subsequent violation of section 12.1-17-07.1, a second or subsequent violation of any domestic violence protection order, a violation of chapter 12.1-41, or a violation of section 14-09-22; three"

Page 1, line 18, replace "all" with "any"

Page 1, line 18, replace "offenses, and" with "offense:"

Page 1, line 18 after "misdemeanor" insert "; and three hundred sixty days for a class B misdemeanor offense"

Page 2, line 19, remove "periods"

Page 2, line 19, overstrike "of"

Page 2, line 23, remove "or probation"

Page 2, line 24, after "deferment" insert "or the total time on probation authorized under this section"

Page 2, line 24, after the underscored period insert:

- "a. For class B and greater felony offenses, an offense subject to section 12.1-32-09.1, a felony offense subject to section 12.1-32-02.1, which involves the use of a firearm or dangerous weapon, a second or subsequent violation of section 12.1-17-07.1, a second or subsequent violation of any domestic violence protection order, a violation of



chapter 12.1-41, or a violation of section 14-09-22, the total time on probation may not exceed ten years.

b. For all other felony offenses, the total time on probation may not exceed five years.

c. For misdemeanor cases, the total time on probation may not exceed three years.

d."

Page 3, after line 6, insert:

**"SECTION 2. AMENDMENT.** Subsections 1 and 3 of section 12.1-32-07 of the North Dakota Century Code are amended and reenacted as follows:

1. When the court imposes probation upon conviction for a felony offense subject to section 12.1-32-09.1 or 12.1-32-02.1, a second or subsequent violation of section 12.1-17-07.1, a second or subsequent violation of any domestic violence protection order, a violation of chapter 12.1-41, a violation of section 14-09-22, or a felony offense under chapter 39-08, the court shall place the defendant under the supervision and management of the department of corrections and rehabilitation. When the court imposes probation upon conviction or order of disposition in all other felony cases, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation. In class A misdemeanor cases, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation or other responsible party. In all other cases, the court may place the defendant under the supervision and management of a community corrections program other than the department of corrections and rehabilitation. ~~If an appropriate community corrections program is not reasonably available, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation. The department of corrections and rehabilitation may arrange for the supervision and management of the defendant by a community corrections program selected by the department of corrections and rehabilitation.~~ A community corrections program means a program for the supervision of a defendant, including monitoring and enforcement of terms and conditions of probation set by the court or pursuant to a conditional release from the physical custody of a correctional facility or the department of corrections and rehabilitation.
3. The court shall provide as an explicit condition of every probation that the defendant may not possess a firearm, destructive device, or other dangerous weapon while the defendant is on probation. Except when the offense is a misdemeanor offense under section 12.1-17-01, 12.1-17-01.1, 12.1-17-05, or 12.1-17-07.1, or chapter 14-07.1, the court may waive this condition of probation if the defendant has pled guilty to, or has been found guilty of, a misdemeanor or infraction offense, the misdemeanor or infraction is the defendant's first offense, and the court has made a specific finding on the record before imposition of a sentence or a probation that there is good cause to waive the condition. The court may not waive this condition of probation if the court places the defendant under the supervision and management of the department of corrections and



34

rehabilitation. The court shall provide as an explicit condition of probation that the defendant may not willfully defraud a urine test administered as a condition of probation. Unless waived on the record by the court, the court shall also provide as a condition of probation that the defendant undergo various agreed-to community constraints and conditions as intermediate measures of the department of corrections and rehabilitation to avoid revocation, which may include:

- a. Community service;
- b. Day reporting;
- c. Curfew;
- d. Home confinement;
- e. House arrest;
- f. Electronic monitoring;
- g. Residential halfway house;
- h. Intensive supervision program; or
- i. Up to five nonsuccessive periods of incarceration during any twelve-month period, each of which may not exceed forty-eight consecutive hours; or
- j. Participation in the twenty-four seven sobriety program.

**SECTION 3. AMENDMENT.** Subsection 2 of section 19-03.4-03 of the North Dakota Century Code, as amended in section 1 of Senate Bill No. 2030, as approved by the sixty-fourth legislative assembly, is amended and reenacted as follows:

2. A person may not use or possess with the intent to use drug paraphernalia to inject, ingest, inhale, or otherwise induce into the human body a controlled substance, other than marijuana, classified in schedule I, II, or III of chapter 19 - 03.1. A person violating this subsection is guilty of a class A misdemeanor. If a person previously has been convicted of an offense under this ~~chapter title~~, other than an offense related to marijuana, or an equivalent offense from another court in the United States, a violation of this subsection is a class C felony.

**SECTION 4. AMENDMENT.** Section 29-01-20 of the North Dakota Century Code is amended and reenacted as follows:

**29-01-20. Stolen property to be held by peace officer.**

1. ~~When~~Except as provided in subsection 2, whenever property alleged to have been stolen or embezzled comes into the custody of a peace officer, the peace officer shall hold it subject to the order of the magistrate authorized by section 29-01-21 to direct the disposal thereof.
2. Subsection 1 does not apply to:
  - a. Consumer goods, as defined in section 41-09-02; and



- 4/4
- b. Goods covered by a certificate of title if proof of certificate of title is presented to the peace officer.

**SECTION 5. LEGISLATIVE MANAGEMENT STUDY - SEIZED PROPERTY.**

During the 2015-16 interim, the legislative management shall consider studying the return of property that comes into the custody of or is seized by peace officers across North Dakota. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fifth legislative assembly."

Renumber accordingly

Date: 4/17/2015  
Roll Call Vote #: 1

**2015 HOUSE CONFERENCE COMMITTEE  
ROLL CALL VOTES**

BILL NO. 1367 as (re) engrossed

**House Judiciary Committee**

- Action Taken**
- ☐ HOUSE accede to Senate Amendments
  - ☐ HOUSE accede to Senate Amendments and further amend
  - ☐ SENATE recede from Senate amendments
  - ☒ SENATE recede from Senate amendments and amend as follows
- ☐ **Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Senator Casper Seconded by: Rep. K. Koppelman

Representatives	4-14	4-15	4-17	Yes	No		Senators	4-14	4-15	4-17	Yes	No
Rep. Brabandt ( Chair)	X	X	X	X			Senator Armstrong	X	X	X	X	
Rep. K. Koppelman:	X	X	X	X			Senator Casper	X	X	X	X	
Rep. Lois Delmore:	X	X	X	X			Senator J. Grabinger	X	X	X	X	
Total Rep. Vote				3			Total Senate Vote				3	

Vote Count      Yes: 6      No: 0      Absent: 0

House Carrier No Carrier      Senate Carrier No Carrier

LC Number 15.8192 . .02006 of amendment

LC Number \_\_\_\_\_ . \_\_\_\_\_ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment: proposed amendment 15.8192.02006 concerning probation periods.

Date: 4/17/2015  
Roll Call Vote #: 2

**2015 HOUSE CONFERENCE COMMITTEE  
ROLL CALL VOTES**

BILL NO. 1367 as (re) engrossed

**House Judiciary Committee**

- Action Taken**
- ☐ HOUSE accede to Senate Amendments
  - ☐ HOUSE accede to Senate Amendments and further amend
  - ☐ SENATE recede from Senate amendments
  - ☐ SENATE recede from Senate amendments and amend as follows
  - ☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

*☒ further amend*

Motion Made by: Rep. Koppelman Seconded by: Senator Armstrong

Representatives				Yes	No		Senators				Yes	No
Rep. Brabandt ( Chair)				X			Senator Armstrong				X	
Rep. K. Koppelman:				X			Senator Casper				X	
Rep. Lois Delmore:				X			Senator J. Grabinger				X	
Total Rep. Vote				3			Total Senate Vote				3	

Vote Count      Yes: 6      No: 0      Absent: 0

House Carrier \_\_\_\_\_ Senate Carrier \_\_\_\_\_

LC Number \_\_\_\_\_ of amendment

LC Number \_\_\_\_\_ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment:    voice amendment to have Legislative Management consider a study of process of return of property.

Date: 4/17/2015  
Roll Call Vote #: 3

**2015 HOUSE CONFERENCE COMMITTEE  
ROLL CALL VOTES**

BILL NO. 1367 as (re) engrossed

**House Judiciary Committee**

- Action Taken**
- ☐ HOUSE accede to Senate Amendments
  - ☐ HOUSE accede to Senate Amendments and further amend
  - ☐ SENATE recede from Senate amendments
  - ☒ SENATE recede from Senate amendments and amend as follows
- ☐ **Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Rep. Koppelman Seconded by: Senator Armstrong

Representatives				Yes	No	Senators				Yes	No
Rep. Brabandt ( Chair)				X		Senator Armstrong				X	
Rep. K. Koppelman:				X		Senator Casper				X	
Rep. Lois Delmore:				X		Senator J. Grabinger				X	
Total Rep. Vote				3		Total Senate Vote				3	

Vote Count      Yes: 6      No: 0      Absent: 0

House Carrier No carrier      Senate Carrier No carrier

LC Number 15.8192 . 02007 of amendment

LC Number                      . 04000 of engrossment

Emergency clause added or deleted

Statement of purpose of amendment:    concerning probation periods and to have Legislative Management consider a study of process of return of property.

**REPORT OF CONFERENCE COMMITTEE**

**HB 1367, as engrossed:** Your conference committee (Sens. Armstrong, Casper, Grabinger and Reps. Brabandt, K. Koppelman, Delmore) recommends that the **SENATE RECEDE** from the Senate amendments as printed on HJ pages 1372-1374, adopt amendments as follows, and place HB 1367 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1372-1374 of the House Journal and pages 1101-1103 of the Senate Journal and that Engrossed House Bill No. 1367 be amended as follows:

Page 1, line 1, after "12.1-32-06.1" insert ", subsections 1 and 3 of section 12.1-32-07, subsection 2 of section 19-03.4-03, and section 29-01-20"

Page 1, line 2, after the first "to" insert "drug paraphernalia, custody and return of stolen property, and"

Page 1, line 2, after "impose" insert "supervision, conditions, and"

Page 1, line 2, after "probation" insert "; to provide for a legislative management study; and to provide a penalty"

Page 1, line 8, remove "total"

Page 1, line 15, after "section" insert an underscored comma

Page 1, line 15, remove "total"

Page 1, line 17, remove "class C"

Page 1, line 17, remove the underscored comma

Page 1, line 18, replace "ten" with "offense subject to section 12.1-32-09.1, a felony offense subject to section 12.1-32-02.1, which involves the use of a firearm or dangerous weapon, a second or subsequent violation of section 12.1-17-07.1, a second or subsequent violation of any domestic violence protection order, a violation of chapter 12.1-41, or a violation of section 14-09-22; three"

Page 1, line 18, replace "all" with "any"

Page 1, line 18, replace "offenses, and" with "offense:"

Page 1, line 18 after "misdemeanor" insert "; and three hundred sixty days for a class B misdemeanor offense"

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Page 2, line 19, overstrike "of"

Page 2, line 23, remove "or probation"

Page 2, line 24, after "deferment" insert "or the total time on probation authorized under this section"

Page 2, line 24, after the underscored period insert:

- "a. For class B and greater felony offenses, an offense subject to section 12.1-32-09.1, a felony offense subject to section 12.1-32-02.1, which involves the use of a firearm or dangerous weapon, a second or subsequent violation of section 12.1-17-07.1, a second or subsequent violation of any domestic violence protection



order, a violation of chapter 12.1-41, or a violation of section 14-09-22, the total time on probation may not exceed ten years.

- b. For all other felony offenses, the total time on probation may not exceed five years.
- c. For misdemeanor cases, the total time on probation may not exceed three years.
- d."

Page 3, after line 6, insert:

**"SECTION 2. AMENDMENT.** Subsections 1 and 3 of section 12.1-32-07 of the North Dakota Century Code are amended and reenacted as follows:

1. When the court imposes probation upon conviction for a felony offense subject to section 12.1-32-09.1 or 12.1-32-02.1, a second or subsequent violation of section 12.1-17-07.1, a second or subsequent violation of any domestic violence protection order, a violation of chapter 12.1-41, a violation of section 14-09-22, or a felony offense under chapter 39-08, the court shall place the defendant under the supervision and management of the department of corrections and rehabilitation. When the court imposes probation upon conviction or order of disposition in all other felony cases, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation. In class A misdemeanor cases, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation or other responsible party. In all other cases, the court may place the defendant under the supervision and management of a community corrections program other than the department of corrections and rehabilitation. ~~If an appropriate community corrections program is not reasonably available, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation. The department of corrections and rehabilitation may arrange for the supervision and management of the defendant by a community corrections program selected by the department of corrections and rehabilitation.~~ A community corrections program means a program for the supervision of a defendant, including monitoring and enforcement of terms and conditions of probation set by the court ~~or pursuant to a conditional release from the physical custody of a correctional facility or the department of corrections and rehabilitation.~~
3. The court shall provide as an explicit condition of every probation that the defendant may not possess a firearm, destructive device, or other dangerous weapon while the defendant is on probation. Except when the offense is a misdemeanor offense under section 12.1-17-01, 12.1-17-01.1, 12.1-17-05, or 12.1-17-07.1, or chapter 14-07.1, the court may waive this condition of probation if the defendant has pled guilty to, or has been found guilty of, a misdemeanor or infraction offense, the misdemeanor or infraction is the defendant's first offense, and the court has made a specific finding on the record before imposition of a sentence or a probation that there is good cause to waive the condition. The court may not waive this condition of probation if the court places the defendant under the supervision and management of the department of corrections and rehabilitation. The court shall provide as an explicit condition of probation that the defendant may not willfully defraud a urine test administered as a condition of probation. Unless waived on the record by the court, the court shall also provide as a condition of probation that the defendant undergo various agreed-to community



constraints and conditions as intermediate measures of the department of corrections and rehabilitation to avoid revocation, which may include:

- a. Community service;
- b. Day reporting;
- c. Curfew;
- d. Home confinement;
- e. House arrest;
- f. Electronic monitoring;
- g. Residential halfway house;
- h. Intensive supervision program; or
- i. Up to five nonsuccessive periods of incarceration during any twelve-month period, each of which may not exceed forty-eight consecutive hours; or
- j. Participation in the twenty-four seven sobriety program.

**SECTION 3. AMENDMENT.** Subsection 2 of section 19-03.4-03 of the North Dakota Century Code, as amended in section 1 of Senate Bill No. 2030, as approved by the sixty-fourth legislative assembly, is amended and reenacted as follows:

2. A person may not use or possess with the intent to use drug paraphernalia to inject, ingest, inhale, or otherwise induce into the human body a controlled substance, other than marijuana, classified in schedule I, II, or III of chapter 19 - 03.1. A person violating this subsection is guilty of a class A misdemeanor. If a person previously has been convicted of an offense under this ~~chapter title~~, other than an offense related to marijuana, or an equivalent offense from another court in the United States, a violation of this subsection is a class C felony.

**SECTION 4. AMENDMENT.** Section 29-01-20 of the North Dakota Century Code is amended and reenacted as follows:

**29-01-20. Stolen property to be held by peace officer.**

1. ~~When~~Except as provided in subsection 2, whenever property alleged to have been stolen or embezzled comes into the custody of a peace officer, the peace officer shall hold it subject to the order of the magistrate authorized by section 29-01-21 to direct the disposal thereof.
2. Subsection 1 does not apply to:
  - a. Consumer goods, as defined in section 41-09-02; and
  - b. Goods covered by a certificate of title if proof of certificate of title is presented to the peace officer.

**SECTION 5. LEGISLATIVE MANAGEMENT STUDY - SEIZED PROPERTY.** During the 2015-16 interim, the legislative management shall consider studying the return of property that comes into the custody of or is seized by peace officers across North Dakota. The legislative management shall report its findings and

recommendations, together with any legislation required to implement the recommendations, to the sixty-fifth legislative assembly."

Renumber accordingly

Engrossed HB 1367 was placed on the Seventh order of business on the calendar.

**2015 TESTIMONY**

**HB 1367**

#1  
1367  
2-9-15

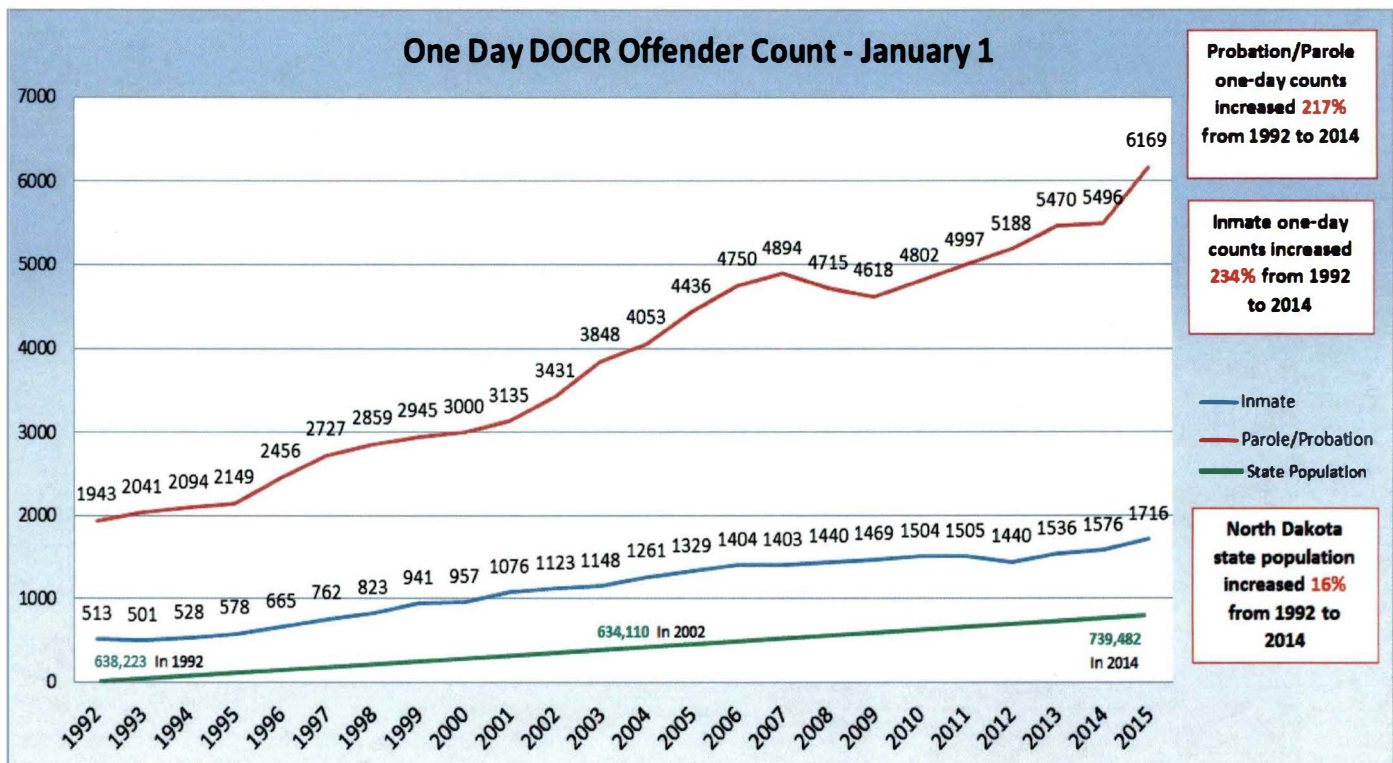
**HOUSE JUDICIARY COMMITTEE  
REPRESENTATIVE KIM KOPPLEMAN, CHAIRMAN  
FEBRUARY 9, 2015**

**PATRICK N. BOHN, DIRECTOR FOR TRANSITIONAL PLANNING SERVICES,  
NORTH DAKOTA DEPARTMENT OF CORRECTIONS & REHABILITATION  
PRESENTING TESTIMONY RE: HB 1367**

My name is Pat Bohn and I am the Director for Transitional Planning Services for the North Dakota Department of Corrections and Rehabilitation (DOCR). I am here on behalf of the department to testify neutral to HB 1367 as written.

The primary concern is this change will allow unlimited periods of probation in the case of felony offenses which will consequently keep more people on supervision for longer periods of time. This will accelerate the growth in our statewide probation caseload and yield increases to our prison and jail populations by placing more people in the revocation queue. This will also result in increasing the workload of the judiciary, prosecutors and sheriffs.

1. Probation and Parole caseload counts have grown by 217% since 1992
2. State prison inmate counts have grown by 234% since 1992
3. Our state population has grown by 16% since 1992



If this bill passes, it will counteract some of the provisions in SB 2027 that can reduce or slow the growth in our corrections population by reducing maximum length of probation periods. SB 2027 originated in the Commission on Alternatives to Incarceration as way to curb growth in incarceration yet still hold offenders accountable. Furthermore, in the

corrections field there is emerging research supporting dosage probation (*Dosage Probation: Rethinking the Structure of Probation Sentences*, Center for Effective Public Policy prepared for the National Institute of Corrections, January 2014). Simply stated, dosage probation seeks to link the duration of probation supervision to the optimal amount of intervention an offender needs in order to reduce the risk of reoffending. The model suggests that the length of supervision should be determined by the number of hours of intervention necessary to reduce risk, rather than customarily established amount of time such as three years or five years. A few elements of dosage probation I want to emphasize are: 1. Supervision of most moderate to high risk offenders can be reasonably accomplished with 18-24 months. They either make changes and progress or they end up before the court in revocation proceedings. 2. Structured assessment is used to differentiate higher from lower risk offenders. 3. Sentencing and supervision decisions are informed by using risk assessment to determine optimal dosage and 4. Probation completion is linked to achievement of the dosage target rather than a fixed period of time, thereby incentivizing offenders' engagement in risk-reducing interventions. I also want to emphasize that some of the research indicates that there may be a point of diminishing returns, treatment fatigue or dilution of program effectiveness when supervising people for too long a period of time.

Considering the life-cycle of a case we anticipate we would not begin to experience the impact on our caseload until 4-7 years after this law would be in effect. (Refer to Johnny Offender Example followed by Probation Frequency Data).

A common problem that keeps offenders lingering on supervised probation caseloads is outstanding restitution. HCR 3002 proposes the study of restitution collection in this state. The department supports this study and is hopeful that the outcomes of the study may have an impact on this problem.

Recommendations to consider:

1. Leave the law as written and encourage the courts to modify their sentence instead of revoking the probation period to avoid using up the two periods already authorized in law.
2. Establish a maximum total time on supervised probation. Once the maximum probation time or incarceration time is reached another period of probation is not available.
  - a. C Felony maximum five years total with unlimited periods.
  - b. B Felony or greater, maximum ten years total with unlimited periods.
3. Allow for unlimited periods of unsupervised probation when there are outstanding restitution balances.

In closing, there are limits on our criminal justice and correctional resources. The changes proposed in this bill will have a broad negative impact on those resources with uncertain benefit. I ask that you request a fiscal note on this bill and the DOCR is neutral HB 1367 as written.



**Johnny Offender**

**Crime: Felony Theft of Property**

# Case Life-cycle

Day 1

Sentenced to two years supervised probation on September 1, 2015

1 year

Probation revoked by the court for heroin use, failure to pay restitution and absconding supervision. Resentenced to two years in prison followed by three years supervised probation.

2 year prison term

1 year

Probation revoked a 2<sup>nd</sup> time for new crimes of DUI and felony drug paraphernalia. Resentenced to two more years in prison. (Currently a third period of probation is not available in sentencing)

2 year prison term

Six years from the date of sentencing to the point where a 3<sup>rd</sup> or subsequent period of probation comes into play.

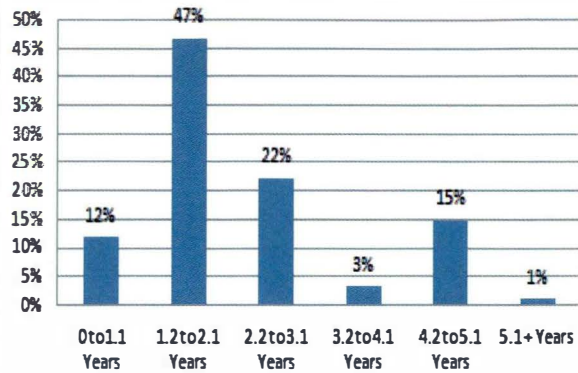


Although further research is clearly warranted given the limited number of studies conducted to date that are specific to dosage and recidivism, the following reflects a conceptual model to guide risk-based interventions:

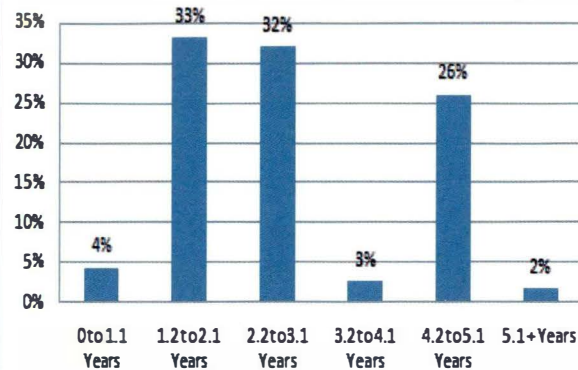
Dosage Conceptual Model				
Risk Level	Dosage Target	Likely Duration	Illustration	
			Dosage Hours Delivered by Corrections Professional	Dosage Hours Delivered through Referral Services
Moderate risk	100 hours	12 months supervision (52 weeks) with 12 months services (52 weeks)	45 minutes/ 2 weeks for 12 months Total hours: 19.5	90 minutes/week for 12 months Total hours: 78
Moderate/ high risk	200 hours	18 months supervision (78 weeks) with 15 months services (65 weeks)	45 minutes/week for 12 months + 45 minutes/2 weeks for 6 months Total hours: 49	3 hours/week for 9 months + 90 minutes/week for 6 months Total hours: 156
High risk	300 hours	24 months supervision (104 weeks) with 18 months services (78 weeks)	45 minutes/week for 24 months Total hours: 78	6 hours/week or 24 hours/4 weeks for 6 months + 90 minutes/week or 6 hours/4 weeks for 12 months Total hours: 234

4

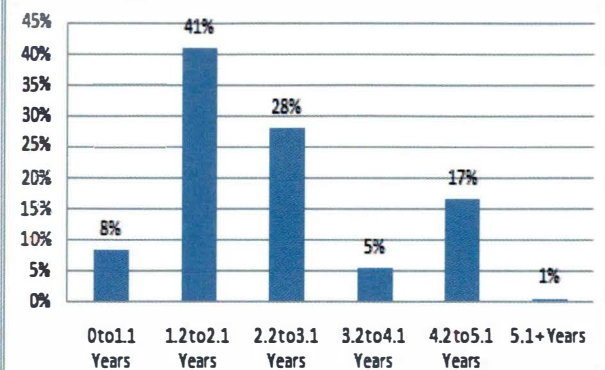
**Statewide Sentence Frequency (5 year)**



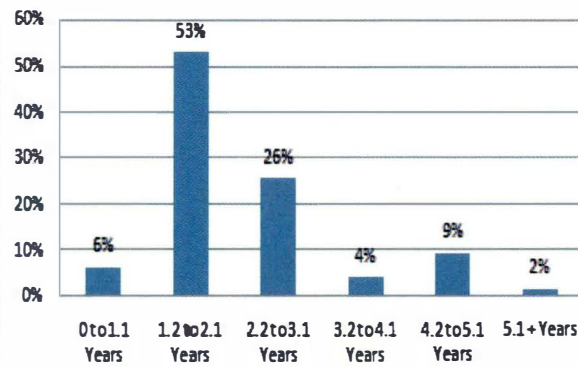
**NWJD Sentence Frequency (5 Year)**



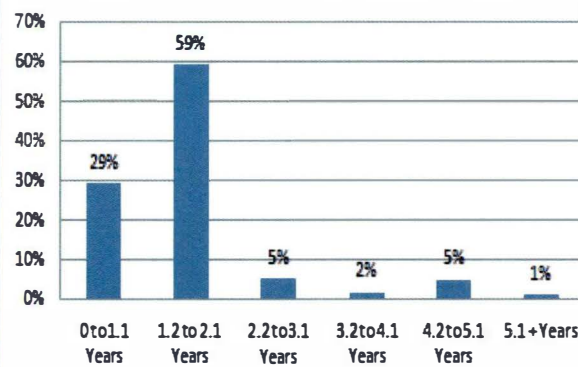
**NEJD Sentence Frequency (5 year)**



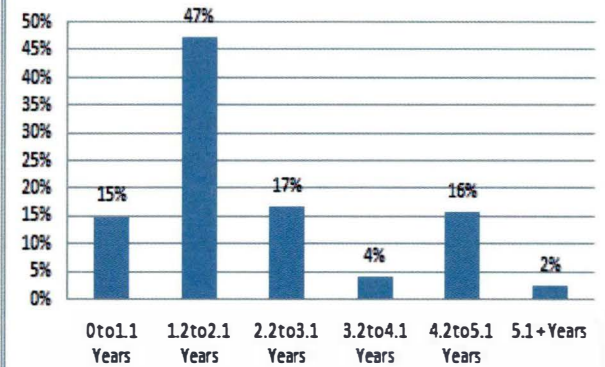
**NECJD Sentence Frequency (5 Year)**



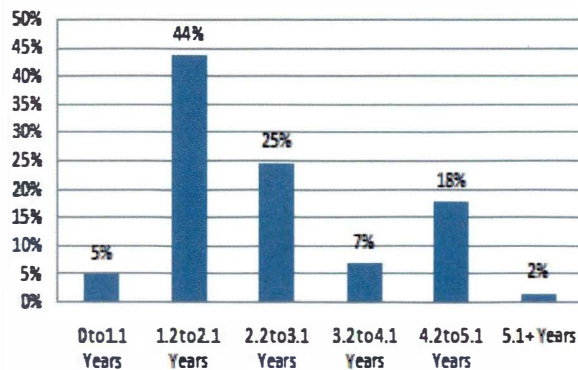
**ECJD Sentence Frequency (5 year)**



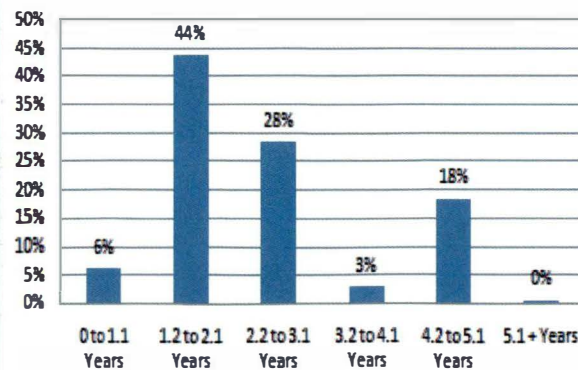
**SEJD Sentence Frequency (5 Year)**



**SWJD Sentence Frequency (5 Year)**

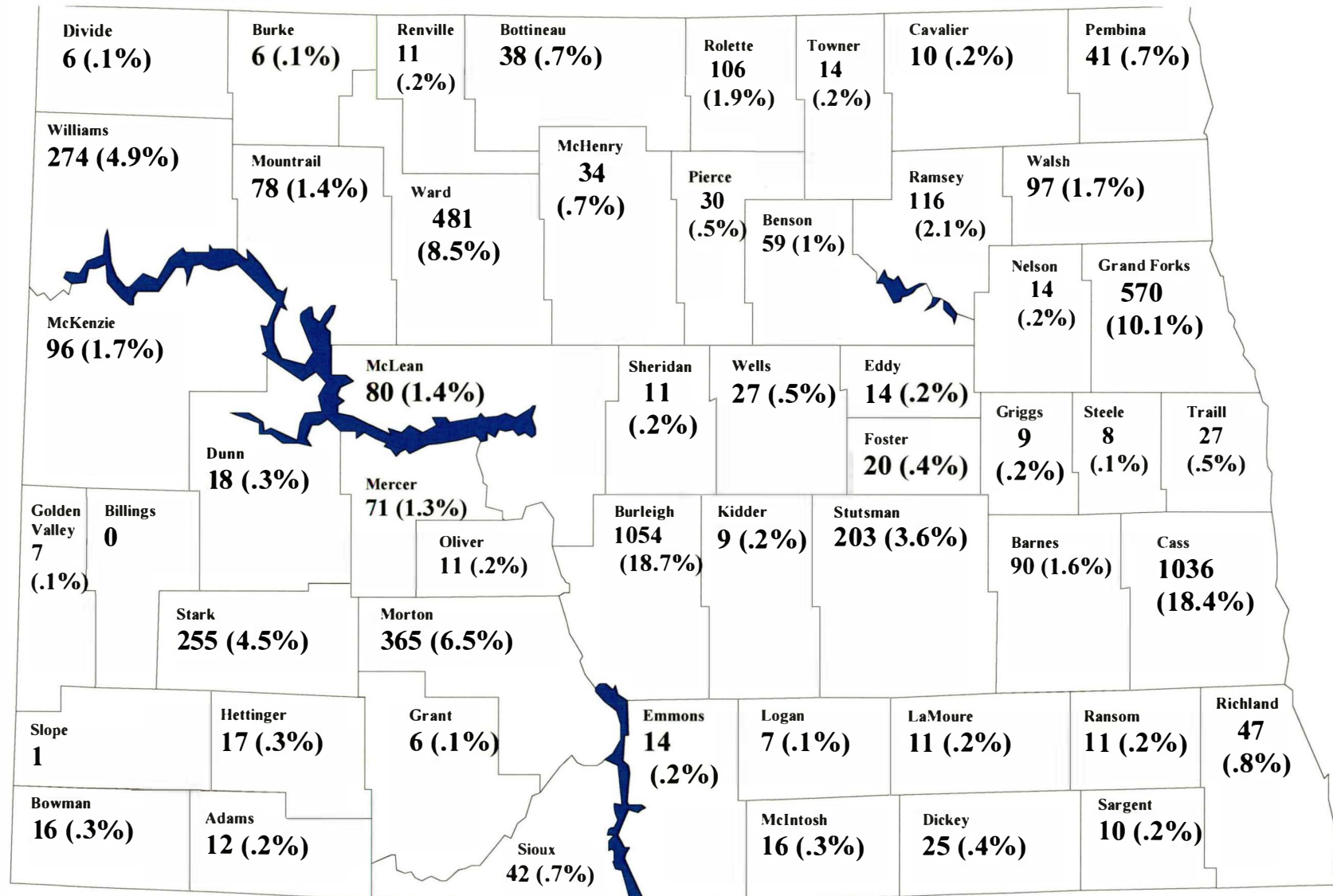


**SCJD Sentence Frequency (5 Year)**



# December 10, 2014 Offenders Supervised by ND Parole & Probation

## Total Number and Percentage (N=5631)





PROPOSED AMENDMENTS TO HOUSE BILL NO. 1367

HB 1367  
2-17-15  
#1

Page 1, line 8, after "the" insert "total"

Page 1, line 8, overstrike "of the period" and insert immediately thereafter "unsupervised"

Page 1, after line 14, insert

2. Except as provided in this section the total length of supervised probation imposed in conjunction with a sentence to probation or a suspended execution or deferred imposition of sentence may not extend for more than five years for a class C felony, ten years for all other felony offenses, and two years for a class A misdemeanor from the later of the date of:

- a. The order imposing probation;
- b. The defendant's release from incarceration; or
- c. Termination of the defendant's parole.

Page 1, line 15, overstrike "2." and insert immediately thereafter "3."

Page 1, line 18, after "of" insert "unsupervised"

Page 1, line 20, overstrike "3." and insert immediately thereafter "4."

Page 2, line 7, overstrike "4." and insert immediately thereafter "5."

Page 2, line 10, overstrike "5." and insert immediately thereafter "6."

Page 2, line 10, after "felony" insert "and misdemeanor"

Page 2, line 11, overstrike "not to exceed five years" and insert immediately thereafter "if the defendant has not served the maximum sentence of imprisonment or probation available to the court at the time of initial sentencing or deferment. The court shall allow the defendant credit for a sentence to probation from the date the defendant began probation until the date a petition to revoke probation was filed with the court. If the defendant is on supervised probation, the defendant is not entitled to credit for a sentence to probation for any period the defendant has absconded from supervision. The total amount of credit a defendant is entitled to for time spent on probation must be stated in the criminal judgment or order of revocation of probation."

Page 2, line 11, remove "for each"

Page 2, line 12, remove "additional period imposed."

Page 2, line 12, remove "An"

Page 2, line 12, overstrike "additional period of probation may follow a period of"

Page 2, overstrike lines 13 and 14

Page 2, line 15, overstrike "6." and insert immediately thereafter "7."

Renumber accordingly

**12.1-32-06.1. Length and termination of probation – Additional probation for violation of conditions – Penalty.**

1. Except as provided in this section, the total length of unsupervised probation imposed in conjunction with a sentence to probation or a suspended execution or deferred imposition of sentence may not extend for more than a total of five years for a class C felony, ten years for all other felony offenses and a two years for a class A misdemeanor from the later of the date of:
  - a. The order imposing probation;
  - b. The defendant's release from incarceration; or
  - c. Termination of the defendant's parole.
2. Except as provided in this section the total length of supervised probation imposed in conjunction with a sentence to probation or a suspended execution or deferred imposition of sentence may not extend for more than five years for a class C felony, ten years for all other felony offenses, and two years for a class A misdemeanor from the later of the date of:
  - a. The order imposing probation;
  - b. The defendant's release from incarceration; or
  - c. Termination of the defendant's parole.
3. If the defendant has pled or been found guilty of an offense for which the court imposes a sentence of restitution or reparation for damages resulting from the commission of the offense, the court may, following a restitution hearing pursuant to section 12.1-32-08, impose additional periods of unsupervised probation not to exceed five years for each additional period.
4. If the defendant has pled or been found guilty of a felony sexual offense in violation of chapter 12.1-20, the court shall impose at least five years but not more than ten years of supervised probation to be served after sentencing or incarceration. If the defendant has pled guilty or been found guilty of class AA felony sexual offenses in violation of section 12.1-20-03 or 12.1-20-03.1, the court may impose lifetime supervised probation on the defendant. If the defendant has pled or been found guilty of a misdemeanor sexual offense in violation of chapter 12.1-20, the court may impose additional periods of probation not to exceed two years for each additional period imposed. If the unserved portion of the defendant's maximum period of incarceration is less than one year, a violation of probation imposed under this subsection is a class A misdemeanor.
5. If the defendant has pled guilty or been found guilty of abandonment or nonsupport of spouse or children, the period of probation may be continued for as long as responsibility continues.
6. In felony and misdemeanor cases, in consequence of violation of probation conditions, the court may impose additional periods of probation if the defendant has not served the maximum sentence of imprisonment or probation available to the court at the time of initial sentencing or deferment. The court shall allow the defendant credit for a sentence to probation from the date the defendant began probation until the date a petition to revoke probation was filed with the court. If the defendant is on supervised probation, the defendant is not entitled to credit for a sentence to probation for any period the defendant has absconded from supervision. The total amount of credit a defendant is entitled to for time spent on probation must be stated in the criminal judgment or order of revocation of probation.
7. The court may terminate a period of probation and discharge the defendant at any time earlier than that provided in subsection 1 if warranted by the conduct of the defendant and the ends of justice.



8. Notwithstanding the fact that a sentence to probation subsequently can be modified or revoked, a judgment that includes such a sentence constitutes a final judgment for all other purposes.

Ken 2

#1-1

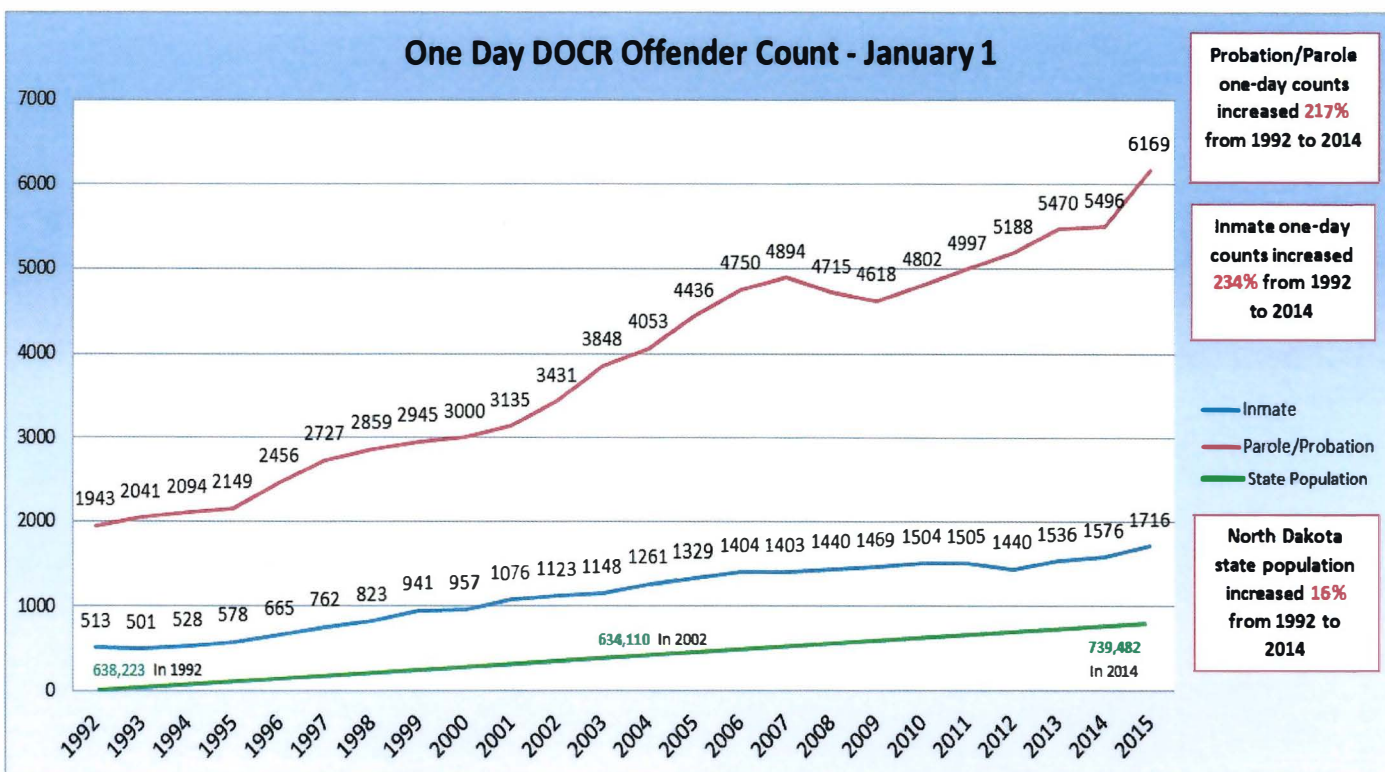
**SENATE JUDICIARY COMMITTEE  
SENATOR DAVID HOGUE, CHAIRMAN  
MARCH 18, 2015**

**PATRICK N. BOHN, DIRECTOR FOR TRANSITIONAL PLANNING SERVICES,  
NORTH DAKOTA DEPARTMENT OF CORRECTIONS & REHABILITATION  
PRESENTING TESTIMONY RE: HB 1367**

My name is Pat Bohn and I am the Director for Transitional Planning Services for the North Dakota Department of Corrections and Rehabilitation (DOCR). I am here on behalf of the department to testify in support of Engrossed HB 1367 and offer amendments for the committee's consideration.

In the bill's original form, it would have allowed for unlimited periods of supervised probation which would have the potential to accelerate the growth of our already exploding statewide probation caseload.

1. Probation and Parole caseload counts have grown by 217% since 1992
2. State prison inmate counts have grown by 234% since 1992
3. Our state population has grown by 16% since 1992



We worked with Aaron Birst from the SA Association and Judge Bruce Haskell, who testified before the House Judiciary in support of the bill in its original form, to amend the bill as you currently see it. I want to draw your attention also to SB 2027 which came to the legislature at the recommendation of Commission on Alternatives to Incarceration and you already heard. These bills are on very similar paths so I'm

1-2  
offering these amendments in an effort to harmonize these two bills and hopefully create a positive outcome for all.

Current 1367:

1. Clearly define maximum lengths of unsupervised probation.
  - a. Additional periods of up to five years unsupervised probation in cases where there is outstanding restitution.
2. Allows for unlimited supervised probation periods until either the maximum prison sentence or probation period has been served and defines how the court awards credit for time on probation.
  - a. Two years for class A misdemeanors, five years for class C felonies and ten years for all other felonies unless otherwise specified in law.

Amendments to 1367:

1. Limits the maximum length of the first probation period to three years except for offenses involving violence, use of a weapon, a second or subsequent stalking, human trafficking, second or subsequent violation of a domestic violence protection order and child abuse or where otherwise mandated by law.
2. Allows for up to 360 days of supervised probation for a class B misdemeanor but these cases would not be eligible for supervision by the DOCR instead these could go to a local misdemeanor probation office, if one is available.
3. Provides the court discretion to not place a person on supervised probation in felony cases except in cases involving violence, use of a weapon, a second or subsequent stalking, human trafficking, second or subsequent violation of a domestic violence protection order, child abuse or a felony in chapter 39-08.
4. Changes the intermediate measure statute to allow the DOCR five non-successive periods of incarceration during any twelve month period, each of which cannot exceed 48 hours.

I want to briefly share with you some emerging research in the corrections field supporting dosage probation (*Dosage Probation: Rethinking the Structure of Probation Sentences*, Center for Effective Public Policy prepared for the National Institute of Corrections, January 2014). Simply stated, dosage probation seeks to link the duration of probation supervision to the optimal amount of intervention an offender needs in order to reduce the risk of reoffending. The model suggests that the length of supervision should be determined by the number of hours of intervention necessary to reduce risk, rather than customarily established amount of time such as three years or five years. A few elements of dosage probation I want to emphasize are: 1. Supervision of most moderate to high risk offenders can be reasonably accomplished with 18-24 months. They either make changes and progress or they end up before the court in revocation proceedings. 2. Structured assessment is used to differentiate higher from lower risk offenders. 3. Sentencing and supervision decisions are informed by using risk assessment to determine optimal dosage and 4. Probation completion is linked to achievement of the dosage target rather than a fixed period of time, thereby incentivizing offenders' engagement in risk-reducing interventions. I also want to emphasize that some of the research indicates that there may be a point of diminishing returns, treatment fatigue or dilution of program effectiveness when supervising people for too long a period of time.

1-3

In closing, there are limits on our criminal justice and correctional resources and through this bill, I think we can have a positive impact on the allocation and application of those resources. We support HB 1367 with the proposed amendments.

HB 1367  
3/18/15

2-1  
3/18/19

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1367

Page 1, line 2, after "12.1-32-06.1", insert: "and to amend and reenact subsections 1 and 3 of section 12.1-32-07"

Page 1, line 2, after "probation", insert: "; supervision of probation, and conditions of probation; and to provide a penalty"

Page 1, line 15, insert a comma after "section"

Page 1, line 17, remove "class C "

Page 1, line 17, remove the comma after "felony" and insert immediately thereafter: offense subject to section 12.1-32-09.1, a felony offense subject to section 12.1-32-02.1 which involves the use of a firearm or dangerous weapon, a second or subsequent violation of section 12.1-17-07.1, a second or subsequent violation of any domestic violence protection order, a violation of chapter 12.1-40, or a violation of section 14-09-22;

Page 1, line 18, replace "ten" with "three"

Page 1, line 18, replace "all" with "any"

Page 1, line 18, replace "offenses, and" with "offense;"

Page 1, line 18, after "misdemeanor" insert: "; and three hundred sixty days for a class B misdemeanor offense"

Page 3, after line 6, insert:

**SECTION 2. AMENDMENT.** Subsections 1 and 3 of section 12.1-32-07 of the North Dakota Century Code are amended and reenacted as follows:

1. When the court imposes probation upon conviction for a felony offense subject to section 12.1-32-09.1 or 12.1-32-02.1, a second or subsequent violation of section 12.1-17-07.1, a second or subsequent violation of any domestic violence protection order, a violation of chapter 12.1-40, a violation of section 14-09-22, or a felony offense under chapter 39-08, the court shall place the defendant under the supervision and management of the department of corrections and rehabilitation. When the court imposes probation upon conviction or order of disposition in all other felony cases, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation. In class A misdemeanor cases, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation or other responsible party. In all other cases, the court may place the defendant under the supervision and management of a community corrections program other than the department of corrections and rehabilitation. ~~If an appropriate community corrections program is not~~

~~reasonably available, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation. The department of corrections and rehabilitation may arrange for the supervision and management of the defendant by a community corrections program selected by the department of corrections and rehabilitation. A community corrections program means a program for the supervision of a defendant including monitoring and enforcement of terms and conditions of probation set by the court or pursuant to a conditional release from the physical custody of a correctional facility or the department of corrections and rehabilitation.~~

3. The court shall provide as an explicit condition of every probation that the defendant may not possess a firearm, destructive device, or other dangerous weapon while the defendant is on probation. Except when the offense is a misdemeanor offense under section 12.1-17-01, 12.1-17-01.1, 12.1-17-05, or 12.1-17-07.1, or chapter 14-07.1, the court may waive this condition of probation if the defendant has pled guilty to, or has been found guilty of, a misdemeanor or infraction offense, the misdemeanor or infraction is the defendant's first offense, and the court has made a specific finding on the record before imposition of a sentence or a probation that there is good cause to waive the condition. The court may not waive this condition of probation if the court places the defendant under the supervision and management of the department of corrections and rehabilitation. The court shall provide as an explicit condition of probation that the defendant may not willfully defraud a urine test administered as a condition of probation. Unless waived on the record by the court, the court shall also provide as a condition of probation that the defendant undergo various agreed-to community constraints and conditions as intermediate measures of the department of corrections and rehabilitation to avoid revocation, which may include:
  - a. Community service;
  - b. Day reporting;
  - c. Curfew;
  - d. Home confinement;
  - e. House arrest;
  - f. Electronic monitoring;
  - g. Residential halfway house;
  - h. Intensive supervision program; or



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- i. Up to five non-successive periods of incarceration during any twelve-month period, each of which may not exceed forty-eight consecutive hours; or
- j. Participation in the twenty-four seven sobriety program.

Renumber accordingly

HB 1367  
3/18/15

1-1  
3/23/15

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1367

1 A BILL for an Act to amend and reenact section 12.1-32-06.1 and to amend and reenact  
2 subsections 1 and 3 of section 12.1-32-07 of the North Dakota Century Code, relating to  
3 court authority to impose additional periods of probation; supervision of probation, and  
conditions of probation; and to provide a penalty.

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

5 SECTION 1. AMENDMENT. Section 12.1-32-06.1 of the North Dakota Century  
6 Code is amended and reenacted as follows:

7 12.1-32-06.1. Length and termination of probation - Additional probation for  
8 violation of conditions - Penalty.

9 1. Except as provided in this section, the total length of the ~~period of unsupervised~~  
10 probation imposed in conjunction with a sentence to probation or a suspended  
11 execution or deferred imposition of sentence may not extend for more than five  
12 Years for a felony and two years for a misdemeanor or infraction from the later of  
13 the date of:

- 14 a. The order imposing probation;  
15 b. The defendant's release from incarceration; or  
16 c. Termination of the defendant's parole.

17 2. Except as provided in this section, the total length of supervised probation  
18 imposed in conjunction with a sentence of probation or a suspended execution or  
19 deferred imposition of sentence may not extend for more than five years for a  
20 ~~class C~~ felony offense subject to section 12.1-32-09.1, a felony offense subject  
21 to section 12.1-32-02.1 which involves the use of a firearm or dangerous  
22 weapon, a second or subsequent violation of section 12.1-17-07.1, a second or  
23 subsequent violation of any domestic violence protection order, a violation of  
24 chapter 12.1-40, or a violation of section 14-09-22; ~~ten~~three years for ~~all~~any other  
25 felony offenses, and offense, two years for a class A misdemeanor, and three  
26 hundred sixty days for a class B misdemeanor offense from the later of the date  
27 of:

- 28 a. The order imposing probation;  
29 b. The defendant's release from incarceration; or

1 c. Termination of the defendant's parole.

2 2-3. If the defendant has pled or been found guilty of an offense for which the court  
3 imposes a sentence of restitution or reparation for damages resulting from the  
4 commission of the offense, the court may, following a restitution hearing pursuant  
5 to section 12.1-32-08, impose an additional ~~period~~periods of unsupervised  
6 probation not to exceed five years for each additional period imposed.

7 3-4. If the defendant has pled or been found guilty of a felony sexual offense in  
8 violation of chapter 12.1-20, the court shall impose at least five years but not  
9 more than ten years of supervised probation to be served after sentencing or  
10 incarceration. If the defendant has pled or been found guilty of a class AA felony  
11 sexual offense in violation of section 12.1-20-03 or 12.1-20-03.1, the court may  
12 impose lifetime supervised probation on the defendant. If the defendant has pled  
13 or been found guilty of a misdemeanor sexual offense in violation of chapter  
14 12.1-20, the court may impose an additional ~~period~~periods of probation not to  
15 exceed two years for each additional period imposed. If the unserved portion of  
16 the defendant's maximum period of incarceration is less than one year, a  
17 violation of the probation imposed under this subsection is a class A  
18 misdemeanor.

19 4-5. If the defendant has pled or been found guilty of abandonment or nonsupport of  
20 spouse or children, the period of probation may be continued for as long as  
21 responsibility for support continues.

22 5-6. In felony and misdemeanor cases, in consequence of violation of probation  
23 conditions, the court may impose an additional ~~period~~periods of probation ~~not to~~  
24 ~~exceed five years. The additional period of probation may follow a period of~~  
25 incarceration if the defendant has not served the maximum period of  
26 incarceration available at the time of initial sentencing or deferment. If the  
27 defendant has not served the maximum sentence of imprisonment or probation  
28 available to the court at the time of initial sentencing or deferment. The court  
29 shall allow the defendant credit for a sentence of probation from the date the  
30 defendant began probation until the date a petition to revoke probation was filed  
31 with the court. If the defendant is on supervised probation, the defendant is  
32 not entitled to credit for a sentence of probation for any period the defendant has  
33 absconded from supervision. The total amount of credit a defendant is entitled to  
34 for time spent on probation must be stated in the criminal judgment or order of

1 revocation of probation.

2 6-7. The court may terminate a period of probation and discharge the defendant at  
3 any time earlier than that provided in subsection 1 if warranted by the conduct of  
4 the defendant and the ends of justice.

5 7-8. Notwithstanding the fact that a sentence to probation subsequently can be  
6 modified or revoked, a judgment that includes such a sentence constitutes a final  
7 judgment for all other purposes.

8 **SECTION 2. AMENDMENT.** Subsections 1 and 3 of section 12.1-32-07 of the  
9 North Dakota Century Code is amended and reenacted as follows:

10 1. When the court imposes probation upon conviction for a felony offense  
11 subject to section 12.1-32-09.1 or 12.1-32-02.1, a subject or subsequent  
12 violation of section 12.1-17-07.1, a second or subsequent violation of any  
13 domestic violence protection order, a violation of chapter 12.1-40, a  
14 violation of section 14-09-22, or a felony offense under chapter 39-08, the  
15 court shall place the defendant under the supervision and management of  
16 the department of corrections and rehabilitation. When the court imposes  
17 probation upon conviction or order of disposition in all other felony cases,  
18 the court may place the defendant under the supervision and  
19 management of the department of corrections and rehabilitation. In class  
20 A misdemeanor cases, the court may place the defendant under the  
21 supervision and management of the department of corrections  
22 and rehabilitation or other responsible party. In all other cases, the court  
23 may place the defendant under the supervision and management of a  
24 community corrections program other than the department of corrections  
25 and rehabilitation. If an appropriate community corrections program is not  
26 reasonably available, the court may place the defendant under the  
27 supervision and management of the department of corrections and  
28 rehabilitation. The department of corrections and rehabilitation may  
29 arrange for the supervision and management of the defendant by a  
30 community corrections program selected by the department of corrections  
31 and rehabilitation. A community corrections program means a program for  
32 the supervision of a defendant, including monitoring and enforcement of  
33 terms and conditions of probation set by the court or pursuant to a  
34 conditional release from the physical custody of a correctional facility or



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the department of corrections and rehabilitation;

3. The court shall provide as an explicit condition of every probation that the defendant may not possess a firearm, destructive device, or other dangerous weapon while the defendant is on probation. Except when the offense is a misdemeanor offense under section 12.1-17-01, 12.1-17-01.1, 12.1-17-05, or 12.1-17-07.1, or chapter 14-07.1, the court may waive this condition of probation if the defendant has pled guilty to, or has been found guilty of, a misdemeanor or infraction offense, the misdemeanor or infraction is the defendant's first offense, and the court has made a specific finding on the record before imposition of a sentence or a probation that there is good cause to waive the condition. The court may not waive this condition of probation if the court places the defendant under the supervision and management of the department of corrections and rehabilitation. The court shall provide as an explicit condition of probation that the defendant may not willfully defraud a urine test administered as a condition of probation. Unless waived on the record by the court, the court shall also provide as a condition of probation that the defendant undergo various agreed-to community constraints and conditions as intermediate measures of the department of corrections and rehabilitation to avoid revocation, which may include:

a. Community service;

b. Day reporting;

c. Curfew;

d. Home confinement;

e. House arrest;

f. Electronic monitoring;

g. Residential halfway house;

h. Intensive supervision program; ~~or~~

i. Up to non-successive periods of incarceration during any twelve-month period, each of which may not exceed forty-eight consecutive hours; or

j. Participation in the twenty-four seven sobriety program.

HB 1367  
3/23/15



1-1  
3/30/15

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1367

A BILL for an Act to amend and reenact section 12.1-32-06.1 and to amend and reenact subsections 1 and 3 of section 12.1-32-07 of the North Dakota Century Code, relating to court authority to impose additional periods of probation; supervision of probation, and conditions of probation; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 12.1-32-06.1 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-32-06.1. Length and termination of probation - Additional probation for violation of conditions - Penalty.**

1. Except as provided in this section, the total length of the ~~period of~~ unsupervised probation imposed in conjunction with a sentence to probation or a suspended execution or deferred imposition of sentence may not extend for more than five Years for a felony and two years for a misdemeanor or infraction from the later of the date of:
  - a. The order imposing probation;
  - b. The defendant's release from incarceration; or
  - c. Termination of the defendant's parole.
2. Except as provided in this section, the total length of supervised probation imposed in conjunction with a sentence of probation or a suspended execution or deferred imposition of sentence may not extend for more than five years for a ~~class C~~ felony, offense subject to section 12.1-32-09.1, a felony offense subject to section 12.1-32-02.1 which involves the use of a firearm or dangerous weapon, a second or subsequent violation of section 12.1-17-07.1, a second or subsequent violation of any domestic violence protection order, a violation of chapter 12.1-40, or a violation of section 14-09-22; ~~ten~~three years for all any other felony offenses, and offense; two years for a class A misdemeanor; and three hundred sixty days for a class B misdemeanor offense from the later of the date of:
  - a. The order imposing probation;
  - b. The defendant's release from incarceration; or

1-2

c. Termination of the defendant's parole.

2.3. If the defendant has pled or been found guilty of an offense for which the court imposes a sentence of restitution or reparation for damages resulting from the commission of the offense, the court may, following a restitution hearing pursuant to section 12.1-32-08, impose an additional ~~period~~periods of unsupervised probation not to exceed five years for each additional period imposed.

3.4. If the defendant has pled or been found guilty of a felony sexual offense in violation of chapter 12.1-20, the court shall impose at least five years but not more than ten years of supervised probation to be served after sentencing or incarceration. If the defendant has pled or been found guilty of a class AA felony sexual offense in violation of section 12.1-20-03 or 12.1-20-03.1, the court may impose lifetime supervised probation on the defendant. If the defendant has pled or been found guilty of a misdemeanor sexual offense in violation of chapter 12.1-20, the court may impose an additional ~~period~~periods of probation not to exceed two years for each additional period imposed. If the unserved portion of the defendant's maximum period of incarceration is less than one year, a violation of the probation imposed under this subsection is a class A misdemeanor.

4.5. If the defendant has pled or been found guilty of abandonment or nonsupport of spouse or children, the period of probation may be continued for as long as responsibility for support continues.

5.6. In felony and misdemeanor cases, in consequence of violation of probation conditions, the court may impose an additional ~~period~~periods of probation ~~not to exceed five years. The additional period of probation may follow a period of incarceration if the defendant has not served the maximum period of~~ incarceration available at the time of initial sentencing or deferment. if the defendant has not served the maximum sentence of imprisonment or probation available to the court at the time of initial sentencing or deferment. The court shall allow the defendant credit for a sentence of probation from the date the defendant began probation until the date a petition to revoke probation was filed with the court. If the defendant is on supervised probation, the defendant is not entitled to credit for a sentence of probation for any period the defendant has absconded from supervision. The total amount of credit a defendant is entitled to for time spent on probation must be stated in the criminal judgment or order of



1 revocation of probation.

2 6-7. The court may terminate a period of probation and discharge the defendant at  
3 any time earlier than that provided in subsection 1 if warranted by the conduct of  
4 the defendant and the ends of justice.

5 7-8. Notwithstanding the fact that a sentence to probation subsequently can be  
6 modified or revoked, a judgment that includes such a sentence constitutes a final  
7 judgment for all other purposes.

8 **SECTION 2. AMENDMENT.** Subsections 1 and 3 of section 12.1-32-07 of the  
9 North Dakota Century Code is amended and reenacted as follows:

10 1. When the court imposes probation upon conviction for a felony offense  
11 subject to section 12.1-32-09.1 or 12.1-32-02.1, a subject or subsequent  
12 violation of section 12.1-17-07.1, a second or subsequent violation of any  
13 domestic violence protection order, a violation of chapter 12.1-40, a  
14 violation of section 14-09-22, or a felony offense under chapter 39-08, the  
15 court shall place the defendant under the supervision and management of  
16 the department of corrections and rehabilitation. When the court imposes  
17 probation upon conviction or order of disposition in all other felony cases,  
18 the court may place the defendant under the supervision and  
19 management of the department of corrections and rehabilitation. In class  
20 A misdemeanor cases, the court may place the defendant under the  
21 supervision and management of the department of corrections  
22 and rehabilitation or other responsible party. In all other cases, the court  
23 may place the defendant under the supervision and management of a  
24 community corrections program other than the department of corrections  
25 and rehabilitation. If an appropriate community corrections program is not  
26 reasonably available, the court may place the defendant under the  
27 supervision and management of the department of corrections and  
28 rehabilitation. The department of corrections and rehabilitation may  
29 arrange for the supervision and management of the defendant by a  
30 community corrections program selected by the department of corrections  
31 and rehabilitation. A community corrections program means a program for  
32 the supervision of a defendant, including monitoring and enforcement of  
33 terms and conditions of probation set by the court or pursuant to a  
34 conditional release from the physical custody of a correctional facility or

1-4

the department of corrections and rehabilitation.

3. The court shall provide as an explicit condition of every probation that the defendant may not possess a firearm, destructive device, or other dangerous weapon while the defendant is on probation. Except when the offense is a misdemeanor offense under section 12.1-17-01, 12.1-17-01.1, 12.1-17-05, or 12.1-17-07.1, or chapter 14-07.1, the court may waive this condition of probation if the defendant has pled guilty to, or has been found guilty of, a misdemeanor or infraction offense, the misdemeanor or infraction is the defendant's first offense, and the court has made a specific finding on the record before imposition of a sentence or a probation that there is good cause to waive the condition. The court may not waive this condition of probation if the court places the defendant under the supervision and management of the department of corrections and rehabilitation. The court shall provide as an explicit condition of probation that the defendant may not willfully defraud a urine test administered as a condition of probation. Unless waived on the record by the court, the court shall also provide as a condition of probation that the defendant undergo various agreed-to community constraints and conditions as intermediate measures of the department of corrections and rehabilitation to avoid revocation, which may include:

- a. Community service;
- b. Day reporting;
- c. Curfew;
- d. Home confinement;
- e. House arrest;
- f. Electronic monitoring;
- g. Residential halfway house;
- h. Intensive supervision program; or
- i. Up to non-successive periods of incarceration during any twelve-month period, each of which may not exceed forty-eight consecutive hours; or
- i.i. Participation in the twenty-four seven sobriety program.



1-1  
4/1/15

PROPOSED AMENDMENTS TO HB ~~1328~~ 1367  
(Sen. Hogue)

**SECTION 7.** Section 29-01-20 of the North Dakota Century Code is amended and reenacted as follows:

**29-01-20. Stolen property held by peace officer.**

Except for consumer goods as defined in section 44-09-02(1)(y), when property alleged to have been stolen or embezzled comes into the custody of a peace officer, the peace officer shall hold it subject to the order of the magistrate authorized by section 29-01-21 to direct the disposal thereof.

*This Amendment was added to the other set  
of <sup>Armstrong's</sup> Minutes on 3/30/2015.*



#1  
HB 1367  
4-14-15  
1 of 4

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1367

That the Senate recede from its amendments as printed on pages 1372-1374 of the House Journal and pages 1101-1103 of the Senate Journal and that Engrossed House Bill No. 1367 be amended as follows:

Page 1, line 1, after "12.1-32-06.1" insert ", subsections 1 and 3 of section 12.1-32-07, and sections 29-01-20 and 29-31.1-02"

Page 1, line 2, after "to" insert "custody and return of stolen property and"

Page 1, line 2, after "impose" insert "supervision, conditions, and"

Page 1, line 2, after "probation" insert "; and to provide a penalty"

Page 1, line 8, remove "total"

Page 1, line 15, after "section" insert an underscored comma

Page 1, line 15, remove "total"

Page 1, line 17, remove "class C"

Page 1, line 17, remove the underscored comma

Page 1, line 18, replace "ten" with "offense subject to section 12.1-32-09.1, a felony offense subject to section 12.1-32-02.1, which involves the use of a firearm or dangerous weapon, a second or subsequent violation of section 12.1-17-07.1, a second or subsequent violation of any domestic violence protection order, a violation of chapter 12.1-41, or a violation of section 14-09-22; three"

Page 1, line 18, replace "all" with "any"

Page 1, line 18, replace "offenses, and" with "offense:"

Page 1, line 18, replace "two years" with "eighteen months"

Page 1, line 18, after "misdemeanor" insert "; and three hundred sixty days for a class B misdemeanor offense"

Page 2, line 19, remove "periods"

Page 2, line 19, overstrike "of"

Page 2, line 23, remove "or probation"

Page 2, line 24, after "deferment" insert "or the total time on probation authorized under this section"

Page 2, line 24, after the underscored period insert:

- "a. For class B and greater felony offenses, an offense subject to section 12.1-32-09.1, a felony offense subject to section 12.1-32-02.1, which involves the use of a firearm or dangerous weapon, a second or subsequent violation of section 12.1-17-07.1, a second or subsequent violation of any domestic violence protection order, a violation of



chapter 12.1-41, or a violation of section 14-09-22, the total time on probation may not exceed ten years.

b. For all other felony offenses, the total time on probation may not exceed five years.

c. For misdemeanor cases, the total time on probation may not exceed three years.

d."

Page 3, after line 6, insert:

**"SECTION 2. AMENDMENT.** Subsections 1 and 3 of section 12.1-32-07 of the North Dakota Century Code are amended and reenacted as follows:

1. When the court imposes probation upon conviction for a felony offense subject to section 12.1-32-09.1 or 12.1-32-02.1, a second or subsequent violation of section 12.1-17-07.1, a second or subsequent violation of any domestic violence protection order, a violation of chapter 12.1-41, a violation of section 14-09-22, or a felony offense under chapter 39-08, the court shall place the defendant under the supervision and management of the department of corrections and rehabilitation. When the court imposes probation upon conviction or order of disposition in all other felony cases, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation. In class A misdemeanor cases, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation or other responsible party. In all other cases, the court may place the defendant under the supervision and management of a community corrections program other than the department of corrections and rehabilitation. ~~If an appropriate community corrections program is not reasonably available, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation. The department of corrections and rehabilitation may arrange for the supervision and management of the defendant by a community corrections program selected by the department of corrections and rehabilitation. A community corrections program means a program for the supervision of a defendant, including monitoring and enforcement of terms and conditions of probation set by the court or pursuant to a conditional release from the physical custody of a correctional facility or the department of corrections and rehabilitation.~~
3. The court shall provide as an explicit condition of every probation that the defendant may not possess a firearm, destructive device, or other dangerous weapon while the defendant is on probation. Except when the offense is a misdemeanor offense under section 12.1-17-01, 12.1-17-01.1, 12.1-17-05, or 12.1-17-07.1, or chapter 14-07.1, the court may waive this condition of probation if the defendant has pled guilty to, or has been found guilty of, a misdemeanor or infraction offense, the misdemeanor or infraction is the defendant's first offense, and the court has made a specific finding on the record before imposition of a sentence or a probation that there is good cause to waive the condition. The court may not waive this condition of probation if the court places the defendant under the supervision and management of the department of corrections and



rehabilitation. The court shall provide as an explicit condition of probation that the defendant may not willfully defraud a urine test administered as a condition of probation. Unless waived on the record by the court, the court shall also provide as a condition of probation that the defendant undergo various agreed-to community constraints and conditions as intermediate measures of the department of corrections and rehabilitation to avoid revocation, which may include:

- a. Community service;
- b. Day reporting;
- c. Curfew;
- d. Home confinement;
- e. House arrest;
- f. Electronic monitoring;
- g. Residential halfway house;
- h. Intensive supervision program; or
- i. Up to five nonsuccessive periods of incarceration during any twelve-month period, each of which may not exceed forty-eight consecutive hours; or
- j. Participation in the twenty-four seven sobriety program.

**SECTION 3. AMENDMENT.** Section 29-01-20 of the North Dakota Century Code is amended and reenacted as follows:

**29-01-20. Stolen property to be held or returned by peace officer.**

- 1. WhenExcept as otherwise provided in subsection 2 or section 29-31.1-02, whichever is applicable, property alleged to have been stolen or embezzled comes into the custody of a peace officer, the peace officer shall hold it subject to the order of the magistrate authorized by section 29-01-21 to direct the disposal thereof.
- 2. If there is no indication the ownership or possessory right is in dispute and satisfactory proof of ownership or possessory right is provided, a peace officer may return directly to the owner or the person with the possessory right any stolen, embezzled, or otherwise seized property that comes into the custody of a peace officer which is not otherwise required as evidence or for use in an investigation.

**SECTION 4. AMENDMENT.** Section 29-31.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**29-31.1-02. Disposition of nonforfeitable property.**

- 1. SeizedExcept in those cases in which section 29-01-20 applies, seized property that is not required as evidence or for use in an investigation may be returned to the owner without the requirement of a hearing, if the person's possession of the property is not prohibited by law, the property is

not forfeitable property, and there is no forfeiture proceeding filed on behalf of the seizing agency.

2. The seizing agency shall send notice by regular mail, if the value of the property is less than two hundred fifty dollars, or certified mail, if the value of the property is equal to or greater than two hundred fifty dollars, to the last-known address of any person having an ownership or possessory right in the property stating that the property is released and must be claimed within thirty days. Notice is deemed to have been made upon the mailing of the notice. The notice must state that if no written claim for the property is made upon the seizing agency within thirty days after the mailing of the notice, the property will be deemed abandoned and disposed of accordingly.
3. If there is more than one party who may assert a right to possession or ownership of the property, the seizing agency may not release the property to any party until the expiration of the date for filing claims unless all other claimants execute a written waiver. If there is more than one claim filed for the return of property under this section, at the expiration of the period for filing claims the seizing agency shall file a copy of all such claims with the clerk of the district court and deposit the property with the court in accordance with the provisions of chapter 32-11.
4. If no owner can be located or no claim is filed under this section, the property is deemed abandoned and the seizing agency becomes the owner of the property and may dispose of it in any reasonable manner."

Renumber accordingly



April 15, 2015

#1  
HB1367  
4-15-15

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1367

That the Senate recede from its amendments as printed on pages 1372-1374 of the House Journal and pages 1101-1103 of the Senate Journal and that Engrossed House Bill No. 1367 be amended as follows:

Page 1, line 1, after "12.1-32-06.1" insert ", subsection 2 of section 19-03.4-03, subsections 1 and 3 of section 12.1-32-07, and section 29-01-20"

Page 1, line 2, after the first "to" insert "drug paraphernalia, custody and return of stolen property, and"

Page 1, line 2, after "impose" insert "supervision, conditions, and"

Page 1, line 2, after "probation" insert "; and to provide a penalty"

Page 1, line 8, remove "total"

Page 1, line 15, after "section" insert an underscored comma

Page 1, line 15, remove "total"

Page 1, line 17, remove "class C"

Page 1, line 17, remove the underscored comma

Page 1, line 18, replace "ten" with "offense subject to section 12.1-32-09.1, a felony offense subject to section 12.1-32-02.1, which involves the use of a firearm or dangerous weapon, a second or subsequent violation of section 12.1-17-07.1, a second or subsequent violation of any domestic violence protection order, a violation of chapter 12.1-41, or a violation of section 14-09-22; three"

Page 1, line 18, replace "all" with "any"

Page 1, line 18, replace "offenses, and" with "offense;"

Page 1, line 18 after "misdemeanor" insert "; and three hundred sixty days for a class B misdemeanor offense"

Page 2, line 19, remove "periods"

Page 2, line 19, overstrike "of"

Page 2, line 23, remove "or probation"

Page 2, line 24, after "deferment" insert "or the total time on probation authorized under this section"

Page 2, line 24, after the underscored period insert:

- "a. For class B and greater felony offenses, an offense subject to section 12.1-32-09.1, a felony offense subject to section 12.1-32-02.1, which involves the use of a firearm or dangerous weapon, a second or subsequent violation of section 12.1-17-07.1, a second or subsequent violation of any domestic violence protection order, a violation of



chapter 12.1-41, or a violation of section 14-09-22, the total time on probation may not exceed ten years.

b. For all other felony offenses, the total time on probation may not exceed five years.

c. For misdemeanor cases, the total time on probation may not exceed three years.

d. "

Page 3, after line 6, insert:

**"SECTION 2. AMENDMENT.** Subsections 1 and 3 of section 12.1-32-07 of the North Dakota Century Code are amended and reenacted as follows:

1. When the court imposes probation upon conviction for a felony offense subject to section 12.1-32-09.1 or 12.1-32-02.1, a second or subsequent violation of section 12.1-17-07.1, a second or subsequent violation of any domestic violence protection order, a violation of chapter 12.1-41, a violation of section 14-09-22, or a felony offense under chapter 39-08, the court shall place the defendant under the supervision and management of the department of corrections and rehabilitation. When the court imposes probation upon conviction or order of disposition in all other felony cases, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation. In class A misdemeanor cases, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation or other responsible party. In all other cases, the court may place the defendant under the supervision and management of a community corrections program other than the department of corrections and rehabilitation. ~~If an appropriate community corrections program is not reasonably available, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation. The department of corrections and rehabilitation may arrange for the supervision and management of the defendant by a community corrections program selected by the department of corrections and rehabilitation. A community corrections program means a program for the supervision of a defendant, including monitoring and enforcement of terms and conditions of probation set by the court or pursuant to a conditional release from the physical custody of a correctional facility or the department of corrections and rehabilitation.~~
3. The court shall provide as an explicit condition of every probation that the defendant may not possess a firearm, destructive device, or other dangerous weapon while the defendant is on probation. Except when the offense is a misdemeanor offense under section 12.1-17-01, 12.1-17-01.1, 12.1-17-05, or 12.1-17-07.1, or chapter 14-07.1, the court may waive this condition of probation if the defendant has pled guilty to, or has been found guilty of, a misdemeanor or infraction offense, the misdemeanor or infraction is the defendant's first offense, and the court has made a specific finding on the record before imposition of a sentence or a probation that there is good cause to waive the condition. The court may not waive this condition of probation if the court places the defendant under the supervision and management of the department of corrections and



rehabilitation. The court shall provide as an explicit condition of probation that the defendant may not willfully defraud a urine test administered as a condition of probation. Unless waived on the record by the court, the court shall also provide as a condition of probation that the defendant undergo various agreed-to community constraints and conditions as intermediate measures of the department of corrections and rehabilitation to avoid revocation, which may include:

- a. Community service;
- b. Day reporting;
- c. Curfew;
- d. Home confinement;
- e. House arrest;
- f. Electronic monitoring;
- g. Residential halfway house;
- h. Intensive supervision program; or
- i. Up to five nonsuccessive periods of incarceration during any twelve-month period, each of which may not exceed forty-eight consecutive hours; or
- j. Participation in the twenty-four seven sobriety program.

**SECTION 3. AMENDMENT.** Subsection 2 of section 19-03.4-03 of the North Dakota Century Code, as amended in section 1 of Senate Bill No. 2030, as approved by the sixty-fourth legislative assembly, is amended and reenacted as follows:

- 2. A person may not use or possess with the intent to use drug paraphernalia to inject, ingest, inhale, or otherwise induce into the human body a controlled substance, other than marijuana, classified in schedule I, II, or III of chapter 19 - 03.1. A person violating this subsection is guilty of a class A misdemeanor. If a person previously has been convicted of an offense under this ~~chapter title~~, other than an offense related to marijuana, or an equivalent offense from another court in the United States, a violation of this subsection is a class C felony.

**SECTION 4. AMENDMENT.** Section 29-01-20 of the North Dakota Century Code is amended and reenacted as follows:

**29-01-20. Stolen property to be held by peace officer.**

~~When~~Except for consumer goods, as defined under section 41-09-02,  
~~whenever~~ property alleged to have been stolen or embezzled comes into the custody of a peace officer, the peace officer shall hold it subject to the order of the magistrate authorized by section 29-01-21 to direct the disposal thereof."

Renumber accordingly

April 16, 2015

#1 4/17/15

HB 1367

# PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1367

That the Senate recede from its amendments as printed on pages 1372-1374 of the House Journal and pages 1101-1103 of the Senate Journal and that Engrossed House Bill No. 1367 be amended as follows:

Page 1, line 1, after "12.1-32-06.1" insert ", subsection 2 of section 19-03.4-03, subsections 1 and 3 of section 12.1-32-07, and section 29-01-20"

Page 1, line 2, after the first "to" insert "drug paraphernalia, custody and return of stolen property, and"

Page 1, line 2, after "impose" insert "supervision, conditions, and"

Page 1, line 2, after "probation" insert "; and to provide a penalty"

Page 1, line 8, remove "total"

Page 1, line 15, after "section" insert an underscored comma

Page 1, line 15, remove "total"

Page 1, line 17, remove "class C"

Page 1, line 17, remove the underscored comma

Page 1, line 18, replace "ten" with "offense subject to section 12.1-32-09.1, a felony offense subject to section 12.1-32-02.1, which involves the use of a firearm or dangerous weapon, a second or subsequent violation of section 12.1-17-07.1, a second or subsequent violation of any domestic violence protection order, a violation of chapter 12.1-41, or a violation of section 14-09-22; three"

Page 1, line 18, replace "all" with "any"

Page 1, line 18, replace "offenses, and" with "offense;"

Page 1, line 18 after "misdemeanor" insert "; and three hundred sixty days for a class B misdemeanor offense"

Page 2, line 19, remove "periods"

Page 2, line 19, overstrike "of"

Page 2, line 23, remove "or probation"

Page 2, line 24, after "deferment" insert "or the total time on probation authorized under this section"

Page 2, line 24, after the underscored period insert:

- "a. For class B and greater felony offenses, an offense subject to section 12.1-32-09.1, a felony offense subject to section 12.1-32-02.1, which involves the use of a firearm or dangerous weapon, a second or subsequent violation of section 12.1-17-07.1, a second or subsequent violation of any domestic violence protection order, a violation of



chapter 12.1-41, or a violation of section 14-09-22, the total time on probation may not exceed ten years.

b. For all other felony offenses, the total time on probation may not exceed five years.

c. For misdemeanor cases, the total time on probation may not exceed three years.

d."

Page 3, after line 6, insert:

**"SECTION 2. AMENDMENT.** Subsections 1 and 3 of section 12.1-32-07 of the North Dakota Century Code are amended and reenacted as follows:

1. When the court imposes probation upon conviction for a felony offense subject to section 12.1-32-09.1 or 12.1-32-02.1, a second or subsequent violation of section 12.1-17-07.1, a second or subsequent violation of any domestic violence protection order, a violation of chapter 12.1-41, a violation of section 14-09-22, or a felony offense under chapter 39-08, the court shall place the defendant under the supervision and management of the department of corrections and rehabilitation. When the court imposes probation upon conviction or order of disposition in all other felony cases, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation. In class A misdemeanor cases, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation or other responsible party. In all other cases, the court may place the defendant under the supervision and management of a community corrections program other than the department of corrections and rehabilitation. ~~If an appropriate community corrections program is not reasonably available, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation. The department of corrections and rehabilitation may arrange for the supervision and management of the defendant by a community corrections program selected by the department of corrections and rehabilitation.~~ A community corrections program means a program for the supervision of a defendant, including monitoring and enforcement of terms and conditions of probation set by the court or pursuant to a conditional release from the physical custody of a correctional facility or the department of corrections and rehabilitation.
3. The court shall provide as an explicit condition of every probation that the defendant may not possess a firearm, destructive device, or other dangerous weapon while the defendant is on probation. Except when the offense is a misdemeanor offense under section 12.1-17-01, 12.1-17-01.1, 12.1-17-05, or 12.1-17-07.1, or chapter 14-07.1, the court may waive this condition of probation if the defendant has pled guilty to, or has been found guilty of, a misdemeanor or infraction offense, the misdemeanor or infraction is the defendant's first offense, and the court has made a specific finding on the record before imposition of a sentence or a probation that there is good cause to waive the condition. The court may not waive this condition of probation if the court places the defendant under the supervision and management of the department of corrections and

rehabilitation. The court shall provide as an explicit condition of probation that the defendant may not willfully defraud a urine test administered as a condition of probation. Unless waived on the record by the court, the court shall also provide as a condition of probation that the defendant undergo various agreed-to community constraints and conditions as intermediate measures of the department of corrections and rehabilitation to avoid revocation, which may include:

- a. Community service;
- b. Day reporting;
- c. Curfew;
- d. Home confinement;
- e. House arrest;
- f. Electronic monitoring;
- g. Residential halfway house;
- h. Intensive supervision program; ~~or~~
- i. Up to five nonsuccessive periods of incarceration during any twelve-month period, each of which may not exceed forty-eight consecutive hours; or
- j. Participation in the twenty-four seven sobriety program.

**SECTION 3. AMENDMENT.** Subsection 2 of section 19-03.4-03 of the North Dakota Century Code, as amended in section 1 of Senate Bill No. 2030, as approved by the sixty-fourth legislative assembly, is amended and reenacted as follows:

2. A person may not use or possess with the intent to use drug paraphernalia to inject, ingest, inhale, or otherwise induce into the human body a controlled substance, other than marijuana, classified in schedule I, II, or III of chapter 19 - 03.1. A person violating this subsection is guilty of a class A misdemeanor. If a person previously has been convicted of an offense under this ~~chapter~~title, other than an offense related to marijuana, or an equivalent offense from another court in the United States, a violation of this subsection is a class C felony.

**SECTION 4. AMENDMENT.** Section 29-01-20 of the North Dakota Century Code is amended and reenacted as follows:

**29-01-20. Stolen property to be held by peace officer.**

1. ~~When~~Except as provided in subsection 2, whenever property alleged to have been stolen or embezzled comes into the custody of a peace officer, the peace officer shall hold it subject to the order of the magistrate authorized by section 29-01-21 to direct the disposal thereof.
2. Subsection 1 does not apply to:
  - a. Consumer goods, as defined in section 41-09-02; and



- b. Goods covered by a certificate of title if proof of certificate of title is presented to the peace officer."

Renumber accordingly

**HB 1367 Summary**

HB 1367 addresses a number of issues relating supervised probation as well as returning property to victims. This bill incorporates many of the recommendations that came out of the Commission on Alternatives to Incarceration in SB 2027 to mitigate the accelerated growth in the supervised probation caseload in this state. It also addresses some of the judiciary concerns regarding limits on felony probation periods, which was the impetus for original version of HB 1367.

**In summary:**

1. Sets initial supervised probation periods at a maximum of the following, unless otherwise specified in law:
  - a. Five years for B felony or greater offenses as well as some violent C felony offenses,
  - b. Three years for all other C felony offenses,
  - c. Two years for class A misdemeanors and;
  - d. 360 days for class B misdemeanors.
2. In consequence of violation of probation, the changes allow for unlimited periods of probation so long as the maximum incarceration time or the total maximum probation time has not been attained. The total maximum probation time is as follows:
  - a. Ten years for B felony or greater offenses as well as some violent C felony offenses,
  - b. Five years for all other C felony offenses and;
  - c. Three years for class A misdemeanors,
3. Provides the court discretion on whether or not to impose supervised probation in felony cases where the court defers imposition or suspends execution of sentence; except in cases involving violence, use of a weapon, a second or subsequent stalking, human trafficking, second or subsequent violation of a domestic violence protection order, child abuse or a felony in chapter 39-08 (DUI).
  - a. Emphasis on less dangerous offenses such as theft of property or felony possession of drug paraphernalia.
4. Eliminates class B misdemeanors and infractions from being eligible for supervision by the DOCR.
5. Enhances the intermediate measure statute by providing the DOCR the authority to more immediately incarcerate individuals for up to 48 hours in lieu of returning them to court for revocation. It limits the use of this tool to no more than five non-successive periods of incarceration during any twelve month period. (Has potential to save court, jails, probation officers and prosecutors time and money).
  - a. The DOCR may reimburse jails for incarceration authorized under this provision.
6. Section 3 of HB 1367 amends NDCC Section 29-01-20, which presently requires that when a peace officer has custody of stolen or embezzled property, it cannot be returned to the owner unless the court has authorized the return of the property.



The amendment would a peace officer to return the property to the owner without a court order if there is no dispute as to the ownership and the property is not required as evidence or as part of an investigation. For example, if an item has been shoplifted and taken by law enforcement from the shoplifter, it can be returned to the store, or if a stolen bicycle has been recovered, law enforcement may return it to the owner without getting a court order.

7. Section 3 also connects Section 29-01-20 to NDCC Section 29-31.1-02, which is amended in Section 4 of HB 1367. Section 29-31.1-02 applies to the disposition of non-forfeitable property, that is, property that is not subject to forfeiture and there is no pending forfeiture proceeding, which had been originally seized as part of a criminal investigation. Like the amendment to Section 29-01-20, non-forfeitable property that is not required as evidence or for use in an investigation may be returned to the lawful owner without a judicial hearing.