

**SENATE BILL NO. 2320**

Introduced by

Senators Wardner, Lyson

Representatives DeKrey, Klemin

1 A BILL for an Act to amend and reenact section 12.1-32-07 of the North Dakota Century Code,  
2 relating to the revocation of probation.

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

4 **SECTION 1. AMENDMENT.** Section 12.1-32-07 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6 **12.1-32-07. Supervision of probationer - Conditions of probation - Revocation.**

7 1. When the court imposes probation upon conviction for a felony, the court shall  
8 place the defendant under the supervision and management of the department of  
9 corrections and rehabilitation. In class A misdemeanor cases, except for a  
10 violation of subdivision b of subsection 2 of section 12.1-17-01, the court may  
11 place the defendant under the supervision and management of the department of  
12 corrections and rehabilitation or other responsible party. In all other cases, the  
13 court may place the defendant under the supervision and management of a  
14 community corrections program other than the department of corrections and  
15 rehabilitation. If an appropriate community corrections program is not reasonably  
16 available, the court may place the defendant under the supervision and  
17 management of the department of corrections and rehabilitation. The department  
18 of corrections and rehabilitation may arrange for the supervision and management  
19 of the defendant by a community corrections program selected by the department  
20 of corrections and rehabilitation. A community corrections program means a  
21 program for the supervision of a defendant, including monitoring and enforcement  
22 of terms and conditions of probation set by the court or pursuant to a conditional  
23 release from the physical custody of a correctional facility or the department of  
24 corrections and rehabilitation.

1           2.    The conditions of probation must be such as the court in its discretion deems  
2                    reasonably necessary to ensure that the defendant will lead a law-abiding life or to  
3                    assist the defendant to do so. The court shall provide as an explicit condition of  
4                    every probation that the defendant not commit another offense during the period  
5                    for which the probation remains subject to revocation. The court shall order  
6                    supervision costs and fees of not less than forty dollars per month unless the court  
7                    makes a specific finding on record that the imposition of fees will result in an undue  
8                    hardship. If the offender has not paid the full amount of supervision fees and costs  
9                    before completion or termination of probation, the court may issue an order, after  
10                  opportunity for hearing, to determine the amount of supervision fees and costs that  
11                  are unpaid. The order may be filed, transcribed, and enforced by the department  
12                  of corrections and rehabilitation in the same manner as civil judgments rendered by  
13                  a district court of this state.

14          3.    The court shall provide as an explicit condition of every probation that the  
15                  defendant may not possess a firearm, destructive device, or other dangerous  
16                  weapon while the defendant is on probation and that the defendant may not  
17                  willfully defraud a urine test administered as a condition of probation.

18                    Unless waived on the record by the court, the court shall also provide as a  
19                    condition of probation that the defendant undergo various agreed-to community  
20                    constraints and conditions as intermediate measures of the department of  
21                    corrections and rehabilitation to avoid revocation, which may include:

- 22                  a.    Community service;
- 23                  b.    Day reporting;
- 24                  c.    Curfew;
- 25                  d.    Home confinement;
- 26                  e.    House arrest;
- 27                  f.    Electronic monitoring;
- 28                  g.    Residential halfway house; or
- 29                  h.    Intensive supervision program.

30          4.    When imposing a sentence to probation, probation in conjunction with  
31                  imprisonment, or probation in conjunction with suspended execution or deferred

- 1 imposition of sentence, the court may impose such conditions as it deems  
2 appropriate and may include any one or more of the following:
- 3 a. Work faithfully at a suitable employment or faithfully pursue a course of study  
4 or of career and technical education training that will equip the defendant for  
5 suitable employment.
  - 6 b. Undergo available medical or psychiatric treatment and remain in a specified  
7 institution if required for that purpose.
  - 8 c. Attend or reside in a facility established for the instruction, recreation, or  
9 residence of persons on probation.
  - 10 d. Support the defendant's dependents and meet other family responsibilities.
  - 11 e. Make restitution or reparation to the victim of the defendant's conduct for the  
12 damage or injury which was sustained or perform other reasonable assigned  
13 work. When restitution, reparation, or assigned work is a condition of  
14 probation, the court shall proceed as provided in subsection 1 or 2, as  
15 applicable, of section 12.1-32-08.
  - 16 f. Pay a fine imposed after consideration of the provisions of section 12.1-32-05,  
17 except when imposition of sentence is deferred.
  - 18 g. Refrain from excessive use of alcohol or any use of narcotics or of another  
19 dangerous or abusable drug without a prescription.
  - 20 h. Permit the probation officer to visit the defendant at reasonable times at the  
21 defendant's home or elsewhere.
  - 22 i. Remain within the jurisdiction of the court, unless granted permission to leave  
23 by the court or the probation officer.
  - 24 j. Answer all reasonable inquiries by the probation officer and promptly notify  
25 the probation officer of any change in address or employment.
  - 26 k. Report to a probation officer at reasonable times as directed by the court or  
27 the probation officer.
  - 28 l. Submit to a medical examination or other reasonable testing for the purpose  
29 of determining the defendant's use of narcotics, marijuana, or other controlled  
30 substance whenever required by a probation officer.

- 1 m. Refrain from associating with known users or traffickers in narcotics,  
2 marijuana, or other controlled substances.
- 3 n. Submit the defendant's person, place of residence, or vehicle to search and  
4 seizure by a probation officer at any time of the day or night, with or without a  
5 search warrant.
- 6 o. Serve a term of imprisonment of up to one-half of the maximum term  
7 authorized for the offense of which the defendant was convicted or one year,  
8 whichever is less.
- 9 p. Reimburse the costs and expenses determined necessary for the defendant's  
10 adequate defense when counsel is appointed for the defendant. When  
11 reimbursement of indigent defense costs and expenses is imposed as a  
12 condition of probation, the court shall proceed as provided in subsection 4 of  
13 section 12.1-32-08.
- 14 q. Provide community service for the number of hours designated by the court.
- 15 r. Refrain from any subscription to, access to, or use of the internet.
- 16 5. When the court imposes a sentence to probation, probation in conjunction with  
17 imprisonment, or probation in conjunction with suspended execution or deferred  
18 imposition of sentence, the defendant must be given a certificate explicitly setting  
19 forth the conditions on which the defendant is being released.
- 20 6. The court, upon notice to the probationer and with good cause, may modify or  
21 enlarge the conditions of probation at any time prior to the expiration or termination  
22 of the period for which the probation remains conditional. If the defendant violates  
23 a condition of probation at any time before the expiration or termination of the  
24 period, the court may continue the defendant on the existing probation, with or  
25 without modifying or enlarging the conditions, or may revoke the probation and  
26 impose any other sentence that was available under section 12.1-32-02 or  
27 12.1-32-09 at the time of initial sentencing or deferment. In the case of suspended  
28 execution of sentence, the court may revoke the probation and cause the  
29 defendant to suffer the penalty of the sentence previously imposed upon the  
30 defendant.

1           7. If the court revokes the defendant's probation, before resentencing the defendant,  
2           the court, unless waived by the defendant, shall order the department of  
3           corrections and rehabilitation to conduct a new or updated presentence  
4           investigation and prepare a new or updated presentence report for the  
5           consideration of the court.

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

11         ~~8.~~ 9. Jurisdiction over a probationer may be transferred from the court that imposed the  
12          sentence to another court of this state with the concurrence of both courts.  
13          Retransfers of jurisdiction may also occur in the same manner. The court to which  
14          jurisdiction has been transferred under this subsection may exercise all powers  
15          permissible under this chapter over the defendant.

16         ~~9.~~ 10. Notwithstanding any other provision of law, the court may authorize the defendant  
17          to assist law enforcement officers in an investigation of a criminal offense upon the  
18          terms and conditions as the court may require by written order. The court shall  
19          hold a hearing in camera before issuing an order under this subsection. The order  
20          must be sealed and is subject to inspection only upon order of the court.