

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1296

2005 HOUSE JUDICIARY

HB 1296

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1296

House Judiciary Committee

☐ Conference Committee

Hearing Date 1/19/05

Tape Number	Side A	Side B	Meter #
1		xx	17.6-41.5
2	xx		35.5-end
2		xx	0-7.8

Committee Clerk Signature



Minutes: 14 members present.

Representative Maragos: We will open the hearing on HB 1296. We will take testimony in favor of HB 1296.

David Gray: (see written testimony). I am support of HB 1296.

Chairman DeKrey: Thank you for appearing. Further testimony in support of HB 1296.

Testimony in opposition to HB 1296.

Mike Donahue, ND Wildlife Federation and United Sportsmen for ND: We are opposed to the bill and ask that you give it a Do Not Pass. HB 1296 is not the vehicle to seek relief that the individual who spoke is seeking. HB 1296 literally removes punishment for non-criminal violations. This is a bad bill.

Representative Koppelman: I think I understand your concerns about the licensure, supervision of outfitters, etc. I am curious about your comments about Mr. Gray's testimony and observations. A few years ago, the people of ND made hunting and fishing a constitutional right,

which is interesting whether you favor that, because it creates some interesting implications. Do you have any comments or thoughts about this case.

Mike Donahue: Yes, that was placed into section 11 of the constitution under general provisions; but at the same time, you have a right to hunt and fish, but you also have the right to do it in an accountable manner. That is to do it legally and to do it with fair chase, etc. When you don't, then you are held accountable for it. It's the same with a driving violation in ND and I am suspended of my driver's license. I don't know of a state I could go to and not be under suspension.

Representative Koppelman: But driving is a privilege not a constitutional right. Do you see hunting and fishing as a privilege too.

Mike Donahue: We see it more as a privilege, as long as you are on the up and up. If it were a constitutional right and not in the general provisions, but up in the preamble part, then you wouldn't even have to be licensed, you get just go about your way. You have to control things.

Chairman DeKrey: Thank you for appearing. Any further testimony. We will close the hearing on HB 1296.

Representative Kretschmar: I would like to hear from someone from Game and Fish on this bill.

Chairman DeKrey: We will recess the hearing on HB 1296.

Chairman DeKrey: We will reopen the hearing on HB 1296.

Robert Timmeon, Chief Game Warden, North Dakota Game & Fish Dept.: I am here at the request of your committee to answer questions. The Dept. does not have any prepared testimony on this bill.

Chairman DeKrey: For or against the bill.

Robert Timmeon: I would try to answer any questions.

Representative Kretschmar: The gentlemen that testified on the bill, was claiming that he did not get a fair hearing before G&F suspended his license, he got a violation in the state of WY. Is there a procedure in the department that there isn't a hearing on these things or do you take the thing to court, explain to me the process.

Robert Timmeon: There is a very clear procedure. The first procedure, and it's all laid out in state law, is that there has to be a violation that would meet the same standards as North Dakota from another state. Then that has to be reviewed, we just don't accept any or all violations or suspension in the state of ND. After it is reviewed, and both our office and in some cases, we consult with the AG's office, and meets all requirements based under the law, that it is a violation that if it had occurred in ND, could have resulted in a suspension, we would recognize the suspension up to a maximum of three years, which is set statutorily in law; irregardless of how long they were suspended in the other state. At that point in time, the person is notified that we are going to recognize the suspension, he has to by law turn in his license within 10 days, he's also notified in the same letter, given a copy of the Century Code, and notified that there is a hearing procedure, if he wishes to avail himself of that procedure and how to do that. Then there is a hearing procedure in front of an administrative hearing officer to ascertain the facts as allowed in state law. This is all post-trial or guilty plea in the other state court, he's had a jury trial or whatever legal performance he's done in the other state. At the end of the hearing, the hearing officer makes a recommendation to the director of the department, whether we should uphold our original decision, or he feels that we should rescind the decision. At that point in

time, the director can go by the hearing officer's decision, and in this case the hearing officer concurred. At that point in time, the person, if he still doesn't agree that he has had a fair process, can ask for an appeal through the district court and through the court system. So there is a very long due process and we're very aware that the law is taking, not Game & Fish, something very precious to people and that is their hunting rights. We are meticulous in making sure that we only do those that we are instructed to do under the law. It's not a pleasurable thing to sit across from a person and tell them you can't hunt anymore; but it is something that is a requirement and a duty of the office to do and we do do it.

Representative Galvin: So North Dakota has some kind of reciprocity with some of the other states, but not all of them.

Robert Timmeon: That's correct. The state law that was passed, enables states to enter a compact with other states. But that compact right now, contains 20 member states. But nothing in the compact can supercede state law.

Representative Galvin: Does that reciprocity include, those portions of the law where your state is different from the other.

Robert Timmeon: The state law says that the law that is violated in another state, if that same law was violated (no law is going to be written in 20 states, word for word exactly as it is written in the other states, each legislative body enacts laws written), if the essence of the law is basically the same law in their state as it is in ND and if in ND, not the other state, it could have resulted in a suspension, then we recognize the suspension up to a maximum of three years.

Representative Galvin: According to the man's testimony, his violation in WY would not have been a violation in ND.

Robert Timmeon: He is certainly entitled to his opinion, and his opinion was adjudicated through the courts, through the hearing process and his opinion is not the state's opinion, is not the hearing officer's opinion, not the court's opinion. He is certainly entitled to his opinion, but there is a difference of opinion.

Representative Koppelman: I don't think I heard whether you were in favor of the bill or not.

Robert Timmeon: We are not in favor of the bill. The bill is extensive, far reaching, and it reverses many of the laws.

Representative Koppelman: The compact that you spoke of, when was that enacted into law in ND.

Robert Timmeon: That was enacted in 2001 legislation. We've been a member since August, 2001.

Representative Koppelman: I remember when we passed this constitutional amendment in ND a few years ago, making hunting and fishing a constitutional right in our state. What effect does that have, in your opinion, on some of these regulations.

Robert Timmeon: You're asking a legal opinion, and I'm not an attorney. That would probably be best answered by the AG's office. I don't believe that it was entered into the constitution as part of the heritage of ND, hunting heritage, and not given full constitutional status as a right. I believe there is language in the law that says that, through judicial procedures, you can have those privileges removed. The G&F department in ND, we only recognize other court suspensions, and as far as personal hunting licenses, those suspensions are by the court, not the department.

Representative Charging: If I were in violation in ND, whether it was purposely or my own negligence, of trespassing, what would be my fine.

Robert Timmeon: Under state law, the violation of hunting on posted land carries a minimum, mandatory sentence of one year of hunting, fishing and trapping privileges suspended. That's the law mandated through the court, that would be imposed by the court, after finding you guilty through the court system.

Representative Charging: Then you would suspend that individual's rights for that year.

Robert Timmeon: That would be correct. We would abide by the court order to suspend.

Representative Charging: So I'm following the compact agreement, that's great, it keeps people from going to state to state illegally breaking the law, and notifies them. But why the three years then.

Robert Timmeon: It's not 3 years. The 3 years is the maximum under law that you can get a court to suspend a hunting, fishing or trapping privilege for any single conviction, there is a ceiling on the suspension law. In some states, you can be suspended for 5 years, 7 years, or life. In ND, for a single conviction, the maximum is three years. The minimum for hunting in ND on posted land is 1 year, but the court could suspend up to 3 years. When ND recognizes a suspension, we will recognize the suspension if it meets all the criteria under the law up to a maximum of three years. So if the person was suspended in another state for a single conviction and it was for 5 or 7 years, ND would only recognize the first three years of that suspension.

Representative Charging: So then it was up to the hearing process that he came back to ND and it was decided that it would be maximum of 3 years in this individual case.

Robert Timmeon: We could provide the case file to the committee if they like. It's a rather lengthy file. The point is that we didn't recognize him for the maximum. His suspension took place in WY, the day the court decision happened. Then there is a procedure that WY goes through to enter this into the compact and then it takes time to get this. By the time the suspension got to ND, a fair amount of time had passed. He was suspended in WY for two years. So by the time the suspension gets to ND, we can't recognize the suspension until we are officially notified of the suspension. So even though the suspension had taken place in WY some time prior, until we are officially notified and go through the procedure, we don't recognize it. So in actuality, by the time we actually recognized the suspension here in ND, he lost his privileges for less than two years that WY imposed. He lost it from the time it was official until the end of the two years. It was a year and some months.

Chairman DeKrey: Thank you. We will close the hearing on HB 1296.

(Reopened in the afternoon session).

Chairman DeKrey: What are the committee's wishes in regard to HB 1296.

Representative Delmore: I move a Do Not Pass on HB 1296.

Representative Onstad: Second the motion.

10 YES 1 NO 3 ABSENT

DO NOT PASS

CARRIER: Rep. Kretschmar

Date: 1/19/05
Roll Call Vote #: /

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1296

HOUSE JUDICIARY COMMITTEE

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken *Do Not Pass*

Motion Made By *Rep. Delmore* Seconded By *Rep. Onstad*

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey		✓	Representative Delmore	✓	
Representative Maragos	A		Representative Meyer	✓	
Representative Bernstein	✓		Representative Onstad	✓	
Representative Boehning	✓		Representative Zaiser	A	
Representative Charging	A				
Representative Galvin	✓				
Representative Kingsbury	✓				
Representative Klemin	✓				
Representative Koppelman	✓				
Representative Kretschmar	✓				

Total (Yes) 10 No 1

Absent 3

Floor Assignment *Rep. Kretschmar*

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

REPORT OF STANDING COMMITTEE (410)
January 19, 2005 3:41 p.m.

Module No: HR-12-0734
Carrier: Kretschmar
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1296: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO NOT PASS
(10 YEAS, 1 NAY, 3 ABSENT AND NOT VOTING). HB 1296 was placed on the
Eleventh order on the calendar.

2005 TESTIMONY

HB 1296

*Treated as a criminal in a civil
matter appeal in prison* *Gray Testimony*

STATEMENT OF CASE

This case involves the unconstitutional and illegal suspension of a North Dakota resident's hunting, fishing and trapping privileges for two years, by the North Dakota Game and Fish (NDG&F) under the direction of Dean Hildebrand. After a hearing, by the executive branch (OAH), the executive branch upheld the executive branch. The case is appealed to South Central District Court in Bismarck ND. The constitution potestas stricte interpretatur.

ISSUES

- 1 The NDG&F violated the constitutional rights of the appellant by suspending privileges with out providing appellant due process of the law.
- 2 The NDG&F violated the constitutional rights of the appellant by requiring appellant to answer for a crime for which he already answered.
- 3 The NDG&F violated the constitutional rights of the appellant by depriving appellant his property with out due process of law.
- 4 The NDG&F violated the constitutional rights of the appellant by denying appellant a trial by jury as said property is in excess of twenty dollars.
- 5 The NDG&F violated the constitutional rights of the appellant to be secure in his papers.
- 6 The NDG&F violated the constitutional rights of the appellant by inflicting cruel and unusual punishment on appellant.
- 7 The NDG&F uses an unconstitutional law as it abridges the privileges and immunities of the appellant as a citizen of the United States.
- 8 NDG&F uses an unconstitutional law as it is unequal in protection and is arbitrary.
- 9 The NDG&F uses an unconstitutional law as there is no presumption of innocence.
- 10 The NDG&F uses an unconstitutional law as the appellant is denied a vigorous defense.
- 11 The NDG&F uses an unconstitutional law as it is unfair and unclear(charge) as to what the criminal behavior is. Criminal behavior is all of the above and anything else that needs be added or whatever.
- 12 The NDG&F violates the constitution by entering a compact.
- 13 The NDG&F does not have authority under Title 4 USC Sec. 112 to impose punishment on citizens.

Don't want us hunting only millionaires

14 The NDG&F can not suspend under NDCC 20.1-16 as a conviction is required and by definition NDG&F does not have one.

15. The NDG&F can not suspend under NDCC 20.1-16 as the laws in Wyoming and North Dakota are dissimilar.

16 The NDG&F abuses discretion in suspending under NDCC 20.1-16 as the law was not intended to be applied in the case of this appellant.

17 The NDG&F threatened appellant with criminal prosecution and has treated the appellant as a common criminal, even though this is a civil matter, causing the appellant emotional distress, disruption of sleep, anxiety, heart palpitations, weight gain and other stress related illnesses.

18 The Wyoming suspension only punishes appellant for two years. NDG&F suspension punishes appellant for over twenty years. And punishes appellant's minor children and adult family members for 2yrs. NDG&F imposes another judgement on top of the Wyoming crime, double jeopardy.

19 The evidence submitted by the NDG&F shows the Wyoming conviction was obtained under dubious if not illegal circumstances i.e. a bait and switch. Therefore the conviction is not entitled to full faith and credit.

20 The NDG&F has a hearing with the OAH and where at severely restricts appellant's evidence and arguments. It is a pointless and expensive exercise for the appellant. All the grievances of the appellant are not entertained where for he must go to District Court. Where in appellant is burdened and yoked with the decisions of the OAH. It is an unnecessary layer applied to the Judicial process in order to protect State agency decisions.

STATEMENT OF FACTS

1. Fact On October 12, 2004 via a letter NDG&F deprived appellant of his ND hunting fishing and trapping privileges() for the period of time from 9/21/04 through 1/1/06.

2. Fact On October 12, 2004 NDG&F deprived the appellant via same letter() of his property, current 2004 licences, under the threat of prosecution.

3. Fact NDG&F claims authorization (disputed by appellant) under NDCC 20.1-16, a.k.a. Interstate Wildlife Compact.

4 Fact On October 19, 2004 appellant requested a hearing () and that NDG&F lift suspension while appeals were pending i.e. due process.

5 Fact Hearing was held October 27 and on Nov.2 2004 the NDG&F suspension letter was affirmed ().

6 Fact On Nov.5 2004 an appeal was taken to South Central District Court in Bismarck ND.().

7 Fact The NDG&F has successfully destroyed the appellant's 2004 hunting season with out accusation, summons, without a trial, without a court order, without a judge and most importantly without any due process or a crime being committed.

8 Fact Wyoming's judgement suspended appellant privileges for 2yrs upon notice and due process so appellant doesn't apply in 04 Wyoming. NDG&F so called reciprocal recognition suspends for two years with no notice or due process in addition NDG&F does not allow appellant to accompany afield family members/relatives, even minor children in their fall hunting(), NDG&F punishes minor children and extended family members, in addition NDG&F suspension wipes out years of religious application to accumulate preference points, in addition NDG&F swipes a tag that is over twenty years in the waiting.

ARGUMENTS AND CONTENTIONS

Appellant when duck hunting relies on the following: if it waddles like a duck, quacks like a duck, has a bill like a duck, flies like a duck, has a neck and head like a duck, and swims like a duck appellant calls it a **DUCK!!** Figuratively speaking the Wyoming court's called the above described bird a quacker and appellant lost his case as he was unable to get the court to admit it was a duck.

The court needs to recognize that appellant has rights under the constitution that forbids public force against him.

Appellant contends that he has to have a sentence which explicitly states all disablements, and is final in that once rendered no further disablements can be imposed for the same offense. Hence NDG&F should not be allowed to disable appellant after Wyoming has disabled appellant, for the same offense. It is apparent that NDG&F is acting on the/result of, the offense/occurrence in Wyoming. Issue 2. a.k.a. double jeopardy. It walks and talks and behaves **JUST** like double jeopardy. NDG&F benignly calls it reciprocal recognition. **IT IS DOUBLE JEOPARDY!!** And is **unconstitutional behavior** on the part of NDG&F. It is a **DUCK!!!**

Appellant contends he was deprived **unconstitutionally of his property and privileges by** NDG&F with out due process. It is a palpable incongruity to allow the NDG&F under the guise of legislative compact to interfere with the liberty established by the due process doctrine stripping appellant of rights guaranteed under the federal constitution. Issue 1 and 3. No state, no state, no state can take property or privileges w/o due process. Said amendment makes no exception as when a state is acting in a proprietary capacity by legislative compacts (protestas stricte interpretatur). It is **unconstitutional behavior by NDG&F**. It is a **DUCK!!**

If the value of property exceeds twenty dollars under the constitution a trial by jury is preserved. However the NDG&F views it self above the law by denying said trial. As a fact no trial is offered where by appellant can face his accuser. Issue 4. NDG&F is an sovereign dictator unto it

self. Dishing out judgements as a tyrant with the objective of instilling fear in the population not so different as Saddam Hussain. Again NDG&F behaves **unconstitutionally**.

Issue 5 is illegal seizure of licence /papers and property of appellant more unconstitutional behavior of NDG&F.

The cruel NDG&F imposes cruel and unusual punishment. Cruel in that the interests of the State is minimal in regards the amount of punishment unusual in that no crime was committed in ND. Question being what might the interest be in a Wyoming trespass and can said interest be achieved without violating the rights of citizens. Issue 6. It is cruel to suspend licences in the middle of a season as it is too late to arrange other plans.

Appellant contends protection from NDG&F judgement should be afforded under the federal constitution as appellant is a citizen of the US and is entitled to the immunities of citizens of non compact States such as Texas or Alaska. Where if they had committed the same crime as appellant would return home and face no further disablement(). Issue 7

Issue 8 Appellant contends the law is unconstitutional as the law is arbitrary and affords unequal protection under it. Suspensions are based on convictions in participating States (20.1-16-03). It is arbitrary and unreasonable to allow the NDG&F to suspend some convictions and not others. As in the case of bear hunting convictions where ND has no bears such convictions are not suspended. Where as a conviction not supported under this States law is not allowed. Such reciprocal recognition is arbitrary and capricious and affords unequal protection to the citizens of ND and is unconstitutional. Or where conviction does not result in suspension licence would not be suspended. Where is an arbitrary and unequal enforcement of one of the Stated purposes of said compact.

Appellant contends under the jurisprudence in the United States a man is innocent until proven guilty. It is unreasonable for NDG&F to be allowed to start an action on a ND citizen under the presumption of guilt. What is to be proved by NDG&F mutilating a convicted man. Cruel. Issue 9.

Where is the justification for a defense after the fact of conviction. It is unreasonable to expect a person to defend against a conviction where he failed to defend in the first place which resulted in the conviction. 10

Appellant contends that NDCC 20.1-16 is unconstitutional as it is so broadly worded, a reasonable person is unable to determine the crime which it forbids. Trespass not mentioned in the law yet gets punished based solely on purpose. Where it is not applicable loosely define and interpreted could engulf it. 11

NDG&F violates the constitution as compacts are forbidden unless allowed by the congress.

US title 4 allows compact to aid enforcement not impose another judgement

Appellant contends NDG&F can only suspend if it has a conviction under the compact. NDCC 20.1-16 clearly defines a conviction "any offense that is related to the preservation, protection, management, or restoration of wildlife". Appellant's conviction did not involve wildlife nor the preservation, protection, management, or restoration of wildlife. The statement is prima facie as wildlife cannot read and not aware of trespassing signs. Trespass is a person on person crime not a person on wildlife crime. Wildlife is mentioned over 40 times in the law, trespass not mentioned once.

15 The Wyoming violation was enter private property for the purpose to hunt without permission of the owner or person in charge. That is not against the law in ND. In ND you can legally enter land with out permission to hunt. ND requires the land be posted. Wyoming does not. The two violations do not match up. At this point NDG&F arbitrarily and capriciously retries the case in ND. NDG&F looks to see if Wyoming's land was posted in an effort to match up the violations. NDG&F now makes arbitrary judgements about the case. NDG&F determines in error the Wyoming land was posted based on pictures from the trial which showed signs at one gate. NDG&F ignores ND law NDCC 20.1-01-17() "posting of lands" which says the "name of the person posting the land must appear on each sign in legible characters". The photos do not establish that the signs are signed and dated by the owner, therefore the land is not posted for ND purposes. In addition NDCC 20.1-01-17 requires "posting of signs at or on all gates " on enclosed property. NDG&F fails to show if all gates were posted, therefore the land is not posted for the purposes of NDG&F. Under NDCC 20.1-16-03 NDG&F must determine whether the violation leading to the suspension could have led to the forfeiture of privileges under this state's law. Appellant contends his actions in Wyoming if repeated in ND on identically marked property would not be a trespass or a crime of any kind in ND. That action would not be sited in ND and appellant would not have been suspended in ND. Holberg's conclusion of law must fail as the fundemental justification for reciprocal recognition is that the laws in compact states are similar. As an example there is no reciprocal recognition for all offenses such as shooting from the road which is legal in ND but illegal in WY. The law is not about upholding convictions Holberg errs. However his conclusion, unwittingly perhaps, proves the law arbitrary and unconstitutional.

HB 1296

CRIMINAL CODE

12.1-32-01

- Section
- bation — Additional probation for violation of conditions. — Repealed.
- 12.1-32-07. Supervision of probation — Repealed.
- 12.1-32-08. Release, discharge, or termination of probation.
- 12.1-32-07.1. Records and filing of papers.
- 12.1-32-07.2. When probationer deemed escapee and fugitive from justice.
- 12.1-32-08. Hearing prior to ordering restitution, reparation, or reimbursement of indigent defense costs and expenses — Conditional.
- 12.1-32-09. Dangerous special offenders — Habitual offenders — Extended sentences — Procedure.

12.1-32-01

PENALTIES AND SENTENCING

12.1-32-01.1. Sentencing of violent offenders. Repealed.

12.1-32-11. Merger of sentences — Sentencing for multiple offenses.

12.1-32-12. Penalties, sentences, and parole for offenses unclassified and in other titles.

12.1-32-13. Minor convicted of felony — Sentencing.

12.1-32-14. Restoration of property or other offenders.

12.1-32-15. Offenders against children and sexual offenders — Sexually violent predators — Registration requirement — Penalty.

12.1-32-01. Classification of offenses — Penalties. Offenses are divided into seven classes, which are denominated and subject to maximum penalties, as follows:

1. Class AA felony, for which a maximum penalty of life imprisonment without parole may be imposed. The court must designate whether the life imprisonment sentence imposed is with or without an opportunity for parole. Notwithstanding the provisions of section 12-59-05, a person found guilty of a class AA felony and who receives a sentence of life imprisonment with parole, shall not be eligible to have that person's sentence considered by the parole board for thirty years, less sentence reduction earned for good conduct, after that person's admission to the penitentiary.
2. Class A felony, for which a maximum penalty of twenty years' imprisonment, a fine of ten thousand dollars, or both, may be imposed.
3. Class B felony, for which a maximum penalty of ten years' imprisonment, a fine of ten thousand dollars, or both, may be imposed.
4. Class C felony, for which a maximum penalty of five years' imprisonment, a fine of five thousand dollars, or both, may be imposed.
5. Class A misdemeanor, for which a maximum penalty of one year's imprisonment, a fine of two thousand dollars, or both, may be imposed.
6. Class B misdemeanor, for which a maximum penalty of thirty days' imprisonment, a fine of one thousand dollars, or both, may be imposed.
7. Infraction, for which a maximum fine of five hundred dollars may be imposed. Any person convicted of an infraction who has, within one year prior to commission of the infraction of which the person was convicted, been previously convicted of an offense classified as a class B infraction may be sentenced as though convicted of a class B

Source: S.L. 1973, ch. 116, § 31; 1975, ch. 116, § 23; 1979, ch. 177, § 2; 1985, ch. 134, § 1; 1987, ch. 132, § 1.

Effective Date.

The 1997 amendment of this section by section 1 of chapter 132, S.L. 1997 became effective August 1, 1997.

Class B Misdemeanor.

The punishment set forth in section 39-09-01(4)(a) are mandatory minimum penalties and because a first-time offender is guilty of a class B misdemeanor under section 39-09-01(2), he may be punished in accordance with the punishments specified for a class B misdemeanor in subsection 6 — up to a \$500 fine, 30 days imprisonment, or both; that the trial court was not limited to sentencing the defendant to pay a fine of \$250 and to undergo an addiction evaluation. *State v. Nelson*, 417 N.W.2d 814 (N.D. 1987).

Class C Felony.

Sentences of three years imprisonment and three years suspension of probation for a class C felony are set in duration the maximum sentence of imprisonment for the offense, which is five years. *State v. Nace*, 371 N.W.2d 129 (N.D. 1985), decided prior to the enactment of section 12.1-32-06.1.

Maximum Sentences.

Provision of section 12.1-32-02(1) that sentences imposed thereunder shall not exceed in duration the maximum sentences of imprisonment provided by this section plainly applies to "combination" sentences, as well as sentences of imprisonment. *State v. Nace*, 371 N.W.2d 129 (N.D. 1985), decided prior to the enactment of section 12.1-32-06.1.

Where there was no indication in the record that the trial court considered an impermissible factor in sentencing defendant accused of relating into a vehicle, imposition of maximum penalty of five years imprisonment was not so. *State v. Manninen*, 453 N.W.2d 758 (N.D. 1990).

Eight Amendment was not violated because legislature authorized maximum penalty of life imprisonment without parole for class AA felonies. *State v. Garcia*, 1997 ND 60, 561 N.W.2d 698 (1997).

Parole Eligibility.

Failure of the sentencing judge to advise

misdemeanor. If the prosecution contends that the infraction is punishable as a class B misdemeanor, the complaint shall specify that the offense is a misdemeanor.

This section shall not be construed to forbid sentencing under section 12.1-32-09, relating to extended sentences.

defendant of the parole eligibility provision of this section was not a violation of Rule 11, N.D.R.Crim.P., nor did it affect the voluntariness of defendant's guilty plea; however, judges were urged to inform defendants of parole ineligibility features of the North Dakota Century Code. *Houle v. State*, 482 N.W.2d 24 (N.D. 1992).

Parole Ineligibility.

There is no mandatory minimum punishment which must be imposed for a class AA felony. Rather, subsection (1) of this section, merely establishes a period of parole ineligibility. *Houle v. State*, 482 N.W.2d 24 (N.D. 1992).

Theft of Property.

In prosecution for theft of property, the trial court did not abuse its discretion when it sentenced the defendant to one year of confinement, where the sentence was within the statutory limit, and the defendant did not allege that the trial court relied on impermissible sentencing factors. *State v. Jacobson*, 419 N.W.2d 699 (N.D. 1988).

DECISIONS UNDER PRIOR LAW

Assignment.

Assignment, as a first offense, was a misdemeanor punishable by imprisonment in the county jail. *Devis v. Riedman*, 114 N.W.2d 831 (N.D. 1962), overruling *Simpson v. Nygaard*, 79 N.D. 351, 96 N.W.2d 685 (1955).

"Felony."

Where a crime was by statute a felony, an imposition of a jail sentence or fine did not reduce the charge to a misdemeanor as of the time of presentation and trial, so as to give a county court jurisdiction. *State ex rel. Stricker v. Andrews*, 62 N.D. 216, 243 N.W. 912 (1932).

A felony, within the constitutional provision that no person convicted of a felony shall be qualified to vote at any election unless restored to civil rights, was a crime punishable with death or imprisonment in the penitentiary. *State ex rel. Olson v. Langer*, 65 N.D. 68, 256 N.W. 377 (1935).

Presumption.

Generally where the statute did not state a crime was a felony or a misdemeanor, or classify it by fixing the place of imprisonment,