

SENATE BILL NO. 2135

Introduced by

Judiciary Committee

(At the request of the Department of Corrections and Rehabilitation)

1 A BILL for an Act to amend and reenact section 12.1-32-07 and subsection 15 of section
2 54-23.3-04 of the North Dakota Century Code, relating to probation supervision costs and fees,
3 powers and duties of the director of the department of corrections and rehabilitation, and civil
4 collection of supervision costs and fees.

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

6 **SECTION 1. AMENDMENT.** Section 12.1-32-07 of the 1999 Supplement to the North
7 Dakota Century Code is amended and reenacted as follows:

8 **12.1-32-07. (Effective for fees collected before January 1, 2001, for offenses**
9 **committed before July 1, 1999) Supervision of probationer - Conditions of probation -**
10 **Revocation.**

11 1. When the court imposes probation upon conviction for a felony, the court shall
12 place the defendant under the supervision and management of the department of
13 corrections and rehabilitation. In class A misdemeanor cases, the court may place
14 the defendant under the supervision and management of the department of
15 corrections and rehabilitation or other responsible party. In all other cases, the
16 court may place the defendant under the supervision and management of a
17 community corrections program other than the department of corrections and
18 rehabilitation. If an appropriate community corrections program is not reasonably
19 available, the court may place the defendant under the supervision and
20 management of the department of corrections and rehabilitation. The department
21 of corrections and rehabilitation may arrange for the supervision and management
22 of the defendant by a community corrections program selected by the department
23 of corrections and rehabilitation. A community corrections program means a
24 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.

2. The conditions of probation must be such as the court in its discretion deems reasonably necessary to ensure that the defendant will lead a law-abiding life or to assist the defendant to do so. The court shall provide as an explicit condition of every probation that the defendant not commit another offense during the period for which the probation remains subject to revocation. The court shall order supervision costs and fees of not less than thirty dollars per month unless the court makes a specific finding on record that the imposition of fees will result in an undue hardship.
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.

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; or
 - h. Intensive supervision program.
4. When imposing a sentence to probation, probation in conjunction with imprisonment, or probation in conjunction with suspended execution or deferred imposition of sentence, the court may impose such conditions as it deems appropriate, and may include any one or more of the following:

- a. Work faithfully at a suitable employment or faithfully pursue a course of study or of vocational training that will equip the defendant for suitable employment.
- b. Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose.
- c. Attend or reside in a facility established for the instruction, recreation, or residence of persons on probation.
- d. Support the defendant's dependents and meet other family responsibilities.
- e. Make restitution or reparation to the victim of the defendant's conduct for the damage or injury which was sustained, or perform other reasonable assigned work. When restitution, reparation, or assigned work is a condition of probation, the court shall proceed as provided in subsection 1 or 2, as applicable, of section 12.1-32-08.
- f. Pay a fine imposed after consideration of the provisions of section 12.1-32-05, except when imposition of sentence is deferred.
- g. Refrain from excessive use of alcohol, or any use of narcotics or of another dangerous or abusable drug without a prescription.
- h. Permit the probation officer to visit the defendant at reasonable times at the defendant's home or elsewhere.
- i. Remain within the jurisdiction of the court, unless granted permission to leave by the court or the probation officer.
- j. Answer all reasonable inquiries by the probation officer and promptly notify the probation officer of any change in address or employment.
- k. Report to a probation officer at reasonable times as directed by the court or the probation officer.
- l. Submit to a medical examination or other reasonable testing for the purpose of determining the defendant's use of narcotics, marijuana, or other controlled substance whenever required by a probation officer.
- m. Refrain from associating with known users or traffickers in narcotics, marijuana, or other controlled substances.

- n. Submit the defendant's person, place of residence, or vehicle to search and seizure by a probation officer at any time of the day or night, with or without a search warrant.
 - o. Serve a term of imprisonment of up to one-half of the maximum term authorized for the offense of which the defendant was convicted or one year, whichever is less.
 - p. Reimburse the costs and expenses determined necessary for the defendant's adequate defense when counsel is appointed for the defendant. When reimbursement of indigent defense costs and expenses is imposed as a condition of probation, the court shall proceed as provided in subsection 3 of section 12.1-32-08.
 - q. Provide community service for the number of hours designated by the court.
 - r. Refrain from any subscription to, access to, or use of the internet.
5. When the court imposes a sentence to probation, probation in conjunction with imprisonment, or probation in conjunction with suspended execution or deferred imposition of sentence, the defendant must be given a certificate explicitly setting forth the conditions on which the defendant is being released.
6. The court, upon notice to the probationer and with good cause, may modify or enlarge the conditions of probation at any time prior to the expiration or termination of the period for which the probation remains conditional. If the defendant violates a condition of probation at any time before the expiration or termination of the period, the court may continue the defendant on the existing probation, with or without modifying or enlarging the conditions, or may revoke the probation and impose any other sentence that was available under section 12.1-32-02 or 12.1-32-09 at the time of initial sentencing or deferment. In the case of suspended execution of sentence, the court may revoke the probation and cause the defendant to suffer the penalty of the sentence previously imposed upon the defendant.
7. The court may continue or modify probation conditions or revoke probation for a violation of probation conditions occurring before the expiration or termination of the period of probation notwithstanding that the order of the court is imposed after

the expiration or termination has occurred. The petition for revocation must be issued within sixty days of the expiration or termination of probation.

8. Jurisdiction over a probationer may be transferred from the court that imposed the sentence to another court of this state with the concurrence of both courts.

Retransfers of jurisdiction may also occur in the same manner. The court to which jurisdiction has been transferred under this subsection may exercise all powers permissible under this chapter over the defendant.

(Effective for fees collected after December 31, 2000, for offenses committed after June 30, 1999) Supervision of probationer - Conditions of probation - Revocation.

1. When the court imposes probation upon conviction for a felony, the court shall 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.

2. The conditions of probation must be such as the court in its discretion deems reasonably necessary to ensure that the defendant will lead a law-abiding life or to assist the defendant to do so. The court shall provide as an explicit condition of every probation that the defendant not commit another offense during the period for which the probation remains subject to revocation. The court shall order

supervision costs and fees of not less than thirty-six dollars per month unless the court makes a specific finding on record that the imposition of fees will result in an undue hardship. If the offender has not paid the full amount of supervision fees and costs before completion or termination of probation, the court may issue an order, after opportunity for hearing, to determine the amount of supervision fees and costs that are unpaid. The order may be filed, transcribed, and enforced by the department of corrections and rehabilitation in the same manner as civil judgments rendered by a district court of this state.

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.

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; or
- h. Intensive supervision program.

4. When imposing a sentence to probation, probation in conjunction with imprisonment, or probation in conjunction with suspended execution or deferred imposition of sentence, the court may impose such conditions as it deems appropriate, and may include any one or more of the following:
- a. Work faithfully at a suitable employment or faithfully pursue a course of study or of vocational training that will equip the defendant for suitable employment.
 - b. Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose.

- c. Attend or reside in a facility established for the instruction, recreation, or residence of persons on probation.
- d. Support the defendant's dependents and meet other family responsibilities.
- e. Make restitution or reparation to the victim of the defendant's conduct for the damage or injury which was sustained, or perform other reasonable assigned work. When restitution, reparation, or assigned work is a condition of probation, the court shall proceed as provided in subsection 1 or 2, as applicable, of section 12.1-32-08.
- f. Pay a fine imposed after consideration of the provisions of section 12.1-32-05, except when imposition of sentence is deferred.
- g. Refrain from excessive use of alcohol, or any use of narcotics or of another dangerous or abusable drug without a prescription.
- h. Permit the probation officer to visit the defendant at reasonable times at the defendant's home or elsewhere.
- i. Remain within the jurisdiction of the court, unless granted permission to leave by the court or the probation officer.
- j. Answer all reasonable inquiries by the probation officer and promptly notify the probation officer of any change in address or employment.
- k. Report to a probation officer at reasonable times as directed by the court or the probation officer.
- l. Submit to a medical examination or other reasonable testing for the purpose of determining the defendant's use of narcotics, marijuana, or other controlled substance whenever required by a probation officer.
- m. Refrain from associating with known users or traffickers in narcotics, marijuana, or other controlled substances.
- n. Submit the defendant's person, place of residence, or vehicle to search and seizure by a probation officer at any time of the day or night, with or without a search warrant.
- o. Serve a term of imprisonment of up to one-half of the maximum term authorized for the offense of which the defendant was convicted or one year, whichever is less.

1 p. Reimburse the costs and expenses determined necessary for the defendant's
2 adequate defense when counsel is appointed for the defendant. When
3 reimbursement of indigent defense costs and expenses is imposed as a
4 condition of probation, the court shall proceed as provided in subsection 3 of
5 section 12.1-32-08.

6 q. Provide community service for the number of hours designated by the court.

7 r. Refrain from any subscription to, access to, or use of the internet.

8 5. When the court imposes a sentence to probation, probation in conjunction with
9 imprisonment, or probation in conjunction with suspended execution or deferred
10 imposition of sentence, the defendant must be given a certificate explicitly setting
11 forth the conditions on which the defendant is being released.

12 6. The court, upon notice to the probationer and with good cause, may modify or
13 enlarge the conditions of probation at any time prior to the expiration or termination
14 of the period for which the probation remains conditional. If the defendant violates
15 a condition of probation at any time before the expiration or termination of the
16 period, the court may continue the defendant on the existing probation, with or
17 without modifying or enlarging the conditions, or may revoke the probation and
18 impose any other sentence that was available under section 12.1-32-02 or
19 12.1-32-09 at the time of initial sentencing or deferment. In the case of suspended
20 execution of sentence, the court may revoke the probation and cause the
21 defendant to suffer the penalty of the sentence previously imposed upon the
22 defendant.

23 7. The court may continue or modify probation conditions or revoke probation for a
24 violation of probation conditions occurring before the expiration or termination of
25 the period of probation notwithstanding that the order of the court is imposed after
26 the expiration or termination has occurred. The petition for revocation must be
27 issued within sixty days of the expiration or termination of probation.

28 8. Jurisdiction over a probationer may be transferred from the court that imposed the
29 sentence to another court of this state with the concurrence of both courts.

30 Retransfers of jurisdiction may also occur in the same manner. The court to which

jurisdiction has been transferred under this subsection may exercise all powers permissible under this chapter over the defendant.

SECTION 2. AMENDMENT. Subsection 15 of section 54-23.3-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15. To collect costs and fees from persons on correctional supervision for the supervision services, control devices, and programs as implemented by the department to assist in making community corrections an effective alternative to incarceration. A person on active supervision is presumed able to pay assessed fees unless the director, giving due consideration to the fiscal obligations and resources of the probationer, determines otherwise. A person with the ability to pay assessed fees who refuses to pay must be returned to the court for a judicial determination. In addition to any other remedies allowed by law, the department may enforce and collect any unpaid supervision costs and fees imposed as a condition of parole, probation, or under a program implemented under this section in a civil judgment entered by a district court of this state and may employ licensed collection agencies to enforce and collect any unpaid supervision costs and fees.