

**FIRST ENGROSSMENT
with House Amendments****ENGROSSED SENATE BILL NO. 2444**

Introduced by

Senators G. Nelson, Lyson, C. Nelson

Representatives Carlisle, DeKrey, Mahoney

1 A BILL for an Act to create and enact section 19-03.1-22.1, a new subsection to section
2 19-03.1-37, and chapter 19-03.4 of the North Dakota Century Code, relating to volatile
3 chemicals and drug paraphernalia; to amend and reenact section 12.1-32-09, subsection 1 of
4 section 15.1-24-05, subsection 7 of section 19-03.1-23, section 19-03.1-23.2, subsection 6 of
5 section 19-03.1-36, and subsection 4 of section 19-03.1-37 of the North Dakota Century Code,
6 relating to drug offenses and enhanced sentencing; to repeal section 12.1-31-06 and chapter
7 12.1-31.1 of the North Dakota Century Code, relating to volatile chemicals and drug
8 paraphernalia; to provide a penalty; and to declare an emergency.

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

10 **SECTION 1. AMENDMENT.** Section 12.1-32-09 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **12.1-32-09. Dangerous special offenders - Habitual offenders - Extended**
13 **sentences - Procedure.**

- 14 1. A court may sentence a convicted offender to an extended sentence as a
15 dangerous special offender or a habitual offender in accordance with ~~the~~
16 ~~provisions of this section upon a finding of any one or more of the following:~~
- 17 a. The convicted offender is a dangerous, mentally abnormal person. ~~The court~~
18 ~~may not make such a finding unless the presentence report, including a~~
19 ~~psychiatric examination, concludes that the offender's whose conduct has~~
20 ~~been characterized by persistent aggressive behavior; and that such the~~
21 ~~behavior makes the offender a serious danger to other persons.~~
- 22 b. The convicted offender is a professional criminal. ~~The court may not make~~
23 ~~such a finding unless the offender is an adult and the presentence report~~

~~shows that the offender~~ who has substantial income or resources derived from criminal activity.

- c. The convicted offender is a habitual offender. The court may not make such a finding unless the offender is an adult and has previously been convicted in any state or states or by the United States of two felonies of class C or above committed at different times when the offender was an adult. For the purposes of this subdivision, a felony conviction in another state or under the laws of the United States ~~shall be~~ is considered a felony of class C or above if it is punishable by a maximum term of imprisonment of five years or more.
- d. The offender was convicted of an offense ~~which~~ that seriously endangered the life of another person and the offender had previously been convicted of a similar offense.
- e. The offender is especially dangerous because the offender used a firearm, dangerous weapon, or destructive device in the commission of the offense or during the flight therefrom.

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

- 2. The extended sentence may be imposed in the following manner:
 - a. If the offense for which the offender is convicted is a class A felony, the court may impose a sentence up to a maximum of life imprisonment.

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

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

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

4. Upon any plea of guilty, or verdict or finding of guilt of the defendant of such felony, a hearing must be held, before sentence is imposed, ~~by the court sitting without a jury~~ in accordance with this subsection as follows:

a. By a jury, or the court if a jury is waived by the defendant, if the notice alleges that the defendant is a dangerous special offender under subdivision a, b, d, or e of subsection 1. The jury, or the court if a jury is waived, must find that the defendant is a dangerous special offender under one or more of these subdivisions by proof beyond a reasonable doubt. However, in the case of a notice alleging only subdivision e of subsection 1, the trial jury, or the trial

1 court if a jury is waived, may make a special finding of proof of this
2 subdivision without an additional hearing subsequent to a verdict or finding of
3 guilt.

4 b. By the court if the notice alleges that the defendant is a habitual offender
5 under subdivision c of subsection 1. The court must find that the defendant is
6 a habitual offender by a preponderance of the evidence.

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

~~the record its findings including an identification of the information relied upon in
making such findings and its reasons for the sentence imposed.~~

SECTION 2. AMENDMENT. Subsection 1 of section 15.1-24-05 of the 1999

Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. A law enforcement agency shall notify a school principal in writing if the agency has probable cause to believe that a student enrolled in the school has violated section 5-01-08, ~~19-03.1-23~~, chapter 19-03.1, chapter 19-03.2, chapter 19-03.4, section 39-08-01, or section 39-08-18. The law enforcement agency shall provide the notice within two weeks of an incident.

SECTION 3. Section 19-03.1-22.1 of the North Dakota Century Code is created and enacted as follows:

19-03.1-22.1. Volatile chemicals - Inhalation of vapors prohibited - Definitions -

Penalty. An individual is guilty of a class B misdemeanor if that individual intentionally inhales the vapors of a volatile chemical in a manner designed to affect the individual's central nervous system; to create or induce a condition of intoxication, hallucination, or elation; or to distort, disturb, or change the individual's eyesight, thinking processes, balance, or coordination. This section does not apply to inhalations specifically prescribed for medical, dental, or optometric treatment purposes or to controlled substances described in this chapter. For the purposes of this section, "volatile chemical" includes the following chemicals or their isomers:

1. Acetone.
2. Aliphatic hydrocarbons.
3. Amyl nitrite.
4. Butane.
5. Butyl nitrite.
6. Carbon tetrachloride.
7. Chlorinated hydrocarbons.
8. Chlorofluorocarbons.
9. Chloroform.
10. Cyclohexane.
11. Diethyl ether.
12. Ethyl acetate.

- 1 13. Fluorocarbon.
- 2 14. Glycol ether inter solvent.
- 3 15. Glycol ether solvent.
- 4 16. Hexane.
- 5 17. Ketone solvent.
- 6 18. Methanol.
- 7 19. Methyl cellosolve acetate.
- 8 20. Methyl ethyl ketone.
- 9 21. Methyl isobutyl ketone.
- 10 22. Nitrous oxide.
- 11 23. Petroleum distillate.
- 12 24. Toluene.
- 13 25. Trichloroethane.
- 14 26. Trichloroethylene.
- 15 27. Xylol or xylene.

16 **SECTION 4. AMENDMENT.** Subsection 7 of section 19-03.1-23 of the 1999
17 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 18 7. A person who violates this chapter or chapter 19-03.4 must undergo a drug
19 addiction evaluation by an appropriate licensed addiction treatment program. The
20 evaluation must indicate the prospects for rehabilitation and whether addiction
21 treatment is required. The evaluation must be submitted to the court for
22 consideration when imposing punishment for a felony violation of this chapter or
23 chapter 19-03.4, and may be submitted before or after the imposing of punishment
24 for a misdemeanor violation of this chapter or chapter 19-03.4.

25 **SECTION 5. AMENDMENT.** Section 19-03.1-23.2 of the North Dakota Century Code
26 is amended and reenacted as follows:

- 27 **19-03.1-23.2. Mandatory terms of imprisonment - Deferred or suspended**
28 **sentence limited.** Whenever a mandatory term of imprisonment is prescribed as a penalty for
29 violation of this chapter, the court may not defer imposition of sentence, nor may the court
30 suspend any part of a specified mandatory term, either at the time of or after the imposition of
31 the sentence, unless the court first finds that the offense was the defendant's first violation of

1 this chapter, chapter 19-03.2, or chapter 19-03.4 and that extenuating or mitigating
2 circumstances exist which justify a suspension. The court shall announce the circumstances
3 that justify a suspension in open court when sentence is imposed and recite these
4 circumstances in the sentence or order suspending part of the sentence.

5 **SECTION 6. AMENDMENT.** Subsection 6 of section 19-03.1-36 of the North Dakota
6 Century Code is amended and reenacted as follows:

- 7 6. Controlled substances as defined in this chapter and imitation controlled
8 substances as defined in chapter 19-03.2 that are possessed, transferred, sold, or
9 offered for sale in violation of this chapter and drug paraphernalia as defined in
10 chapter ~~42-1-31.4~~ 19-03.4 are contraband and must be seized and summarily
11 forfeited to the state. Controlled substances as defined in this chapter and
12 imitation controlled substances as defined in chapter 19-03.2, which are seized or
13 come into the possession of the state and drug paraphernalia as defined in chapter
14 ~~42-1-31.4~~ 19-03.4, the owners of which are unknown, are contraband and must be
15 summarily forfeited to the state.

16 **SECTION 7. AMENDMENT.** Subsection 4 of section 19-03.1-37 of the North Dakota
17 Century Code is amended and reenacted as follows:

- 18 4. In all prosecutions under this chapter, chapter 19-03.2, or chapter ~~42-1-31.4~~
19 19-03.4 involving the analysis of a substance or sample thereof, a certified copy of
20 the analytical report signed by the state toxicologist, or the toxicologist's designee,
21 or the director of the forensic sciences division of the state department of health, or
22 the director's designee, must be accepted as prima facie evidence of the results of
23 the analytical findings.

24 **SECTION 8.** A new subsection to section 19-03.1-37 of the North Dakota Century
25 Code is created and enacted as follows:

26 In all cases of conspiracy to violate chapter 19-03.1, 19-03.2, or 19-03.4, the state
27 is not required to prove or establish that a conspirator knew the other person to the
28 agreement intended to deliver or possess with intent to deliver a controlled
29 substance, an imitation controlled substance, or drug paraphernalia to a third
30 person.

1 **SECTION 9.** Chapter 19-03.4 of the North Dakota Century Code is created and
2 enacted as follows:

3 **19-03.4-01. Definition - Drug paraphernalia.** In this chapter, unless the context
4 otherwise requires, "drug paraphernalia" means all equipment, products, and materials of any
5 kind which are used, intended for use, or designed for use in planting, propagating, cultivating,
6 growing, harvesting, manufacturing, compounding, converting, producing, processing,
7 preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting,
8 ingesting, inhaling, or otherwise introducing into the human body a controlled substance in
9 violation of chapter 19-03.1. The term includes:

- 10 1. Kits used, intended for use, or designed for use in planting, propagating,
11 cultivating, growing, or harvesting of any species of plant which is a controlled
12 substance or from which a controlled substance can be derived.
- 13 2. Kits used, intended for use, or designed for use in manufacturing, compounding,
14 converting, producing, processing, or preparing controlled substances.
- 15 3. Isomerization devices used, intended for use, or designed for use in increasing the
16 potency of any species of plant which is a controlled substance.
- 17 4. Testing equipment used, intended for use, or designed for use in identifying or in
18 analyzing the strength, effectiveness, or purity of controlled substances.
- 19 5. Scales and balances used, intended for use, or designed for use in weighing or
20 measuring controlled substances.
- 21 6. Diluents and adulterants, including quinine hydrochloride, mannitol, dextrose, and
22 lactose, used, intended for use, or designed for use in cutting controlled
23 substances.
- 24 7. Separation gins and sifters used, intended for use, or designed for use in removing
25 twigs and seeds from, or in otherwise cleaning or refining, marijuana.
- 26 8. Blenders, bowls, containers, spoons, grinders, and mixing devices used, intended
27 for use, or designed for use in compounding, manufacturing, producing,
28 processing, or preparing controlled substances.
- 29 9. Capsules, balloons, envelopes, and other containers used, intended for use, or
30 designed for use in packaging small quantities of controlled substances.

- 1 10. Containers and other objects used, intended for use, or designed for use in storing
2 or concealing controlled substances or products or materials used or intended for
3 use in manufacturing, producing, processing, or preparing controlled substances.
- 4 11. Hypodermic syringes, needles, and other objects used, intended for use, or
5 designed for use in parenterally injecting controlled substances into the human
6 body.
- 7 12. Objects used, intended for use, or designed for use in ingesting, inhaling, or
8 otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human
9 body including:
- 10 a. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without
11 screens, permanent screens, hashish heads, or punctured metal bowls.
- 12 b. Water pipes.
- 13 c. Carburetion tubes and devices.
- 14 d. Smoking and carburetion masks.
- 15 e. Objects, sometimes commonly referred to as roach clips, used to hold
16 burning material, for example, a marijuana cigarette, that has become too
17 small or too short to be held in the hand.
- 18 f. Miniature cocaine spoons and cocaine vials.
- 19 g. Chamber pipes.
- 20 h. Carburetor pipes.
- 21 i. Electric pipes.
- 22 j. Air-driven pipes.
- 23 k. Chillums.
- 24 l. Bongs.
- 25 m. Ice pipes or chillers.
- 26 13. Ingredients or components to be used or intended or designed to be used in
27 manufacturing, producing, processing, preparing, testing, or analyzing, whether or
28 not otherwise lawfully obtained, including anhydrous ammonia, nonprescription
29 medications, or lawfully dispensed controlled substances.

1 **19-03.4-02. Drug paraphernalia - Guidelines.** In determining whether an object is
2 drug paraphernalia, a court or other authority shall consider, in addition to all other logically
3 relevant factors:

- 4 1. Statements by an owner or by anyone in control of the object concerning its use.
- 5 2. Prior convictions, if any, of an owner, or of anyone in control of the object, under
6 any state or federal law relating to any controlled substance.
- 7 3. The proximity of the object, in time and space, to a direct violation of chapter
8 19-03.1.
- 9 4. The proximity of the object to controlled substances.
- 10 5. The existence of any residue of controlled substances on the object.
- 11 6. Direct or circumstantial evidence of the intent of an owner, or of any person in
12 control of the object, to deliver the object to another person whom the owner or
13 person in control of the object knows, or should reasonably know, intends to use
14 the object to facilitate a violation of chapter 19-03.1. The innocence of an owner,
15 or of any person in control of the object, as to a direct violation of chapter 19-03.1
16 may not prevent a finding that the object is intended or designed for use as drug
17 paraphernalia.
- 18 7. Instructions, oral or written, provided with the object concerning the object's use.
- 19 8. Descriptive materials accompanying the object which explain or depict the object's
20 use.
- 21 9. National and local advertising concerning the object's use.
- 22 10. The manner in which the object is displayed for sale.
- 23 11. Whether the owner, or anyone in control of the object, is a legitimate supplier of
24 like or related items to the community, for example, a licensed distributor or dealer
25 of tobacco products.
- 26 12. Direct or circumstantial evidence of the ratio of sales of the object or objects to the
27 total sales of the business enterprise.
- 28 13. The existence and scope of legitimate uses for the object in the community.
- 29 14. Expert testimony concerning the object's use.
- 30 15. The actual or constructive possession by the owner or by a person in control of the
31 object or the presence in a vehicle or structure where the object is located of

1 written instructions, directions, or recipes to be used, or intended or designed to be
2 used, in manufacturing, producing, processing, preparing, testing, or analyzing a
3 controlled substance.

4 **19-03.4-03. Unlawful possession of drug paraphernalia.** A person may not use or
5 possess with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest,
6 manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack,
7 store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a
8 controlled substance in violation of chapter 19-03.1. Any person violating this section is guilty
9 of a class C felony if the drug paraphernalia is used, or possessed with intent to be used, to
10 manufacture, compound, convert, produce, process, prepare, test, inject, ingest, inhale, or
11 analyze a controlled substance, other than marijuana, classified in schedule I, II, or III of
12 chapter 19-03.1. Otherwise, a violation of this section is a class A misdemeanor.

13 **19-03.4-04. Unlawful manufacture or delivery of drug paraphernalia.** A person
14 may not deliver, possess with intent to deliver, or manufacture with intent to deliver, drug
15 paraphernalia, if that person knows or should reasonably know that the drug paraphernalia will
16 be used to plant, propogate, cultivate, grow, harvest, manufacture, compound, convert,
17 produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest,
18 inhale, or otherwise introduce into the human body a controlled substance in violation of
19 chapter 19-03.1. Any person violating this section is guilty of a class C felony if the drug
20 paraphernalia will be used to manufacture, compound, convert, produce, process, prepare,
21 test, inject, ingest, inhale, or analyze a controlled substance, other than marijuana, classified in
22 schedule I, II, or III of chapter 19-03.1. Otherwise, a violation of this section is a class A
23 misdemeanor.

24 **19-03.4-05. Unlawful delivery of drug paraphernalia to a minor.** A person eighteen
25 years of age or over may not deliver drug paraphernalia, in violation of this chapter, to a person
26 under eighteen years of age who is at least three years the deliverer's junior. Any person
27 violating this section is guilty of a class C felony.

28 **19-03.4-06. Unlawful advertisement of drug paraphernalia.** A person may not place
29 an advertisement in any newspaper, magazine, handbill, or other publication if that person
30 knows or should reasonably know that the purpose of the advertisement, in whole or in part, is

- 1 to promote the sale of objects designed or intended for use as drug paraphernalia. Any person
2 violating this section is guilty of a class A misdemeanor.

- 3 **SECTION 10. REPEAL.** Section 12.1-31-06 and chapter 12.1-31.1 of the North
4 Dakota Century Code are repealed.

- 5 **SECTION 11. EMERGENCY.** This Act is declared to be an emergency measure.